

**OPEN NINTH:
CONVERSATIONS BEYOND THE COURTROOM
COURT SPOTLIGHT
EPISODE 69
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HOSTED BY: FREDERICK J. LAUTEN**

(Music)

NARRATOR: 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. Joining me today is Mary McQueen. And Mary is the President of the National Center for State Courts, and she’s served in that capacity since 2004. As President, she coordinates the major National Initiatives for the Conference of Chief Justices, which includes a review of model rules and policies on various legal issues that include admission to the bar of the various states, legal education requirements, professional ethics for lawyers and judges. She also serves as the Secretary General of the International Organization on Judicial Training.

Mary received her undergraduate degree from the University of Georgia and her juris doctorate from Seattle University Law School. She is actively involved in national and statewide judicial matters. She’s a frequent lecturer. She’s a frequent speaker. She’s a frequent writer. It’s a thrill to have Mary McQueen joining us today.

And I’m just so excited about your being here. Thanks for joining us.

MARY MCQUEEN: Well, thank you, Chief.

CHIEF JUDGE LAUTEN: So in full disclosure, your daughter works for us. And I’m going to tell you what every mom loves to hear -- I know, because I’m a parent and I have children -- which is your daughter is phenomenal and so well-liked and such a recognized scholar and leader here. So we’re thrilled to have her. So I know that you didn’t assign her here, but thank you so much and we think the world of your daughter.

MARY MCQUEEN: Well, thank you. The Ninth Circuit has such an incredibly positive and visionary national reputation that being able to say I have a daughter that works in the Ninth Circuit really means a lot.

CHIEF JUDGE LAUTEN: Well, thank you. Let's talk about you a little bit.

MARY MCQUEEN: All right.

CHIEF JUDGE LAUTEN: And then, you know, maybe we'll bring your daughter back into it a little later.

But -- so how did you transition from an attorney into Court Administration, and then eventually into the presidency of the National Center for State Courts, which is quite a prestigious position to hold?

MARY MCQUEEN: Well, thank you. I think all of us who are officers of the court, I mean, you know, we all remember, you know, those first days in law school where they tried to help us understand that as an officer of the court -- you know, still in some jurisdictions they call us counselors -- and so the best interest of the public, you know, how can we help people resolve issues, whether it's their family, whether it's their -- you know, their jobs, whether it's their children. And so I think in looking at just the incredible number and the impact of the decisions that happen in courts, I started looking at how can we as the court community serve the public better. And I felt like maybe that I could do that from the inside rather than on a case-by-case basis.

CHIEF JUDGE LAUTEN: Great.

MARY MCQUEEN: Because I think from time to time the public looks at courts and say, well, why do you create all these -- what they see as barriers -- for just getting my issues

decided. You know, why are there all these, you know, rules and responsibilities that you have to go through.

And so I have had in my career the opportunity to actually be at the table where just incredible judicial leaders, like yourself, you know, the justices, the judges, the legislatures -- because I mean, you know, we are three branches of government and we work together to solve real problems. And I just felt like I've just been really blessed to be able to be at -- in a position where you can really discuss solutions to those -- some of those problems that then become, you know, individual cases.

CHIEF JUDGE LAUTEN: Did you start -- in Court Administration, did you start in a small, defined court system and then go on to a state court position, or did you start in the --

MARY MCQUEEN: Well, I worked actually in Kentucky and Washington, D.C. and Washington State. And so I started --

CHIEF JUDGE LAUTEN: Well, if you can work in that -- those three different locales, you must be able to get along with people pretty easily.

MARY MCQUEEN: Well, I said it's like going from Puget Sound to the Potomac and back.

CHIEF JUDGE LAUTEN: Okay. There we go.

MARY MCQUEEN: And I think, you know, looking at -- we're more alike than we're different. I mean, there may be small differences from state to state, but overall I think all courts have the same vision and mission. And so for me it was being able to try to take that time out because I started, as you and I were kind of chatting before we went online, with juries. Because I think juries are such an incredible responsibility.

I mean, you know, people talk about checks and balances and separation of powers, well, courts have checks and balances on them.

CHIEF JUDGE LAUTEN: That's right.

MARY MCQUEEN: And one of them is that the public gets to participate in a major segment of justice in this country.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: You don't sit on juries in France. You don't sit on juries in Germany. You don't sit on juries in China. And I have people sometimes ask me when they look at these cases -- and you -- you know, you and your court have had some of the very --

CHIEF JUDGE LAUTEN: High profile.

MARY MCQUEEN: -- high-profile cases.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And they said, you just let people off the street come in and make these decisions. And I said, yes, we do.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And that is part of the check and balance on the courts. And I think from time to time the public thinks, oh, well, this is just the imperial branch of government. You know, there are more checks and balances, I believe, on the courts than any other branch.

CHIEF JUDGE LAUTEN: We -- I've taken to telling jurors at the end that this is -- that serving on a jury is the most direct form of democracy, other than voting, that I can imagine. And even voting, you -- in our republic, you elect someone who makes decisions for you, in essence.

MARY MCQUEEN: Um-hum. Yeah. Absolutely.

CHIEF JUDGE LAUTEN: Hopefully, they're informed decisions. Hopefully, they listen to their constituents. But ultimately, in a republican democracy, then can vote, you know, the way you feel or not. On a jury, there's no filter. You're a juror, you vote. And that's direct democracy in action.

And I also tell people who sort of read summaries, like, how did the jury go there; I said, you almost have to sit through an entire trial to ever have the real feel for it. And I thank jurors because it's hard work. I like having jurors. Sometimes I wouldn't want to make those factual calls.

MARY MCQUEEN: I think we learn so much from jurors. And so I think, you know, when I first started and, you know, looking at juries, managing juries, I felt like that these were the people that were the real ambassadors about how a court works.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: You know, it's not, you know, what you see on television or what you see on the 6 o'clock news.

CHIEF JUDGE LAUTEN: Right. Right.

MARY MCQUEEN: It's talking to somebody who's actually been there, who had to make a decision about was somebody going to live or die.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: Was somebody's business going to be changed in a major way.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And --

CHIEF JUDGE LAUTEN: Was someone going to pay a [indiscernible] sum of money.

MARY MCQUEEN: That's what I'm saying. And it's open, everybody can see what happens.

CHIEF JUDGE LAUTEN: That's right, except for their deliberations.

MARY MCQUEEN: Except for their deliberations.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And I just -- I'm really proud to be part of that.

CHIEF JUDGE LAUTEN: Well, I am too. And, you know, I don't want to spend the whole time on jurors, but I want to talk a little -- the statement I make, when I've [sic] asked, is that most of the time -- and well over the majority of the time -- most of the time my impression is jurors get it right. I guess that's saying, I agree with jurors most of the time. But I listen to the trial too, and I'm amazed at the kind of degree of common sense that jurors bring.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: I think we could improve upon how we instruct them and how we facilitate their decision-making process. Sometimes I -- I'm a firm believer now we should give them more information earlier on in the process --

MARY MCQUEEN: No, I agree. Absolutely.

CHIEF JUDGE LAUTEN: -- than in later in the process. But even with those sort of distinctions that we could improve upon, jurors tend to get it right. Which is why I say to people, it's really easy to criticize a jury, but you have to listen to everything they heard, be in the setting where they are, and ultimately, even if you disagree, we have just as a democracy agreed, this is the system we have. And so when jurors say not guilty, for example, there is no appeal in a criminal case; it's over with.

MARY MCQUEEN: That's right.

CHIEF JUDGE LAUTEN: In a civil case, either party can appeal, so it gets reviewed. But I'm a big fan of jurors. I like the jury system. I'm concerned when people want to attack or limit or define or reduce the participation of jurors in cases. So -- but I think [indiscernible].

But I'm going to ask you, if you would, to talk to me a little bit about the perception of state courts, the role of state courts. This is separate now from the federal judiciary, which is its own system. But, you know, all 50 states have their own state court system, their elaborate systems. Although they pretty much do look alike, there are trial level courts, appellate courts, and the final review, the state supreme courts.

What are the trends that your organization sees as it pertains to state courts?

MARY MCQUEEN: I think, you know, one of the challenges -- even though that we do -- most states, and local as well as the state courts, conduct questionnaires from jurors. We were talking about, you know, jury exit questionnaires and will --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: But they're more or less focused on your experience as a juror.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And so one of the challenges for me is how do I find out what the public really thinks. You -- I mean, sometimes you -- we've tried to use focus groups, but frankly, just being very candid, it's usually people who didn't like the outcome of what happened in their case that show up. And so --

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: -- how do you just find out what the average person -- that you're there -- somebody described courts to me one way is that the average public doesn't really

understand how important they are. It's kind of like when you're on oxygen and you don't really know it till somebody steps on the hose.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And so I think just look -- let's just look at the statistics.

CHIEF JUDGE LAUTEN: Okay.

MARY MCQUEEN: Ninety-six percent of all the cases in this country -- you know, and I'm not talking about traffic cases; I'm talking about, you know, landlord/tenant, debtor/creditor, domestic relations, family, criminal, civil -- are decided in state courts. One day's worth of the docket in New York is bigger than the entire federal system in this country.

CHIEF JUDGE LAUTEN: Wow. That's sobering.

MARY MCQUEEN: So where people come to get justice is in the state courts. So in trying to say, well, how do we know how we're doing; you know, how -- do we have a score card, if you would, about how state courts are doing. So when I came to the National Center for State Courts -- because we try to look out over all the courts, you know, the courts in Orange County as well as the courts in Paducah, Kentucky.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: You know, what's going on. And so we initiated a public opinion survey about eight years ago, and one of the questions we asked people is basically, you know, their confidence in state courts. You know, how much confidence do you have; a great deal of confidence, not so much. And what's really incredible to me -- we do this in the fall every year and it has a fairly high level of reliability. Like, it means, like, in every 20 times you ask the same people the same question on the same days, 19 of them would answer the same way.

CHIEF JUDGE LAUTEN: All right.

MARY MCQUEEN: So that's a high level.

And so we -- this year -- we always do it in November, kind of after the elections. We don't want to kind of get all that political discussion involved in thinking about courts. And it is telephone, but it's cell phones. You know --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- we've tried to move forward with the technology.

CHIEF JUDGE LAUTEN: So you capture young and [indiscernible].

MARY MCQUEEN: Absolutely. And we control for that. I'll share --

CHIEF JUDGE LAUTEN: How interesting.

MARY MCQUEEN: -- kind of an interesting finding with you. And what we found this year, for instance -- because everybody will remember the recent confirmation hearings for a supreme court position -- that this year the courts -- the public's confidence in the courts actually went up 12 percentage points in the state courts.

CHIEF JUDGE LAUTEN: That's interesting.

MARY MCQUEEN: It went down in the federal courts.

CHIEF JUDGE LAUTEN: Probably because of that hearing.

MARY MCQUEEN: And so we have like 12 different characteristics, you know, that we measure to find out, did you think that -- you know, how is that confidence measured. And it's questions like, do you think it's a good investment of tax dollars; you know, did you feel like you were respected; did people treat you with respect when you came in the door; did they kind of tell you -- they give you information to help you figure out where you needed to go or what you needed to do.

And so to me, we use kind of terms like, well, do you think it was hard-working; do you think the decisions were fair and impartial even though it may not have come out the way --

CHIEF JUDGE LAUTEN: You hoped.

MARY MCQUEEN: -- you hoped; and do we kind of take the needs of people into account.

And so I think that the fact that we saw that dramatic increase for state courts, that it shows that the state courts -- that we really are -- and I know that you've had some of those efforts here in Orange County to try to help people feel like they're heard. You know, I mean, because I think those of us who work in the courts know that at the end of the day, courts represent a hope --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- that, you know, maybe I haven't been listened to yet, maybe --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: Sometimes I think people don't know where to turn.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And it's kind of like the last stop on trying to resolve some issue. And so I think we can feel positive about that.

CHIEF JUDGE LAUTEN: That's good. Because by and large -- there's some exceptions, but for the most part, people come into the court system and they're usually experiencing anxiety probably at the lowest level, some people even outright trauma; but some anxiety.

If you're coming in for an adoption, you're usually in a good mood. If you're coming into this building to get married, you're usually in a good mood. Short of that, you're either

suing or being sued, and that could be civil, criminal. Your family could be breaking up in Family court. Your children in Dependency court might be removed from you or you're put on a parenting plan to improve. So people tend to be nervous.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: You know, our system is to administer justice. It's one of the highest principles for organized civilized society that I can think of.

You know, one of the -- you and I have talked about this. I have concerns. So people walk through the front door of this building --

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: -- and I -- they're already nervous.

MARY MCQUEEN: Absolutely.

CHIEF JUDGE LAUTEN: By definition, they're coming into a place where I'm -- it's a little bit like going to a doctor.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: But it's different. And because of legitimate security concerns, we sort of greet them by barking at them to take everything out of your pockets and please remove your belt. And that concerns me. I know it's the modern issue, I know it's realistic. We have to ensure the security of everybody in this building; not just the judges, but everybody who uses it.

But I really, you know, would, if I could, design the court system and have people walk through the door and go, welcome to your court; this is your court system; you've paid for it; it's a fundamental aspect of American democracy and we're here to serve you. And so we're kind of constantly trying to impart that message.

And your court -- your organization has been great about this. There's substantive justice. There's actually getting the answer to the legal question right.

But there's the procedural due process, which means people feel like you treated me with respect and dignity; you listened to me; you didn't rush through my presentation and you reached a result. Hope -- you know, everyone hopes they win, but only one of the two parties can win in a two-party case. So -- and that's -- we know from surveys that that's as important sometimes as getting it right.

MARY MCQUEEN: Well, I was going to say, one of the questions we ask, for instance is in general do you think that the courts and the judges on those courts reflect the values of your community. That was up 11 percent this year, and that's that procedural justice piece you're talking about.

CHIEF JUDGE LAUTEN: Yeah. That's -- well, that's encouraging. But when it's up, if we were at 11 percent to start with and we went to 22 percent, we're still in trouble. So I'm --

MARY MCQUEEN: That's true. But we went up to over 50, so I'll take that.

CHIEF JUDGE LAUTEN: Okay. So more than half of the users, which --

MARY MCQUEEN: Right.

CHIEF JUDGE LAUTEN: I mean, in a system where it's sort of designed that someone's going to lose, so 50 percent of the time someone's going to -- someone's going to be unhappy about something.

What about -- the overall perception went up. But what percentage of people think the state courts are doing a good job as state court systems? In other words, did we go up 12 percent to 50 percent, or did we go up to the 80s, or --

MARY MCQUEEN: We went up to 76.

CHIEF JUDGE LAUTEN: Okay. Well, that's three-quarters.

MARY MCQUEEN: I think that's -- you know, that's, what, three out of four.

CHIEF JUDGE LAUTEN: Room for improvement but, you know, that's pretty optimistic. And we know we have room for improvement.

MARY MCQUEEN: And I think because we look at -- you know, asking about some of these specific criteria, you know, if we said -- and we ask people if they've been in court --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- you know, if they've served on a jury. And if people that served on a jury had, let's say, less of a sense that courts were a good investment, that would tell us, well, we need to spend some time on improving jury service in our court.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: So we try to look -- even though it was overall positive --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- where can we improve.

CHIEF JUDGE LAUTEN: So what did jurors tend to report? Do you have a number for jurors?

MARY MCQUEEN: Jurors tend to have a higher level of confidence in the courts than people who haven't served on juries, because I think they actually see it in action, you know, that there's some sense of having watched some of the challenges that occur in courts.

I'll give you an example that I think Orange County's been a leader in, and that's language access. Just because you can come in the front door, if you don't understand the language, if you can't read the papers that the judge is giving you and you're having to rely on, you know, just sitting in court, that's not access.

CHIEF JUDGE LAUTEN: Right. Yeah. Well, focus on jurors, and then we're going to get to -- the surveys I've seen where you survey the court -- the users --

MARY MCQUEEN: Um-hum. Yes.

CHIEF JUDGE LAUTEN: Now, this is opposed to just the public -- the court users.

MARY MCQUEEN: Right. Right.

CHIEF JUDGE LAUTEN: Jurors usually rate the jury system high.

MARY MCQUEEN: Higher.

CHIEF JUDGE LAUTEN: That doesn't come as a big surprise to those of us who work in the system because we, in a sense, treat jurors with enormous respect. When they come into the room, we order people to stand.

MARY MCQUEEN: That's true.

CHIEF JUDGE LAUTEN: When they leave, we order people to stand.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: I think judges go to lengths to make jurors feel comfortable.

MARY MCQUEEN: Thanking them for their service.

CHIEF JUDGE LAUTEN: I'm always -- thank you, do you need a break, here's where you can go to lunch.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: And the lawyers are respectful for [sic] jurors because they know their decision is -- lies in their hands. So they're probably the happiest court users.

Litigants, by definition, you know, it's going to be a little harder for them to be happy, although

we certainly owe them those characteristics I described earlier. Lawyers, you just never know. You know, I think most of them like -- enjoy the court system, but it's a little hard to say.

And then the public at large -- and their perception is interesting because where is it formed. Is it formed from TV, is it formed from social media, is it formed from having experience --

MARY MCQUEEN: Or friends and family that have had experience.

CHIEF JUDGE LAUTEN: Right. Right.

MARY MCQUEEN: But that's why I think this survey is so interesting, because we're just looking at the general public.

CHIEF JUDGE LAUTEN: How much conversation is there about the access to the court system? And I'm curious about it in different levels, Mary.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: So I'm curious about the hours of operation.

MARY MCQUEEN: Uh-huh.

CHIEF JUDGE LAUTEN: I'm curious about access and barriers financially, access and barriers linguistically, access or barriers in terms of costs. What -- I imagine these are all areas the National Center has looked at. And anything you can -- any information you can share with us, I think our listeners would appreciate.

MARY MCQUEEN: We've mentioned language some. And Orange County's been on the forefront of that.

CHIEF JUDGE LAUTEN: We have, but we even need -- have room for improvement, Mary. Just let me tell you, we are aware of this. We get funding from the state for interpreters, but we don't get enough funding for every single case. So we use those interpreters in the due

process courts, which are Criminal, Dependency, Domestic Violence, Mental Health petitions. But if you file for a divorce and you speak Spanish and you come into this building, we might not have someone to help you. And I feel terrible about that, but it's a resource -- we need more resources.

MARY MCQUEEN: Well -- and I was going to say, you mentioned when people come in the front door. So if a person that has a language challenge comes in the front door, the first thing you do is have them hold up their hands and empty their pockets.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: That's not exactly welcoming.

CHIEF JUDGE LAUTEN: Welcoming. I agree with you about that.

MARY MCQUEEN: And so --

CHIEF JUDGE LAUTEN: It's a reality. I'm struggling with how do you do it, but I completely agree.

MARY MCQUEEN: Yeah. And so I think in some ways technology's going to help with that. I know that your courts are using technology, at least in the courtrooms, to try to access more -- but I think what we're going to see hopefully, and one of the things that we do at the National Center, is to try to make federal funds available to the local courts. Because Congress funds local law enforcement --

CHIEF JUDGE LAUTEN: Yes.

MARY MCQUEEN: -- and courts are -- courts actually come first in the Constitution before protecting -- protection of the general public. It says due justice. And so I think that's one -- because I think you're right, Judge. It comes down to limited resources and how we're

going to distribute them. And so, yes, when somebody's facing loss of life or freedom, we absolutely are going to make sure you have an interpreter.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And then I think we do a very good job about helping families, especially if you're in a domestic violence situation.

CHIEF JUDGE LAUTEN: But not in a divorce.

MARY MCQUEEN: But not in a divorce.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And I'm saying -- but landlord/tenant and debtor/creditor and those kind of things --

CHIEF JUDGE LAUTEN: Right. We don't help there, and we need to. Right.

MARY MCQUEEN: And I was going to say, so you get a letter in the mail saying that your wages are going to be garnished and it's written in English.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: It probably was used to line the trash can.

CHIEF JUDGE LAUTEN: Right. Right. So we need to improve that.

MARY MCQUEEN: So we have to do a better job.

CHIEF JUDGE LAUTEN: What other access issue? What about hours of operations for courts? I'm so curious about that because --

MARY MCQUEEN: Well, I was going to say, hours of operation, we've gone back and forth on if we're talking about the physical location and access to the courthouse. And a lot of times it's come down to, one, hours -- the cost.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: Because, you know, you have to have law enforcement here, you have to have --

CHIEF JUDGE LAUTEN: Clerks.

MARY MCQUEEN: -- Public Defenders here --

CHIEF JUDGE LAUTEN: The clerks.

MARY MCQUEEN: -- you have to have the clerks here.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And it's just very costly. And in some jurisdictions, it results in increasing your insurance costs just on the buildings and -- you know, kind of unintended costs.

CHIEF JUDGE LAUTEN: Yeah. Because people say, why not night court.

MARY MCQUEEN: Exactly.

CHIEF JUDGE LAUTEN: And, you know, I have some sympathy to -- I have to take time off of work to use your system, and I'm sympathetic to that.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: On the other hand, it's very expensive to -- as you've mentioned, to open this court or keep it open for -- 24 hours a day would be hard or even for 15 hours a day. Although I am sympathetic to -- you know, there are some moves, Online Dispute Resolution and others --

MARY MCQUEEN: Exactly. Exactly.

CHIEF JUDGE LAUTEN: -- where maybe we can solve your dispute without you taking time off of work, but --

MARY MCQUEEN: Exactly. And I think that's what -- I'm glad you mentioned that because I know that you're one of the pilots nationally in looking at online courts, is the way I

like to talk about it too. And what can we do that helps you resolve your issues without having to come to the brick-and-mortar building.

And this is where I was going to tell you, it's kind of interesting, because when we -- last year, we actually asked the public that question directly. This year, we asked it a little bit differently, that maybe we'll talk about. And the more that I get to be closer to retirement, the more I wonder where I fall in this spectrum about being cyberly (phonetic) sophisticated.

CHIEF JUDGE LAUTEN: Okay.

MARY MCQUEEN: And so we controlled this question -- the answers by age.

CHIEF JUDGE LAUTEN: Okay.

MARY MCQUEEN: And it was like, would you like to see more court services available online. We didn't kind of go into which types of court services. We did that this year, though, that I can share that with you.

CHIEF JUDGE LAUTEN: Okay. Right. I'm curious about that.

MARY MCQUEEN: But we just said generally. And we controlled for people that you and I would probably call Millennials, you know, people, you know, in their early 30s or lower --

CHIEF JUDGE LAUTEN: Right. My children's age. Right.

MARY MCQUEEN: -- you know, kind of in the middle --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- and then people over 65. Well, I wasn't surprised that the younger generation said absolutely. But the older generation was just as high. It was 68 percent of people over 65 that wanted more access to court services online.

CHIEF JUDGE LAUTEN: Interesting. Interesting. So we are -- just so our -- so the public knows that our state is debating Online Dispute Resolution, is -- or ODR, is what --

MARY MCQUEEN: Um-hum. Right.

CHIEF JUDGE LAUTEN: And for certain categories of cases. The popular one seems to be traffic tickets. Can I --

MARY MCQUEEN: Absolutely.

CHIEF JUDGE LAUTEN: But the other ones are sort of small claims or county civil disputes where the parties would communicate with each other electronically to say, look, from eBay, I ordered a set of golf clubs from you -- and eBay already has this with Modria as their vendor. On eBay, if I order -- let's say I order a driver and they -- it's represented to me as being brand new, pay \$300. And I pay \$300 and I get it and I go, this is clearly not brand new, there's scratches on it and marks; someone's -- this is a used golf club and you told me I was buying it --

MARY MCQUEEN: Right.

CHIEF JUDGE LAUTEN: So instead of -- you know, what do I do; 300 bucks, I mean, what am I going to do? So they have Modria where I can get online with the seller and say, come on, you really represented it was brand new, it's clearly not brand new. And the seller said, well, you know, I swung it five times just to see what -- but I never played with it. And I go, yeah, but it's not brand new and I gave you three -- I feel bad about that. Then the seller might say, well, do you think 250 is fair. And I might go, 200 is fair. Anyway, they resolve hundreds of thousands of cases with that sort of online electronic exchange. And we're debating whether to do that in the court system, and I think the Ninth Circuit's going to pilot an ODR program.

MARY MCQUEEN: Well, this year, we asked people -- because we wanted to follow up on this just general question that we asked, would you like more.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: So this last year we asked, so what types of cases would you want --

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: -- would you feel comfort --

CHIEF JUDGE LAUTEN: You asked this question. I'm curious to hear what --

MARY MCQUEEN: We -- the question was, if you were party to -- the -- so here's the question.

CHIEF JUDGE LAUTEN: Okay.

MARY MCQUEEN: The question was, if you were party to a court proceeding of this type, and then we listed them all, would you prefer to resolve this online or by appearing in person in court.

CHIEF JUDGE LAUTEN: Oh, great. Can't wait to hear the response on this.

MARY MCQUEEN: And 66 percent said traffic tickets.

CHIEF JUDGE LAUTEN: Traffic tickets. Interesting.

MARY MCQUEEN: So traffic tickets were the highest.

CHIEF JUDGE LAUTEN: I don't know how that's going to happen yet, but that's interesting.

MARY MCQUEEN: Well, we're just --

CHIEF JUDGE LAUTEN: Because you're going to get on there with the police officer who gave you the ticket or the judge, I don't know yet.

MARY MCQUEEN: Yeah, but -- well, 10 years from now, none of us are going to drive anyway.

CHIEF JUDGE LAUTEN: That's true. It'll all be --

MARY MCQUEEN: So we won't have to worry about it. We'll all be using an autonomous car.

CHIEF JUDGE LAUTEN: Which is a revenue stream issue, but we'll talk about that later.

MARY MCQUEEN: Well, that's true. And so the next highest one was consumer debt.

CHIEF JUDGE LAUTEN: I see.

MARY MCQUEEN: You know, this debtor/creditor, where you get this notice that you were seen in the emergency room in, I don't know, Paris, Tennessee, or somewhere, and you've never been to Paris, Tennessee.

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: And so you just throw it in the trashcan. And the next thing you know --

CHIEF JUDGE LAUTEN: You're sued.

MARY MCQUEEN: -- you're -- well -- or you've had a default judgement entered and your wages are garnished.

CHIEF JUDGE LAUTEN: Oh, that's right. Yeah. Interesting.

MARY MCQUEEN: And so we found -- because we did a couple of pilots. I love pilots. You know, let's try it out before we make everybody do it. We found out in a couple of jurisdictions that if you -- if the credit company was required to attach the original debt to the filing, 50 percent of them went away.

CHIEF JUDGE LAUTEN: That's astounding.

MARY MCQUEEN: These debts are kind of the -- and I know that Florida, you know, really felt the brunt of the mortgage crisis.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: But you know how you get a mortgage and you think, okay, I owe the First Federal Bank of Florida. And then you find out it was sold to the Second Continental Bank of Connecticut. Right.

CHIEF JUDGE LAUTEN: [Indiscernible]

MARY MCQUEEN: Same thing happens to these debts.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: You know, that some -- so let's say, you know, they just -- they sell them to somebody else, and so by the time they get to you, who knows what it was. You have no way of defending yourself.

CHIEF JUDGE LAUTEN: Right. You know, there's a fascinating term for this kind of debt in the literature, it's called zombie debt; it never dies. And that's --

MARY MCQUEEN: That's true. That's true.

CHIEF JUDGE LAUTEN: Literally in the law journals and the law reviews there are whole articles about how do courts process zombie debt.

MARY MCQUEEN: But using your example of the golf club --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- I think that would absolutely apply to consumer debt.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And --

CHIEF JUDGE LAUTEN: Or landlord/tenant.

MARY MCQUEEN: Yeah, absolutely.

CHIEF JUDGE LAUTEN: You know, I didn't pay my --

MARY MCQUEEN: Get the two people --

CHIEF JUDGE LAUTEN: You didn't pay the last two months' rent --

MARY MCQUEEN: Yeah.

CHIEF JUDGE LAUTEN: -- yeah, well, I didn't because I kept asking you for hot water and you wouldn't give it to me.

MARY MCQUEEN: And here's a picture of the --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- broken pipe, or something like that.

CHIEF JUDGE LAUTEN: Ceiling falling in, right. Right.

MARY MCQUEEN: And while court rules -- I think the public sometimes thinks that it's kind of like the tax code, that the court rules are there to keep lawyers employed.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: They're really there to make sure the best evidence is presented to the court.

CHIEF JUDGE LAUTEN: Right. That's right.

MARY MCQUEEN: And so if people have an opportunity with some of these Online Dispute Resolution options to say, well, here's the picture, and by the way it's dated, you know, because they all --

CHIEF JUDGE LAUTEN: Right. So that's intriguing.

MARY MCQUEEN: Yeah.

CHIEF JUDGE LAUTEN: The other area that we're experiencing already -- and I know you know about this, Mary, but we allow -- in some cases, not all cases, but we will allow lawyers and their clients to appear remotely so they don't have to drive in to this building.

MARY MCQUEEN: Yes. Absolutely.

CHIEF JUDGE LAUTEN: They can go to a law firm that has a high-definition screen and camera, and we have a high-definition screen and camera in the court -- hearing room.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: And the lawyer's offsite -- might be in his or her office, and we might conduct an entire hearing where it's remotely done. And that's for -- save on expense, save on driving down to the building, paying for parking. And we can -- you know, to assist everybody. So that's another area of access.

But I'm curious about, you know, if you've surveyed the public about can people afford legal services [indiscernible], so financial access?

MARY MCQUEEN: We have asked that question. But you know about -- if you -- you know, if you made a decision to not come to court, why did you make that decision.

CHIEF JUDGE LAUTEN: Okay.

MARY MCQUEEN: And overwhelmingly it's time and money. And so one of your colleagues from Miami-Dade, Jennifer Bailey --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- chaired a National Task Force looking at the cost of people bringing their civil cases.

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: And we decided that we needed to conduct ourselves like an emergency room, that when somebody came into court we should triage that case and say, you need to go in examination room 1, examination room 2 or examination room 3. And the first examination room would be these kinds of cases where, if we could just get people together,

somebody has a picture of something or -- you know, the fact issues are very clear -- or clearer. I mean, there may be a difference of opinion, but there's -- and possibly we could resolve these cases very quickly and doing a lot of the work up front by a court management team and the judge doesn't have to get involved until the very end.

CHIEF JUDGE LAUTEN: Interesting. Interesting.

MARY MCQUEEN: And that saves time and it saves money.

CHIEF JUDGE LAUTEN: Well, I'm going to give a shout-out to Jennifer Bailey who's a good friend of mine. She's chairing a Task Force on Business Courts in the state currently.

MARY MCQUEEN: Oh.

CHIEF JUDGE LAUTEN: She has an advanced degree from Duke --

MARY MCQUEEN: Yes.

CHIEF JUDGE LAUTEN: -- in Judicial Studies -- or Management, I think it is.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: And she's 10 times smarter than I am. I just -- I'm running at full speed to keep up with Jennifer. But she's a phenomenal judge, hard-working judge. I mean, she hears actual cases --

MARY MCQUEEN: Yes, she does.

CHIEF JUDGE LAUTEN: -- and then she also is so frequently involved in these statewide studies for access. And she's brilliant.

MARY MCQUEEN: Well, she applied -- she was one of a pilot on the -- on applying this triage approach to civil cases. And she actually has the evidence, she has the data to show that it saved money.

CHIEF JUDGE LAUTEN: Great. Yeah, that's fascinating.

I heard once that people don't hire lawyers sometimes because they don't know they need a lawyer, which seems -- as someone trained in the law and comes to the, you know, courthouse every day, that surprised me when I heard it; like, you don't know that you have a problem that would require a lawyer's expertise to resolve. Have you heard that same --

MARY MCQUEEN: I have. And so there's -- especially within the group that we call self-represented litigants or people who want to go to -- you know, it was kind of doing -- you know how you do a physical checkup every year, doing kind of a legal checkup. But I think that the biggest issue is that sometimes people just think if they keep talking to their neighbor about the property line dispute --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- or the dog coming into their yard that -- I think a lot of people feel self-confidence [sic] or just embarrassment that they can't resolve this without coming to a court of law. And so we do hear that from occasion that -- or they didn't know a court could resolve this dispute that they have.

CHIEF JUDGE LAUTEN: I see. That's interesting. Then there's the whole area of people who know they need to be in court -- and we see this a lot in Family court -- who feel -- for legitimately or not -- I'm sure often it's legitimately -- I just cannot afford the services of an attorney, so -- you know, this is very personal, I'm getting divorced, I don't want to get divorced; but I can't spend -- whatever the dollar figure is -- 10, 20, 30, 40 thousand dollars on an attorney. Part of our problem is we don't have the financial resources and there's always stress at home. And so we are dealing here -- in every state court, every court everywhere that I know, I was

dealing with people who just feel, I can't afford legal services. And that's a real issue when you're talking about a system of justice, and that concerns me a lot.

MARY MCQUEEN: And we've just -- we're just finalizing applying those lessons that we learned in the civil triage to Family court. So we hope this next year to have kind of the examination doors --

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: -- identified for Family court so that we can be more responsive at a lower cost to the public.

CHIEF JUDGE LAUTEN: Well, and here -- and we're not unique about this --

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: -- but we offer probably more services to pro se litigants, self-represented litigants, in the Family division than we do anywhere else. So we have a room that we'll help you fill out the form -- we'll give you the forms, we'll tell you what forms the judge requires in your case in Family. We can't give them legal advice. But if they say, do I have to fill out this question 3, we'll tell them yes or no.

Then we have, you know, people who will assist them to getting to the right place. And we might tell them, you know, you forgot page 3. We offer a lot of assistance. But nonetheless there are a lot of litigants, especially in Family court, that are self-represented.

MARY MCQUEEN: I would say that -- and I'll -- I'm going to use a range here, because it depends on the jurisdiction you're from. But anywhere from 80 to 92 percent of the people that are unrepresented are in Family court.

CHIEF JUDGE LAUTEN: Yeah.

MARY MCQUEEN: And I would say that these court navigators or, you know, the people that can come in and help you navigate the court --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- is really I think the future of trying to say, what types of services can we provide that don't require a lawyer. You know, what -- can we somehow have a certification between a paralegal and a --

CHIEF JUDGE LAUTEN: A lawyer; somewhere on that spectrum.

MARY MCQUEEN: -- a lawyer, somewhere, that can help us provide these really necessary services without the cost associated with them.

CHIEF JUDGE LAUTEN: There are issues, I sense, that are surfacing in the state court system, probably the federal system too, that you would think we would have spotted years ago but it seems to me our focus has been on them recently. And that includes things like money to get out of jail pretrial, legal financial obligations, meaning the court costs that court users especially in Criminal are awarded or imposed; we impose them on them and how long do they last. And I think we're starting to look at do we have sort of a wealth-based court system that treats wealthy people one way and poor people another way, and I think that's getting a lot of attention.

You'd think that we would have addressed this decades if not centuries ago. But what's happening on a national basis in those areas?

MARY MCQUEEN: We just finished -- yeah. We just finished what was called the National Fines, Fee and Bail Task Force. And one of the very real issues -- and going back to even traffic cases. And sometimes, you know, the traffic ticket will say, you know, that you

have to pay this amount by a certain time. And various jurisdictions, if you call them, will put you on a time pay.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: But if -- in fact, in most states, if you fail to pay or if you fail to appear to explain why you didn't pay, that can result in incarceration.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: You can be jailed for that, which could result in you losing your job, you know, losing your home because you couldn't work. And so we were looking at alternatives to money sanctions, but --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- you know, alternatives to saying, okay --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- when you get a traffic ticket, it's going to cost you \$250. Now, if you're an executive with some, you know, multimillion dollar corporation, that's like 50 cents in the parking meter.

CHIEF JUDGE LAUTEN: Right. Right.

MARY MCQUEEN: But when you're the average person, maybe a single parent with three -- two or three children, that is your grocery money for the month.

CHIEF JUDGE LAUTEN: Right. Right.

MARY MCQUEEN: And so what we've been trying to do is to look at tools for judges to actually look at your finances and say, what is a realistic sanction. And then what we're trying to do is say, well, are there alternatives to paying something.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And I'll give you -- kind of excited -- I mean, I think all of us know that frankly if you have the resources, sometimes you can go online and do a traffic school instead of having to pay a fine.

CHIEF JUDGE LAUTEN: Right. Right.

MARY MCQUEEN: But those cost two or three hundred dollars.

CHIEF JUDGE LAUTEN: Right. That's right.

MARY MCQUEEN: So I went to one of our partners, Selective Insurance Company, and I said, would you-all do a public/private partnership with us trying to test people that are truly indigent that haven't had a, you know, traffic ticket let's say in the last two or three years, that you would give them access to an online school without having to pay. Because these weren't people -- these aren't their customers anyway.

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: Right. And -- but what was interesting is they said, well, we'll even go you one better. They had been working with what they call traffic -- driving simulators. The only way I can explain to you is, you know, if you take your children or your grandchildren, or even if you and, you know, friends just go to the movie, there are always these simulators that, you know, fly a plane or do whatever.

CHIEF JUDGE LAUTEN: Right. Well, they have -- yeah. We have them in our library.

MARY MCQUEEN: Yeah. Yeah.

CHIEF JUDGE LAUTEN: You can learn how to fly a plane. You can learn how to operate a backhoe on a simulator.

MARY MCQUEEN: Well -- and so what they'd done is they've worked with a group about -- instead of just learning the rules of the road, actually trying to improve your performance driving. So we've put these in three courts to --

CHIEF JUDGE LAUTEN: Interesting.

MARY MCQUEEN: -- that you could sign up for this instead of having to pay a traffic ticket. Now, the problem with that is, you've still got to get off work and find the time to go do it. That was one thing. But the unintended consequence, especially for older drivers, is the simulators made them dizzy.

CHIEF JUDGE LAUTEN: Great.

MARY MCQUEEN: How -- I mean, just think about it. Right?

CHIEF JUDGE LAUTEN: That's interesting.

MARY MCQUEEN: And so --

CHIEF JUDGE LAUTEN: Well, we're hopeful, pretty soon there will be self-driving, you know, cars, we won't have as many of these.

MARY MCQUEEN: Yeah. It -- we won't have that problem. So --

CHIEF JUDGE LAUTEN: Now, I do want to add this. We did an ALICE study; ALICE stands for Asset Limited, Income Constrained, Employed --

MARY MCQUEEN: Um-hum. Oh, yes. Um-hum.

CHIEF JUDGE LAUTEN: -- study and -- I think United Way did it here, and showed that, I think, 64 percent of our population in Central Florida -- we're a prosperous region, but we have a lot of hotel and restaurant and -- employees who earn the minimum wage, Florida's minimum wage, but that's in the 8.75 range --

MARY MCQUEEN: Yeah.

CHIEF JUDGE LAUTEN: -- and really are constrained. They're employed, they have income, but it's very difficult for them to meet their financial obligations to pay rent and mortgage, transportation in a state that doesn't have great public transportation --

MARY MCQUEEN: Right.

CHIEF JUDGE LAUTEN: -- and daily expenses. And one of the statistics that just leapt out at me is that of those 64 percent, like 90 percent of them couldn't come up with \$400 if they needed to.

MARY MCQUEEN: Sure.

CHIEF JUDGE LAUTEN: And so if you get a traffic ticket that costs \$285, you know, and you have any other expense, what are you going to do. And court costs for misdemeanors and criminal felony cases --

MARY MCQUEEN: On top of that that.

CHIEF JUDGE LAUTEN: -- easily get you into the hundreds and hundreds of dollars.

MARY MCQUEEN: Yeah.

CHIEF JUDGE LAUTEN: And then of course, as we mentioned, should we have a bond system that says, well, just -- if you have money you can get out of jail, or should we have a bond system that measures your risk to be released from jail. There's a constitutional right to be released from jail. So people are presumed to be innocent. We can hold a very narrow class of people pretrial without bond. Most everyone is entitled to bond.

Should that decision be driven by what income do you -- how much money do you have, which is what we've historically done. That's just been our culture, where now there's a movement towards, let's assess what kind of risk you present. If you present virtually no risk to

failure -- in failure to appear or to the community, we'll just let you out of jail; just promise to come back; if you don't, we'll arrest you.

MARY MCQUEEN: And I think --

CHIEF JUDGE LAUTEN: So there's all this evolution in those --

MARY MCQUEEN: And we're seeing that in several states. And one of the questions we asked in this most recent survey was, the current system of cash bail produces a two-tiered justice system with wealthy defendants being able to walk free while low income are jailed; do you agree or disagree.

CHIEF JUDGE LAUTEN: What was the answer to that?

MARY MCQUEEN: And over 40 percent of the public agreed with that.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And we said, okay, so tell me why you think that; you know, what's the outcome. And 74 percent said because the family impact; you know, losing your job, you know, your kids had to go live with grandma because I was incarcerated.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And it may be a non-violent crime, I mean, you know.

CHIEF JUDGE LAUTEN: Right. Sure.

MARY MCQUEEN: Another 70 percent said that they just thought it was a bad use of tax dollars because it's costing more to keep that person in jail a day than the underlying sanction would be.

CHIEF JUDGE LAUTEN: Right. Right. There's [indiscernible]. Right. Yeah.

MARY MCQUEEN: Another one was -- about another 70 percent said that it creates this two-tiered system of justice, that the people that have [sic] finances get locked up pretrial but

the people who don't -- and frankly, if you look at -- you know this, having sat on drug cases, that, you know, the dealers that, you know, have all the kind of money get out but the --

CHIEF JUDGE LAUTEN: The mules don't.

MARY MCQUEEN: Exactly.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: They're locked up.

But the final one that I hadn't thought of -- and I think we as officers of the court have to think about -- is a lot of people felt that they were forced to plead guilty.

CHIEF JUDGE LAUTEN: Oh, my good -- just because of the money?

MARY MCQUEEN: Just because they did not want to have to go to jail.

CHIEF JUDGE LAUTEN: Sit in jail.

MARY MCQUEEN: And they did not think about the downstream impact of having a record.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: You know, and so that then results in this problem that I think you and I know, that especially in economic or culturally diverse communities, trying to expunge a record of where you were arrested, you know, when you were 20 years old --

CHIEF JUDGE LAUTEN: Right. Yeah, it follows you forever.

MARY MCQUEEN: -- you know, breaking and entering or stealing a beer can or something like that, that that, you know, 10 years later results in you not being able to get into school or certain professions or being hired.

CHIEF JUDGE LAUTEN: Yeah. The debate I've heard, Mary -- and this is a sobering debate, I mean, this --

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: But I've had people say, look, we're a capitalist society.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: You know, your income level decides what, you know, kind of house you can afford and whether it's a spacious house or it's cramped. Your income level decides where you can go to school.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: Your income level decides on your transportation mode and whether you have a nice car or, you know, a fundamental car.

MARY MCQUEEN: Um-hum. Right. Um-hum.

CHIEF JUDGE LAUTEN: So why is that so offensive, you know, when you're talking about monetary bond and court costs?

MARY MCQUEEN: If it was based on your income level rather than what you were charged with, maybe it would be more relative.

CHIEF JUDGE LAUTEN: Right. Well, there's that. And the other answer, though, is you -- what system are you in. When you're in -- you know, when you're talking about transportation, that's one thing. When you're talking about the administration of justice, then --

MARY MCQUEEN: And you have a -- that you have a constitutional right to.

CHIEF JUDGE LAUTEN: You have a basic right to a fair and impartial justice system. That's built in to the fabric of our democracy.

MARY MCQUEEN: Um-hum. Um-hum.

CHIEF JUDGE LAUTEN: The Founders fought over this.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: People died from the Revolutionary War forward about, we want a fair and equitable and not a wealth-based justice system. We don't want to be a society where oligarchs buy their way out of justice, but peasants -- this is sort of a Russian -- you know, suffer. And so that's the difference. Do we have a justice system that is fair and equitable? Yes, you might hire a more experienced lawyer with more money, but do we really keep you in jail just because you can't afford to post bond, and then do we saddle you with lifetime legal financial debt -- court debt because you just can never get out from under it.

And I think those are serious questions that deserve serious consideration. They're not that -- they're a little difficult to solve because -- and one of the issues is the court system in part is funded on user fees, which is another significant fundamental debate. Like, should court systems at all be driven by fines, fees and costs use -- or should they just be funded from general revenue because they serve that fundamental civic purpose in a society?

MARY MCQUEEN: I have to say that one of the other findings from this recent survey, when we asked -- we asked directly, should judges be allowed to determine whether or not a defendant should be detained based on their individual case. And that's just what you said, based on their, you know, public safety --

CHIEF JUDGE LAUTEN: Risk.

MARY MCQUEEN: -- or risk or to appear.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: Over 73 percent said that yes, judges should be given that discretion to make that decision rather than just establishing a uniform bail schedule for anyone who is charged with you-name-it crime --

CHIEF JUDGE LAUTEN: Whatever, right. Right.

MARY MCQUEEN: -- that carried a \$500 bond.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And so I think that that's what -- that you and I were saying --

CHIEF JUDGE LAUTEN: Well, I --

MARY MCQUEEN: -- you have to take the individual situation into consideration.

CHIEF JUDGE LAUTEN: Yes. And I think the law has sort of define --

MARY MCQUEEN: That's right.

CHIEF JUDGE LAUTEN: -- answered most of these questions for us.

MARY MCQUEEN: That's correct.

CHIEF JUDGE LAUTEN: You can't -- I think it is unconstitutional now to have a monetary bond system that's driven just by money --

MARY MCQUEEN: That's -- absolutely. That's right.

CHIEF JUDGE LAUTEN: -- as opposed to an individual assessment of what would ensure this person's appearance and protect the community from safety -- you know, from risk.

And so we're -- for our listeners, we're working on that in the Ninth. We're moving closer to a system where we're going to decide it based on risk and not income. And we have some work to do there, and a little bit of it's been cultural and historic.

MARY MCQUEEN: I think you're absolutely right, courts should not be expected to operate off of revenue from violations.

CHIEF JUDGE LAUTEN: Yeah. I think that concept, though, is evolving and in -- what's the word I'm looking for -- it's sort of increasing in consciousness among policymakers. And in fairness to the legislators, I go up and, you know, talk to them about funding for the court system.

MARY MCQUEEN: Um-hum. Um-hum.

CHIEF JUDGE LAUTEN: And, you know, I -- sometimes I'm critical of them. But I want to give them a little bit of due right now which is, I get in line to visit a legislator and say, the court system needs more money from general revenue; we shouldn't be funded by user fees; we need more judges, et cetera.

MARY MCQUEEN: Sure.

CHIEF JUDGE LAUTEN: And in front of me is someone representing education saying, we need more money per pupil for the -- our children who are -- educating fundamental --

MARY MCQUEEN: Absolutely. Absolutely.

CHIEF JUDGE LAUTEN: The person in front of them is, I'm from the Mental Health Association --

MARY MCQUEEN: Exactly.

CHIEF JUDGE LAUTEN: -- we're 50th in the state federal funding per capita for mental health --

MARY MCQUEEN: Absolutely.

CHIEF JUDGE LAUTEN: -- we need more money. In front of them is Transportation; we're a growing state, we need roads, people can't get around. In front of them is my wife about homelessness; we need more -- and so I think that they -- I can appreciate that legislators get fatigued; it's everybody wants money from me. Having said that --

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: So I'm very sympathetic to their -- the difficulty of managing a budget in a state because you don't want to -- you can spend your way into trouble.

We have some states that are -- Illinois and California are experiencing that. Florida, fortunately, is not.

But having said that, the court system being funded by user dollars is problematic, because then you get into these wealth-based, you know, decisions that are discriminatory.

MARY MCQUEEN: Well, it's certainly appearance -- it gives a different appearance --

CHIEF JUDGE LAUTEN: It has a terrible appearance to --

MARY MCQUEEN: Yeah.

CHIEF JUDGE LAUTEN: I mean, if you come in and think, this judge's salary or the court system's keeping the lights on all depends on whether I have to pay a fine or not, you're not going to feel like you got a fair shot.

You know, there is this tension. I mean, this tension was built into the Constitution. I -- you know, I know you're a student of history, I'm a student of history. It was built in by our Founders, and they purposefully put these checks and balances. But at times they put the Legislative Branch, the Judicial Branch and the Executive Branch at odds.

MARY MCQUEEN: Um-hum.

CHIEF JUDGE LAUTEN: I'm sure as a legislator it doesn't feel good if my branch, the Judicial Branch, says, you know, your -- that legislation you sweated bullets over for four years to get passed, well, it's not constitutional. I'm sure it stings to hear that.

And sometimes in their -- to their credit, it's not as obvious as -- sometimes it's obvious but sometimes it's not, it's a close call. I thought I could do that, and the court says you can't. But that's the system that our Founding Fathers designed. We check the Legislature. We check the Executive. They fund us. The jurors check our powers. The legislature can remove power

statutorily from judges. Not constitutional powers, but it certainly can tell us how many judges we have, what our resources are, adopt or revoke a statute.

So it's this interesting interplay of three branches, but it can get -- every now and then it -- you know, I respect what they can do. I probably have to tell them that more. But every now and then it can get where we're in a little bit of, you know, contentiousness because we need more resources or whatever.

MARY MCQUEEN: And I think we do a really good job of listening, which I think sometimes --

CHIEF JUDGE LAUTEN: Well, today, I'm not sure everyone's listening at the level that the three branches should listen.

MARY MCQUEEN: Should listen.

CHIEF JUDGE LAUTEN: But having editorialized about that -- go -- I'm sorry to interrupt.

MARY MCQUEEN: No. No. I was going to say, what I meant by that is I found in my career that if I was working with somebody in the legislature, especially when I was out in Washington State and had the OSCA position in Washington State --

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: -- they either knew something I didn't know or I had some information they didn't have.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And it was amazing to me if we would just sit down in the same room and say, okay, how do we solve this fines and fees problem, that we usually could come up with something. It -- not -- and it may have been a third option that the two of us wouldn't have

questioned. And so in some ways I think the separation of powers, or I like to call it the shared powers, requires us to listen and try to come to a conclusion together.

CHIEF JUDGE LAUTEN: Yeah. That's a great -- before we went on-air I told you that this week I was invited to be a panelist to two House subcommittees who were wrestling with Amendment 4, which is the Felons' Voting Rights Act.

MARY MCQUEEN: Right.

CHIEF JUDGE LAUTEN: And, you know, I couldn't offer my opinion, I'm not permitted to do that, but I was up there to sort of tell them how restitution works or probation works [indiscernible].

MARY MCQUEEN: Um-hum. Um-hum.

CHIEF JUDGE LAUTEN: But I have to say, you know, it was one of my first experiences being a panelist in front of a House Committee. I was very impressed. I was really impressed at the chair. He did a phenomenal job. And then there was a co-chair, and he was brilliant in the data field. But I was impressed at how soberly the members, the men and women on that House subcommittee, addressed this issue. How you could actually physically see them intellectually struggling with, we want to do the right thing; the voters have spoken but the amendment is a little bit unclear and we want to help implement the will of the voters in this area, but we have some very hard decisions to make in how we implement that. I was -- I just walked away from that thinking, very impressive. I know it was filmed but, you know, after you see, like, the confirmation hearings this summer that were contentious and probably not us at our best, I went up to our legislature and I was really impressed at how hard they were working.

And I think you're right. I think most of the time, Mary, when you meet a -- most of them, they're -- are well-motivated, like, I'm here to serve the public. We may have different

political philosophies about how you do that, but for the most part most of them are there to do good.

MARY MCQUEEN: No, I agree. I absolutely -- one of the things, the challenges, that I've always looked to Florida to try to see how you're going to resolve is your incredibly open Sunshine Laws.

CHIEF JUDGE LAUTEN: Yeah, that can sometimes be -- you know, can present issues but it's a --

MARY MCQUEEN: Well, that was -- I was going to say, but because what we're seeing nationally is with electronic filing and more of this information being out in the public sector -- I'm talking about online or in the cloud or wherever you want to call it -- people also say, but wait a minute, in my case I would just as soon everybody not knowing --

CHIEF JUDGE LAUTEN: My financial situation in my divorce.

MARY MCQUEEN: Exactly, or -- exactly.

CHIEF JUDGE LAUTEN: Right.

MARY MCQUEEN: And so I think we as the balancing branch of government --

CHIEF JUDGE LAUTEN: Right. Right.

MARY MCQUEEN: -- have to help kind of be very cautious about what those tradeoffs are. And people seem to think that this privacy issue was created by the technology explosion with everything being online. But between you and me, even if it was on paper, there's some information that people should have a sense of privacy about. And I think we can figure that out regardless of --

CHIEF JUDGE LAUTEN: I think so. But that's -- but that is a struggle.

MARY MCQUEEN: That is.

CHIEF JUDGE LAUTEN: That is a -- because there are significant differences of opinions and, you know, both sides have very sobering strong points, you know, with identity theft today on the rise, what should we require to be in the public domain. On the other hand, we don't want a government that operates privately because that lack of transparency causes distrust. But it's really tough.

And so -- and today, where you can access our Clerk's records from any computer anywhere --

MARY MCQUEEN: I'm sitting at home. Yeah.

CHIEF JUDGE LAUTEN: And then our big fear was, so what kind of fidelity does your system have for protections against forgery. Like a document gets filed and someone who's --

MARY MCQUEEN: Can change it.

CHIEF JUDGE LAUTEN: -- can change it because they are a sophisticated computer, you know, hack. So, yeah, there are real significant issues.

The -- you and I know the future of the court system is electronic.

MARY MCQUEEN: Absolutely.

CHIEF JUDGE LAUTEN: Records will be electronic.

MARY MCQUEEN: Absolutely.

CHIEF JUDGE LAUTEN: Some of the issues facing -- well, we have all the issues we've identified in this podcast about money and bail bonds and all kind -- and access to the court, affordability of legal services. But, you know, some of the issues going forward will include will we let people remotely appear in a criminal trial. No, probably not.

But there will be technology in my daughter's lifetime, certainly in my granddaughter's lifetime, where you could realistically holograph in a witness. They could be in California and they could testify in Florida and you wouldn't see much of a difference. And so that presents an -- what will the courthouses 50 years from now look like?

MARY MCQUEEN: Or will they be brick and mortar?

CHIEF JUDGE LAUTEN: Will they even be brick and mortar? That's right. They may not be brick and mortar. So there's --

MARY MCQUEEN: But do you know what's not going to change? Justice.

CHIEF JUDGE LAUTEN: Right. Justice as a concept should not -- well, it shouldn't evolve. We are evolving and trying to obtain --

MARY MCQUEEN: How we provide it.

CHIEF JUDGE LAUTEN: -- how we provide it and do we --

MARY MCQUEEN: Protect it.

CHIEF JUDGE LAUTEN: -- reach the goal of --

MARY MCQUEEN: Access for all.

CHIEF JUDGE LAUTEN: -- providing justice to all.

MARY MCQUEEN: Yeah. Absolutely.

CHIEF JUDGE LAUTEN: And, you know, we're human beings who operate the system, so perfection's not attainable. But certainly we're moving in the direction of all of these issues you've been so wonderful with your time to discuss with us. And I hope our listeners enjoyed it as much as I did.

But I want to thank you for joining us here in Central Florida. It's Valentine's Day week, so enjoy your time with your daughter.

MARY MCQUEEN: Thank you.

CHIEF JUDGE LAUTEN: And thanks for visiting us. And you're welcome any time. There's so much more we could cover, so if you come back I'm going to ask if you'll sit with us one more time.

Thanks so much, Mary.

MARY MCQUEEN: Absolutely. Thank you, Judge.

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

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