

OPEN NINTH:
CONVERSATIONS BEYOND THE COURTROOM
FEATURING PHIL KNOX AND PETER KIEFER
SURVEYING THE COURTS
ASSESSING FUTURE TRENDS
EPISODE 154
JUNE 21, 2022
HOSTED BY: LISA T. MUNYON

(Music)

NARRATOR: Welcome to another episode of “Open Ninth: Conversations Beyond the Courtroom” in the Ninth Judicial Circuit Court of Florida. And now, here’s your host, Chief Judge Lisa Munyon.

CHIEF JUDGE MUNYON: Hello, and welcome to Open Ninth. I’m here today with Philip Knox and Peter Kiefer, the men behind the informative court future survey. Together the two of them have conducted this survey for almost a decade, analyzing and examining the future trends our courts may see. I’m thrilled to have you on the show. Thanks for joining me.

MR. KIEFER: Well, thank you for having us.

MR. KNOX: Good to be here.

CHIEF JUDGE MUNYON: Well, thank you. So tell me first why you got involved in doing this survey.

MR. KIEFER: It actually started at the 2012 Orlando NACM conference at Bonnet Creek. We went – we, of course, go to a number of sessions at each of the annual conferences and inevitably there are sessions where there’s maybe two or even three presenters up at the front of the room that are presenting on some topic or program that a court’s going on that’s conducting. And it hit us that you know in many of these sessions, the aggregate knowledge of the people in the audience sometimes outweighs the knowledge of the people at the front of the room. And so many people come to these conferences in order to chat with other folks informally, to get some of the ideas like that in an informal session, in an informal setting. So we thought really, we need to find a way to effectively tap on that combined wisdom, the wisdom of the audience and the wisdom of many. So that’s what started our course, our journey

to find that. We sold that idea to Michele Holcomb who happened to be president of NACM at that time. And after that we started it up with our first survey going out in 2013.

CHIEF JUDGE MUNYON: So NACM is the National Association for Court Managers, correct.

MR. KIEFER: Yes.

CHIEF JUDGE MUNYON: And both of you are court – or were, or are court managers, correct?

MR. KIEFER: We both were. We're both retired now.

CHIEF JUDGE MUNYON: And Phil, where did you work, in what type of court?

MR. KNOX: Actually, Judge, we – Peter and I both worked in the same court. I was in the Maricopa County Superior, which is the greater Phoenix area which includes Scottsdale, Tempe, Glendale, 9200 square miles actually and three plus, almost four million people probably in that jurisdiction.

CHIEF JUDGE MUNYON: Wow.

MR. KNOX: And as I said, I was Chief Deputy Court Administrator for a number of years, and as I said, I was there for about 20 years in that court.

CHIEF JUDGE MUNYON: And Peter, what did you do in that court?

MR. KIEFER: I started out as the Criminal Court Administrator, and then transferred to being a regional administrator and then finished out my career there at being the Civil Court Administrator. Prior to that, I was with the California administrative office of the courts and before that, I was 20 years in the Oregon court system.

CHIEF JUDGE MUNYON: So that collective knowledge about court management is what gave you the idea that we need to survey other court managers about the future of the courts in the United States?

MR. KIEFER: I think that combined wisdom and then just trying to tap in to the whole group knowledge and wisdom that we all have as an assembled group.

CHIEF JUDGE MUNYON: So how do you go about leveraging all of that knowledge in a series of surveys?

MR. KIEFER: I think we started off with some of the concepts of a book, which has been sort of our inspiration to get this going. It's a book by James Surowiecki called The Wisdom of Crowds. Came out in 2004, and the premise of his book is in consolidating information and knowledge from large groups. Surowiecki pointed out that decisions of very large and diverse groups – it's important that they are a diverse group, are often better decisions than decisions that are made by an individual or even a small group. We all know one of the challenges of small groups in working is groupthink, when you can have one or two individuals that might overpower the rest of the group and take it in a direction that the group just is not inclined to go or maybe in just one specific direction. So there – he had several criteria that he used in order to avoid groupthink and having an individual sort of totally influence a group. One is that the group must be diverse. The respondent to this group through our survey for example, they don't really confer with each other before they're sending out – before they complete the survey. The survey really only takes less than ten minutes to complete any one that we do. And so each respondent has his own experiences and his own interpretation of the facts, and they're not really affected by others. They don't confer before they fill out the survey and they send it back to us. So each one is individually responsible for what they put in.

MR. KNOX: Rather than tracking and listening to what a few experts might tell us, what you've heard Peter list for you there is that what we are doing is getting people that are in the midst of – a lot of these people that are respondents for us are doing the work on a daily basis. And so we consider them the experts and what we should expect. That we know, the three of us sitting here, we know that governments, and particularly courts, are notorious for working and changing slowly. So over the time what we've been able to – we've been able to forecast you know with these regular surveys of people, and you'll see and hear that we have asked the same questions of people at different interval times so that's interesting feedback we're getting as well. But that – with those efforts that we have, with all these survey results, we can – we can get a better view of the environment that people are working in. I can tell you, to give you an example, Peter and I take a lot of this data and a lot of this information, and we present it to groups like you mentioned, NACM, court managers at their annual or semi-annual, their conferences. And there was a time that before the – by the time of the 2016 presidential election, we were listening to political pundits come out. And we had for the group that was in attendance, we would show them snippets, if you will, of four or five or six of these pundits saying things that as we knew, you know, within the year after they made these comments, they were almost completely ludicrous of what they had anticipated would happen.

CHIEF JUDGE MUNYON: Well, you've been doing this survey for what, about ten years?

MR. KNOX: Right.

MR. KIEFER: Just about under ten years.

CHIEF JUDGE MUNYON: And how many people generally – how many court managers participate in this survey every year?

MR. KIEFER: We get a very diverse range and it ranges from court administrators, their judges. We have division directors, deputy court administrators, elected clerks of court. So it's a wide range of folks and so we actually have begun to label them as court professionals ranging from the whole group of – we've had some chief justices who have responded down to a number of student interns, judicial fellows who also fill out the survey. So on any one survey we are getting somewhere about 350 responses. Overall over the years we have now reached about 1600 folks have – different folks have taken the survey at one point or another. And many folks have been with us year after year. We have a significant number of folks who have completed the survey, sometimes four or even five times.

CHIEF JUDGE MUNYON: So do you tend to ask the same questions each year or do you skip some years with your survey questions? How do you generate your survey questions to gain the information that you think would be most useful?

MR. KIEFER: We take a look at the news. We talk to court administrators. We ask for the opinions of court professionals around the country. We also look at articles coming out from various organizations certainly because of – certainly like the National Center for State Courts and their court trends. We get ideas from that area. We like to create a mix so every year we usually have a number of new scenarios that we have never published before. And then we combine them with a number of scenarios that we have run into in previous years to see how the opinion and perspective of the group may have changed over time.

MR. KNOX: Yeah, and let me, to join what Peter had said, we – one of the things I do and Peter may do some of this himself, but I take a look at the future trends, journal from the National Center for State Courts as a possible publication that might be useful for us. And I tell you, and you'll hear some of the questions and you may be familiar with some of the questions we ask. But I took a look at in anticipation of this podcast, some of the future trends that have been released through the National Center's journal. And in 2021, for example, they've – they've got articles on improving diversity and fostering inclusion using data to inform pandemic planning, delivering court training virtually, a few on cybersecurity. I also went back a little bit and took a look at a 2007 publication of the future trends to give us some historical perspective and they had articles on public access to court records, risk of disclosing personal information, e-filing expansion, interpreters in civil cases. So they're kind of, albeit, it gives us kind of a mark to start from. You'll note that when we get into some of the questions that we've asked, we kind of pushed the boundaries a little bit. So we do, Judge, to respond directly to your question, we do ask some of the same questions over periods of time. So we will have comparison data from 2013 to 2020 and again, we ask people as best they can, when they take these surveys, to look out, not what they want to see but based where they're sitting in their chair there and as an expert for us, look out ten years to make that prediction. And so we do something much different than the National Center's future trends.

CHIEF JUDGE MUNYON: I think it's fascinating that your survey started long before COVID but has continued through COVID, because I'm sure that COVID has had an impact or an acceleration of some of the trends that you were seeing before. But before we get into that, I'm sure that over the years in your surveys, you've seen that these surveys accurately predicted court trends. So what have those surveys in the past gotten right?

MR. KIEFER: I think that I can think of two that come to mind that we got right, or I won't say that we got right, the survey has gotten right or at least it has reflected the perception of the court community back before some of these issues really came to a head. The first one that I can think of was we had a scenario that databases from multiple courts are going to consolidate into a central storage facility site. And I think over the years – this was in the 2013, the original survey, and I think what we have seen over the years is that in a number of states usually it's the administrative office of the court, have often set up large data storage facilities along with, in many cases, doing a – offering a centralized digital case management system. And that they are the caretakers of a large central data storage facility where all of the courts, particularly the smaller ones and the medium sized ones can access their data with some level of security. And they don't have to have the added costs of onsite maintenance. One that I think actually accurately reflected what has been going on in this country for years is that in 2013 we intentionally put out two opposing scenarios. One is that immigration issues will increase over the years and the second one was that immigration issues will fade away over the years. And the responses for both, the immigration issues will increase. The response was maybe. We don't know. It was very undecided. The response rate for immigration issues will fade away was, unlikely, not going to happen. And I think what we see here in our country even today is that continual inability to really be able to define how the folks feel, and there's a lot of ambivalence I think even today about immigration issues and even how we're handling them with the immigration courts.

CHIEF JUDGE MUNYON: Are there any things that the surveys just got wrong over the years?

MR. KNOX: Well, if I could circle back and maybe revisit –

CHIEF JUDGE MUNYON: That they got right.

MR. KNOX: Yeah, a little bit. I'd like to focus maybe a little bit because there are both. And maybe you'll say after hearing the ones I think they got right, those are pretty much – those are easy ones, Phil, but I think that the courts and the respondents, when they – when they said the courts will increase user-based revenue as far back as 2013, the response was highly likely. Court forms available on the internet. And then e-ticket functions will expand for large courts. And we made a distinction between small and large courts. Now –

CHIEF JUDGE MUNYON: Now, e-tickets are electronic traffic tickets, correct.

MR. KNOX: Correct.

MR. KEIFER: Correct.

MR. KNOX: And as far as getting things wrong, and I kind of – this one is pretty funny for me actually, because this goes back to 2013, and there was some large agreement I think from our respondents that courts would go paperless. Now I attended law school in the 80s, in the early 80s and I think I remember – I'll attribute it to my torts professor, but I think he said that, you know, in the not too distant future courts would be paperless. Well, I don't think – we have come along and we've made some strides, but I don't think we're anywhere near going paperless, especially in smaller courts. And then in the spring of 2013, we developed a scenario that said within the next ten years, the state legislators would formally show disapproval of courts through budget allocations. And then respondents then said at 2.8 on our scale that comes out to be a maybe. So they said that those court legislators would show their disapproval of courts through their budget allocations. Yet, in the years' subsequent, state legislators in Kansas,

Pennsylvania, Iowa, and North Carolina all limited funding or moved to change judicial terms of service. So I think maybe we missed that one a little bit too.

CHIEF JUDGE MUNYON: I do have to tout Florida courts. We are largely paperless at this stage but it is a two decades long initiative by the Supreme Court, so it helped us in the pandemic. Mr. Kiefer, what do you think the survey showed?

MR. KIEFER: Well, this is very interesting because Phil mentioned one item which I actually interpreted it as that the crowd got wrong, but let me go with the one that I think we can agree on. Back in 2013 when we started, one of the scenarios was a significant number of courthouses will go virtual. And back then it was unlikely, almost too improbable, ain't going to happen. And now look at it. And that was of course because of COVID, but – and I think we're going to circle back to that scenario again maybe later on. But I think that's amazing that back in 2013, they said, no, we just really don't see that as being probable. Now, the other scenario that I picked out was the courts are going to supplement their revenue by increasing user fees and I think that did happen. It has happened over much of the decade, but I think that what we – what courts did not see coming was coming out of Ferguson, Missouri and the Department of Justice study is now we see a significant pushback against user fees. And I think that though we still have an incredible number of user fees and surcharges that are tacked on to fines and fees in courts, I think that move to increase the number of them has kind of stopped. And I think we're now at a pretty much static point whereas maybe legislators are unwilling to remove many of those fees, but they're not willing to go and add any more because of the decisions or the impressions that it has on harming folks of lower socioeconomic strata such as was pointed out in the Ferguson DOJ report.

CHIEF JUDGE MUNYON: So obviously, COVID impacted the operation of courts nationwide or around the world, actually. So how has – what impact did the pandemic have on your most recent surveys?

MR. KIEFER: Well, I think the one that we already just touched on which is that a number of courthouses are going to go virtual which over the years was unlikely. And I'm thinking we – we started out with saying that that was going to be audio-video. We weren't even calling it virtual at that time. It was just that court hearings were going to be conducted by audio-video. And as I mentioned, you know, it was unlikely -- we ran that survey, that scenario again in 2014 and it came out as well, maybe, fifty-fifty. We ran it again in 2020 and we released the surveys in January. So it was still before COVID really hit and the result was still coming out as maybe fifty-fifty chance. People said, maybe, maybe not coming out. But I mean later, several months later, in that very year, all of a sudden on – it seemed like overnight courts all over the country were going – going virtual and conducting their hearings virtually. And it's still going on today even though COVID is at least, technically at least for the moment on the wane. So I think the one amazing part about that in terms of the pandemic is that even in stodgy old courts, things can change literally overnight. And I think that's – that's an interesting concept that we realized maybe some flexibility that we didn't really know we had.

CHIEF JUDGE MUNYON: And I think it proves the adage that necessity is the mother of invention, and we didn't have a choice so if we wanted to get things done, we had to go virtual.

MR. KNOX: And I think an important note there is what Peter mentioned that we maybe, I don't know that we can pat ourselves on the back for this, but we had asked questions early on in 2014, 15, 16 prior to what we all saw in 2020, 21 and even into this year regarding

flexible work schedules. And obviously, that's something that raised – was raised again more prominently because of the pandemic, video meetings which you know, these things back in 2013 were deemed to be likely or highly likely. More recently though because we did frame some these scenarios to play to the pandemic issues. And one of them that still I question is we sent something out that asked about vaccines bringing us back to normal. And that one is listed as fifty-fifty or maybe, you know, just flip a coin. So we couldn't get the several hundred people that we sent this out to to really land on one side or the other, whether vaccines would get us back to where we were in 2019 or before. So not sure – you know, there's a lot of question. I think a lot of this data, and this is – certainly appears to benefit, this is – this data has been collected, you know, we talk about big data, I mean, this is a growing body of big data for us. It's information, as you heard, that's been gathered by over 1500 people in the business and a number of different questions, the same questions sometimes asked multiple times. I know that Peter and I have both presented on a lot of these topics. We bring up the scenarios, and we separately design scenarios for those in the audience and we ask them to respond. We both have separately and together developed articles based on these things, bail reform, mental health and those types of things where we have five or six questions that we've asked that we can frame a three or four page white paper on these things. So that's another real benefit of all this information.

CHIEF JUDGE MUNYON: Well, the two of you are the closest I'm ever going to come to having a crystal ball about what is going to happen in future of the courts. So if I could have each of you give me, you know your five top trends in the courts over the next ten years. Peter.

MR. KIEFER: I'll start off but I do want to put in this advisement that we – I personally am lousy at predicting things. So this is what I've been seeing from the trends of the group,

which I think does a much better job than I personally do. So looking at the trends that we've been seeing from the crowd, coming up into the future, there's going to be a continued and increased focus on the internal environment of court facilities. I think there's already a focus on having courthouses be healthy and I think this is going to become particularly important in the years to come particularly for new courthouses. That they're going to become – they're going to have to be healthy buildings. They're going to have to be energy efficient. They're going to have to be environmentally friendly. So I think we're going to be seeing that more and more. The next trend that I see the group's thinking is going to be very important in the future is virtual training, both virtual sessions for discussion but also prerecorded sessions when there's not too much debate as to what the concepts need to be. A lot of maybe how-to sessions that can be pur – can be prerecorded. For example, the purposes of courts could be a prerecorded session whereas talking about diversity, equity and inclusion. Probably would want to be a virtual discussion group. And then the next part that I would see is – and we have tracked this scenario for years, and I think it's going to continue to be important and grow, and that is the gap between rich and poor, is going to continue to grow and it's going to become an overriding societal challenge in our county. That's going to be combined with a high demand for racial justice, which also has been over the time period rated as highly likely to occurring. So that's several of the ones that I could think of.

CHIEF JUDGE MUNYON: All right. Phil.

MR. KNOX: Yeah, thanks, Judge. And I will tell you, Peter and I worked independently on developing this – a response to this in anticipation of this question. But a few of them land on the same – on the same sheet for both of us. Change in courthouse design, for example. I actually drafted an article some time ago following the pandemic on germs and the archi –

actually, the title of it is The Architecture of Germs and how the pandemic and the future will be changed by this pandemic for courthouse design, because I've worked on a number of projects to develop new courthouses. So that being the entry point, not having to stop and ask people questions for things, having the ability for wayfinding and those types of things. Virtual training, again that's something so maybe, if Peter and I are reading the same crystal ball, we're coming up where some of these might fall right in line. A bail reform, we did ask a lot of questions on bail reform. I'm not in the midst of that discussion now. I don't know if it's lost some of its energy, but I do think that some things will come about regarding bail reform. Then flexible work schedules. And those came out of a lot of our earlier work and then even subsequent to the pandemic. So I offer those four and then I'll offer you one that I can tell you will likely not happen. And this would also give you a sense of how we try to get our respondents to stretch their thinking a little bit, and they do push back as Peter and I know. And actually, I pushed back on releasing this question. But in the winter of 2015, we sent something out that read – the scenario read something like this, the devices are attached to the mentally ill defendants to monitor and manage chemical imbalances. Or – and then we put this parenthetically, or even implanted in the mentally ill to track them. You know, could be blood pressure, could be brain activity, things like that. It came back pretty high. We did release it. I don't think we're going anywhere soon regarding that, but it might be the fodder for some sort of science fiction novel or something.

MR. KIEFER: I think as Phil was talking, I wanted to bring up two more that at least we ought to be keeping our eye on. One is an item which I think personally is very important and I don't think it gets a whole lot of play and I think it will grow in importance and that is cybersecurity. Cybersecurity is the kind of thing where when I talk to folks around the country,

it's, yeah, it's kind of an interesting issue, sort of, until it hits your court. And then all of a sudden it's a huge catastrophe. And so I think cybersecurity will continue to increase as an issue and I think the group has said that it's going to be highly likely in the future. And I think the second one is telework. Interestingly enough that we ran that scenario in 2021 and it came back as likely but just barely about fifty-fifty chance. So I think in the next year or two years, it's going to be an issue to watch nationally. Are new employees going to demand teleworking and demand organizations such as the courts to offer telework more robustly or will the courts begin to call back teleworking employees and require them to come to the courthouse? And I think that's going to be a really interesting dynamic to watch in at least the next two to three years.

CHIEF JUDGE MUNYON: There's so much to unpack in all of those. I will observe that we have seen a lot of virtual education, whether it be live webinars or prerecorded ones. But I know that you miss a lot too in having – engaging with people face-to-face usually at the break or after the seminar. And I think that is something that just cannot be captured virtually. And it's those, both relationships and the knowledge, that you gain from how other people do things around the country that simply can't be replicated virtually.

MR. KNOX: Yeah, absolutely, Judge. In fact, as two NACM members, and Peter and I have attended a number of NACM conferences around the country. And the human cry from the membership, when they remark as to where the benefit is of these confer – in person conferences, are those breakouts, stepping out of a meeting or you know, talking to someone you haven't seen, you know in person, but you were working on a project, or anything like that. And it is a huge benefit.

CHIEF JUDGE MUNYON: And I see teleworking, I'm sure Florida is not unique in that the judicial branch sometimes tends to pay less than even other branches of the state government

or the local government, much less the private sector. So it requires us to be a little more creative and a little more flexible to get the best employees to do the job. And I'm sure you find that in your areas of the country as well.

MR. KIEFER: Absolutely.

MR. KNOX: Absolutely, yeah.

CHIEF JUDGE MUNYON: So I assume that you're doing a 2022 court trend survey.

MR. KIEFER: Yes, we are.

CHIEF JUDGE MUNYON: When will you release that?

MR. KIEFER: It is already out there and I would like to personally put in a plug that –

CHIEF JUDGE MUNYON: I was going to ask you to.

MR. KIEFER: Yeah, I have sent the link to Matt and if it can be posted on your web page, we would love it. We have three ways of having folks fill out a survey. One is as I mentioned a personal invitation to folks who have previously taken the survey. Second, we do have a growing mailing list of folks that we would like to have it and we try to cajole them to take our survey. And third, we have an internet link out there for anybody who wants to go on line and take the survey. We keep the survey open usually probably through July before we close it down and then we do the final compilation of the responses. So I think Matt's going to post the link to the survey on your web page so we invite everyone to go in and take that survey. We'd love to have those responses. And then we will be posting the results on our web page, which is called the Courtleader.net. And the top trends will be posted on that so you can take a

look. Plus we personally email out the top trends document to every individual who took the survey. So you get your own personalized copy of that.

MR. KNOX: And just a little bit more on the 2022 survey, we've had 215 respondents so far. And to give you and your listeners a little teaser, we do have scenarios developed on that survey on courthouse design and response to the pandemic, tracking of bail decisions by courts, artificial intelligence, auto-interpretation for courts. And we added three scenarios for international respondents. And we don't separate them out. We bring all the data together, but as we sent this out, you know, there are people in the United States that we offer them the chance to type in any comments and there have been a few. Why is there so much on international and Peter and I worked at, you know, trying to be responsive to the growing number of international courts to give us a much larger broader picture. And so we did develop three scenarios that are internationally based, but we did hear from our national brethren as to – they thought it was a little overkill so it's all a balance when you send out surveys.

MR. KIEFER: Yeah, we do have a nice group of respondents that have stayed with us over the years, from Australia, from New Zealand. We have a large group from Canada, but we have also had folks from the Netherlands, a gentleman from Scotland. So we have them from all over the world.

CHIEF JUDGE MUNYON: And your website again is www.courtleader.net.

MR. KNOX: .net, yes. Yes.

CHIEF JUDGE MUNYON: All right, well thank you so much for joining me today. I look forward to learning about the 2022 court trends and trying to decide where our courts in Florida are going from here. Thank you very much for joining me.

MR. KNOX: We appreciate the offer, thank you.

MR. KIEFER: Our pleasure, thank you.

NARRATOR: Thank you for listening to “Open Ninth: Conversations Beyond the Courtroom” brought to you by Chief Judge Lisa Munyon and the Ninth Judicial Circuit Court of Florida. Follow us on Facebook, Twitter or Instagram @ninthcircuitfl for updates on new episodes and subscribe to Open Ninth on your favorite podcast service.

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