

**OPEN NINTH:
CONVERSATIONS BEYOND THE COURTROOM
THE PATH TO THE FEDERAL BENCH
EPISODE 99
MAY 4, 2020
HOSTED BY: DONALD A. MYERS, JR.**

(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 Don Myers.

CHIEF JUDGE MYERS: Hello, and welcome to Open Ninth. Joining me today is United States District Court Judge Roy “Skip” Dalton. Judge Dalton earned his Juris Doctorate Degree from the University of Florida Levin College of Law in 1976. In fact, he’s a Double Gator. He spent the next three decades as a civil litigator, including serving as counsel for United States Senator Mel Martinez back in 2005 and ’06, I believe.

In January of 2011, former President Barack Obama nominated then-attorney Dalton for a seat in the District Court for the Middle District of Florida, and just less than six months later the Senate unanimously confirmed his nomination.

It’s great to have you here, Judge Dalton. Thank you for being with us.

JUDGE DALTON: Thank you for the invitation. It’s my pleasure.

CHIEF JUDGE MYERS: Great. Well, we are so honored to be able to have a conversation with you. I’m around judges all day, but it’s a rare occasion when I get to sit and have a lengthy conversation with one of our Federal District Court Judges, and I’m really grateful for the opportunity.

I have to say this, because I’m never going to have another opportunity. I was in Washington, D.C., last week -- two weeks ago, and had the privilege of meeting three of our United States Supreme Court Justices. Surreal. I mean, just an incredible experience. And now I get to follow that up and talk with you about all of their rulings and the things that they do right and wrong. No, we’ll stay away from that, I promise you. I know the politics of all of that.

But tell us a little bit, Judge Dalton, about how it is that you first came to the law, and then we're going to go on -- just talk a little bit -- just some highlights of your career.

JUDGE DALTON: Sure. Well, I, as you mentioned, went to the University of Florida. And when I was in undergraduate school, I had a roommate who was very, very bright. To this day, may be one of the smartest people that I know, and I always admired his academic prowess and we were close friends as well.

I didn't really have a plan for what I was going to do post-graduation. I was a Political Science major, and I didn't have a real firm idea of what my career path was going to be. He mentioned that he was going to take the LSAT with an eye towards going to law school, and I had no other plan in place so I thought, well, I'll do it too.

And sort of fast forward, I did reasonably well, went to the University of Florida. My good friend left and went to Harvard Law School. And as I kiddingly tell him, I stayed behind and got a provincial education at UF and he went off to the Ivy Leagues. But we continue to be fast friends to this day.

So that's how I got to law school. And then once I was in law school, I -- actually, when I got out of law school, I went to Lakeland initially, because that's where my friend was from. His family had been really kind to me. I was from the little town of Sanford, which is not so little anymore but it was a small town when I grew up there. And at the time, I thought I didn't want to be in Orlando because it was too close, and so Lakeland seemed like it was a long way away.

I went down there and worked, really, in a clerking capacity until I took the bar exam. It was also being given in Lakeland. And that period of time, which was really a little less than a year, was long enough for me to appreciate the fact that I wanted to be back home.

I also had a girlfriend, who's now my wife of 43 years. She was, as she will be quick to tell you, much younger. She was still back in undergraduate school. And I was uneasy about her being in undergraduate school while I was out at work, and so we got married very soon thereafter and she finished her degree. She got her degree from the University of Florida, but she actually finished her studies at UCF and Rollins, which was -- actually, then, it was FTU.

CHIEF JUDGE MYERS: FTU, that's right.

JUDGE DALTON: And I've been in Orlando ever since. Was very blessed in my practice initially. I worked for Dean, Ringers, Goble [sic] & Lawton -- I mean for Goble Dean at Dean, Ringers, Morgan & Lawton. And Goble was -- he's now passed away, but a very well-regarded trial lawyer who had moved to Orlando from Miami, and Goble had a lot of confidence in me. And he was not in great health at the time, so he couldn't sit for long periods of time. So any kind of lengthy hearing or trial or deposition was difficult for him, which was unfortunate for him but really inured to my benefit because I ended up getting a lot of responsibility for a young lawyer at a really young age that I, you know, really hadn't done anything to deserve other than get his confidence. But he was very generous to me as a mentor, and so I credit a lot of my later success as a trial lawyer to that start.

CHIEF JUDGE MYERS: That firm has a reputation in the community -- a good one -- but obviously for doing defense work primarily, is that correct?

JUDGE DALTON: Yes.

CHIEF JUDGE MYERS: Okay.

JUDGE DALTON: Yes. And I did defense work with them. I cut my teeth, you know, on automobile cases. Of course, back then, in the late 70s, we didn't have the alternative dispute resolution that we have now, and so almost all of the small cases got tried, which is unfortunately

no longer true. You know, there's good and bad ADR, obviously. But the benefit for a young trial lawyer was that I tried an awful lot of cases. Some of them were only two or three days in length. You know, someone fell down on a green bean in the Food Fair aisle, that case usually got tried. Somebody had a small automobile intersectional collision, that case usually got resolved by trial.

CHIEF JUDGE MYERS: That is so interesting. I had a conversation recently with the ABOTA trial lawyer group here in Orlando, and one of the concerns that they expressed --

JUDGE DALTON: I'm a charter member.

CHIEF JUDGE MYERS: Exactly. One of the concerns they expressed was the idea that it's difficult to find lawyers with any significant trial experience, and particularly younger lawyers coming up, because there just aren't that many cases being tried any longer.

JUDGE DALTON: That's very true. It's a common problem. I am a Fellow in the American College of Trial Lawyers, which is one of the, you know, great -- you know, it's one of the things that is a really capstone in my career. I mean, I really treasure that membership because it's got such a great collection of very well-known and accomplished trial lawyers. And one of the requirements, of course, is you've got to have a significant number of jury trials in order to even be eligible for consideration. Very difficult, frankly, to find people that meet the trial criteria.

CHIEF JUDGE MYERS: So I want to take this detour with you for a minute --

JUDGE DALTON: Sure.

CHIEF JUDGE MYERS: -- because this is something that really is interesting to us in this community. The question asked of me is, how do we get young lawyers more trial

experience. And I tell them, at this stage it seems like some of our older trial lawyers need to let go and just let younger lawyers try some of these cases.

JUDGE DALTON: Well, I think that's very true. Actually, one of the things that I do -- I try to do it in the spirit of good humor but I'm trying to make a point -- is when I have -- especially if I have a matter that's got multiple motions that I have set for hearing and I've got a room full of lawyers and I've got lawyers in the second and third chair -- not always just women lawyers but I'm particularly attuned to women lawyers -- I will often ask the first chair, so, you know, I did not plan on taking argument on this motion, but I'll entertain it if you'll allow second chair to make the argument. And it's usually pretty well received. Sometimes I get a little resistance, you know, but it's usually pretty well received. Again, to try to get the message to the senior lawyers that these folks need to have an opportunity to get on their feet and to speak.

CHIEF JUDGE MYERS: Such an interesting conversation, because of the fact that we continue to advocate for more and more alternative dispute resolution. I know here in the Ninth, we are a pilot circuit for a program involving online dispute resolution, moving particularly small claims parties into the virtual world to attempt to resolve the disputes without ever even coming down to the courthouse.

And of course we have traditional mediation, we have non-binding arbitration, we have arbitration, we have lots of other venues for resolving cases. But it does seem harder and harder and more and more difficult for lawyers -- young lawyers to get significant opportunities in the courtroom.

JUDGE DALTON: Well, I agree with you and I think it's critically important to preserve the fundamental skills of advocacy that trial lawyers can really only develop when they're in the courtroom. The -- not just the method and manner of properly interrogating

witnesses or identifying and introducing documentary evidence, you know, into the record, but also things like, you know, a mastery of the Rules of Evidence and understanding objections and preservation of the record, and all of those things that you can read about them, you can learn about them in books, you can go to seminars, you can study, you can, you know, learn at the feet of others, but until you've had an opportunity to get on your feet and do that yourself, very difficult to become, (a), accomplished enough to be effective, and to have enough self-confidence to be able to not fear resolution by trial.

I know a lot of lawyers, I think, that are just afraid of the courtroom. And I don't mean that in a critical way. They're afraid not because they fear something is going to happen to them, but they're afraid they're not prepared well enough, that they don't have enough experience or they haven't done it often enough. And many times that's true. But the saying is true that if you don't force yourself to get in there and do it, you know, those skills -- you can -- you're not going to develop them if you don't have them, and if you did have them they're going to erode if you don't put them to use.

CHIEF JUDGE MYERS: Exactly. I've spoken in terms of Professionalism seminars about the idea that it's difficult for lawyers who don't have those sets of skills to know when to argue and when not to argue sometimes about issues in cases. And I think if you have the perspective and recognition that the Rules of Evidence are going to make it incredibly difficult if not impossible to get this piece of evidence in, let's not argue about it.

JUDGE DALTON: Right.

CHIEF JUDGE MYERS: Instead let's focus on the things that are going to make a difference to the case. And when cases are resolved with a good understanding of what might actually happen at trial, I think the parties reach better results than they do in those contexts

where they're just too unfamiliar with what the trial outcome could be or the process is going to be to make good decisions about settling cases.

JUDGE DALTON: I think that's absolutely true, and there's no question that better results in mediation are much easier to obtain when you have a mastery of the Rules of Evidence. And you know, for instance, that this really prejudicial piece of information or this document or this testimony is subject to exclusion, and you know that you've got a reasonably good chance of -- at getting it excluded, or the reverse, that your adversary thinks it's going to be excluded but you have a mastery of the Rules of Evidence and you know you've got a very good chance that it's going to come in and you know how it's going to come in; you can really only develop that level of confidence if you've plied that trade, you know, in the crucible of a courtroom.

CHIEF JUDGE MYERS: Absolutely.

JUDGE DALTON: And I see many lawyers come before me, as I suspect you do too, that have, you know, a lot of experience but they don't -- I'm in the Rules of Evidence every day, you know, so I'm -- you know, and I say this not to brag, but I'm very converse into the Rules. I know where they are, I know how they apply because I do it all the time. And I'm appreciative of the fact that the lawyers have to spend a lot of time getting ready to come over because they're not doing that every day. You know, they're not doing a 403 prejudicial balancing, you know, analysis every day, or they're not looking at exceptions to the hearsay rule, or they're not, you know, evaluating, you know, what constitutes a -- you know, qualifies under the catchall provision of the Federal Rules for hearsay exemptions.

So it's not that I expect them to have that command of -- the same command that a sitting trial judge would have, but if you're going to be a trial lawyer, those are your -- that's your toolbox and you better know what's in there and you better know how to use it.

CHIEF JUDGE MYERS: Exactly. I think many of our trial judges here, even in the State courts, could relate to that, those experiences in the courtroom with lawyers who are still either working to develop that or those who have perhaps consoled themselves to the idea that they may never master and they'll just trudge along.

JUDGE DALTON: Right.

CHIEF JUDGE MYERS: So it is good to -- that's a great conversation. I appreciate that and I appreciate your insights and thoughts about that.

So we started, I think, talking about the fact that you were trying some cases as a young lawyer in a defense firm, getting some experiences beyond, perhaps, your years might justify. And you did a little bit of defense work with a very good law firm. What did the rest of your practice career hold for you?

JUDGE DALTON: Well, when I left Dean, Ringers -- which was a great training ground for me as I mentioned, not only in terms of the development of the trial skills but also I had a lot of respect for the lawyers that were there. And so I learned a lot about professionalism and about how to be effective and how to be hopefully a lawyer that was not unpleasant to deal with.

I felt more comfortable, frankly, with the more entrepreneurial aspects of the practice of law. I felt a little confined by defense work. And so I left the firm happily -- I mean, amicably, and started my own practice as a young lawyer. My first office was in the old 135 Wall Street building.

I'll tell you a quick, funny story if I can do it quickly, is that I was so -- you know, when you -- when that happens and you're going to leave a firm and strike out on your own, you're kind of flush with excitement, a little worried about what's going to happen. And when I was

leaving the law firm, I was turning in all of my -- you know, my badge, my building badge and all of those things. And the administrative person, who was very pleasant -- and everybody was very nice to me as I left -- said, and, you know, we'll need your car keys. And I said, oh, of course. You know, I had a lease car, so I gave her my car keys.

And I got in the elevator to go down the elevator and I realized I didn't have a car, I had no way to get home. Had not dawned on me that that was one part of my planning I hadn't checked that box. But I was able to discreetly use the payphone, back then, to call my wife to come down and collect me with all my boxes, which she was kind to do. But she takes pleasure in ribbing me about it to this day, about what a big-shot lawyer I was, leaving, and I had no car and no way to get home.

But anyway, so I started my practice there on Wall Street, and I went through a number of iterations but always in a small firm environment doing plaintiff's work. And in those days, there was not a lot of lawyer advertising. Most of the work that I got came from word of mouth, so the development of relationships -- not only amongst lawyers, but among people that, you know, are, you know, bankers or trust officers or community leaders, that's really where most of my work came from.

A lot of it came also from some of the silk-stocking law firms that, you know, didn't approve of lawyer advertising, and so it was easier for them to send the work, you know, to somebody that was in that arena. I know the -- you know, obviously the complexion of that world has changed drastically since the days when I was doing it.

But I was, you know, successful in building up good referral sources that were always pretty loyal to me over the years and developed a nice practice, which was a little eclectic. As

the years went on, I ended up doing, you know, lots of different things, which was a great way to stay fresh and stay interested in everything that I was doing, so I enjoyed that part of it.

CHIEF JUDGE MYERS: At some point in your career, I made reference to the fact that you had represented Senator Mel Martinez. Tell us a little bit about that experience. Where did that come from and --

JUDGE DALTON: Sure. So Mel, one of my great friends, when he first started practice you may remember was with the old Billings firm, Billings, Frederick, then-Wooten & Honeywell. And Mel had a good friend in Tallahassee by the name of Ken Connor, also a really good trial lawyer. And Mel and Ken had originally joined together with the idea that they would have an Orlando and a Tallahassee office. Well, that turned out to geographically not be a very good mix, even though they were very compatible.

And so Mel was sort of a free agent, and we had talked off and on at various bar events about maybe the possibility of doing something together, and the planets lined up and so we joined forces and built an office over in College Park and practiced as Martinez & Dalton. Then we brought Bob Dellecker in and Brian Wilson, who came right out of Wake Forest and went to work for me, and we sort of put those things together. Bob was working for Mel and Brian was working for me, and that was really the genesis of the firm. It's still there today. I'll get their name wrong. I can do Dellecker, Wilson, but once I get past those two, I don't -- I know Tony Sos is there too, as well as Ken McKenna, but -- and Bill Ruffier, so I'm probably leaving somebody out.

CHIEF JUDGE MYERS: I think you got most of them. Yeah.

JUDGE DALTON: Okay. Good. Yeah. I don't mean to leave them out.

CHIEF JUDGE MYERS: No, no, no. A lot of those folks are contemporaries of mine.

JUDGE DALTON: Right.

CHIEF JUDGE MYERS: And friends of mine. I've known Brian and his family growing up, you know, in the Winter Park area.

JUDGE DALTON: Right. I didn't answer your question. I didn't mean to -- but that was the history. And so when Mel, in the late 90s, left to run for County Chairman, which is the County Mayor -- it was then called County Chairman -- was elected County Chair, I stayed in the firm and was practicing in the firm with the folks that were there.

And then, as you may remember, he was appointed by President Bush, George W. Bush -- he'd been involved in that campaign -- he was appointed to be the HUD Secretary. And about three years into his time as the HUD Secretary, maybe two, I've kind of lost track of that, he came back to Florida to run for the Senate. And so he was elected in a close election and went to Washington.

Mel had never really had a legislative job. Most of his jobs in the political arena had been Chief Executive-type positions. And so he did not have a cadre of staff people that had, you know, accumulated over the years. And he went to Washington and put together a staff really from offices of other senators, and so he didn't have anybody from home. He didn't have anybody that knew him, and he immediately developed, you know, some issues with personnel and trying to get comfortable with people that didn't really have a lot of history with him. And he called me initially to say, you know, do you know anybody that might be an effective counsel. He had a Chief of Staff who was from Alabama at the time.

And so anyway, the upshot of that was eventually he talked me into doing that. I went up there and I commuted back and forth between Orlando and Washington for about a year -- not quite a year. But that was plenty for me, and I think plenty for him as well, although we had

great fun doing it. And it was interesting for me because now I'm -- I have no political stripe now, but at the time I was a Democrat and Mel was a Republican. And so it was interesting for me being his counsel in the middle of his Legislative Affairs office. But most of what I did was sort of HR related and prepping him for things that were, you know, coming up.

But we had two Supreme Court appointments while I was there. Justice Roberts and Justice Alito both came through the appointment process while I was there as his counsel. So it was a lot of fun for the two of us.

CHIEF JUDGE MYERS: That's -- what an incredible opportunity to see the Supreme Court and the appointment process through that lens as opposed to the rest of us who just watch from afar.

JUDGE DALTON: Right. It was quite interesting. And so I -- part of my responsibilities then were to prep him for his interviews when they came through and made their courtesy calls. And I sat in with him when he did the interviews of Justice Alito and Justice Roberts, then-Judge Roberts and Judge Alito when they came through. But it was very, very interesting. And it was interesting for me doing the background research on what they had done and what they had written and a lot of the opinions and things that were identified then as, you know, controversial or the things that he needed to be aware of. So it was fun prep work for me.

CHIEF JUDGE MYERS: That's great. So your reputation in the community as a trial lawyer really second to none for your professionalism as well as for results, for the level of preparation but also the manner in which you treated people. Really just an outstanding reputation.

So you've got this tremendous law practice. What is it that -- what happens that you end up on a list to become a judge in the Federal District Court?

JUDGE DALTON: You know, it's hard to put my finger on any one thing in particular. I did have a really rewarding law practice. I enjoyed it very much. I did enjoy doing different things, as I mentioned, you know, to kind of keep me fresh. I did -- you know, I had a couple of real estate ventures that I undertook. I served as the Chairman of the Municipal Planning Board for the City of Orlando for a number of years, which was quite different from what I was doing in a law practice but -- so I enjoyed that a lot.

When I was in Washington, working for Mel, one of my responsibilities was to be the liaison with the Federal Judicial Nominating Commission. And so, you know, that began to sort of peak my interest. I had a lot of interaction with Patsy Fawcett, who was then the Chief Judge for the Middle District, and I became much more informed about the Middle District. I did have some Federal practice as part of my -- so I was not -- I was no stranger to the Federal courts. But the appointment process, all of that was foreign to me. I hadn't really -- I didn't have -- I didn't know I had an interest, so I didn't do anything about it. But I think, you know, an interest then began to germinate when I was interacting then.

And then when Mel left the Senate, there was -- as he was on his way out, there were some vacancies in the Bush Administration so I applied for a couple of those. I made it to the shortlist a number of times, did not get the nomination.

You had mentioned that I was nominated in January by President Obama, that's true. But I was also nominated before then. I was nominated in November of 2010, and my nomination expired because the Congress expired. I did not get a hearing in the Judiciary Committee during the 111th Congress, and so when that happens your nomination gets returned to the Executive Branch to the President.

And so then I was re-nominated in January but -- so it was a much longer process than it looks like when you look at it on paper. Because I went -- I was shortlisted twice, once in the Bush Administration, then I got shortlisted again in the Obama Administration early in his first term. Judge Honeywell got that nomination, I did not. And so there does come a point where you think, well, maybe this is not meant to be. Because going through the nomination process was -- is arduous, you know, the --

CHIEF JUDGE MYERS: Tell us a little bit about that.

JUDGE DALTON: Well, the application process is very comprehensive, as it should be. But, you know, you're required to fill out a very extensive questionnaire that not only does it detail all of your professional life and all of your personal life as well, everything about, you know, your family, where you've lived, every job you've ever had from the time that you were 18, everything that you've ever written.

So, you know, I had written -- I was certainly -- I hadn't written any novels, but, you know, I had written a lot pieces for legal articles and legal journals and letters to the editor and all of those things that you don't think about when you're doing them until somebody tells you that you've got to collect them all. And that was in the pre-computer days, and so much of that was done by paper.

So I submitted that process -- that to the Nominating Commission. I think there were 37 or 38 applicants for each vacancy that I applied for. That number varied a little bit. But the Nominating Commission was comprised then of appointees, about half of whom were appointed by the Republican Senator, about half were appointed by the Democratic Senator. That goes back to Bob Graham and Connie Mack. We had always had one of each party from then until up -- really up until the time that -- the Scott-Rubio era came into being.

So they would then select people for interviews. Everybody didn't get an interview. I was fortunate enough to get an interview on every occasion. Actually I was fortunate enough to be shortlisted on every occasion, but I obviously didn't get the nomination until -- you know, they say the third time's the charm, maybe it was for me. But then after the Honeywell vacancy was filled, I was nominated by President Obama, as you mentioned, first in November, then in January, and ultimately confirmed -- I'm coming on my anniversary. I'm just getting ready to start my tenth year on the bench, so --

CHIEF JUDGE MYERS: Wow. So you make the shortlist, you get the nomination, and you're not done. There's still interviews --

JUDGE DALTON: Not by a longshot. Yeah.

CHIEF JUDGE MYERS: -- and meetings, and conferences. Tell us about that.

JUDGE DALTON: So what happens is I got called -- I remember the day well -- on Good Friday of 2010. And the language that they use, or at least did then, was that you are -- if all goes well, which was a very common phrase -- if all goes well, you -- the President intends to nominate you for the Middle District. We'd like for you first to come up and meet with the Office of Legal Policy, which are the -- is a branch of the executive lawyers -- the White House counsel. These folks work not directly -- they don't -- it's not a direct report to the -- at least it wasn't then a direct report to the White House counsel, but they work under the White House.

And so they first took -- would invite you up and did a vetting. They ask you all kinds of questions about your personal background, whether there was anything in your background that might be a source of embarrassment to the President if you were to be nominated, or embarrassment to you if you were to be nominated.

And then the next thing that happens is they make an assignment to the FBI, and then the FBI assigns a special agent in charge who comes and meets with you and then explains to you -- you then do another set of paperwork for the FBI, which is equally as rigorous. The FBI then conducts a background investigation which is very comprehensive. They go back all the way to your -- in my case they went all the back to high school teachers and spoke to neighbors and spoke to obviously anybody that you litigated with, if you had any history of acrimony or anything that, you know, they were able to identify. So they were looking both for friend and foe.

Then they -- they didn't -- I never saw the FBI's file, but they deliver to the Office of Legal Policy. And the Office of Legal Policy will then call you and tell you, all has gone well. And then you would go -- then the next thing that would happen after that is I went back to Washington and met -- while I was in the process, there was a vacancy on the United States Supreme Court and Justice Kagan was in the process. When that vacancy occurred, everything stopped at the District court and Circuit court level. So there was a fairly long lag. Then after Justice Kagan was nominated, then they rekindled the lower courts.

And so then I was formally nominated in November, and then -- of 2010, and then I was handed off to the Judiciary Committee of the Senate. The Judiciary Committee has its own people who do their own vetting, so you go through that process again. There's another -- this time it's a formal questionnaire that's actually submitted to the Senate, which is still -- you know, if you have any interest -- I don't know why you would, but if you have an interest you can find, I think, almost everybody's Senate questionnaire online.

And then -- the uncertainty, then, is trying to get scheduled for a hearing. And there are a lot of politics involved in when is a hearing going to get set, who is going to be scheduled for the

hearing. In my case, after my January nomination, it happened pretty quickly for me, which was a blessing. I got a hearing in March. So I went back to Washington, took all my family, had a hearing in front of the Senate Judiciary Committee, which for me was pretty benign. They asked me a couple of really softball questions. I was fortunate that I was on the panel with a lawyer -- I mean a judge from California by the name of Goodwin Liu who was on his second go-around for nomination to the Ninth Circuit. He ultimately was not successful -- his nomination was not -- he was not favorably voted out of the Committee, but he got his revenge; he was appointed to the California Supreme Court, and I think he's happy as a clam.

But the good news for me was there were lots of questions for Judge Liu, and by the time they got through with Judge Liu there was very little interest in Judge Dalton. So I got some -- I got to introduce my family and have a couple of softball questions. I did get some harder questions in written form. That's the other thing people may not be aware of, is that after your Committee hearing, which happens in the Senate and of course is broadcast on CNN, it looks like it's over. It's not over. Then the senators send you really kind of the tougher questions or the more probing questions in written form, and you have to turn those around very quickly.

And so that happened for me as well. I got a number of sets of what are essentially like interrogatory questions from a number of the senators, which I then had to, you know, do my background, work on answer -- I have to -- had to have my answers reviewed by the Executive Branch, the Office of Legal Policy, and then they submitted them to the Senate. And I was actually confirmed by unanimous consent, which was also a nice thing for me, on May the 2nd, I think, of 2011.

CHIEF JUDGE MYERS: So you're just shy of your ten-year anniversary.

JUDGE DALTON: Yep.

CHIEF JUDGE MYERS: All right. And --

JUDGE DALTON: Starting my tenth year, so --

CHIEF JUDGE MYERS: And unlike the State courts, the Federal courts aren't divided into divisions. I mean, we have a Civil Division, a Felony Division, a Domestic Division, a Juvenile Division. But you handle really anything that's filed in the Federal District Court.

JUDGE DALTON: True. And it's really one of the great things about the job. People ask me what I like about it the most, and I think the fact that it's so intellectually stimulating and there is so much variety. I can be in a -- you know, an intellectual property in a complicated patent case, you know, be in trial for several weeks in a patent case. While I'm taking breaks in the trial, I'll be taking a change of plea in a drug trafficking case, I might be scheduling a suppression hearing, you know, dealing with important Fourth Amendment issues, at the same time I might have a pretrial conference that I'll squeeze in in a, you know, complicated insurance dispute.

So it's really very stimulating from an intellectual standpoint in terms of the variety. I very much enjoy that part of it.

CHIEF JUDGE MYERS: So in your ten years, is there a case or two that stands out to you where the issues were interesting, fascinating, even, you had an opportunity to make a decision that really has an impact, not just necessarily for the litigants but possibly even beyond?

JUDGE DALTON: I think I've had a lot of interesting cases, for sure. It's hard to, you know, single one or two out. But I presided over a very complicated intellectual property case -- it's now concluded, so I think it's safe for me to talk about it. But several things about it that I enjoyed. It was incredibly complex, both legally and factually. The technology was really interesting. It involved the methodology for down converting digital information from high

frequency radio waves to low frequency radio waves so that the frequency could be delivered to your telephone, the digital data stripped off of the frequency -- low frequency beam that sent it there and that actually translated it into sounds that you could hear and understand.

CHIEF JUDGE MYERS: Okay. If you're looking at the dazed look on my face, it's -- help me. Dumb it down a little bit for me.

JUDGE DALTON: Well, it's fascinating. Essentially, if you think about digital transmission in terms of -- let's think of it as in phone wires. There's a high phone wire, high frequency wave, and the digital information is wrapped around it like another wire might be coiled around it. And so that high frequency information can pack a lot of info into a relatively short burst of electronic energy.

That's too much information for -- to be delivered directly to your phone, so it has to be stepped down. If you think about it in terms of water going over a dam, it's going over with incredible velocity, an incredible amount of water. If you wanted to get a drink of water, you couldn't possibly drink it out of the water that's coming over the dam. You'd have to take that water, slow it down and calm it down so that you could dip a cup in it and drink it.

CHIEF JUDGE MYERS: Okay.

JUDGE DALTON: Essentially, that's the same thing that happens with this transmission of digital information. You have to slow it down and spread it out so that it can be delivered to your phone so that you can essentially drink that information by listening to it on your phone.

CHIEF JUDGE MYERS: I see.

JUDGE DALTON: So the technology was very interesting. Patent cases are complex anyway because they have a lot of different procedural steps along the way in terms of

identifying the claim terms that are in the patent. That's part of the judge's responsibility to define those terms when the parties can't agree on it. That's called a Markman hearing. Once the Markman hearing is done and those claims have been identified, which is a complicated process in and of itself -- I used a -- I appointed -- which I haven't done very often, but I appointed a special master to serve as an assistant to the court to help me understand some of that material. Then post-Markman, of course, the parties then had very complicated summary judgment submissions, dispositive motions.

We had -- once we got through all that and actually were trying the case -- really, really wonderful lawyers, which is always such a treat as a trial judge. These lawyers came from the best -- or, I mean, to give you an idea of what was -- many people are familiar with the Cravath firm in New York; they were third chair in this case. So really brilliant lawyers from California, you know, who came from the Silicon Valley that really -- they had technical backgrounds. Most of them were engineers themselves by training. But they were really very accomplished trial lawyers, so I really enjoyed every aspect of that.

I think the jury liked the case as well. It ended up with a really large verdict for the plaintiff. And you -- so you would think -- with my background being predominately plaintiffs, you know, I hear this all the time, this -- you know, no one says it to me to my face but people say, I don't know what happened to Judge Dalton, he used to be a plaintiff's lawyer, and look at this order he just entered in favor of the defendants. But it happens, you know, from time to time.

I felt like there was a deficiency in the plaintiff's proof, which I really struggled with in the post-trial motions. The verdict had been 173-million-dollar verdict for the patent holder. The jury found that there was an infringement. On the post-trial motions I granted what we call

a Judgement as a Matter of Law, a JMOL motion, a Rule 50 motion, and set the verdict aside. I didn't do it cavalierly for sure. I struggled with it for a long time. Entered a very lengthy order identifying what I thought the deficiencies were. And it later went to the Federal Circuit which is where our patent cases go. Some people don't know that. The 11th Circuit is the Court of Appeals for almost everything else. But things that involve intellectual property are appealed to the Federal Circuit because, again, in the irony of the Federal practice, the generalist, myself, we resolve the case and then it gets appealed to the specialist. The only things they do are intellectual property.

CHIEF JUDGE MYERS: Which is grossly unfair as a trial judge and generalist, to recognize that you're going to get scrutinized by folks who really do have a much higher level of expertise.

JUDGE DALTON: Well, let's just say we recognize the irony.

CHIEF JUDGE MYERS: Yes.

JUDGE DALTON: And also true on the reverse of that is that the bankruptcy judges who are incredibly specialized and know their trade inside and out, when the litigants are unhappy with the resolution by a bankruptcy judge it gets appealed to who? United States District Court. So you go from the specialist to the generalist. The only good news there is that when it goes to the 11th Circuit, our decision, the District Court level, has -- is not entitled to any deference and they review it de novo anyway, so I often wonder why they don't just take it directly from the bankruptcy court and spare me the trouble.

CHIEF JUDGE MYERS: Fascinating. I'm sure that was a tremendous experience and can relate to cases being handled in that way before us.

I want to talk with you about one last topic area. And this is the idea of pro se litigants. Those are really considered to be a very common part of the State court trial practice. We see numbers of 40, 50, 60 percent pro se litigants in a Domestic Division, for example. Very high numbers of pro se litigants in our small claims and county court cases. And we know the challenges that come with that, and we'll chat about some of those.

But do you have those experiences in the Federal court as well?

JUDGE DALTON: We do. You know, as you know well, the challenge in dealing with pro se litigants is trying to make sure that you are cognizant of the access-to-the-courts issue and make sure that the courts are -- to the extent they can be -- open, inviting, and friendly. At the same time, you have to be able to resolve the disputes. And when the complaints come to you in a form that's unintelligible and the litigants have no grasp of process or procedure or the ability to move their case along in a -- in not only a timely but an appropriate way, it's very challenging.

We have, just recently over the last several years, had a very significant effort in the pro se arena. We have completely retooled our website to make it more pro se litigant friendly. We have updated our resources. We have a subcommittee of our bench bar that has devoted significant time and energy to that. We have established a pro se clinic that runs from -- I think from 11 o'clock to 1 o'clock every Tuesday to give pro se litigants not legal advice but guidance in terms of, you know, how to best access the resources that are available to them.

That program -- I was the beneficiary -- the undeserved beneficiary because I got recognized for the work that was done by my committee. But we were graced with the Supreme Court's award for Pro Bono Service by the Federal courts, and I received the Federal Judicial Service Award, as I said, not for anything I did other than being the head of the committee. But the committee did a tremendous amount of heavy lifting in terms of trying to make our

environment -- which is intimidating, frankly, for many of the practitioners, and it's especially intimidating for the pro se litigants.

But it continues to be a challenge. One of the things that I often tell my clerks and some of our staff attorneys, that we have resources that you don't have, but we have some resources that we can devote to that. But I tell them, as easy as it is to get jaundiced about -- or jaded about these pro se applications -- you know, Mr. Gideon is in there somewhere.

CHIEF JUDGE MYERS: Um-hum.

JUDGE DALTON: And that's very true, I think. You know, the Sixth Amendment Right to Counsel that we trace back to *Gideon v. Wainwright*. If you go back and look at Mr. Gideon's initial filing, it was scribbled out in pencil, you know, on a torn off piece of legal paper. And so if we're not careful, we're going to overlook Mr. Gideon.

But it's very tough, frankly, to be careful in light of the -- first of all, the volume that we get, which is nowhere near the volume that you get. But also the complexity of the things -- the arguments that are trying to be made in terms of people trying to make a constitutional argument when they're not -- they don't have the tools to be able to deliver it in a way that they're going to get the relief that they are seeking.

Many times the cases are frivolous. Many times vexatious or serial litigants take advantage of the process, which is unfortunate, because that tends to color the view, I think, that many of the people in the reviewing process have about the merits of the pro se applications. But many of them are meritorious and we try to be mindful of our ability to appoint counsel if we see a case that has got merit or might have merit, or we at least sort of -- I guess the best way to describe it is if it smells a little bit like it might have some merit -- I'm try -- I try to always be on the lookout for an opportunity to appoint a pro se lawyer who might be looking to do what we

touched on when we started the podcast, which is get some trial experience and to provide some much needed service for a pro se litigant.

CHIEF JUDGE MYERS: Well, I think the challenge of the pro se litigants is a common challenge, and as you did mention, it's true that the numbers in the State courts are staggering and it becomes difficult and can rob judicial resources in trying to sort through those that are legitimate versus those that may have some other motive or just simply not be meritorious. And yet it is one of the most significant access-to-justice issues that I think we all struggle with, so --

Well, great to come full circle. Judge Dalton, what an honor. Thank you so much for joining us today. I appreciate your insights and a little bit of a glimpse into the process that you went through to make it to the bench. We are grateful for your public service and what you do. Thank you for being with me.

JUDGE DALTON: Well, thank you for having me. And I think this is a wonderful way to get people that may not know as much about the court system plugged in and let them have an opportunity of sort of what it's like behind the curtain. So I commend you for your efforts in social media and podcasts. I think it's a wonderful outreach effort by the courts. I commend you for devoting your time to it.

CHIEF JUDGE MYERS: Well, thank you.

JUDGE DALTON: Thanks for having me.

CHIEF JUDGE MYERS: Thank you.

NARRATOR: You've been listening to "Open Ninth: Conversations Beyond the Courtroom" brought to you by Chief Judge Donald A. Myers, Jr., and the Ninth Judicial Circuit

Court of Florida. For more information about the Ninth Judicial Circuit Court, follow us on Twitter, Facebook, Instagram and LinkedIn.

(Music)