

# Civil Litigation UPDATE



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# The Judicial Perspective: An Interview with Retired Judge Lisa M. Rau

By Virginia Hinrichs McMichael

*Virginia Hinrichs McMichael recently did a Zoom interview with retired Judge Lisa M. Rau, formerly of the Philadelphia County Court of Common Pleas and founder of Resonate Mediation and Arbitration, to talk about her life in public service and on the bench, and her new role as owner of a mediation and arbitration firm. The following is an edited version of their far-reaching 90-minute conversation:*

VHM: Good morning, Judge Rau. Let's start with a little bit of background about you and where you grew up.

LMR: I was a military kid — a military brat, they call us. I was born in Massachusetts and we moved every couple of years. We lived in Afghanistan, Washington, D.C., Minnesota, California, Nebraska. I think that there were two big things that I got out of that. One was that it taught me to be a risk-taker.

The other thing was it helped me see different perspectives. When we were living in Afghanistan, I saw abject poverty and yet other beautiful ways of looking at the world. It was great. We were in an international school, so with all the kids in our classes, it was like a little mini U.N.

VHM: After college, you spent a couple of years in the Peace Corps in Thailand. Did you see that as an extension of your experiences growing up, or was it something completely new and different for you?

LMR: It was an extension. I thought the Peace Corps was a way to have fun,

but also not just be sitting around doing nothing. I ended up in Thailand, in the Peace Corps, living in a remote village in the middle of nowhere.

It was a fascinating experience because I really got to learn what it was like to be an outsider. There were no Americans or other foreigners in the village where I lived.

There were 60 little villages that my Thai coworkers and I would visit to teach health care and nutrition. I had such an American frame of mind when I first got there. I thought, oh, we could do three or four villages a day. We could just go, go, go. And they were like, "oh, no, we go, we eat lunch, we chat." It was my first lesson in learning to be persuasive.

Food is fundamental to a culture. You have to earn a level of trust, which means that if they serve you one of their delicacies for lunch, like silkworms or a roasted roach, you eat it. It sounds disgusting, but there were certain roaches that had this peachy flavor, and you could make them into kind of a curry thing. We connected over their food. They appreciated that I learned to speak Thai, however poorly.

I remember one village we went to that was really, really remote. After we chitchatted and bonded with people, this older woman came up to me. She was touching my skin because, you know, freckles, that's not a thing. And she was almost narrating to the crowd, saying, "Well, they won't come off, they won't come off!"

And then she starts telling the crowd that I'm blind. She just kept going on: "Look at her blue eyes. She's blind." And then I realized that they would not have seen anyone with blue eyes unless they had severe cataracts

or were blind. Then someone said, "But she drove a motorcycle here. How did she do that?" So we had to prove that I was not blind. It was so funny.



Virginia Hinrichs McMichael

VHM: After your stint in the Peace Corps, you went to Stanford Law School. With that kind of a resume, you could have done any number of things. What did you decide to do after law school? And how did you end up on the bench?

LMR: Well, I went to law school with the notion that I would do either international human rights or civil rights when I got out. But then I learned that there were only about three international human rights jobs in the world and not many openings. I fell in love with the Public Interest Law Center of Philadelphia. I really wanted to work there. I managed to get a meeting with the executive director, Michael Churchill. I knew he didn't have a job opening, but I asked to talk to him about his career.

I applied to several firms and got offers as backup in case I couldn't get a civil rights job. I was still set on the Public Interest Law Center, so I just persevered. Every three weeks or so I would call Michael Churchill and say, "How's it going? Is there an opening?" Well, lo and behold, just before I accepted an offer from a law firm, I got an offer from the Public Interest Law Center.

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VHM: At some point, you decided to go from being an advocate to being a judge. What prompted that decision?

LMR: I have to confess, in law school, I always was reading cases from the judge's perspective. I would evaluate whether I thought the judge had been true to the law, made the right decision and had the right rationale. I guess my brain just kind of went there.

When I found out that you elect judges in Pennsylvania, I was like, "Wait, how do you do this?" My husband Larry and I had just finished paying off our student loans the year before when I came home and said, "I'm going to run for judge." I had no political connections. I didn't even know what a ward leader was.

Nobody thought I could possibly win, so they basically ignored me on the campaign trail. But I got a lot of volunteers and we did a lot of the organization ourselves.

I came so close to winning — really, really close — like at the beginning of the night I was a winner and then it fell. It was crushing.

VHM: When you ran again for judge the second time, you won. You then spent 18 years on the bench, part of that as a team leader. How would you sum up your experience, if you can, in a few sentences?

LMR: It was everything I had hoped for and more. I loved trials. I loved it when I would walk out into the courtroom and be surprised about the evidence. It was a lesson in keeping your mind open until the very, very end.

VHM: Do you think we do enough to train judges in Pennsylvania to help them make good decisions?

LMR: We're doing more now than we used to. Philadelphia is a great jurisdiction. You get one week a year plus money for tuition for additional education, along with what the court gives you already.

VHM: What's the hardest part of being a trial court judge?

LMR: I thought evidence was a real challenge. It's like a constant pop quiz. Jury instructions, you can prepare. Opinions, you have time to write. Opening statements to the jury, you prepare. All of that is prepared.

But evidence is a true pop quiz and you're totally exposed. It's when the whole courtroom is watching to see if you're a wise judge, a fair judge or a knee-jerk biased judge. It's a terrifying experience the first time you get an objection. Even later, it can be a source of anxiety. I really had to study it to get it right. Later, when I was asked to teach evidence for the National Judicial College, I focused on giving judges techniques to make it easier for them to rule on objections in the rapid-fire courtroom environment. Probably the biggest mistake judges make is to rule before hearing the lawyers' arguments.

VHM: What are some of the worst things you have seen trial lawyers do?

LMR: I think they forget how to talk to a jury in plain English. It's a natural thing that can happen, especially with civil litigators. They spend so much time writing briefs that it changes the way they talk. Then when they get up in front of the jury, there's a little too much lingo. They forget that they're trying to tell a story. That would be the biggest thing.

VHM: Let's move to another area. You retired from the bench at the end

of 2019 and moved into the arbitration and mediation area by starting your own firm. How has that transition been? What exactly are you doing and how is it going?

LMR: I guess the way I ended up here was a little surprising. I became a team leader in 2013. The Philadelphia court manages their cases by having one judge manage a team of judges. And the team leader manages all the civil major cases. At the height of my team leader job, I had 7,200 cases. As team leader you deal with every crisis, every discovery issue, certain types of motions, and every pretrial conference. Obviously, with that many cases, there's no way we have enough judges. One of the most important functions of the team leader besides managing things, is to settle as many cases as possible.

For five years, I was doing settlement conferences almost daily. And I discovered I loved it. I loved being able to be at a point where everybody knows all the evidence that's going to come in at trial. There are no secrets anymore. It's all about trying to take people who've been in conflict for a couple of years and get them to a resolution that they're happy with.

VHM: What prompted you to retire from the bench and start your own mediation and arbitration practice?

LMR: I had some companies approach me about leaving the bench and join them to do mediation. I almost did that. In fact, I had decided to do that but then when my husband decided to run for D.A. I was like, "Oh, wait, halt, too much chaos in one year."

So I waited. And as time went on, I realized that after being an indepen-

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dent judge for almost two decades, I really didn't want to work for another company. I wanted to do more of a boutique practice. I wanted the independence to be able to say, "I want a paperless office." "I want a portable office," which is what I designed. Who would have known that with a pandemic that would be such a godsend? I can provide a private binding jury trial online without having to ask anyone for permission. I've been having fun.

VHM: We're all familiar with arbitration and mediation, but the whole

idea of actually having jurors there in a private setting, and a virtual one at that, that seems to be something pretty new.

LMR: It combines concepts from several other things: mock trials, binding arbitration and courtroom jury trials. There are mock jury trials that lawyers spend a lot of money on. With this, you pay jurors for an online private jury trial. You recruit the jurors in the same way. You use the voter rolls.

For mock trials, it's all about targeting certain profiles. But here you just

say, "I want a randomized group." You let the lawyers go through voir dire online, but hardships and obvious conflicts have already been screened out in advance. I think with some time, and as people realize that it's going to be a long time until they get their trial, they may become more open to doing online trials. There are some courts across the country that are already doing online jury trials.

VHM: Has the pandemic changed your practice?

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LMR: At first, in March, people were afraid to mediate or arbitrate online. Now it's standard. There are some actual advantages. I've noticed in the online format when people are on their home turf, they're more confident and they're more themselves, and you're more apt to get the actual truth, whatever it is. I didn't expect to be a fan. It's amazing the cases are resolving. There's no difference in the resolution rate.

VHM: One more thing. Your husband Larry Krasner is the district attorney for Philadelphia. What impact did his election have on your career as a judge, and did it affect your decision to go into your current practice?

LMR: We had been having to coordinate our careers for a long time. When I was a judge, any time his law firm had cases in civil court, we had to make sure they didn't end up on my team.

On the decision to change careers, I had been thinking that I might go into private mediation practice for a while. But Larry's election as D.A. caused me to wait a bit before jumping into this adventure.

VHM: So it looks like we're done for today.

LMR: I really enjoyed talking with you, Ginny.

VHM: This was a lot of fun. Thanks for taking the time to share your story.

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