

Mary-Beth Moylan: Hello, I'm Mary-Beth Moylan, Associate Dean for Experiential Learning at McGeorge School of Law, sitting down today with District Court Judge Morrison England Jr. of the United States District Court for the Eastern District of California. Judge England, thank you so much for taking the time to talk to me today.

Judge Morrison England: Thank you very much for giving me the opportunity. I look forward to it.

MM: If you would, could you please describe a day in your judicial life?

ME: A day in the judicial life here in the District Court can be somewhat different. As you saw when I came in, I'm reading an opinion and working on writing more than I would say being in court. And I think that's somewhat of a misnomer that people have that in the Federal Court at the trial level that we're in trial every day.

And that's not the case compared to the State Court. Generally speaking, it's going to be reviewing potential drafts of memoranda, opinions, orders, and handling other things and doing research and getting prepared for the trials. Generally speaking, I think we're averaging about ten trials a year in this district.

MM: Okay. And I would assume then that on some days when you have law in motion, hearings, or when you have status conferences, those days you have less time to do the researching and the writing?

ME: Well, that's the problem is that I know that I'm getting prepared for a 3+ week trial starting next Monday. And while you're in court you can't do what you normally do while you're in chambers. But everything continues to occur and happen even though you're on the bench. So, it does make it a little bit difficult.

Plus, as you said, generally speaking for me and my court, Thursdays are my law in motion days. So I'll have criminal calendar in the morning and civil calendar in the afternoon. Each of the judges in this district has their own day that they have their particular calendars. But, for the most part, unless we're in court, we're in chambers. Just working and trying to research and speak with your law clerks and prepare memoranda and/or opinions.

MM: It's a busy, busy life. Can you tell me a little bit about your area of practice before you took the bench? I know you were a Superior Court judge before you were a Federal District Court judge, but before that?

ME: Before that I was in private practice at a small firm in Sacramento and we handled what would be normally known as transactional law - real estate, business, commercial type law. A little bit here and there into probate type things. At least that's what the two of us in the four person firm did, and the other two were involved with insurance defense, which was litigation practice. But, never the two shall they meet, and so, we had no ... my partner - well, we were all partners at one point - but our side of the firm was

transactional. So, we did our best to try to stay out of court. Because when you're putting together contracts, leases, business agreements, buy-sell agreements, etc., if you have to go to court that means that something went wrong.

MM: You did not do your job correctly. *chuckling*

ME: *chuckling* We did not do the job. That's the whole idea is to prevent the necessity for going to court. So I was a non-litigator. I would never in a million years say that I was a litigator at all.

MM: It must've been a really big shift to go from transactional practice to the Superior Court bench?

ME: And not just transactional to a trial bench, but going from a civil practice to criminal. Which I had never even been in a criminal courtroom in my life when I became a Superior Court Judge. Now the, the training that you get now is a little bit different than what it was in 1996, but I basically sat on the bench for five hours with a judge the day before I took the bench.

And my first hearing was a preliminary hearing, which is a criminal case, and there were a lot of things that were happening in the law at that time and I just remembered listening to everyone talking about, "This will be not a problem at all, Judge. This is a Prop 215 prelim, no problems. We're probably just going to go ahead..." And I'm thinking, "What's a Prop 215 prelim?"

And I know what they are exactly now, but it was a very interesting time.

MM: Talk about learning by doing, right?

ME: You learn by doing and one of the things I had was great neighbors on either side of me in chambers who had been through kind of a similar thing and we were able to understand that if there was a question, just come around and open the door and stand there and look at me with your eyes wide open and I'll take a recess and come and help.

MM: That's great.

ME: You know, and sometimes it took more than one of us to figure something out. But I think one of the biggest things I learned was don't try to bluff your way through a situation. If you don't know, just say so.

MM: Yeah. I bet that the transition then from Superior Court to the Federal District Court was a bit easier than your practice to Superior Court transition.

ME: Oh, much, much easier. I knew how I ran my courtroom. I knew what crimes were, for example. I knew how there is certain lingo, as you know, that you deal with when

you get into the court situation. And the one thing that was different though is from the State Court to the Federal Court is managing your calendar and your chambers.

Because, in the State Court, as you know, you're in a master calendar situation in Sacramento County, so you got one case that you worked on. And you could work on that case if it's a trial - usually it's a trial - you could take your time and work on it until it was concluded. And it also gives the attorneys in State Court a little more leeway to be involved in the voir dire process, and certain other things.

When you come to the Federal Court, we're on a direct calendar, so everything, every case that I have, I have to manage it. And it means that I have to be able to give each case a certain amount of time and that's the amount of time that there is which then means that I become very strict on the time allotments which are different than in State Court.

MM: Yeah. And the federal rules, really, have changed to make the District Court so much more responsible and involved. Right?

ME: Yes, that's what we have to do. We have to manage it and the case law has come out that really gives the district court judge a tremendous amount of power as to what he or she can do and must do.

MM: Yeah. Sounds like power and responsibility, right?

ME: Yes, and it's ... and when you have a lot of cases such as we do in the Eastern District, we have to be very careful about our time. And when we allocate a certain amount of time, we have to be very strict on it. And I think that sometimes in the last two trials I've had, I could tell the people that were in my courtroom had never been in federal court before.

There are certain things, like sending in requests to modify witness lists or exhibit lists the night before at 11 o' clock.

MM: Yeah, that doesn't work.

ME: That does not happen. Once a final pre-trial order is issued, that is it. And if you find out something new, absent a manifest showing a manifest injustice we're not going to have it come in.

MM: So in addition, to kind of understanding that idea that the timelines are real in Federal Court, that the rules that you set down about what comes in and what doesn't in the pre-trial order, are the mandate ... what other things do attorneys that are experienced in Federal Court do you see them doing that they do well? That would give you a clue that this person is someone who practices in Federal Court regularly?

ME: Well, you can tell by the way that they handle themselves with their motion practice. In our court, the discovery motions are handled by the magistrate judges or the non-dispositive motions. And we handle all the dispositive motions. And you can read and tell exactly who knows what they're doing and what the issues are and what issues are and what the rules are. It's very clear.

It's also very clear after the final pre-trial conference as to who understands exactly, as I just mentioned, that once that exhibit list is done, once that witness list is done, it is over and we're not going to do anything more. When it comes to the voir dire as I mentioned earlier, you have a very limited amount of time the district judge controls it. Whether he or she allows it, or doesn't allow it, or somewhere in between, that's completely up to that particular judge.

And those attorneys that understand that are able to work within those confines and we never have a problem. And I really appreciate the fact that someone who comes into Federal Court understands the restrictions, the guidelines, the mandates, so that the trials run smoothly.

MM: One of the things that you're saying too is something we tell our students that every question is a gift. That a question from the judge is an insight into where the judge is with your case and that if you're listening carefully and you're treating it as a conversation rather than a performance, you'll have the opportunity to fully appreciate the gift you're being given, which is the question.

ME: I think you've hit the nail on the head, because I know and I remember when I was in law school. I didn't appreciate that fact. It was a performance that I rehearsed. And it's completely wrong in my opinion, my humble opinion. You cannot be that locked in. You have to know where you're going and know what the issues are.

It truly is a gift because, I know that when I'm asking a question here in the district court, or when I've sat by assignment at the 9th Circuit, I go in with questions and if I have a question there's something that I don't understand, or that no one understands yet, so we want you to come and help us out here. Because generally speaking, the things that are pretty obvious we'll get.

MM: Right.

ME: But what's going to be the distinguishing factor here?

MM: Yeah, what's the concern in the judge's mind? That's the most important part.

ME: Especially on the appellate panel because all three can have a different view.

MM: Right, at least in the District Court they just need to respond to you.

ME: What I'm doing.

MM: Right. They just need to understand and have insight into the way you're thinking about the problem. This actually segues nicely into my next question, which is: I think, practitioners know that they need to follow the federal rules and they need to follow the local rules, but some judges have "local, local rules" - I like to call them - they're the specific rules for your courtroom and your chambers. Do you have any of those?

ME: There are some districts that actually have local, local rules that the judges aren't that local - they actually publish them on their website - here's what I want. In the Eastern District, we don't do that. But do we have local, local rules? I would say, yes, to a certain extent. And that would be scheduling orders.

MM: Right.

ME: And it's amazing how many people don't read the scheduling orders. And that's the pretrial scheduling order, a supplemental scheduling order, and the final pretrial order. And for us, as you know, when you file a case in the Federal Court, in the district court, you're randomly assigned to a district judge. Every district judge has their order for joint status report. That's the first thing you need to look at because each of us has our own different one.

What are the timeframes? What is expected? How does this work? You need to comply with that. And that's just generated automatically the moment you file. But then after a period of time when you have filed your joint status report and I emphasize joint....

MM: *chuckles*

ME: Meet and confer.

MM: Working together is important.

ME: Meet and confer. Then there will be a pre-trial scheduling order that's going to lay out everything that you're doing. And I have to say that we are - I've been here 15 years in the Federal Court - and I know that even within the last two months, we're tweaking various scheduling orders to try to make it more efficient. I'm trying to do things such as: we just had all new digital exhibit systems installed - we had older ones but we've just upgraded everything. And so there are a lot of issues on the new systems now that you need to be aware of.

More importantly, the days of bringing in bankers boxes full of binders of exhibits and depositions really is over. As far as I'm concerned, it's digital. Get a thumb drive and bring it. Now we may need one set for the jurors, and that's only because this district has not adopted - there's a federal pilot program for jurors to have their own digital exhibit systems in the jury room - but there are some issues about that, I think still, as to allowing what they get to...

MM: Right, how do you keep things out of that?

ME: Undue emphasis, all the different things. But, maybe instead of having five giant sets of depositions and binders, now it's just simply bringing it in and we set it up because everything that's being presented is presented digitally. The witness has it. We can control what the jury sees.

MM: Are there monitors in the jury box?

ME: Yes. We have monitors in the jury box. We put them in probably about ten years ago. But they were the big fat thick...

MM: Right

ME: But now we have very high def, thin monitors. And the witness has a monitor that's a touch screen so you can draw on it. And as the person draws in say, for example, puts an arrow that "This is where I was standing" and there's an overhead picture, you can digitally save just that portion of the exhibit.

MM: Interesting.

ME: Or even print it out if you want to, or if you have a long, for example, lease agreement they can blow up one paragraph or one sentence. SO it's changed a lot.

MM: Yeah, and so people need to be very aware that that pre-trial scheduling order has details on what they need to do when, what the expectations are, it's really the roadmap to the whole case for them.

ME: It really is. And what I do in my final pretrial order is to make sure that my courtroom deputy prepares all the dates, so everybody knows this is the date you have to do this, do this, do this, do this. And we all now have added a week for if you need training on the...

MM: On the technology

ME: technology, we'll take care of that as well. But no, it does, and each of us is a little different. There are some people that don't embrace technology to the extent that I do. There are some that don't embrace it all. So if you think that you come in to my courtroom it's going to be that way next door, that's not going to necessarily happen.

MM: Yeah, and that goes to the local, local rules part, right? The unwritten what you can expect in each different courtroom is going to be different based on the judge...

ME: But it's written, it's just not a local published rule. But it's there when you get your case and you are assigned to a district judge in the Eastern District of California. Look at the orders that come out and follow them because it makes everyone's life easier.

MM: Okay, well good. You answered what was going to be my final question, what was, I have two more though, but what could attorneys do to make your life easier. I'm going to say your answer is read the pretrial scheduling orders.

ME: Absolutely. I mean, we try to make it as clear as possible because when everybody goes along and is working on the same path, things just tend to work. We don't have issues come up, because one of the things for me that's a pet peeve that, if I have a jury waiting, and it says the attorneys want to speak to you before the jury's brought in. You know, we're going out. We don't need to have these types of interruptions. We can take them a break or someplace else, but if we're all on the same page, there shouldn't be something unless something really major has happened. And that has happened, and we'll make amends and we'll deal with it, and I've dealt with it, but just to say, "I want to think about this and..." No. No.

MM: Right.

ME: Once we start going, we're on the train without stopping.

MM: If you could give attorneys who practice in front of you one piece of advice, what would you say to them?

ME: Be prepared. Know your case. Know the law. And if you're wrong or if you have a bad point, fall on the sword and accept it. And deal with it and understand how to get around it. I appreciate an attorney who has a bad fact or a sketchy bit of authority who acknowledges it right away and says here's how I distinguish it. That to me is just huge in how you look at the attorney and what they're talking about because we all know that every case isn't a slam dunk. There's always something that you can argue, but it doesn't impress me when a person knows that they got a bad fact or there's no law to support it and they keep arguing it anyway.

MM: Well, it hurts credibility.

ME: It's like I said, they say, Look I know I've got this issue.

MM: Great, so, my last question for you this morning is what you've learned about the practice of law since become a judge?

ME: From going from a transactional law firm where the courtroom was something to fear to coming to the court as a judge and becoming very comfortable in the courtroom I've realized that there's so many aspects of the law that one can get into. And it's not always what one would think would be the quote-unquote traditional legal experience.

I mean, when I was at McGeorge, my thought was because I had worked for my Master's in Counseling Psychology because I wanted to be a football coach, and so I thought, "Well, I want to go into family law and be a marriage and family therapist."

That is the last thing in the world that I would ever want to do. But, it was something that the law gave me, that opportunity.

Then I got to go into the transactional world. I enjoyed doing that, now I've come into this world - well first the Superior Court where I did juvenile law, felonies, a little bit of family law - I did a whole lot of different things. And then you come here and you get to experience, we're mostly a civil court - 75% civil and 25% criminal. Law gives you opportunities to do different things in different places.

And the one thing that I do recall and what being a judge has taught me and the different levels I've gone through is that when I was in law school, I never ever, ever, ever, EVER thought that I would be a judge. Ever. I didn't want to, didn't know how they got there. I was basically an ignorant law student. Probably an ignorant citizen because I didn't know if there was either the Governor or the President that you dealt with generally. And what I've learned is that when you have a degree in law, that opens doors in a lot of different areas and it also gives you the opportunity as a person to understand something about yourself.

Never ever say that you can't do something. I mean, one of the things when I was being kind of recruited to be on the superior court was you should apply and everything I say was "But I am not political. But I don't know anyone. But I can't. I can't, I can't I can't, I can't."

And, you learn at some point you can't continue to say I can't. You have to say "Why not?" Because you know, to be a little bit colloquial here, if you don't ask, you don't get. And so, being a part of the law is one of the greatest things that I've ever done and I think it's opened doors for me.

It's, I have, many members of my families are in law and I don't believe that any of us were ever in the courtroom, but we're very successful as attorneys. So, that's what I think about what the law has taught me and being a judge has taught me. And that's why I like to encourage students and young attorneys to really think about what they want to do and what they can do. Not what they can't.

MM: And be open o whatever door is in front of them.

ME: You never know. How this started for me is just a unique story and I look back on it now and think if I had not just said yes, or done this one thing it would've changed my entire life. My entire life would be different right now, so, that's all, but you have to have the background. That's the beauty of having legal training and education.

MM: Great. Thank you so much for sitting down with me today.

ME: it's been my absolute please.re you've made me go through some thoughts and things and I hope this is beneficial to anyone who listens to it.

MM: Thank you very much. This has been an in practice session of the CAP·Impact blog of McGeorge School of Law. Again, I'm Mary-Beth Moylan from McGeorge, sitting down with Judge England from the Eastern District. Thank you for listening.