In Conversation: The Honorable Warren W. Eginton

By Noah Jon Kores

The Honorable Warren W. Eginton is a senior judge on the bench for the United States District Court in the District of Connecticut. He was appointed in 1979 and, at the time, was one of seven federal judges in Connecticut. He was born in 1924 in Brooklyn, NY. Judge Eginton went to Princeton University, took a break to fight in World War II where he was stationed in the Pacific and, when he returned, he finished college and went on to graduate from Yale Law School in 1951. He began his practice at the New York City firm of Davis Polk but shortly moved to Cummings & Lockwood LLC, where he stayed until he competed with, and prevailed over, T. Clark Hull to obtain an appointment to the federal bench in 1979 by US Senator Lowell Weicker.

Judge Eginton has tried cases since 1951 and with 66 years of experience, we sought his advice on some of the big topics.

Any tips for attorneys in the area of trial work? Let's start with motions practice: Any comments on the process?

There is a lot of discussions among judges on this. The common thread in our discussions is how do you make this less expensive? The way you start is with motions practice. I feel very strongly that 26(f) is the answer to discovery expense. To get a Rule 30 conference costs money and you get into discovery issues that should be handled from the very beginning. Within the first three months after the case is filed and the pleas are closed or a motion is filed to dismiss, the idea is to get the attorneys together and a 26(f) conference does that.

What's your preference in selecting juries and the attorneys' role in that process?

In federal court, we do it as a panel, and I've felt in my long time on the federal bench that our practice is very good at getting a fair jury. We are pleased with what the juries do and I think the juries are pleased. We get a lot of nice comments about their experience on the juries.

I've developed my own thoughts over the years—I've tried cases in Arizona and New Mexico—and when I went there for a month or two at a time, I came to appreciate their method of selecting juries, which is to let the attorneys participate. I did that myself down there. I brought it back here and thought the attorneys ought to participate.

We have an attorney questionnaire that the law clerks modify for cases, as we need it, and it solves most of the questions. We first ask the array of 80 to 90 people, "Who is going to be away?" and get it winnowed down to 40 to 50 people and you give them the questionnaire and they answer it. At that time, there isn't much left for me to ask, but I ask the questions the lawyers want me to ask. I then turn it over to the lawyers; I have the lawyers introduce themselves, their clients, their witnesses, and so on.

Then, I have them ask any questions they want to ask. I've been doing that about the last eight years. I've never had it abused. I tell the lawyers I want them to ask specific questions of specific jurors, not all of them like a blunderbuss approach to the whole array. They discipline themselves. They bring out information that might not otherwise have been brought up if they hadn't asked the questions. I find it good practice to let those lawyers participate. I think we get better juries as a result.

How long does it take you to pick a jury?

We do it in the morning. We start early—about 8 o'clock—and we get the array in by 9 or 9:30. We are finished with the array by about 11 or 11:30. We then pick the jury and we get them out of there before lunch. I'd say the longest I've gone is 8:00 a.m. to 1:00 p.m., but I do a lot in about three hours. Most of the cases you get done by lunchtime.

Moving on to the next part of the trial process, anything you find to be effective in terms of opening statements?

I always advise lawyers, and I do this frequently in pretrial conferences: don't read. In other words, if you are going to make a presentation, do it with your wife or mother or sister or children until you are satisfied that you've got it down. Then, don't read it. Put a note on your cuff if you want as to topics, subject matter, and orientation as to where you're going. Talk. Talk to the jury, talk to the judge. Don't read, because the recipient feels that you don't know what you're talking about and that you have to read it to persuade yourself that you ought to be saying it. It's much better if you look directly at the jury and talk to them. Most of the attorneys—the good ones, in any event—heed my advice because they were doing it anyway. They know you have to talk to the jury, not read to the jury. I always tell them don't make it too long.

Jury is the best discipline factor to the lawyers because if they turn the jury off, they are going to lose the case. If they give too long or repetitious a summation, they are going to hurt their case.

There are two or three things that I tell them with my own experience, when you are putting the witness through the paces on the stand, don't make objections unless you have to. There are only two times you have to make an objection: one is when you know that the judge is as mad about it as you are and is going to support you very strongly in his or her ruling based upon the objection because they know your objection is sound and the opposing lawyer should not have done what the opposing lawyer did; and the judge is hoping you're going to make an objection and will sustain you. That's the time you want to make the objection.

The other time is when you know that the judge is wrong and the judge is not going to reverse himself or herself but the judge is wrong and it's a critical aspect of the case. You've got to object; you've got to protect the record. The judge is not going to get mad at you; they know you've got to protect the record. We really welcome the objection because it gives us the chance to think about what we did and we change it. The objection makes sense to us and we change it. That doesn't happen very often.

When a lawyer (young lawyers usually, inexperienced lawyers) objects to every little thing, that's bad to do that. You should restrain yourself.

Any advice as to direct and cross-examination?

Direct examination is inexcusable if you haven't trained or educated or "brainwashed," if you want to call it that, the witness. If you do what the attorneys do very often in the workplace discrimination cases, they call the opposition to the stand as their first witness. They cross-examine that witness and very often that's the way the case begins. In this case, my advice is to make sure you're being effective because if you open any doors, you could be in trouble. Don't open any doors you don't want to open. Make sure you pin the witness down with documentation and use everything you've got to cross-examine that witness. If you haven't got anything to cross examine that witness, you have to make a decision as to how important the witnesses [are]. If it's an important witness, you've got to do everything to discredit the witness.

If you've got a plaintiff's case and you're the plaintiff's lawyer and you put on an important witness, make sure they are really prepared. Warn them that they are going to get the question 'Did you meet with so and so and prepare to testify?' The witness should tell the jury that he did and don't worry about the effect of it because the jury expects you to be prepared and meet with the lawyer. The witness's lawyer should prepare him thoroughly and make the witness feel comfortable on the witness stand. The thing a jury picks up is repetition. You've got your point; make it; nail it down. Do it once and not more than once as you examine the witness on direct.

On cross of a hostile witness, for example, you take him or her on with documentation. You've got to have documentation to impeach these witnesses or else you're going to just make it a matter of credibility so you need to be careful and make sure you use it effectively. Using it effectively means having documentation that makes a liar out of the witness. You need to shake the credibility of the witnesses.

What about closing arguments? Anything particularly effective or ineffective?

Some judges limit openings and closings; I hate that. I hated that when I was in the pit trying cases. I've never done that on the bench. I'm going to let the jury be the disciplining factor. If counsel turn the jury off by being long-winded and repetitious, it's going to affect their case. I think what you ought to do, especially for young lawyers, depends on whose bag you're carrying. If you work for a good lawyer, go to court and watch. You should learn by watching a good lawyer in court. He should not be repetitive. He should go for the jugular. Start with the important stuff. It's the way to handle a summation.

What would you say is the biggest problem affecting the courts?

There are two major problems facing us. One of which is the expense of federal litigation. We are trying, especially through

26(f), to get the discovery less expensive than it is. Some law firms are better than others in doing that. The other problem is pro se parties. I have a lot of cases, usually employment discrimination cases. I get a call from the clerk's office and I get on the phone to a partner in some big law firm. I have them send a junior associate to the courthouse to help the person get started with filing the pleadings. I've had two or three cases where the lawyer, by the time he finishes helping, thinks maybe this is a good case after all and wants to try the case. That's one way we handle the pro se.

The other way is we have master lists of attorneys and we say 'Please come in and try the case for us' and they will do it but then they say 'We have problems with this, don't overload us with these cases.'

The increase in pro se litigants is going to be a continuing challenge for the younger judges. We do worry about it and where it's going and the cost of federal litigation is one of the factors that leads to increasing numbers of pro se parties.

What about the criminal courts?

Criminal docket is not overloading the courts with work. The reason is because the drug situation is getting under control. We have two ways to deal with this. They have support court. We also have reentry court. That is difficult though. We are not realizing as much success as we would like to in helping these criminal offenders get back into society. There's a stigma there. We lecture businesses on this. We get a lot of reaction that we get too many people that worry about hiring former convicts. They want to hire people who have no criminal record. It's tough. We keep honestly trying to educate the corporations onto the importance of this with limited success.

What's the biggest difference in the practice of law now versus when you started?

It's become a much different world with the computers. When I went on the bench, we had a typewriter then a word processing machine. One night, I was doing a brief and we did about 40 pages of the brief on the word processor and then in the middle of the night, it disappeared off the machine and we had to start from scratch. My view of word processers became very dim. Now we have computers. I rely on my clerks to help me work the computers. That's a big change in how the lawyers operate. I remember when I started out practicing law, we Shepardized everything. It was a laborious process. I used to have a desk full of open books when I was writing a brief. Now, everything is done automatically on the computer. I'd say that's the biggest change. **CL**

Noah Jon Kores is an attorney in Bridgeport, practicing in the areas of criminal defense, personal injury and workers' compensation.