



## BenchMarks: Barry Plotkin

Superior Court Judge,  
County of San Bernardino

by Ed Butler

**I**t resembled a homecoming for Judge Barry L. Plotkin, when he returned in January to the Rancho Cucamonga bench, after supervising the Fontana District court for a year.

It was also a refreshing change of scene for a judge who loves variety in assignments and the challenges that new kinds of cases bring. Formerly on the bench at Rancho nine years, including seven presiding over civil cases, Judge Plotkin says overseeing Fontana gave him a direct experience of heavy burdens confronted by that district. He had been shifted to Fontana in October 2002 for criminal matters and now does criminal preliminary hearings back at Rancho.

A former longtime criminal defense attorney, Judge Plotkin was born in Oil City, Pa. but has lived in California since age four. He grew up in Los Angeles, his mother an insurance adjuster and his father a painting contractor. He competed interscholastically in football, baseball and track at Hollywood High School. "Athletics was really my first love," he recalls. That continued in adulthood with avid engagement in hiking and backpacking.

While children of celebrities could be encountered at Hollywood public schools, he says they tended to end up in private schools where attendance scheduling was more flexible.

Judge Plotkin, a 145-pound defensive back, was so enamored of football that he intended to attend junior college so that he could play at his size. Those plans were foiled the summer after high school graduation, when he broke his leg playing baseball and ended up enrolled at UCLA, which had already accepted him, one semester late. When it was time to pick a major he elected political science, having some inkling that he wanted to go to law school. While an undergraduate, he worked part-time as a "kind of go-fer" at the Hilton Hotels executive offices in Beverly Hills.

Because his program was delayed by the fracture, as a midterm graduate in winter he bided his time before law school working as a deputy probation officer at the Los Padrinos Juvenile Hall in Downey. He would return there to work during summer breaks while attending the Boalt School of Law at UC Berkeley.

Judge Plotkin says he chose Boalt rather than UCLA Law School because he wanted to separate himself from the various social distractions of his home ground, as part of making a total commitment to law school.

Law school started off in a bizarre fashion, however, in that he arrived at Berkeley at the beginning of the infamous Free Speech Movement sit-in (September 1964) at Sproul Hall, not far from the Boalt School. "I began to wonder what I had gotten myself into," the judge recalls. After several days, the sitters were expelled by Gov. Reagan by means of the National Guard.

Judge Plotkin says law students tended to be more conservative and did not involve themselves in such activism. Also, it was a more conservative time in law school, as out of 260 people in his first year class, perhaps 15 were women and four or five were of ethnic minorities.

Upon receiving his juris doctorate and license

to practice, he went to work prosecuting crimes for a few years for the Los Angeles County district attorney's office.

That led to approximately a 20-year career in private practice in Pomona, mostly devoted to criminal defense work with some civil work as well. In the course of 10 years or so partnering with other attorneys, one of these was now-Judge Ray Youngquist, who presides for the county at Chino.

Judge Plotkin says shifting to private criminal defense was "kind of a natural progression" after having been a prosecutor. He represented defendants accused of a wide variety of crimes, including death penalty crimes. His second death penalty case was heard by state Supreme Court Chief Justice Ronald George, who was a Los Angeles county judge at the time. Judge Plotkin "came away with the perception that (Justice George) was one of the brightest, best judges I have ever seen and one of the nicest men I have ever met."

Judge Plotkin says even his four children have asked him the stock question of how a criminal defense attorney can comfortably represent a person he believes to be guilty.

"I think criminal defense lawyers reconcile themselves to the fact that everybody is entitled to a defense under the Constitution, they are entitled to a competent and reasonable defense." The attorney has a duty to assure that conviction does not occur without proof of guilt beyond a reasonable doubt, and as long as the defender is ethical, he "should be able to sleep okay," the judge says.

As for those who might want to make comparisons, "I think the level of representation among public defenders often exceeds that of private attorneys," Judge Plotkin says. He finds that in this county the public deputies "are very committed to what they do," and where representation is not up to par, it's liable to be a private practitioner doing criminal defense on the side.

Appointed judge by Gov. Deukmejian in late 1990, Judge Plotkin spent the first two years presiding over criminal matters. While he was very squeamish at the time about being shifted then to family matters, an area then unfamiliar to him, he has become a huge fan of the value of judges changing assignments and courts.

"I think the greatest thing about this job is the exposure to many assignments that a judge can have," with the stimulating new challenges and horizons that accompany them, he says.

As a new family jurist, he busied himself learning the area and looking back, "I think it made me a better judge, a more tolerant and understanding judge. I think it was a learning experience that was beneficial."

Judge Plotkin also enjoys the variety of working in different courts, "as every court has a different culture." He has presided over criminal, civil and family matters at Rancho and San Bernardino and criminal at Fontana. He has reached the point of encouraging a change in assignment after two years, as without such stimulus "a certain staleness sets in and it's much harder to keep your focus."

He admits after handling civil cases for seven years that is his favorite area as judge. "I think it's the most challenging . . . there's such an enormous variety of civil cases and you can never exhaust your knowledge base."

Presiding over criminal matters for 15 months at Fontana gave Judge Plotkin firsthand

experience of what he sees as special burdens and challenges facing that district.

"It was an enormous volume court—probably the most neglected and overlooked court we have—the stepchild in our court system," he says. He explains that criminal caseload there is so voluminous that jury trials have to be scheduled in the afternoon. He had the impression that the district was "cast adrift" that it was a "lonely outpost" having to fend for itself. It relies on very capable judges being assigned there, he says.

Proposed courthouse expansion at Fontana has gone into limbo. While the executive committee had allocated \$750,000 to remodel second floor space into a fifth courtroom, a draft master plan under state consolidated takeover suggests that Fontana could be switched to specialized duty as a regional traffic court. As it is now, the building is rather lacking in creature comforts for jurors, in Judge Plotkin's opinion. On the whole, however, despite tight budgets the county has had "very capable court administration and very capable presiding judges" committed to improving court efficiency and making work less stressful, the judge says.

Judge Plotkin chairs a countywide court committee on jurors, the goals of which include working with a state task force to make jury service more comfortable and to enforce summonses to appear for service. He finds that the responsiveness of summoned people varies significantly by region of the county, tending to be good in the westerly areas but dismal in the remote desert areas. One new procedure to encourage compliance is "summary contempt" which does not carry the risk of jail time.

Judge Plotkin reports that county Presiding Judge Pete Norell has assembled a team to ease the burden of pro per litigants in family cases, the largest area of self representation experienced by the court. Each court in the state is developing its own strategies for such things as training seminars to help such litigants achieve justice and "to persuade them that they are being treated fairly" by judges trying to listen without bias.

As for words to the wise to attorneys, Judge Plotkin says attorneys sometimes go overboard trying to educate judges about the case at hand. "Lawyers really tend to underestimate the level of understanding a judge has about the case before him," he finds.

He says "judges get impatient when lawyers beat around the bush" when they really should "make your strongest argument first" without beginning with "very extraneous matter." He advises, "Come right out of the chute with your guns blazing."

Based on their experience, judges are usually more understanding of a matter than an advocate might think, the judge finds.

He also finds there tend to be different styles by area of practice, with family attorneys tending to be more aggressive and civil attorneys sometimes particularly driven.

Off work, Judge Plotkin's favorite pursuits have included regular backpacking in the eastern Sierra Nevada range of mountains and hiking the mountains of San Bernardino County.

His four children, now adults, went along on such treks. One son practices medical malpractice defense law in Orange County. His siblings are two teachers and a travel agent.

Judge Plotkin's wife is a school psychologist for Riverside County.

*Ed Butler is Manager of the Rancho Cucamonga Branch of the San Bernardino County Law Library.*