

BenchMarks:



Douglas Elwell

Superior Court
Judge, County of
San Bernardino

by Ed Butler

Extremely delighted to serve as judge, Judge Douglas M. Elwell is a sparkplug of good cheer and accessibility at the Fontana District courthouse.

Recently assigned chief responsibility for drug court at Fontana as part of his felony trial calendar assignment, Judge Elwell is the new supervisor of Fontana district. Judge Elwell says his style is to "run a less structured courtroom" than some judges while emphasizing the importance of facilitating what attorneys have to do in court.

The judge says he isn't sure what attracted him initially to the legal profession that he dearly loves, although he competed in public speaking in high school.

Born in Los Angeles, he did much of his growing up in Texas, first in Houston and then Midland, where he attended the same elementary school as President George W. Bush. While the president was a couple years ahead of him and he doesn't remember him, the judge's father, who worked in the oil industry in industrial and personnel relations, was acquainted with the president's father, the first President Bush.

Judge Elwell has two sisters who have also had law careers, one a sole practitioner family attorney in the North Bay above San Francisco, and the other a former law office manager and legal secretary. The latter now is a certified pastry chef.

After high school Judge Elwell enrolled in Stanford University. A case of prolonged adolescence, so to speak, resulted in neglect of studies and his leaving there after a year. With the Vietnam War boiling, he enlisted in the Army and spent much of his three active duty years in the Green Berets. That included training as a radio operator and in Spanish language and spending a year overseas attached to the Eighth Special Forces Group in South America.

After mustering out and getting married, he spent about a year in fulltime work – mostly for the Edison Company – before he went back to school at Claremont Men's College, now Claremont McKenna College. Ready to knuckle down at that time, he completed a four-year bachelor's program in three years, pursuing political science and philosophy full majors. On the way to graduating summa cum laude he also worked various part-time jobs including one at a cement pipe plant and in public relations at the Santa Anita Racetrack.

Then came law school, first at Duke University in North Carolina and then Loyola University of Los Angeles. Getting his feet wet in law practice, he became an associate at Allard, Shelton & O'Connor in Pomona (now of Claremont). There, he did "a little bit of everything" including probate and municipal law.

An attraction to trial work led to his employment as a deputy county counsel of Los Angeles County, engaged chiefly in litigation for eight years in the office's property division, in direct and inverse condemnation and the acquisition and disposition of property. Fascinated by the subject of land use, Judge Elwell also served the county as advisory counsel to government departments, including the Claremont planning commission.

Judge Elwell observes that the issue of what constitutes public use making property takeover constitutionally acceptable "is subject to raging debate." He notes that the U.S. Supreme Court has been more inclined to visit the subject over the past 10-15 years.

After an intense litigation work schedule for eight years, he took a year off from the law working as a professional horse show announcer. This is something he did avocationally for a total of 15 years, as the husband of Allison, longtime supervising trainer of the Cal Poly Pomona Kellogg Arabian Horse Center.

His year of respite came to an end when he was sought out by the Fourth District State Court of Appeal, at San Bernardino, to serve as research attorney.

It was during his five years at the appellate court, including much opinion drafting work, that he developed a hankering for the work of judge. He was very impressed by the appellate judges and "the nature of the judicial process was very appealing," Judge Elwell says. Rather than advocating, the judge serves as a "decisionmaker, trying to help that process reach a fair and just decision."

While his application for a trial court judgeship was pending, Judge Elwell detoured for a while to open an appellate law practice with fellow appellate court research attorney Sharon Waters, who has subsequently also become a Superior Court judge, for Riverside County. Judge Elwell described the partnership as a "marvelous practice, great fun," and an opportunity to operate his own law firm for the first time.

When the desire for judging returned after a few years, he was glad to learn that his earlier withdrawal of application did not discourage Gov. Wilson from appointing him to the San Bernardino County bench in the fall of 1995. He began presiding over Municipal Court at Chino, handling a variety of matters including civil and criminal trials, including a few felony trials. He became a Superior Court judge upon consolidation in 1998.

In his eight years so far as trial judge, he has presided at several districts in the county including Rancho Cucamonga, Victorville and Redlands. He previously was at Fontana for 2 ½ years and returned there a half year ago after two years in Redlands.

Exhibiting the demeanor of a man who truly loves his work, Judge Elwell says, "I can't think of a day that I haven't enjoyed since I went on the bench." He's also very happy with a criminal assignment, an area over which he has presided almost exclusively the past six years.

"I just think criminal law is an inquiry into the human condition, good and bad, and I'm absolutely fascinated by the depth of the human psyche and criminal law allows me to watch that being explored," he says.

As part of that, he has been directly involved in drug court for three years and recently took the drug court lead judge role at Fontana. He finds that the treatment avenues afforded by Prop. 36 for drug defendants have had less impact on drug

court than had been feared. Experience has shown that defendants needing the more intense supervision and interdiction seen in drug court benefit more in drug court in terms of better, longer lasting success, the judge finds. In the interest of conserving limited public resources, the defendants motivated to be under drug court supervision are asked to waive their right to alternate treatment avenues of Prop. 36 rather than be able to switch back and forth.

On the subject of cost efficiency, the judge has high praise for countywide court administration in its doing "a phenomenal job . . . of anticipating where the (financial) strains were going to come and how we could" plan for them. He says this administrative effectiveness has resulted in San Bernardino County weathering the state budget crisis better than others.

Judge Elwell reports there are funds budgeted to possibly add courtroom capacity at Fontana and the addition of another judgeship would be very helpful. Commissioner man hours at Fontana were recently increased from four to five days per week.

Over the long term, the Fontana court could take on a specialized role, such as traffic court, if criminal trial courts are centralized in three regional courthouses in the interest of space efficiency.

Among several recent personnel changes at Fontana, Judge Barry Plotkin, district supervisor for much of 2003, has returned to Rancho Cucamonga where he previously presided for several years.

In his new capacity as judicial supervisor, Judge Elwell says, "I'm working with such a marvelous group of judges here at Fontana that I think my main job is to stay out of their way . . . we have the A team here at Fontana." He also has special praise for Jill Johnson, his courtroom clerk for his entire eight years so far as judge. "She has a tremendous work ethic . . . She is really the backbone of our ability to get everything done."

Judge Elwell emphasizes the importance of facilitating the work attorneys have to do before the court. "I run a less structured courtroom than many judges. . . that's not to say I don't expect respect." He says he has nicknamed his the "Southwest Airlines courtroom," flexibly taking cases out of order as circumstances might warrant, for example.

As for advice to attorneys, he insists on communication to opposing counsel and the court about such things as inability to appear as scheduled. He wants attorneys to be "courteous, professional and know (their) cases."

Judge Elwell won't rule out a possible future desire to serve as state appellate justice. However, at this time "I much prefer where I am. . . the energy of a trial courtroom is vital to me." He also might be interested in teaching again, as a former civil procedure teacher at California Southern Law School. He says he enjoys experiencing a student's "moment of connection" upon realizing an instructive point, much like self realization exhibited by drug court defendants.

In his spare time, the judge enjoys reading, going for walks and tending to his home garden. He and Allison may take up camping again. The Elwells have a son, Scott, 24, a student at the University of California, Davis who will be following his dad into the Army.

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