



BenchMarks: Bryan F. Foster

Superior Court Judge,
County of San Bernardino
by Ed Butler

A former power house litigator who loves working with people, Judge Bryan F. Foster has become supervisor of Joshua Tree District less than two years after his initiation there as Superior Court judge. Judge Foster brings a congenial demeanor to presiding over chiefly criminal matters, in contrast with his former civil practice lifestyle, and the rigorous challenges of shoe-horning the county's heavy caseload into a courthouse with painfully limited resources.

Judge Foster rose from humble San Francisco roots to have a 29-year career as attorney that included 20 years in personal injury plaintiff work, based in Riverside, leading to his advocate level membership in the American Board of Trial Advocates. Once terrified of public speaking as a beginning litigator, he was drawn to judging more recently by the opportunity to support a just result irrespective of the position of the parties. "I have to do what's right for everybody and that's kind of a nice feeling. It's the best job in the world," he says.

Although Judge Foster's father dropped out of high school at 14 due to family circumstances, he was a diligent provider as a mortician and encouraged his children to pursue their dreams. The judge's mother was a beautician whose work included making up the bodies at the mortuary where her husband worked.

Born and raised in San Francisco, Judge Foster attended Riordan High School, a uniquely all-boys parochial school. In high school he was a devoted athlete, going out for interscholastic football, basketball and track, and also cross country for a while. He also played football at the University of San Francisco, where he earned both a history bachelor's degree and his juris doctor degree.

He recalls holding various kinds of jobs to help defray his expenses, as early as age 12 helping the janitor in grammar school. He performed a wide variety of work, arranging his schedule so that he could cut loose completely for the sake of football in its

season. Over the years his various pursuits included car wash work, pumping gas, delivering blood samples for a biochemist, delivery of chinaware, lumber yard work, that of pipefitter's helper, dock worker, night watchman, bouncer and paint store clerk. As a law student he worked as a sheriff's deputy guarding the jail.

He found all this work experience valuable as "you get to learn how people think."

Judge Foster says his choice of the law as a career did not come as a sudden or intense flash of inspiration. He likes to quip that, armed with a history degree, he realized that "the history companies were no longer making history." His high school aptitude tests suggested something in accounting or the law. He found that he enjoyed law school, the logical progression of the law. "I enjoy people . . . I like studying the human condition, how people interact with each other," he says. Later evidence of this was his fascination with jury psychology, the things that are important to jurors and those that aren't.

He spent his first nine years of attorney practice in the Bay Area, starting out with a firm representing the San Francisco Housing Authority. His later emphases up there included probate and family law. After a number of years, he became fatigued of the emotionally draining character of domestic relations and even considered leaving the profession. A new self analysis led him to relocate to Riverside for trial work. His self analysis showed that he enjoyed dealing with complex situations and key issues and making them manageable, reorganizing facts to make sense of things and then discussing them with others. He enjoyed the process of getting at the heart of a complex issue and trying to clarify it.

As he embarked upon litigation, he had to confront a "horrible fear" of public speaking, to the point of losing his breakfast each morning on the way to a week-long trial. By the third or fourth trial, he says he realized "the jurors really wanted to like you" rather than seize onto and hold onto one's mistakes. In a year of heavy trial practice, he lost his fear of public speaking and got to enjoy it.

He specialized in personal injury litigation after relocating south to Riverside in 1983. He started with Kinkle, Rodiger and Spriggs that year, moved to Redwine & Sherrill in 1988 and partnered as Foster, Driscoll and Reynolds from 1990 to 2000. He was a sole practitioner from 2000 to 2003, when he was appointed to the San Bernardino County bench by Gov. Gray Davis.

At Joshua Tree, criminal matters account for about 90 percent of his caseload. He also handles mental health court, probate court and overflow from the other departments.

Judge Foster indicates that his attraction to judging was similar to his attraction to litigation as an advocate. He feels his strength lies in his ability to analyze data and get to the heart of it. He had sat as a pro tem judge and enjoyed hearing both sides before making a decision on the side of what he felt was right.

He admits to missing some aspects of advocacy, such as being able to achieve results that make clients "extremely grateful." He recalls one spouse of an injured client who wanted to name a child after him. He misses the strategy part of advocacy, planning out the case to minimize weaknesses and maximize strengths.

Judge Foster says the most dramatic change he experienced in becoming judge is "the amount of deference you get as a judge." He says the change in professional status "took some getting used to," as people directed their attention to him as a source of decision. He finds in the judicial role "you have to learn to be decisive, and not dwell on decisions you have made, (not) second guess yourself." He finds that attorneys appreciate consistency and decisiveness in a judge, as it helps them prepare their case.

He finds that a minority of judges use intimidation to control the courtroom, but that is not his style. He appreciates how the process is scary for new attorneys, he says, as "I lived it, so I appreciate what they're going through." He prefers that they view him as assisting them rather than being some sort of threat.

He says he was surprised in becoming judge to experience a wide range of skill levels among attorneys appearing in his court. He says this contrasts sometimes with the strong skills he consistently experienced in his defense competitors in personal injury litigation, and he finds that amount of experience does not control skill level.

He finds there are significant differences in criminal vs. civil adjudication, as criminal tends to be more fact-based and does not have the discovery tools or complexity of civil.

In his capacity as district supervisor, Judge Foster looks after the efficient operation of the court, including calendar, oversees policies and procedures and is responsible for interaction with the community. The district participates in a monthly regional meeting sharing information among law and justice entities.

The same as all of San Bernardino County, Joshua Tree is challenged by having to fit excessive workload through limited resources. The smallness of the remote operation is itself a challenge, because there lacks flexibility to deal with absence of one of the three regular judges or the Friday commissioner. This problem in the face of heavy workload can cause trials to be delayed and hearings put off.

Judge Foster says the biggest resource challenge at Joshua Tree is that "the courthouse is bursting at the seams." When the third department was added, a jury room was appropriated for a judge's chambers. This leaves only one regular deliberation room. The jury assembly room is used as the commissioner's courtroom on Fridays and family court has been held in the tiny law library. Meanwhile, other functions are pressed for space, such as the family law facilitator, district attorney, public defender and probation functions.

Any efforts to plan for a more suitable facility, in the face of surging population growth in the district, are hamstrung by the uncertainties surrounding state government takeover of court facilities.

While a lack of sufficient judges and courtrooms has been acknowledged, Judge Foster points out that new judgeships require associated services, such as courtroom staff and public criminal advocates, to make them feasible. With all these growing pressures in a fast-growing county, "at some point the system is going to become so overloaded that we're not going to be able to do our job," he says.

Judge Foster reports that juror response to summonses has improved markedly since the district and county implemented an enforcement program. He says jury service is a special area of interest for him and he'd like panels to be a cross section of the community and for juror waiting to be kept to a minimum.

He speaks with enthusiasm about mental health court, one of his assignments, which he views as probably the most valuable of all collaborative courts. He has observed marked improvement in such defendants, who appreciate the mindset of the court caring about them rather than punishing them. To be accepted, the individual's problem must have been diagnosed as mental rather than drug-caused, and those with a violent history are excluded. The court aims to stabilize the person's situation so that he can avoid being a victim or predator and become a contributing member of society where possible.

Asked for general advice to attorneys, Judge Foster emphasizes the value of advocates being respectful and civil toward each other. He quoted another judge remembering what she learned from her playground supervisor, to "share your toys, don't talk too loud and be nice to everybody." He adds that attorneys should avoid personal animosity toward each other. He recalls that competing attorneys described him as easy to go against but also tenacious, another trait he admires.

Asked to state traits that would be good for future judges to have, Judge Foster emphasizes decisiveness and good judicial demeanor. He defines the latter as being empathetic toward all sides in front of the judge. A judge should have good common sense and a good base in legal analysis, he adds.

"I think probably the most important thing is to have somebody that works well with other people," Judge Foster says.

Asked to comment about a few litigation issues, the judge says the growing ADR/private judging movement has advantages and disadvantages. He says the private judges tend to get the high end cases, but that can be very helpful with the greater attention to complexity that such a setting can give. By contrast, in the public courts "we have such volume we have to move things along quickly."

On the subject of taking cases on contingency as a litigator, Judge Foster says the pre-eminent thing is to assess whether a case has any legitimacy, whether there is an argument for liability recovery. The next thing is to determine the potential recovery and expenses necessary to prosecute the case. Cases with large potential awards then can be used to subsidize other cases.

For lower value cases, there would have to be greater value in liability to justify them. He adds that attorneys get a bad name when they don't have the nerve to decline a case due to lack of economic value, to meet the client's expectations. He says there were cases he bore the cost of on principle because of the defendant's unreasonable position.

On the subject of efforts to limit punitive damage awards, he defers to legislative discretion. He feels such awards have value and is concerned that any artificial ceiling might conflict with the need to weigh the specific facts of the case against the economic position of the parties. He adds that limits to awards could allow for reasonable judicial oversight and controls on how the awards are applied and distributed.

Judge Foster resides in Redlands with wife Nancy, a literacy specialist for the Riverside public schools. They have three adult sons: a teacher at Hemet High School, a commercial real estate worker in the Los Angeles area, and a worker in a respiratory therapy supply business.

Judge Foster says his favorite pastimes include attending USC football games and family outings. His community activities have included Hospice and Operation Safehouse, a temporary retreat for teenagers that come from troubled or dysfunctional homes.

He says ways to cope with the long commute between Redlands and Joshua Tree include audio books and a subscription to satellite radio.

Ed Butler is Rancho Cucamonga branch manager of the Law Library for San Bernardino County.

ELWOOD M. RICH

JUDGE OF SUPERIOR COURT (RET)
JUDGE FOR 28 YEARS

MEDIATIONS • ARBITRATIONS • INDEPENDENT ADR

(951) 683-6762

CALIFORNIA SOUTHERN LAW SCHOOL
3775 ELIZABETH STREET, RIVERSIDE 92506