

The Joy of Judging

*Hon. LaDoris H. Cordell (Ret.)**

In 1982, when I ascended to the bench, I knew nothing about judging. I was thirty-two years old and had just received a telephone call informing me that I had been appointed to the bench by California Governor Jerry Brown. In an instant, I became Judge Cordell. The excitement and anticipation I experienced quickly turned to fear and trepidation when I realized that there was no training to prepare me for the bench. And there was nothing from my three years at Stanford Law School that I could utilize to guide me—no courses, no seminars, no lectures—nothing. So, I bought a black robe, put it on, and went to work. I was on my own.

Much has changed in the twenty-five years since I began my judicial career. Throughout the country, there are now judicial orientation programs and judges' colleges where new judges are provided tutorials, however brief, as preparation. But what has remained unchanged in this arena is law school curriculum. To this day, not one law school in the country offers classes on judging. Despite the fact that law school graduation is the path to judgdom, American law schools devote not one minute of education to preparing law graduates to enter the world of judging.

In February, 2001, I created the first law school clinical course on judging in the nation. It began with my e-mail to our Presiding Judge:

11/28/2000
09:36 AM

Good morning. I have an idea concerning small claims appeals: as you know, every Friday, small claims appeals are assigned to the civil judges. Many, if not most, of the judges do not care for this assignment for two reasons: (1) the cases involve pro se litigants and, thus consume more time than they should; and (2) these cases oftentimes interfere with our regular Friday morning calendars. In fact, at one point, the clerk [who assigns the cases]

* LaDoris Hazzard Cordell, a 1974 graduate of Stanford Law School, was the first lawyer to open a private law practice in East Palo Alto, California. In 1978, she was appointed Assistant Dean for Student Affairs at Stanford Law School, where she implemented a successful minority admissions program. In 1982, Governor Jerry Brown appointed Ms. Cordell to the Municipal Court of Santa Clara County. In 1988, Judge Cordell won election to the Superior Court of Santa Clara County, making her the first African American woman to sit on the Superior Court in northern California. After 19 years on the bench, she retired and began her current employment at Stanford University where she is now Special Counselor to the President for Campus Relations. On November 4, 2003, Judge Cordell, accepting no monetary donations, ran a grassroots campaign and won a 4-year seat on the Palo Alto City Council. Judge Cordell is an on-camera legal analyst for CBS-5 television and is a guest commentator on Court TV.

had to send out a memo to the judges directing them not to ask her to take these cases back.

I would like to take this particular workload away from the judges and, at the same time, create a wonderful learning experience for law students. I would volunteer to take at least five of these cases every Friday. In doing so, I will be working with 2nd and 3rd year law students from Santa Clara, each of whom will be assigned one of these cases. Each student will review the file a week before the hearing, thus allowing sufficient time to become familiar with the law on the particular subject of the lawsuit. On the morning of the trials, the student assigned to the case, when that case is called will sit with me and participate in conducting the trial. By participation, I mean that the student will be permitted, with my supervision, to ask questions of the litigants. When the testimony is concluded, the matter will be taken under submission.

Upon the conclusion of all of the trials that morning, the students will meet with me in my chambers, in a group setting, where we will discuss each of the cases. I, of course, will make the decisions as to how to rule, but will arrive at the decisions with the involvement of the students. I will then direct the students to draft the decisions (they will have one week to do so). They will then present their drafts to me for my review. I will then issue the written rulings, with copies to the students who assisted in their preparation. I will also have a waiver form for the litigants to sign, informing them of the student participation and advising them that only I will make the rulings in their cases. The students will be supervised by a law professor at Santa Clara Law School. At the end of the semester, all of the students will come together at the law school to discuss their experiences in judging. With this clinical judging program, litigants are guaranteed that full attention will be paid to their cases, and will be given thorough written decisions, a rarity in small claims cases. . . .Your thoughts?

In January, 2001, my clinical course on judging was underway. Eight second and third year students from Santa Clara Law School enrolled—four women and four men. Each was required to observe a small claims appeals case before presiding over one of their own. When they gathered in my courtroom for their assignments, I handed each a file and told them that I expected them to be ready to preside the following week. I was amused by the collective look of shock on their faces. “So, we just do this?!” I answered, “Sure, you know the rules of evidence, you have the files, so let’s do it!” Off they went, terrified and excited (just like me, on my first day).

In California, the jurisdictional limit in small claims appeals is \$5,000. Litigants, for the most part, represent themselves. Only a defendant can

bring an appeal. If the plaintiff loses at trial, the case ends there. All small claims appeals are heard at trials de novo. So, my student-judges would, indeed, have the final say.

During hearings, each student sat in my chair at the bench, front and center. I sat, second-chair, just behind them. With waivers signed by the litigants allowing the students to preside with me, we were ready to go. (Not one litigant ever declined to sign a waiver.) I had prepared a script from which each student-judge could read:

Good morning. My name is _____. I am a law student at Santa Clara University. I understand that this dispute concerns _____ (*briefly describe what the lawsuit is about*).

(To the Plaintiff): Tell me why you believe that you are entitled to the money that you are claiming from the Defendant. Or, Tell me why you believe that you should have a judgment against the Defendant.

(To the Defendant): Tell me why you believe that you don't owe the Plaintiff any money. Or, Tell me why you believe that the Plaintiff should not have a judgment against you.

Students presided over a wide range of cases. The first round included who was at fault in a car accident, a landlord-tenant dispute over a no-pets clause, a couple that wanted all new wedding pictures taken because of their dissatisfaction with the work of the photographer, and a quarrel between two neighbors over a toppled willow tree.

The student-judges were attentive, respectful, and well-prepared. One student, a young man whom I shall call Luke, after welcoming the parties and explaining how the trial was to proceed, looked to the plaintiffs (a wife and husband) and said, "Mr. Smith, why don't you tell me what your claim is." I placed my hand on his arm and said to the litigants, "*Just a moment, please.*" I then whispered to Luke, "*Why did you ask the husband to explain? Couldn't the wife be the one who has the information? You just assumed that the man was the one in charge, right?*" He looked at me, gasped, and said, "I can't believe that I did that." I then whispered, "*Okay, now make it right.*" He turned to the parties and said, "You know, I assumed that Mr. Smith would present the case. That was wrong. I should have asked you both who wanted to present the case. I'm sorry about that. Which of you would like to present the evidence?" Ms. Smith (of course) raised her hand and proceeded to make the presentation. When we debriefed, Luke shook his head in disbelief, clearly dismayed that he had stereotyped the Smiths. I told him that what was important was that he had so perfectly rectified the situation. His fellow students nodded in agreement. This was one of many "aha" moments for the students.

In another instance, a student presided over a case where the litigants were represented by lawyers—a rare, but proper, occurrence. After the hearing, he sent me an e-mail that said:

I felt I lost control over the parties' adversity toward each other while I was trying to absorb the facts. They were so familiar with the facts, and I wasn't. I had sorted out the possible legal issues beforehand in my mind, anticipating getting out the facts with the parties, without counsel. I think I lost control over the attorneys[.]

I wrote back:

My perception was very different. I did not feel that you lost control at all. It is the case that oftentimes the lawyers will try to take control of things. You did not let that happen. You kept everyone focused on the issues. Keep in mind that this was brand new for you and old hat for them. You experienced exactly what judges experience when we take the bench for the first time. You did just fine.

The difference between the way that female and male student-judges presided over these cases was notable, if not surprising. The women, at their first trials, while fully prepared, were, to a person, shy and soft-spoken. I frequently had to pull them aside and urge them to speak louder. The men, on the other hand, were bold and oozing with confidence, occasionally verging on arrogance. I frequently had to pull them aside to advise them to listen to the litigants and to refrain from interrupting. I recall whispering to one young man, “*You don't know everything. Just listen and ask questions.*” When they presided over their second trials, a few weeks later, there was a dramatic change. The women spoke up and the men spoke down.

Debriefings in my chambers immediately followed the court sessions. This was an opportunity to provide feedback to the students about their judicial performances and to discuss the legal issues raised by the cases. Everyone had a chance to weigh in. While, obviously, I had the final say, the students and I rarely disagreed on the outcomes.

The parties in small claims appeals rarely, if ever, receive written opinions. Typically, the decisions merely state “Judgment for the Plaintiff” or “Judgment for the Defendant,” without explanation. Quite the opposite occurred in our clinical program. The students' draft opinions reflected the seriousness with which they considered their cases. The decisions they authored were thoughtful and well-reasoned. And although they only had one week to give me their draft opinions, they each submitted, without fail, decisions that required only minimal editing. Their final drafts became the opinions of the Court, signed by me, filed and mailed to the litigants.

An essential piece of this clinical course was the academic component. Santa Clara Law School professor, Cookie Ridolfi, provided ongoing aca-

demic support. She met regularly with the student-judges and stayed in weekly contact with me.

When I retired from the bench in March, 2001, the clinical course came to an end. The experience, albeit a brief one, convinced me that judicial clinical training belongs in our law school curriculum. This course taught law students to be respectful of those with whom they will interact as lawyers, provided them with the unique opportunity to mete out justice, and, by all accounts, whetted their appetites for the joy of judging.

