

Episode 5 Transcript: An Insider's Perspective on the Legal System

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Speakers

Host: Peter Blanck, JD, Ph.D. – Chairman of the Burton Blatt Institute and University Professor at Syracuse University

Guest: Judge LaDoris Hazzard Cordell

[Music – 4 Wheel City]

Barry Whaley:

Hi everybody. On behalf of the Southeast ADA center, the Burton Blatt Institute at Syracuse University and the ADA national network. Welcome to episode five of Disability Rights Today. Listeners, ADA live and Disability Rights Today are products of the Southeast ADA center, a member of the ADA national network and a project of the Burton Blatt Institute at Syracuse University. Disability Rights Today provides listeners with new insights on recent or cases that shape the Americans with disabilities act and impact the civil rights of people with disabilities.

Barry Whaley:

I'm Barry Whaley I'm director at Southeast ADA center. And as a reminder, listening audience, if you have questions about the ADA, you can use our online form anytime at disabilityrightstoday.org. We're honored today to have as our guest Judge LaDoris Hazzard Cordell. Judge Cordell is a legal commentator and police reform advocate, a frequent commentator on news outlets, including NPR, CNN, and MSNBC. Judge Cordell is the first African American woman to sit on the superior court of Northern California. She's also the author of a new book, Her honor: My Life on the Bench, What Works, What's Broken and how to Change It. Judge Cordell has a unique perspective on how our legal system works and the prejudice that pervades it. We're honored to have her as our guest today as always. Our host is Dr.

Peter Blanck, chairman of the Burton Blatt Institute, university professor at Syracuse University. So Peter I'll turn it over to you.

Peter Blanck:

Well, thank you Barry, for that nice introduction and Judge LaDoris Hazzard Cordell, what an honor to have you with us. Thank you for taking the of time.

Judge LaDoris Hazzard Cordell:

Well, Peter, the feeling is mutual. You and I go way back to our days at Stanford and when I had really just got started being on the bench. So it's just a pleasure to be in conversation with you.

Peter Blanck:

Likewise, we're going to talk about your new book, which I have read a preprint copy of in which I recommend strongly to all our listeners. Very insightful, but you and I first met, I believe it was about 1983 and you were just appointed in 1982 to the municipal court. As Barry said, you were the first African American woman in all of Northern California, appointed to the bench at that time, which is a statement in its own. Right. But I guess I have to start, Judge, because today's events are so paramount in our minds issues of racial justice issues of, of course, the social and economic emergency from the pandemic. What was it like in 1983 when you first went on the bench as the first African American woman in Northern California, the kinds of challenges in prejudices you saw and are we doing any better today, is this second part of the question which we'll go to.

Judge LaDoris Hazzard Cordell:

So when I went on the bench in 1982, I was just 32 years old. I had jumped into a profession where I had not received any training. The story of how I even got in, interested in going on the bench is in the book, Her Honor, it really talks about how I got bitten by the judge bug, but let's go back to 1982. It could be a year when many of your listeners weren't even born yet. But in 1982, I had been working as an assistant dean at entered law school for the past four years. And during that time, the big push really was for affirmative action. It was for looking at law schools, looking at graduate

schools and undergraduate programs around the country and realizing that the representation of African American students, Latino students was not significant. And that was true also at Stanford at the law school.

Judge LaDoris Hazzard Cordell:

So when I was there, one of the big issues as assistant dean was dealing with and confronting affirmative action and really making a push to get more representation of people of color in our law schools and another graduate schools. So that was really the big issue. We had cases going to court dealing with affirmative action, the Bakke decision. And there was not really a lot of talk at that time about the legal system and its dealing with racial issues or bias and systemic racism. That kind of thing, that subject really developed after I was on the bench, and actually after I left the bench, but there were things that were happening once I got on the bench and about, I don't know, maybe 10 years after I was in, then we had the three strikes laws. We had mandatory minimum sentencings and then began this whole matter of mass incarceration, meaning the incarceration of poor people, people of color in disproportionate numbers.

Judge LaDoris Hazzard Cordell:

So when I started the real big push was really for me, my whole lens was about how can I do this job, do this work because putting on that black robe entails a lot of power. And for someone as young as I, it really was about learning how to do this work while on the job, which one should never have to do. But that's the way a lot of the judging is in this country, particularly trial judges, it's literally trial and error, learn by doing, which is an issue that I take up in Her Honor and about why that's not a good way to run a judiciary and to be a part of the legal system,

Peter Blanck:

You touched on a number of important points. Today, of course, in the parlay we hear about implicit bias and unconscious bias and structural racism and so forth, ableism, sexism. As you were saying in 1983, these were terms still on the horizon, but nevertheless felt, as I want you to explain to us, there was no Americans with disabilities act until 1990. There

weren't major structural reforms in place, certainly in corporations and elsewhere, the kind we're seeing today. What was your life like in terms of looking back now in types of the experiences you had in almost, not took for granted, but realized that there was a lot of strange things going on the basis of your race and other categories.

Judge LaDoris Hazzard Cordell:

Bias in its many forms is everywhere. It is conscious. It is unconscious. It is pernicious and biases are within all of us. You cannot be a human being and not harbor biases of some kind. And to deny that you have them, it's a lie because we all have them. The key is to become aware of those biases and then conduct yourselves in a way that tries to avoid using those biases. So I became aware for example, of racial bias in early in my life. I was maybe six or seven years old when I was called [inaudible 00:08:10] by an angry white man. And I was with my mother and we had just come out of a supermarket and he didn't like how close the basket I was pushing the shopping cart came to his car. I heard stories from my parents about their encounters with racism.

Judge LaDoris Hazzard Cordell:

And I do know that on my mother's side, my great-grandmother and great great-grandmother were the enslaved. My parents came north from this south in the great migration. And this was during the great depression. And I've heard plenty of stories, their own experiences. I've experienced racism, sexism, homophobia throughout my life. As a lawyer, I was sometimes belittled by judges who had never encountered a black woman in their court, who wasn't a defendant on the bench. You can imagine the reception that I received as the first black woman judge ever in Northern California in 1982. I take the bench, get frowns, get smiles, get bewildered looks from litigants, from some lawyers, I'd get patronizing comments. One lawyer, for example called me honey, during a hearing. "Well, listen, honey." And I had to stop and say, "Excuse me?" But this was the whole trivializing who I was as a woman and as someone who was African American. And from some of my fellow judges, I was disrespected. But fortunately there were those who were welcoming and supportive.

Judge LaDoris Hazzard Cordell:

I have to tell you, my parents didn't raise a sissy. I mean, my sisters and I were taught early on to be upstanders and not to be bystanders. So I take what I see as these biases that happen to others and that happen to me as not just turning my head and looking away, but trying to take these things on. And I did that while on the bench. Some people called me an activist judge. And in a way I accept that title if it means abiding by the law, but also seeking ways to make the legal system better, to make it less biased. So the stereotypical description of an activist judge is one who just disregards legal precedent, just does whatever she wants to do. That's not an activist jurist in my opinion. And indeed I accept and appreciate that title as long as it means doing what we can to make this system a better one for everybody.

Peter Blanck:

Now, you just talked about some very poignant and important stories of racism and homophobia and self forth in the 1980s and in earlier in your life, which were clearly examples of overt racism and sexism and so forth. And then we moved into this environment that we were talking about. And you talk about in the book of implicit bias or this more subtle approach. Has this overt racism that you experienced early on, just gone underground? Is it still out there, but is it just conveyed in a different way?

Judge LaDoris Hazzard Cordell:

If we are talking, Peter, about the legal system, racism is baked in. It's baked into everything in America, quite frankly. And so yes, the blatant kinds of things that I perhaps experienced or heard about when I started, that's not happening now, but you have a system that was not meant for certain people. The legal system, the foundation of it was not created for people who looked like me. It wasn't created for people who were Jewish. It wasn't created for women. It wasn't created for poor people. It was really created for white males. So we are dealing in a system that still has racism and sexism and all of this baked in. The fact is today, we are focusing on it and calling it out.

Judge LaDoris Hazzard Cordell:

And so what has happened, for example, in training for judges, they are now required trainings in many states for judges to look at this unconscious bias and what is it? It unconscious bias means it's biases you're not aware of. You do not know that they even exist in you, but once you can bring that out and see that they exist in you, the idea is that you will then change your behaviors so that you don't give into the biases.

Judge LaDoris Hazzard Cordell:

And let me give you a quick example. I was on the bench and in doing what I do as a trial judge and the calendars we get, the caseloads are just mind boggling. So for example, I could typically do 100 arraignments in a morning. That is from nine o'clock till noon, see a hundred cases, meaning those are 100 different people come in front of me and an arraignment means I advise people of what the charges are, tell them that to find out if they have lawyers and if not refer them to maybe a public defender and then either take their guilty plea or not guilty plea and do that for a hundred different people. And that's just in the morning.

Judge LaDoris Hazzard Cordell:

So the pressure is on trial judges to do just handle the voluminous cases and get through them as quickly as possible. And in the course of doing that one day, my bailiff, a black woman who worked with me for the whole time that I was on the bench, came up to me during a little break. And she said, "I've noticed that every time a person comes in front of you who's charged with a crime and they don't have a lawyer, so they're pro per," that means in prope persona, they're just representing themselves, "that you tend to get really brisk, cut them short." And I didn't realize it. And I was like, what? And I realized what I was doing finally, when she said it was that, if you're pro per you're holding it up. If I have a lawyer, who's representing someone, the lawyers know the process, they know the procedure and they know exactly what to do, and they don't hold me up, but you get someone in who's representing him or herself, everything slows down. And I wasn't ready to slow down, because I wanted to get through all this.

Judge LaDoris Hazzard Cordell:

And I had to stop and say, wait a minute, here I am showing a bias against people who are representing themselves, probably because they can't afford to have lawyers. And, and in this way I'm denying them justice. So the fact is it, I was shocked that I was doing this. It was an unconscious bias. So what I did in addressing it before I went back out into the courtroom, I had a three by five note card and I wrote on it, it with a marker, black Sharpie, "Pro pers are people too." I took it out and I taped it just in inside the bench. So that every time I looked down, there was the reminder. So it was an instance of where I think, hey, I'm doing the right thing. I'm a black woman. I'm gay. I'm aware of all these awful biases in the world. And here I was showing a bias, an unconscious one that became conscious because it was brought to my attention. Then the issue becomes, what do you do about it? And that was my way of addressing it.

Peter Blanck:

Well, that's fascinating. Your level of self-awareness and ability to correct course, as you saw, it is really heartening to hear from the perspective of the other side of the bench. A year into your tenure as a judge, you also took a risk on this young law student who happened to have a PhD in psychology who thought maybe some of these biases could be studied and were expressed by judges in subtle ways. That was me. That was a life's career changing event for me to be able to work with you. What's your reflections. Do you remember when we started doing that? And you think from your perspective and the judges that were involved good came out of that?

Judge LaDoris Hazzard Cordell:

Peter, how could I ever forget that? That was an extraordinary experience and something that had never been done anywhere in this country. I write about what you and I worked on in the book, in Her Honor. It's in the chapter where I talk about juries and judges. So it's just fascinating because of the way, Peter, the way that you think/ you are so creative in thinking about issues and about how to, first of all, determine what exactly exists and documenting it. And then from there we moved to dealing with what's

the remedy, how do we make things better? And that's exactly what you and I did along with, was it Mr. Rosenthal who was working with us on this? Yeah.

Peter Blanck:

Professor Rosenthal who had written *Pygmalion in the Classroom*, which was about interpersonal expectancy effects in the classroom. And we, with your help, took it to the courtroom.

Judge LaDoris Hazzard Cordell:

It was just amazing because what you thought was, well, what are judges doing that are influencing jurors? Because we shouldn't be influencing anybody. The jurors are the fact finders. They determine, they listen to witnesses, they look at evidence and they determine what's credible, what's not. And then figure out what their verdict should be based on instructions that we judges give to them. And what you looked at with this experiment was what are judges doing? What is our verbal and nonverbal behavior on the bench? Do we have that? And if so, how is it influencing jurors? And if it is influencing jurors, is that good or bad? And there were things like judges sitting there, nodding, rolling their eyes, maybe the way that they talked to witnesses, all these kinds of things you were able to determine were what judges were doing.

Judge LaDoris Hazzard Cordell:

When you looked at real trials, they were actually happening in the court in this court system, in which I presided in Santa Clara county. Evaluating judges and then looking at how these jurors took the information. So I write about it in the book, but as a result of this, Peter, you are in my view and then not just my view, the leading authority in talking about these kinds of biases in the courtroom as judges, in terms of their conduct, verbal and nonverbal behavior on the bench. It was an eye opening event.

Peter Blanck:

Well that that's very kind of you and between us, we essentially were able to predict jury outcomes on the basis of the judge's non-verbal cues and

instructing the jury by itself, which was new at its time. So thank you for that. And that was a highlight for me, certainly.

Peter Blanck:

I wanted to take a little side step if I could now bring the question of disability into the conversation a little bit for our listeners. You probably know Kimberly Cranshaw, who's a professor at Columbia Law School, and she was so influential in beginning and coining the term intersectionality. Beginning an understanding that many people, particularly African American women like yourself, carry multiple marginalized identities. And often these identities in combination can be particularly damaging in terms of the types of bias that is experienced in our current work. And for the listeners on this call, we're particularly interested in to what extent a disability, a mental health condition, which you write about in the book. That was a very interesting chapter about the mental health court. But to what extent does disability, whether it's visible or non-visible, is that conception in your emerging view of this holistic view of individuals, how does that play into this sense of intersectionality and multiple marginalized identities? For example, where are the disabled judges on the bench with visible disabilities? Do you see them as lawyers in the courtroom and so forth?

Judge LaDoris Hazzard Cordell:

So, I thought quite a bit about this issue in preparing for our conversation and I don't come up with much because the issue of disabilities, let's just talk within the judiciary itself. At least during my time on the bench, really wasn't a topic of discussion. And when I think about the people who were on the bench at the time I was on our court, which was the fifth largest court in California, for example, I don't recall any judge who was in a wheelchair for example. We did have one judge who had a vision issue, but was not completely unsighted. So it wasn't a thing. It really was not.

Judge LaDoris Hazzard Cordell:

But what's interesting though, is that when I was in law school, so now we're back, I was in law school from 1971 to 74. One of the courses I took

was a clinical course with a professor, Michael Walt, whose specialty is juvenile law. And that's where I got really bitten by the litigation bug, where I knew I wanted to be a litigator. I was representing juveniles in juvenile court. And one thing professor Walt did not do, he did not say anything to us about the judge or to me about the judge before whom I would be appearing. He just said, "Look, this judge." And I knew it was a male, that's all I knew.

Judge LaDoris Hazzard Cordell:

So when I went into court for the first time with my there's this judge, and it was a judge who was sitting in a wheelchair and it stunned me because again, I just have the stereotype is you're a judge, you don't have at least any visible disabilities. And so that just struck me and Michael Walt made it up point not to even talk about it because this person is a judge and that's what it was about. I still remember that to this day, and I can't even imagine how it was for that judge at the time we're talking in the seventies.

Judge LaDoris Hazzard Cordell:

So when we fast forward through the time I was on the bench straight through to 2001, the big issue came up for me was in the mental health arena. I didn't preside over, for example, a drug court, but the mental health issue was huge because there's a special court, just for people who are on lock psychiatric units who want to get out, who want to be back in the community. And if their treating physicians do not give the okay, then those individuals have the right to come to court to come before a judge to make the case to say that they deserve to be out of these lock facilities and back out in the community.

Judge LaDoris Hazzard Cordell:

I write about that in Her Honor. And one of the things that's so I guess disturbing about this whole system is that the judges who preside in these courts for the most part do not have any training in the area dealing with mental health issues. So it's just, that's your next assignment, go do it and figure it out. Which is outrageous because we are oftentimes asked to make very difficult decisions. I write in Her Honor how the very first case I had

was whether or not a woman should be allowed to decide or not she should have electroconvulsive treatment, electro shock, where her psychiatrist wanted her to do it. She didn't want it. And my job was determine whether or not she had the capacity to refuse it, with no training. I mean, what am I doing? I had no business hearing such a case. So I write about that in the book to talk, again, about what we need to do to make the legal system better for everyone. So the real focus for me was really dealing in the mental health arena.

Peter Blanck:

I thought that was a very compelling chapter in the book, but I must say, based on our own recent studies, and of course, your knowledge, you hear about the mental health crisis in the profession, in the legal profession. The alcohol and substance abuse, which under the Americans with disabilities act, of course are recovering alcoholic or user of illegal substances, or somebody who has depression or anxiety would be covered by the law. Did you see an awareness of those sorts of stresses in the profession, both on either side of the bench and then has that changed today?

Judge LaDoris Hazzard Cordell:

When I was there, no, everything was under wraps. The stigma was huge. So nobody's talking about anything. So occasionally I remember a judge at the time I was on the bench who was arrested for maybe his third or fourth drunk driving and was convicted and eventually said, okay, I've had enough. I really need to get treatment. Then it was hush, hush, nobody really talked about it much. So when we fast forward to today, things have changed. The stigma around things such as mental illness, alcoholism, drug addiction that has changed dramatically. I mean, lawyers, for example, are encouraged to come forward and deal with those issues if they themselves are grappling with stuff with specific help that's available now through a lot of the state bar organizations and the same thing with judges. I mean, there's a freedom about talking through these issues and saying, if you need help, it's not a problem. And it doesn't show that you're a weak person. It means that you can be a better person if you get the help. That has dramatically changed.

Peter Blanck:

There's so many questions I want to ask you, but your final chapter among the final chapters of the book called the fix, which you list suggestions, I think 10 suggestions for reform. Today, of course, we have experienced COVID. We have experienced, as you talk about the murder of George Floyd, we have experienced four years under a president who many would say, did not pay attention to the rule of law. Take a few moments as we wrap up, where do you think we're at today? I hope you're somewhat optimistic about where we're going, although it's a very challenging time and let people know some of the fixes that you have suggested in your book.

Judge LaDoris Hazzard Cordell:

Sure. First, let me say that I do think there are some positive things about our legal system. I know that I presided over thousands of cases in which I really believe that people got justice. And I think that's true of many of the judges that sit on the benches around the country. That being said, our legal system is broken in so many ways. There's a reason why I don't call it the criminal justice system, for example, because I don't think we're at the point of justice yet. I call it a criminal legal system. So the things I'm concerned about, I'm concerned about systemic racism. I'm concerned about the threats to judicial independence. I believe the judiciary for example, is the third leg of our democracy. And it is every day being threatened. And the independence of judges is being threatened.

Judge LaDoris Hazzard Cordell:

And by independence, I mean the ability to make decisions based on the law and the evidence and the facts, and not based on the whims of public opinion. When that happens, we lose our independence. So the chapter titled the fix, I make 10 recommendations to improve our legal system, ranging from increasing the compensation for jurors, to requiring law schools, to hold courses on judging, because after all it is from law students who become judges. And yet there's no training even in our law schools. I advocate for replacing the election of judges with a merit selection commission. I advocate for permitting the recall of judges only when

they've engaged in malfeasance or committed serious crimes, not when they make lawful, albeit controversial decisions.

Judge LaDoris Hazzard Cordell:

So what can we all do? Those of us who are not lawyers, not judges, but we are voters. We are people who come into the courts who use the courts. What can we do? Well, first, my suggestion is read Her Honor. I wrote Her Honor to educate readers about our state court judges, our trial judges. Our state trial courts are the courts of the people. Most of us have been, or will be affected by decisions of our trial judges. I mean, everything from traffic tickets, small claims lawsuits. That's the Judge Judy cases where there aren't any lawyers in court where people are suing each other, criminal prosecutions, civil litigations, divorces, child custody disputes will contest, name changes, adoptions. These are just some of the ways that judges intrude into all of our lives. I think it's important that first we become knowledgeable about the system itself. I encourage us to learn about our courts, just our local courts, who are your trial court judges, who are they? Take steps to make our legal system work for all of us.

Judge LaDoris Hazzard Cordell:

How do you do that? You lobby your legislators. If you want change. Let's say for example, jurors are not getting paid sufficient compensation, which I believe is the case just countrywide. And again, I write about this in the book and that we need to have, for example, a state juror fund to compensate people so that then when they do their public and civic duty, that they can still get paid, even though they're not going to be at work. We can use the initiative process. I think it is a last resort. If we want to stop the election of judges, which has been taken over by wealthy, special interest groups, and instead go to merit selection commissions, all of which I talk about in the book.

Judge LaDoris Hazzard Cordell:

So these are just some of the ways that all of us can ensure that we go on this road to actually have a legal system that is fair and that is just for all of us, no matter who we are, no matter how we dress, no matter what we look

like. And that's just critical. And I will continue fighting for this as you do, Peter, and the work that you do to make this system the best that it can be.

Peter Blanck:

It's a very compelling argument and statement you make, and those fixes are something that we should pay close attention to. And many of our readers, I think will enjoy learning about. You write towards the end of the book, quote, "I quickly learn that judging is as much a test of one's character and courage as it is a test of one's command of the law." And I thought to myself, knowing you, that is you. That is a testament to somebody who I know of the highest character, of the highest courage. And I think the book reflects that and it's appropriately so dedicated to your parents from where it sounds like, and I believe I haven't obviously met your parents, all roads derived from. The experiences you've had, the experiences you've overcome and I think more to do yet.

Peter Blanck:

So I just want to say, thank you so much, Judge Cordell for an extraordinary interview. I highly, highly recommend the book to our listeners and I wanted to give Barry and our team a chance for any questions or last words. But again, thank you, Judge Cordell. This is an extraordinary time spent with you and really of great value to our listeners.

Judge LaDoris Hazzard Cordell:

Well, thank you Peter so much.

Peter Blanck:

Thank you.

Barry Whaley:

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