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A Perspective on Judging

Hon. Richard A. Paez[†]

It is good to be here at Boalt. It wasn't too many years ago that I returned to the law school for a visit. I left in 1972, and if somebody had told me then, that twenty-five years later I would be appointed to the United States Court of Appeals for the Ninth Circuit, I would have said, "You're kidding. That's not going to happen." Had I thought that such an appointment was even a remote possibility – as I once told Dean Kay¹ – I might have attended class a few more times, participated in class a bit more, tried to write onto law review, and I might have limited my involvement in community activities and the third world strife on lower campus. I might have been less involved in the issues that we were concerned with in 1969, 1970, 1971, and 1972. It was quite an era. Life at Boalt Hall at that time was very stimulating. There was never a dull moment at the law school during those years. I was just mentioning to Jessica² that I did not appreciate my education at Boalt until many years later. The environment here, the professors, and the opportunities that we had, truly paid off in the long run. Sometimes we do not appreciate the advantages that we have until we have a chance to look back and reflect on our experiences. So it is good to be back, and I have enjoyed being here today.

I visited Boalt shortly after my appointment to the District Court in the Spring of 1995. That was right about the time that Propositions 209 and 187 were pretty hot-button issues. I gave the lecture for the Mario G. Olmos Lecture³ series. The theme of my speech was the need for more Latinos on the state court bench. I prefaced my remarks by acknowledging that Proposition 209 was in the planning stages – it had not yet qualified for the ballot – and that Proposition 187 was under attack in the courts. I made a brief comment about how I thought those initiatives were a bit divisive in the greater scheme of things; and did little to bring about consensus and cooperation between all the various interests. Years later, those remarks came back to haunt me in my bid to become a judge of the United States Court of Appeals. So, I have had many experiences with this law school and I have enjoyed participating in various events at the school. It is always good to return and interact with the students.

[†] Judge Paez, U.S. Court of Appeals for the Ninth Circuit, was appointed to the U.S. District Court for the Central District of California in 1994 and elevated to the U.S. Court of Appeals in 2000. Before serving on the federal bench, Judge Paez spent the 1970s practicing poverty law, first as a staff attorney for California Rural Legal Assistance and then at the Western Center on Law and Poverty, and later as the Director of Litigation and Executive Director of the Legal Aid Foundation of Los Angeles. He was appointed to the Los Angeles Municipal Court in 1981 where he served for thirteen years before his appointment to the U.S. District Court.

1. Professor Herma Hill Kay served as dean of Boalt Hall from 1992 to 2000.

2. Jessica Delgado, an attorney with the Santa Clara County Public Defender's office, was another member of the panel with Judge Paez.

3. Hon. Mario G. Olmos Law and Cultural Diversity Memorial Lecture, an annual lecture in honor of Judge Olmos '71 who dedicated his life to promoting equality and justice for people of diverse national, economic, racial, and cultural origins.

The topic for our panel discussion is different voices, different perspectives for 21st-century issues. That is a hard question to answer. I would like to think that I make a difference. As Judge Saucedo⁴ said, we are required to apply the law fairly. I do not think that I ever have applied a different standard in judging a case involving a Latino defendant, a black defendant, an Asian defendant, a white defendant, or a multimillion dollar corporation. But, there is something about our own personal life experience that makes each of us different.

I used to tell jurors when they entered the courtroom and took their oaths as jurors, “You walk into the courtroom with a lifetime of experiences, and we don’t ask you to suddenly forget all that experience, to ignore that experience.” I asked them if they could judge fairly the case that they were about to hear. I explained, “As jurors, recognize that you might have some bias, or prejudice. Recognize that it exists, and determine whether you can control it so that you can judge the case fairly. Because if you cannot – if you cannot set aside those prejudices, biases and passions – then you should not sit on the case.”

The same principle applies to judges. We take an oath of office. At the federal level, it is a very interesting oath. It says, in part, that you promise or swear to do justice to both the poor and the rich. The first time I heard this oath, I was startled by its significance. I have my oath hanging on the wall in my office to remind me of my obligations. And so, although I am a Latino judge and there is no question about that – I am viewed as a Latino judge – as I judge cases, I try to judge them fairly. I try to remain faithful to my oath.

I think we look at conflicts from our own life experiences. If you were to look at my life – at least my professional experience – and I’ll just start with that, I probably have a unique professional experience. If you looked at the federal judiciary and asked how many federal court of appeals judges are there that worked in legal services, as I did for nine years, I doubt that you would find many. I never worked for a law firm, a district attorney’s office, a U.S. Attorney’s Office, a State Attorney General’s office, or the Justice Department. I worked, instead, for legal services for the poor. That was my professional career. And working in that environment, representing individual clients as well as litigating larger cases, sometimes impacts the way one may look at issues or conflicts. You don’t shed that experience – you don’t leave it behind. But, when called upon to decide a case, judges have a distinct and clear obligation to apply the law fairly and justly to the parties in the case.

Judges have an obligation to read cases honestly and find facts fairly. I strive to do that at all times. If I had not done so – if I had not been successful in carrying out my judicial obligations – I don’t think I would have made it as far as I have. I have a suspicion, although no one has asked – why did it take four years for senate confirmation? I suspect that when some individuals looked at my professional career, it may have caused a few raised eyebrows, maybe, I don’t know. Certainly if somebody had told me at the outset of my career that someday I would be appointed to the Ninth Circuit, maybe I would not have chosen the career path

4. Hon. Valeriano Saucedo, California Superior Court, County of Tulare.

that I did. As Judge Sotomayor⁵ mentioned last night, I tried to choose a professional route that would be satisfying and rewarding in many ways beyond just being economically rewarding. Working in legal services had little, if any, monetary reward to it, but the work that we did was truly satisfying. We felt good about everything we did. I am sure that working in the Public Defender's office, or any other public office, has a similar sense of fulfillment. Working as a public defender, day in and day out in the courtroom, is one of the most difficult tasks in the criminal justice system. It is probably the most difficult role in the courtroom.

One must look at one's experience and ask, "Has this person made a difference?" Well, I can't answer that question yet. Some of you might take a look at the work of the Latino judges who have been on the bench for maybe 10 or 15 years, and then, attempt to determine whether the judge has made a difference. It would be interesting to see what standards you would use to evaluate the judges. There is one matter though, that I do think makes a difference, and Jessica has alluded to it. As a legal services lawyer, I worked in the San Joaquin Valley, where most of my clients were farmworkers. Then I moved to Los Angeles, and a fair number of my clients were poor African Americans from South Central Los Angeles, Latinos from the east side of town, and clients from the Asian community. I did not appreciate the ramifications of the client population until I joined the criminal justice system as a municipal court judge in Los Angeles. When I first began working at the arraignment court, I was confronted with a sea of brown faces. It was somewhat disturbing because there were so many brown and black faces in the courtroom and holding areas. It was troubling. But I always sensed that I was able to establish a rapport with the defendants. In some small way, I was able to have a dialogue with the defendants – to relate to the defendants individually. And, as Jessica said, with my background and experience, I was able to understand fully their plight and unfortunate circumstances.

The question that is addressed to this panel is probably at the heart of this conference. There is a genuine need to have more Latinos on the state and federal benches and in the legal profession. Right now, on my court, there are 28 active judicial positions. We have about 15 or 16 senior circuit judges. Judge Alarcón is a senior circuit judge, and Judge Wardlaw and I are active judges. On the District Court in Los Angeles, the second largest United States District Court in the country next to the Southern District of New York, there are currently no Latino judges. At one time there were Judges Moreno, Wardlaw, and Paez.

It is great to be here, and I am happy to answer any questions.

5. Hon. Sonia Sotomayor, U.S. Court of Appeals for the Second Circuit.

