

GEORGE NICHOLSON

# Introduction

*From the Editor-in-Chief*

## **A Special Edition of *California Legal History***

Why is it a special edition? For many reasons, but primarily because it is our 20th annual edition, it is the 175th birthday of the California Supreme Court, and it is the year before the 250th birthday of the Declaration of Independence.

Chief Justice Patricia Guerrero, State of California, comes first with her foreword in which she sensitively explains why the journal is important and expresses appreciation to the California Supreme Court Historical Society for its ongoing work in producing this journal and its other efforts to preserve this state's legal legacy and carry it into the future,

Daniel Kolkey, Society President Emeritus and former Associate Justice, Court of Appeal, Third Appellate District, concludes his final preface with this, “[A]s we celebrate our state high court’s 175 years of jurisprudence, it is altogether fitting and proper that the California Supreme Court Historical Society’s journal commemorates it. After all, the role of the Society is to preserve and disseminate our judiciary’s history through its funding of our State Supreme Court justices’ oral histories, its sponsorship of a comprehensive book compiling the Court’s history, the articles that it publishes in both this journal and its semiannual magazine, the *Review*, and its programs about the Court’s decisions, the State’s judiciary, and our legal history in general.”

Kirk C. Jenkins’s fine piece, “An Abridged 175-Year History of the California Supreme Court,” presents an overview of the high court and its evolving jurisprudence. Jenkins has been around the Supreme Court and our court of appeal for a long while. He is an appellate specialist with forty years’ experience and has been first chair appellate counsel in more than 250 matters. He is California State Chair of the Council of Appellate Lawyers, American Bar Association; an elected Fellow of the American Academy of Appellate

Lawyers; an elected Fellow of the California Academy of Appellate Lawyers, of which he is past President; an elected member of the American Law Institute; a Member Consultant to various Restatements, including the Restatements of Insurance and Torts; and a Certified Specialist in Appellate Law.

Rabbi David Dalin’s passionate article, “Jewish Justices on the California Supreme Court,” is the first such history ever published. Jewish justices, whether on the California Supreme Court or the United States Supreme Court, have been few in number, but immense in their impact on the law. Rabbi Dalin is the distinguished author of twelve books, including *Jewish Justices of the Supreme Court, from Brandeis to Kagan* (2017). The book is the first history of the eight Jewish men and women who have served or currently serve on the United States Supreme Court. Rabbi Dalin taught Jewish studies at several universities and served as a visiting professor at George Washington University and at the Jewish Theological Seminary.

Timothy Sandefur’s commentary, “The Declaration of Independence in California: A Tortured History,” traces California’s legal and constitutional evolution from the state’s earliest days. Sandefur will again write in celebration next year on the legal evolution of the entire nation, hinging on the Declaration of Independence and its 250th birthday. Sandefur is Vice President for Legal Affairs, Goldwater Institute, Scharf-Norton Center for Constitutional Litigation, holds the Duncan Chair in Constitutional Government, and is the renowned author of eight books, including *The Conscience of the Constitution: The Declaration of Independence and the Right to Liberty* (2015). He has written two books since—*Freedom’s Furies: How Isabel Paterson, Rose Wilder Lane, and Ayn Rand Found Liberty in an Age of Darkness* (2022), and *Frederick Douglass: Self-Made Man* (2018), and more than fifty scholarly articles.

As noted, next year is a very significant day in our nation’s history, the 250<sup>th</sup> birthday of the Declaration of Independence. “I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence,” declared President-Elect Abraham Lincoln while raising the American flag at Philadelphia’s Independence Hall on February 22, 1861, barely a week before his first inauguration on March 4. ([Address at Independence Hall](#).) Thus, Janice Rogers Brown began her October 2025 article written in anticipation of that special birthday, “[How Two Presidents Saved the Declaration of Independence](#),” *Coolidge Review* (October 10, 2025). Her article is a must read for anyone wanting to prepare for the celebration. Judge Brown is one of our nation’s most eloquent, wise, and able historians. She served as a judge on the United States Court of Appeals for the District of Columbia Circuit from 2005 until she retired from the bench in 2017. She

previously served on the California Supreme Court from 1996 until 2005 and before that the California Court of Appeal, Third Appellate District, from 1994 until 1996.

We are trying something new this year, the use of several *précis* to explain the context and significance of specific articles immediately following. The first example is a *précis*, “Is that all there is?,” that we use to introduce articles by Presiding Justice Arthur Gilbert, Court of Appeal, Second Appellate District, Division 6, “The Fire Next . . .,” an emotional piece following the January 2025 Pacific Palisades fire in which he and his wife, Barbara, lost everything, including their home. He intended to retire this year and was very excited about it. The fires cast an unwelcome pall over his retirement plans. Maestro Gary Greene, Esq., “We shall return,” tells the inspiring tale of how music shared by the members of his Los Angeles Lawyers Philharmonic and Legal Voices, and his Big Band of Barristers, comforted and enabled themselves to handle their losses and the losses of their friends and neighbors.

The phrase, “Is That All There Is?” is the title of a song inspired by Thomas Mann’s 1896 short story, “Disillusionment.” The song was written by Mike Stoller and Jerry Leiber and arranged by Randy Newman. It took a while before it was noticed in 1969 by Peggy Lee, an American jazz and popular music singer, songwriter, and actress, whose career spanned seven decades. She recorded, “Is That All There Is?” and it became an immediate hit.

The second *précis* presents a potpourri of criminal justice news and history, including the next six articles: Leonard Kienzle, a playwright, who offers his “One Hundred Years of the Alameda County All-Star Prosecutors,” the cover story, with original cover art depicting six major historical former members of the office—Chief Justice Earl Warren, U.S. Attorney General Edwin Meese III, California Supreme Court Justices Ming Chin, Carol Corrigan, Martin Jenkins, U.S. Vice President Kamala Harris; and the Alameda County Courthouse. That cover art was done *pro bono publico* by Terry Flanigan, a talented and experienced artist and distinguished lawyer who, for a time, served as appointments secretary to two governors. The original art is 30” x 24” and, after it is suitably framed, a proper home will be sought for its permanent display.

The following notes help explain why those six superstars were selected by Kienzle for his story and Flanigan included them in his cover art: Chief Justice Earl Warren (Presidential Medal of Freedom recipient; “the jurist who made a nation”); U.S. Attorney General Edwin Meese III (Presidential Medal of Freedom recipient; “the most influential person ever to hold the office of U.S.

Attorney General”); U.S. Vice President Kamala Harris (Democrat nominee for President, 2024); and three members of the California Supreme Court: Associate Justice Ming Chin, Ret., Associate Justice Carol Corrigan, and Associate Justice Martin Jenkins. The six faces are arrayed around a backdrop of the Alameda County Courthouse. For three key books, see Jim Newton, *Justice for All: Earl Warren and the Nation He Made* (2006); Steven Calabresi and Gary Lawson, *The Meese Revolution: The Making of a Constitutional Moment* (2024); and Kamala Harris, *The Truths We Hold: An American Journey* (2019).<sup>1</sup>

Nancy O’Malley, former District Attorney of Alameda County, next tells us about, “The Remarkable Women of the Alameda County District Attorney’s Office,” while John Wesley Hawk Stoller, Supervising Assistant Public Defender in the Sacramento County Public Defender’s Office, follows with, “The Women Who Shaped Public Defense: A Love Letter.”

Jeffrey Seaman and Paul H. Robinson, prominent legal scholars, vigorously challenge us with their “What Justice? Confronting the Criminal Justice System’s Biggest Problem.”

Tom Hogan, former District Attorney, Ret., Chester County, Pennsylvania, presents his “Confronting Failures of Justice: Getting Away with Murder and Rape,” a book review of the book by Robinson, Seaman, and Muhammad Sarahne. Along with Robinson, Sarahne teaches at PennCarey Law, University of Pennsylvania. He was an attorney at the Criminal Department of the State Attorney’s Office in Israel, where he represented the state in all criminal proceedings before the Supreme Court, mainly in appeals.

Terry McHale, “Terry Flanigan, The Law, and the Art,” weaves an entertaining tale about an able lawyer and inspired artist, and his powerful family. Flanigan, as noted, did the cover art for the 2025 edition of *California Legal History*. McHale, a prominent legislative advocate in Sacramento, is a prolific interviewer and writer, having done pieces with Willie Brown, Kareem Abdul Jabbar, Willie Mays, Gary Condit, Senator John Burton, and Governors Pete Wilson and Gray Davis. McHale will also do a piece for the 2026 edition of *California Legal History* on the Burton brothers, John and Phillip, two of the most powerful politicians in California history. John Burton greatly admired the late Justice Stanley Mosk, California Supreme Court, and personally arranged to name the Library & Courts Building in Sacramento for Mosk and personally attended a huge ceremony to rededicate the building and to unveil a statue of Mosk in front of the Stanley Mosk Library & Courts Building.

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<sup>1</sup> To learn more about the Office, see former Alameda County District Attorney, J. Frank Coakley, *For the People, Sixty Years of Fighting for Law and Order* (1992).

The third précis, written by Judge Garen Horst, Superior Court, County of Placer, arises from the state’s “Wild West” that held sway in the middle of the nineteenth century with the discovery of gold in California. Two towns were central to this early era of California history: Auburn in Placer County, and Placerville in El Dorado County. Approximately thirty miles separated these towns, traversed through vast forestlands and canyons guiding the American River south toward Sacramento. As these towns were formed, the rule of law was carried out during a time when the laws were in flux and California was just becoming a state. Placer County Superior Court Judge James Prewitt described it as “an era [in which] a rude but high order of justice was generally administered on the spot,” during his dedication of the Historic Courthouse in Auburn in 1898. From that era, two articles follow.

Judge Horst presents his “Reflections on Justice, From the Historic Auburn Courthouse.” Justice Michael Raphael, Court of Appeal, Fourth Appellate District, Division 2, discusses “California’s First Felony Murder Case.”

Ryan Carter is a working journalist and graduate of the UCLA Law School and its Master of Legal Studies program, with a specialization in Public Interest Law & Policy. Laura McCreery is a writer and oral history researcher specializing in California politics, government, and public policy. She conceived and conducted the California Supreme Court Oral History Project. Carter and McCreery teamed up to present a state high court oral history—“A Pioneering Path: Justice Ming W. Chin, and His ‘Astounding’ Journey, From Family Farm to California’s Highest Court.” Carter abridges McCreery’s oral history to facilitate reading and writes an original introduction and conclusion. Justice Chin’s unabridged oral history may be accessed in the archival collection of [The Bancroft Library](#).

“Rich, Liz, Kristallnacht, the Holocaust, and Beyond,” is my final piece as editor of *California Legal History*. It is about what comes of the children of two families trapped in the cruelty and death imposed by Hitler and his evil Nazi regime. Before he died, Rich was my dear friend and former judicial colleague, Justice Richard Fybel, Court of Appeal, Fourth Appellate District, Division Three. Liz, 90, is my dear friend and a tireless and inspired teacher of teachers and children. She founded the Central Valley Holocaust Educator’s Network (CVHEN). CVHEN’s mission is to teach educators and children about the Holocaust. CVHEN focuses on classroom strategies, resources, and lessons that inspire young people to embrace civic responsibility, tolerance, and social action as a way of fostering moral adulthood. Liz also teaches Genocide and Holocaust Studies to pre-credential teachers at California State University,

Sacramento (CSUS), and in 2023 Liz received an Honorary Doctorate in Humane Letters from CSUS. Liz continues to teach and learn from others. Her lifelong dedication to memory-informed education is an inspiration. My article discusses the lives of Rich and Liz and my humble interactions with them.

### **Selma Moidel Smith, A Memorial Tribute (1919–2025)**

Three years ago, I began my first issue as editor of *California Legal History* just as the California bench and bar, and the Epstein family, were mourning the loss of someone very special in the law—my dear friend and former judicial colleague for more than thirty years, Presiding Justice Norman L. Epstein of the Court of Appeal, Second Appellate District, Division Four.

I begin my final issue as editor of *California Legal History* while the California bench and bar, and the Smith family, are still mourning the loss of someone else very special in the law—Selma Moidel Smith, 1919–2025, a pathfinding female attorney admitted to the California State Bar in 1943, who remained active for the next eighty-two years in legal, academic, and musical circles until her death earlier this year.<sup>2</sup>

Selma Moidel Smith was editor-in-chief of *California Legal History* for fifteen years, from 2008 (at 89) to 2022 (at 103).<sup>3</sup> During the same period, she managed the *Selma Moidel Smith Law Student Writing Competition in California Legal History* conducted annually by the California Supreme Court Historical Society. The competition seeks to promote research and writing on the California Supreme Court and, more broadly, the state’s legal history. The articles were judged by a panel of American legal historians and lawyers. The three winning articles are eligible and usually published each year in *California Legal History*.

Selma enjoyed a unique 100th birthday party in 2019 while being honored during the 10th Annual *Concert Extraordinaire* staged by the Los Angeles Lawyers Philharmonic at the Walt Disney Concert Hall. The orchestra performed one of her musical works, the “Beguine” from her *Espressivo*. During the same occasion, as depicted in the photograph above, Smith received the *June Lockhart Humanitarian Award*.

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<sup>2</sup> For more, see Ricardo Pineda, “Selma Moidel Smith, 1919–2025,” *Los Angeles Daily Journal*, July 28, 2025; for a eulogy by her son, Mark L. Smith, see “Attorney Selma Moidel Smith Dies at the Age of 106,” *Los Angeles Metropolitan News*, July 30, 2025; and for a wealth of information on Selma’s long and distinguished life and times, see *Selma Moidel Smith*, her personal website. Earlier, Justice Kathryn Mickle Werdegar, California Supreme Court, wrote “A Tribute to Selma,” *CSCHS Newsletter*, at p. 2 (2012).

<sup>3</sup> At 82, 83, and 84, I have been a spring chicken while serving as her successor.



Maestro Gary Greene presents Selma Moidel Smith with the June Lockhart Humanitarian Award in 2019. (Photo courtesy of the LA Lawyers Philharmonic.)

The Herb Alpert School of Music, UCLA, conducts an annual *Selma Moidel Smith Recital* series to celebrate and honor the former UCLA music student. The recital this year, April 2025, featured Davide Di Rienzo, an exceptional piano doctoral student in the School of Music. He performed works by Selma Moidel Smith, Franz Liszt, and Kaitlin Webster-Zuber.<sup>4</sup>

Selma was a gifted pianist, violinist, Spanish guitarist, and composer of over 100 piano and instrumental pieces in classical, Latin, and other styles. Her music has been featured at the National Museum of Women in the Arts in Washington, D.C. and performed by the Los Angeles Lawyers Philharmonic, to a standing ovation, at Walt Disney Concert Hall. Selma is also listed in the *International Encyclopedia of Women Composers*.

Selma's artistic side does not end with her passion for music. She is also a poet. Below are a few lines of one of Selma's earliest poems, composed at the age of sixteen, titled D'awn and Sunset.

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<sup>4</sup> [Selma Moidel Smith Recital](#).

Dawn—and the world awakens  
 From its peaceful slumber;  
 The pinkish hues of the morning sun  
 Are tinting the hills and valleys.  
 What can this new day bring?  
 Perhaps a smile, perhaps a tear.  
 But always inspiration!

As Selma sees in Dawn, so too we see in her: always inspiration.<sup>5</sup>

### **Selma Moidel Smith Student Essay Winners**

The California Supreme Court Historical Society (CSCHS) invites all students (and recent graduates) interested in or working in California legal history (not just the history of California courts) to compete in its annual nationwide student writing competition. Papers may include elements of digital humanities and may also be coauthored. Prizes of \$5,000 for 1st place, \$2,500 for 2nd, and \$1,000 for 3rd will be awarded to the best papers addressing California history, broadly considered. Papers should be at least 7,500 and preferably not more than 12,000 words, including footnotes and other explanatory matter. The competition is open to students and recent graduates in history and/or law, provided that the author(s) did not have full-time academic employment when the paper is written.<sup>6</sup>

### **Changes in Leadership**

From day one of my tenure as editor-in-chief until mid-2025, my dear friend and former judicial colleague, retired Justice Daniel Kolkey, was president of the California Supreme Court Historical Society. We worked together closely. He has been a continuing inspiration and immense aid throughout my related service.

Jake Dear and Molly Selvin, formerly co-editors of the Society's twice-yearly magazine, the *Review*, were indispensable help to me on a regular basis. Dear is chief supervising attorney of the California Supreme Court, while Molly was a former associate dean at Southwestern Law School in Los Angeles, executive director of the Leadership Academy for Development

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<sup>5</sup> Kelsey Maher & Elizabeth Bock, "Selma Moidel Smith: A Happy 100th Birthday," Women Lawyers Association of Los Angeles, April 2019. John W. Cooley, in his *Appellate Advocacy Manual, A Design and Decision-Making Approach*, opens with a lengthy chapter on "Multifaceted Functions of Appellate Practitioner." He suggests imagination is indispensable for lawyers and for judges. His early section headings declare we, in the legal profession, are artists, poets, novelists, musical composers, essayists, even dreamers, and the like, at different times and in different circumstances. Selma, perhaps more than most of us, reflected Cooley's vision.

<sup>6</sup> This introduction is abbreviated from the "Selma Moidel Smith Student Writing Competition: Call for Papers Addressing California Legal History, 2025."

at Stanford University, and research fellow with the Center for the Legal Profession at Stanford Law School. She earned her Ph.D. in legal history from the University of California, San Diego, and has twice been awarded Fulbright senior scholar grants. Professor J. Clark Kelso, McGeorge School of Law, is the new editor of the *Review*.

So too, essential roles in producing each edition of *California Legal History*, 2023–2024–2025, have been played by Copy Editor Alison S. Britton, Production Designer Kate Cook, and Printing Consultant Ben Thompson, Sierra Office Supply and Printing. They are inspired, collaborative, and dedicated to making each issue of *California Legal History* excellent. Stuart Greenbaum, an old, old friend and colleague for several decades while we were both with the California District Attorneys Association, the California Department of Justice, and Pepperdine University, helped design the front cover of the 2023 edition and supplied a unique photograph he took of Bernard Witkin sitting in the lobby informally preparing for a 1977 speech he delivered before the California District Attorneys Association at the Del Coronado Hotel in San Diego.

Judge Barry Goode is Justice Kolkey’s successor as Society president. Judge Goode has served long and well on the Society’s Board of Directors and fostered its policies and projects greatly. Now, he will lead the Society for the next three years, I am sure with great distinction. Decades ago, he certainly got started in the law with gusto. He earned a bachelor’s degree magna cum laude and was Phi Beta Kappa, Kenyon College in 1969. He earned a Juris Doctor degree cum laude from Harvard Law School in 1972. His first job out of law school was as a special assistant to U.S. Senator Adlai Stevenson III of Illinois, from 1972 to 1974. After that, he joined the San Francisco law firm McCutchen, Doyle, Brown & Enersen (now Bingham McCutchen), where he rose to partner. Throughout his twenty-seven-year career at the firm, he specialized in representing large corporations in environmental litigation. He also worked as an adjunct instructor of environmental law at the University of San Francisco. He left the law firm in 2001 to become Governor Gray Davis’s Legal Affairs Secretary. In November 2003, Governor Davis appointed him to serve on the Superior Court of Contra Costa County.

My successor as editor-in-chief of *California Legal History*, David A. Carrillo, is a fine, experienced lawyer and distinguished scholar. He earned four degrees, all from UC Berkeley—B.A., J.D., LL.M., and J.S.D. He promptly joined the faculty as a lecturer in residence at UC Berkeley Law and founded the California Constitution Center. The Center focuses on scholarship related

to the California constitution and the California Supreme Court. Carrillo coauthored a casebook on California constitutional law, teaches courses on the California constitution and the California Supreme Court, publishes articles on those subjects, and is editor-in-chief of [SCOCA](#), a blog about the state high court. He has just finished a second book, covering 125 years of the California Supreme Court from 1900 to 2024, combining history and biography with analysis from a unique dataset of the court's decisions to provide a new perspective on the court and its justices. Continuing Education of the Bar at UCLA intends to publish it and the target date range is sometime this coming summer, 2026. Carrillo was in active law practice for sixteen years before he began his academic career. You may see it all on the California Constitution Center website linked above.

As noted above, Judge Goode began his legal career with Adlai Stevenson. In a sense, so did I, twenty years earlier. Seventy-three years ago, in the summer of 1952 when I was eleven years old, I watched, gavel to gavel, Republican and Democrat conventions on a small, round, and grainy black and white television. It was the first time the conventions had ever been televised. Things were different then. World War II was over shortly before. Disputes and conflicts took place, and decisions were debated and made, whether in smoke-filled back rooms or on the floor of the convention. American politics had not yet become tormented, tangled, and turgid. We had not started demonizing, dividing, and killing one another over political and philosophical differences. The internet was not even a dream for the general public, and we were not consumed daily on cell phones with profane and scandalous name calling adversarial targets and even people we never met.

Five-star General of the Army Dwight D. Eisenhower, Supreme Commander of the Allied Expeditionary Force in Europe during World War II, became the Republican nominee for president, while Governor Adlai Stevenson of Illinois became the Democrat nominee for president.

During those two conventions and later during the campaigns, partisans claimed either, "I like Ike" or "I'm madly for Adlai." Ike beat Adlai in 1952 and again in 1956. With related reading I did during those days, I was hooked

on law, constitutional governance, and politics. I had no idea of where it would lead.<sup>7</sup>

Political conventions, as then conducted, were criticized as undemocratic and were soon largely replaced with state primary elections, although conventions remained, more as ceremonial occasions rather than decisional and dispositive occasions. Both political parties were comprised of a spread on the political spectrum. Both had their share of what today are called liberals and conservatives. There were no “progressives.” Traditional convention processes required those of differing views to work out their differences and to name winning candidates and forge comprehensive electoral platforms. Today, our parties no longer have varying shades of view memberships. They are largely uniform and at loggerheads with one another. Congressional representation is ossified. The Senate only less so. Just as they are harshly split, so, too, are our nation’s citizens.

We simply cannot get along. As noted above, we are at the point of demonizing, damning, endangering, and even killing one another. That is why building bridges has always been one aspect of my work throughout my sixty-

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<sup>7</sup> My undergraduate degree is in political science. My sole foray into partisan politics was in 1981–1982 when I ran for state attorney general. At the start, there were three of us on the Republican side—Congressman Charles Pashayan of Fresno, Assemblyman David Stirling of Whittier, and me. I was then a senior assistant attorney general. I had to take an unpaid leave of absence to run. A key point in the primary race occurred when an early meeting of major donors was held by State Finance Committee Chair David Murdock in the penthouse suite of his towering Murdock Plaza Building in Los Angeles. Former President Gerald Ford presided. Each of the three of us was serially allotted thirty minutes. I was last. The group kept me for an hour, and I got all but one as supporters. Pashayan soon dropped out, and I beat Stirling, 2-1, in the June 1982 primary election and lost in the November 1982 final election to Los Angeles District Attorney John Van de Kamp. Proposition 8, the Victims’ Bill of Rights, which I largely wrote, was also on the June 1982 primary election ballot. Paul Gann and I campaigned together up and down the state encouraging citizens to vote for Proposition 8. It passed, thus providing statutory and constitutional rights to crime victims and their families for the first time anywhere in the nation; see Paul Cassell, “Keynote Address for the 2025 University of the Pacific Law Review Symposium: The Crime Victims’ Rights Movement: Historical Foundations, Modern Ascendancy, and Future Aspirations,” *University of Pacific Law Review* 56 (2025): 387. Cassell is a former federal district court judge and now, the Ronald N. Boyce Presidential Professor of Criminal Law and University Distinguished Professor of Law, S.J. Quinney College of Law, University of Utah; Nancy E. O’Malley and Harold Boscovich, “Victims’ Rights in California: A Historical Perspective to Modern Day,” *California Legal History*, California Supreme Court Historical Society, at p. 91; and in the same publication, George Nicholson, “The Roots of America’s Crime Victims’ Legal Rights Movement, 1975-2023: A Personal Retrospective and Memoir,” at p. 115. These three articles provide a perspective on the Alameda County District Attorney’s Office imprint on the development of statutory and constitutional rights of the victims of crime and their families. Years earlier, District Attorney D. Lowell Jensen led the nation’s prosecutors in providing those rights. Jensen was an inspiration to all who worked for him, including me. Jensen, ninety-one, is now a retired federal district judge. When I became a state judge in 1987, I put politics entirely behind me, although earlier I was on the State Republican Party Central Committee for four years because of my winning the 1982 Republican nomination for state attorney general. My sole goal during those four years was fruitlessly arguing, with four different past and then present state party chairs and state finance committee chairs, in favor of the moral obligation to reach out enthusiastically to the various women and minority voters, whether or not those voters delivered their votes or provided campaign contributions. My argument was grounded in this eternal truth: statewide office holders represent everyone, not just those of their own party and their campaigns should be conducted consistent with that eternal truth.

three years in the law, and especially during my thirty-one years on the bench.<sup>8</sup> Hopefully, increasing numbers of judges, lawyers, law professors—and yes, law students—may begin engaging in related work.

We cannot play ostrich. Democracy just cannot flourish amid fear. Liberty cannot bloom amid hate. Justice cannot take root amid rage. America must get to work. In the chill climate in which we live, we must go against the prevailing wind. We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust. . . . The legal system can force open doors and sometimes even knock down walls. But it cannot build bridges. That job belongs to you and me.<sup>9</sup>

Our nation and our people are strongly but fairly evenly divided. Both sides claim the high ground. Too many of us irrationally despise and demonize one another, including those we have never met. Even for those of us with the mind, heart, and discipline to do so, the challenge of helping to mitigate the division and demonization looms large. It is a daunting but indispensable task.

Judges, especially appellate court and supreme court judges, are among those best able to help calm this social and cultural storm. Why is that so? Because judges are role models for those in and out of the legal profession, and they are our nation's neutrals, cloaked with community standing, credibility, prestige, and power. I humbly and respectfully suggest, whether sitting or retired, we share a duty, which we can pursue in ethical ways, to leverage our temporary lofty circumstances to help rekindle good will, common sense, and common decency among our conflicted factions.




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<sup>8</sup> For a sampling of my related work, see Doug Potts, “[Leading Us Out of the Cultural Divide](#),” *Los Angeles Daily Journal*, December 13, 2017; George Nicholson, “[Visionary Becomes State’s New Judicial Appointments Secretary](#),” *Los Angeles Daily Journal*, January 11, 2021; George Nicholson, “[Chong, Céspedes, and Shepard: Mentors and Role Models](#),” *Sacramento Lawyer*, Fall 2021; George Nicholson, “[Lawyers and Judges: Mitigating Public Demonization and Division](#),” *Los Angeles Daily Journal*, July 22, 2021; and George Nicholson, “[A Judicial Role in Calming Our Divided Nation](#),” *Journal of Appellate Practice and Process* 21 (2021): 231 (the audience for this journal includes all tribal, state, and federal appellate and supreme court justices), with [Appendix A: Court-Clergy Outreach](#), and [Appendix B: Court-Community Outreach](#). Finally, every lawyer and judge should re-read occasionally, Lincoln’s “[House Divided Speech](#).” More than at any time since the Civil War, his sober words are relevant today.

<sup>9</sup> Thurgood Marshall, [Remarks at Independence Hall, Philadelphia](#), July 4, 1992.