



LEST WE
FORGET

GEORGE NICHOLSON

Rich, Liz, Kristallnacht, the Holocaust, and Beyond

Most people in the United States are unfamiliar with the term, *Kristallnacht*. What is it? Where did it come from?

Kristallnacht was a nationwide, violent anti-Jewish riot that took place throughout Nazi Germany on November 9 and 10, 1938. During Kristallnacht, groups of Nazis and other Germans targeted Jewish places of worship, stores and businesses, homes, and people. The perpetrators included Nazi Party officials and members of Nazi Party organizations, especially the SA, SS, and Hitler Youth. German civilians unaffiliated with these Nazi organizations also participated. Many took the opportunity to steal items from vandalized Jewish homes and businesses, and to publicly humiliate their Jewish neighbors.

Top Nazi leaders coordinated and instigated the Kristallnacht riot. However, they intended for it to look like an unplanned outburst of popular anger against Jews. They portrayed the violence as a spontaneous response to a Jewish teenager's assassination of a minor German diplomat. But the violence was not spontaneous. Nazi officials used the incident as an excuse to launch the riot.

Kristallnacht was state-sponsored vandalism and arson. Nazi Propaganda Minister Joseph Goebbels and other top Nazis actively coordinated the riot with the support of Nazi leader Adolf Hitler.¹

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¹ “[Kristallnacht](#),” *Holocaust Encyclopedia*, United States Holocaust Memorial Museum.

Kristallnacht was a precursor to something much worse: “The Holocaust (1933–1945) was the systematic, state-sponsored persecution and murder of six million European Jews by the Nazi German regime and its allies and collaborators. In addition to perpetrating the Holocaust, Nazi Germany also persecuted and murdered millions of other victims.”²

Elizabeth (Liz) Igra

Help is at hand for learning about the awful years of grief inflicted during Kristallnacht and the murder of six million Jews in the Holocaust. That help comes from Elizabeth (Liz) Igra. Her story is inspiring. It is told by her daughter, Judge Misha Igra, Superior Court, County of Sacramento. It is a story of the power of a single, determined, tiny woman to work huge wonders in education.

A few months ago, in a grand celebration, Liz observed her 90th birthday surrounded by family, friends, and colleagues. Not simply a remembrance of Liz’s longevity, the event recognized Liz’s accomplishments, past, present, and ongoing. She survived the Holocaust as a child and, as an adult, dedicated her life to educating future generations so that the horrors of the past do not recur.

Liz was born in Cracow, Poland. The beloved only child of Dr. Simon Kranz, a renowned physician and surgeon, and Anna Forner, a college-educated beauty with blonde hair and blue eyes. Liz’s childhood was idyllic until the city where the family lived came under German control. A Nazi commandant forced the family into a ghetto and claimed their resplendent villa as his own. Fearing for his family, Dr. Kranz arranged for Anna and Liz to leave the ghetto, intending to join them in a few days. That night, Liz’s father was taken to the Belzec death camp and murdered.

During the years that followed, Liz experienced unfathomable upheaval and terror. Liz and her mother hiked over the Carpathian Mountains, walking at night and hiding during the day. Anna kept Liz distracted by telling stories, reciting poems, and practicing math equations. They were betrayed, robbed, arrested, and jailed. Falsified papers and Anna’s Aryan appearance enabled them to travel and hide under assumed identities. Anna had Liz memorize family addresses so that, if they were separated and survived, Liz would know where to go and who to find.

Liz was 10 years old when the war ended. For the first time in her life, Liz attended school. It was a transformative experience that instilled a dedication

² “Introduction to the Holocaust,” *Holocaust Encyclopedia*.

to the power and importance of education and shaped Liz's future.

After emigrating to Australia and ensuring Liz's safety in a new country, Anna tragically died, holding teenaged Liz's hand. Soon after, Liz met her husband, Dr. Jacob (Jack) Igra. Jack had also survived the Holocaust, with his own story of survival and loss. My father did not "flee" the Nazis, however. At 7 years old, he was taken from his home at gunpoint in the middle of the night, placed in a cattle car, attempted to flee, was apprehended, and miraculously survived brutal imprisonment until liberation.

After emigrating to the United States, Jack accepted a neurologist position at Kaiser in Sacramento. Liz earned undergraduate and graduate degrees, cofounded Shalom School, and taught as a master teacher for the Elk Grove Unified School District. Jack and Liz had six devoted children, nine adoring grandchildren, and were married nearly fifty-seven years before Jack passed away.

Misha Igra continues:

After Liz "retired," 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 life-long dedication to memory-informed education is an inspiration.

Richard "Rich" Fybel (1946–2022)

Rich was a remarkable man and jurist, and a very dear friend. I will tell you why. In 2006, Christian Clinger, an officer in the Utah State Bar Association, invited me to give the keynote lecture, specifically on ethics, at the annual meeting of the Utah State Bar Association—which, for some reason, was meeting in California, in the city of Marina del Rey. I accepted and prepared for a very long while. I developed an unexpected staph infection in my knee and it required emergency surgery.

The morning after surgery, when my senses returned, several days before I was to be released from the hospital, I remembered I had to do Clinger's keynote a week later. I momentarily panicked, thought of the unthinkable—

calling Clinger and canceling—but then I thought of Chief Justice Ronald George, who was both a close friend and someone who lectured on everything or anything virtually daily, and could do anything with “a whole week’s” notice. I asked for a telephone, called, and got him. I asked him to do Clinger’s lecture. He checked his calendar—remember Clinger’s bar meeting was a week away—and found a conflict he could not break. He pondered an alternative and suggested I call Justice Fybel, whom I had never met.

He suggested Justice Fybel because since 2004 he had been Chair of the California Supreme Court’s Advisory Committee on the Code of Judicial Ethics. He was also Chair of the California Supreme Court committee responsible for recommending the structure and rules for the Supreme Court Committee on Judicial Ethics Opinions. Almost until his death, he was and remained an advisor to the Commission for the Revision of the Rules of Professional Conduct of the State Bar of California. He was a perfect fit for the Utah Bar keynote, if I could get him. (He was then revising Judge Rothman’s huge treatise, *California Judicial Conduct Handbook*.)



This was a favorite photo of Elie Wiesel and Rich. It was taken at the Fowler School of Law, Chapman University. From time to time, Weisel would visit and speak during classes Rich taught at the law school. (Image courtesy of Chapman University.)

I called Justice Fybel from my hospital bed. He was very agreeable, but faced a dying father-in-law, who required his entire family's attention at the time. And, because he could die at any moment, Justice Fybel would have to be there to comfort his mother-in-law and his own wife and family. He thought out loud for a few moments and asked to call me back. In less than five minutes he called me back and accepted. As I said, we had never met and never spoken before. I let Clinger know.

Justice Fybel appeared for me and for Clinger in Marina del Rey and delivered his lecture, "Honest Lawyers Make Good Lawyers—Thoughts on Ethics and Civility in the Legal Profession."³

I wound up in the hospital, and after surgery, hooked up to a machine called a WoundVac, which promotes healing through *Negative Pressure Wound Therapy*. I was in a life-threatening situation. But this relatively new therapy was promising and by delivering negative pressure (a vacuum) at the wound site through a patented dressing and a very noisy machine, wound edges are helped to grow together, while removing infectious materials and actively promoting granulation. I was advised I had to be very careful and, when I was eventually released from the hospital, I would have to visit the hospital every other day for three months for a dressing change and a machine check. I remained attached to the machine; it was mobile, akin to a purse, and pumped day and night for the entire three months. It was noisy, so I slept away from family, read considerably, and kept my judicial caseload current while in bed, machine pulsating constantly! I attended oral arguments by telephone with permission of counsel.

During the ensuing several years, Justice Fybel and I worked together several times on education projects related to Kristallnacht and the Holocaust. We became good friends, Rich and Nick.

He was the son of Jewish immigrants who escaped ahead of almost certain imprisonment and death and came to the United States. His mother, Ruth, escaped from Lithuania in 1939. His father Ernest escaped from Germany by way of Holland in 1938. His family history was a significant inspiration for public service.

He viewed his Jewish faith as a blessing and took to heart basic Jewish values of justice, healing the world, charity, and kindness to others. He was the President of the Board of Directors of University Synagogue in Irvine from July 2010 through June 2012.

³ Richard D. Fybel, "Honest Lawyers Make Good Lawyers—Thoughts on Ethics and Civility in the Legal Profession," *Utah Bar Journal* 19, no. 7 (November/December 2006): 11–15. I encourage you to read it. It is a fine and timeless article. It reminds me of a similar article I read in my first year in law school, written by a great California lawyer. See John Sutro, "The Good Lawyer," *Santa Clara Law Review* 7, no. 1 (1966).

Justice Fybel wrote and spoke extensively on the German legal system between 1933 and 1945 and the Nuremberg trials. He was an Adjunct Professor at the Fowler School of Law at Chapman University, where he cotaught a seminar with Professor Michael Bazylar on “The Holocaust, Genocide and the Law.” He was a member of the Holocaust Program Planning Committee for “How the Courts Failed Germany,” cosponsored by the United States Holocaust Memorial Museum, the University of California, and the California Judicial Council, and he was a panel member in the program at UC Irvine (UCI).

Elie Wiesel was a hero of Rich’s.⁴ It is easy to see why. Wiesel was a writer and teacher who survived the Auschwitz-Birkenau concentration camp in Nazi-occupied Poland and taught the world about the Holocaust until the day he died. He was widely honored—for example, with the Nobel Peace Prize, Presidential Medal of Freedom, United States Congressional Gold Medal, and the Grand Croix of the French Legion of Honor. Wiesel was one of the main figures who spearheaded the establishment of the United States Holocaust Memorial Museum in 1993.

He was a member of the Boards of Advisors of the Fowler School of Law and the Rodgers Center for Holocaust Education at Chapman University. He was also a member of the Board of Visitors of the UCI School of Law, and of the Jewish Law Institute Advisory Board of the Touro Law Center in New York. He was a member of the JSerra Catholic High School Pre-Law Magnet Advisory Board. This program is remarkable for a high school.⁵

His former division’s presiding justice, Kathleen O’Leary, spoke after his death: “During his twenty-year tenure as a justice of the Court of Appeal, Justice Fybel made significant contributions to the development of California law, the pursuit of justice, and the advancement of judicial ethics. Justice Fybel authored some 260 published opinions. His opinions display a mastery of diverse areas of law and are a valuable contribution to jurisprudence. Justice Fybel firmly believed in the fair and evenhanded application of the law and the responsibility of the court system to promote justice.”

She concluded: “Justice Fybel believed he led a charmed and blessed life, and he was grateful to all the people who helped him be in a position to make contributions in the areas he believed were important. As a person, an attorney, and a judge, he showed empathy and understanding of the impact judicial decisions have on litigants and lawyers, and he exemplified the virtues of honesty and kindness. Justice Fybel’s theory of jurisprudence was this: Fair, just, and

⁴ Donna Raskin, “Elie Wiesel is a Nobel-Prize winning writer, teacher and activist known for his memoir ‘Night,’ in which he recounted his experiences surviving the Holocaust,” *Biography*, September 9, 2022.

⁵ See [The Patrick Ahle Law Magnet Program](#).

correct results are obtained by impartially and rigorously applying the relevant principles of law to the record in light of the relevant standard of review.”

Liz, Rich, and Kristallnacht

Liz, her daughter Judge Igra, and I worked with Rabbi Reuven Taff to bring Rich to speak during a Kristallnacht Memorial Service held on November 8, 2018, at Sacramento’s Mosaic Law Congregation. He was doing work related to that of Liz. Both were speaking, writing, and teaching of the dark years of the Holocaust. Rich focused largely on teaching members of the bench and bar to learn of and never forget what Nazi Germany’s judges did to further the harm done by Hitler and his Nazi regime.

The next morning after that Kristallnacht observance, Justice Fybel, his wife Susan, Judge Igra, her mother Liz, my wife Brenda and I had breakfast together. The purpose of the breakfast was to allow Rich and Liz Igra to get to know one another better. Rich’s mother and father, Liz and her late husband Dr. Jacob Igra, all were European survivors of the Holocaust era. The bench and bar in Sacramento have not forgotten Rich. During the most recent annual Unity Dinner held in Sacramento, a memorial to Justice Richard D. Fybel was presented. It was narrated by former Chief Justice Tani Cantil Sakauye. Judge Igra, Liz, and Susan were there.



Nick and Liz on the morning after the 2018 Kristallnacht observance, listening to Rich talk. Also there were Susan Fybel and Judge Misha Igra. (Brenda Nicholson took the photograph.)

Returning to the November 2018 Kristallnacht observance, I was privileged to introduce Rich:

In this place, earlier this year, Dr. Eva Fogelman, a Holocaust scholar, and Liz Igra, whom you all know as a survivor who escaped the Jewish ghetto in Poland just ahead of the Nazi extermination, addressed children of Holocaust survivors.

They said our nation’s teachers are not teaching about the Holocaust—because they were not taught—thus, they are failing all our students.

Two years earlier, during Sacramento’s 28th annual Unity Bar Dinner, I witnessed a similar, but particularly acute failure to teach because it involved hundreds of lawyers and judges.

Of course, all of us present knew various aspects of the Holocaust, but we did not know in any detail about the Nazi judges who allowed the Holocaust to happen.

We learned about these fallen judges from the dinner’s keynote speaker, Justice Richard D. Fybel, a distinguished justice on the California Court of Appeal in Santa Ana.

During the past half century, I had attended countless legal and judicial education programs. None of them ever remotely touched on the crucial role of the Nazi judges.

Justice Fybel told us of their roles during the Unity Bar Dinner, and he is working hard to tell everyone, everywhere he can, especially among the bench and bar.

He helped plan the 2010 Holocaust Program on “How the Courts Failed Germany,” co-sponsored by the United States Holocaust Memorial Museum, the University of California, and the California Judicial Council. He spoke during that program.

Justice Fybel spoke in Courtroom 600 in the Nuremberg Palace of Justice in 2016 during the 70th Anniversary of the Nuremberg Trials, specifically, *United States v. Josef Altstoetter, et al.*, known as The Justice Case. It was poignant and haunting. ([Courtroom 600: Commemorating the 70th Anniversary of the Nuremberg Trials.](#))

He spoke at the opening of an exhibit created by the German Federal Bar. The exhibit was entitled “Lawyers Without Rights—Jewish Lawyers in Germany Under the Third Reich,” at both Southwestern University and Chapman University Schools of Law. He writes, “the dagger of the

assassin was concealed beneath the robe of the jurist,” quoting Telford Taylor, prosecutor of Nazi judges on trial in Nuremberg post–World War II, to open his own article, “Assassins in Judicial Robes.”⁶

As Sacramento lawyer and artist, Terry Flanigan, explains it, art may inspire those of us in the law who have not experienced unimaginable human suffering imposed by, for example, the Holocaust, to understand, empathize, and reflect more deeply than with mere words, however eloquent. Dame Laura Knight painted *The Dock, Nuremberg*, in 1946. She did so because, “In that ruined city death and destruction are ever present. They had to come into the picture, without them, it would not be the Nuremberg as it now is during the trial, when the death of millions and utter devastation are the sole topics of conversation wherever one goes—whatever one is doing.” (See [The Nuremberg Trial](#).)

Evoking the spirit of Dame Knight’s painting, Justice Fybel was sobering and moving as he spoke so thoughtfully and eloquently on these awful matters. It helps to keep in mind Dame Knight’s evocative painting when reading or listening to him. It may help if you watch or re-watch the movie, *Judgment at Nuremberg*. It won the Academy Award for Best Movie in 1961.

Justice Fybel spoke about a traveling exhibit created by the German Federal Bar, “Lawyers Without Rights—Jewish Lawyers in Germany Under the Third Reich” during the openings at each of two law schools, Southwestern and Chapman.

He is professor at the Fowler School of Law, Chapman University, where he co-teaches a seminar on, “The Holocaust, Genocide, and the Law.”

He is a founder of the Ruth and Ernest Fybel Endowed Fund for Literature on Children of the Holocaust, at the Chapman University, Samueli Holocaust Memorial Library.

Justice Fybel works very hard to make sure California’s lawyers and judges remain true to their oaths to protect and defend the Constitutions of California and of the United States; remember the Holocaust; and recall the failure and complicity in the Holocaust by Nazi Germany’s lawyers and judges.

⁶ Richard D. Fybel, “Assassins in Judicial Robes,” *Gavel to Gavel: The Los Angeles Superior Court Judicial Magazine*, Spring 2013, p. 30–32, 41. Also see, Richard D. Fybel, “The Absence of Judicial Ethics and Impartiality: The German Legal System, 1933–1945,” in *National Security, Civil Liberties, and the War on Terror*, ed. M. Katherine B. Darmer and Richard D. Fybel (Prometheus Books, 2011), 25–37; Richard D. Fybel, “When Mass Murder and Theft of All Human Rights Were ‘Legal’: The Nazi Judiciary and Judges,” *California Litigation* 25, no. 2 (2012): 15–21. Justice Fybel spoke of such matters during the annual luncheon of the St. Thomas More Society, the J. Reuben Clark Law Society in 2016. His presentation may be watched here: [The Nazi Judicial System \(1933–1945\) and the Nuremberg Trials](#).

As three examples of his weighty presence and teaching:

He has, for the past 15 years, been Chair of the California Supreme Court's Advisory Committee on the Code of Judicial Ethics.

He co-authored the Fourth Edition of the *California Judicial Conduct Handbook*, published last year.

He was an advisor to the Commission for the Revision of the Rules of Professional Conduct of the State Bar of California.

He was Chair of the California Supreme Court committee that recommended the structure and rules for the Supreme Court Committee on Judicial Ethics Opinions.

He stands as a singular exemplar of what it means to be an honorable and ethical jurist. Telford Taylor, prosecutor of the Nazi judges in Nuremberg, argued: "The dagger of the assassin was concealed beneath the robe of the jurist." It is always shocking for judges and lawyers to hear and ponder those words. I am sure it is especially shocking for you to hear and ponder them. Justice Fybel often uses those words to open his related articles in legal and judicial magazines.

May I respectfully urge you to bundle your emotions, energize your intellects, and stiffen yourselves as you prepare to listen to my dear friend and colleague, Justice Richard D. Fybel, as he speaks to you this evening in solemn observance of the 80th anniversary of Kristallnacht, the "Night of the Broken Glass," the prelude to the Holocaust.

Sadly, we are here, together, to listen to him after yet another tragic American slaughter, this latest one in Thousand Oaks last night, . . . and the awful massacre in the Tree of Life in Pittsburgh less than two weeks ago.

Please join me in welcoming Justice Fybel.

Over the years, Justice Fybel and I did several related programs, including court/community and court/clergy outreach. One of the most notable was a February 2017 panel of judges discussing "Religion and Appellate Decision-Making," during a statewide meeting of the California Academy of Appellate Lawyers (CAAL) in Pasadena. Roughly fifty attendees were expected. Justice Kathryn Mickle Werdegard, California Supreme Court, and more than one hundred attended, I was told, to hear this panel. The entire occasion was well-received.



Left to right in the photograph: Professor James A. Sonne, Director, Religious Liberty Clinic, School of Law, Stanford University, moderator, along with Judge Milan Smith, United States Court of Appeals, Ninth Circuit; Justice Richard D. Fybel, Court of Appeals, Fourth Appellate District, Division Three, State of California; and Justice George Nicholson, Court of Appeals, Third Appellate District, State of California, were the panelists. (Photo taken with an iPhone by someone at the event.)

Professor James A. Sonne, Director, Religious Liberty Clinic, School of Law, Stanford University, moderated during the proceedings from this outline he provided to the judicial panelists:

- *Personal.* In the first line, I'd ask each of you about your faith backgrounds and the meaning religion has had in your personal life, upbringing and relationships, and decision to become a lawyer. Religion might be a somewhat foreign concept to some in the audience, at least personally. Among other things, therefore, my hope is to show that, like any other cultural or deeply personal factor, religion is a central feature of the identity of highly respected and accomplished judges (and law professors!). Moreover, the degree to which your faith answers the universal questions of life, death, and suffering should provide a warm and humanized backdrop against which we can then move into the more professional aspects of the panel.

- *Judicial.* In the second line, I'd ask about the role your faith has had in your decision to be a judge and the impact it has (or doesn't have) in the performance of your job. This will likely be the heart of our discussion and will be treated with the delicacy it deserves. Tentatively, I'd plan to ask about the contexts in which your faith might understandably come into play (e.g., in your taking the oath of office, in your personal treatment of others, in areas where mercy and discretion are required), as well as areas where it would be improper to mix religion and your judicial duties (e.g., in your application of law, in the equal treatment of litigants). I'd also be interested in exploring some prominent examples of the tension: Justice Frankfurter's invocation of his own Jewish heritage as being irrelevant in his *Barnette* dissent; Justice Sotomayor's emphasis on empathy in her confirmation hearings; or Judge Gorsuch's observation that a judge who likes the results of all his decisions isn't a good judge. Perhaps we could close with any judicial mentors or exemplars who you think embody the proper balance.
- *Professional.* Third and finally, I'd like to explore your view of the role religion plays or should play in the legal system and profession. One of my areas of scholarship is cross-cultural lawyering; to what extent does/should the practice of law take into account religious differences of litigants, lawyers, and decision-makers? There is a gap between those inside and outside the legal world when it comes to religious observance; does/should that matter? In other words, whether religion should play more or less of a role in the profession. Perhaps we could also explore whether the religious identity of judges should be raised in the appointment process or otherwise be fair game; I'm thinking of recent controversies over there being only Catholic and Jewish justices on the Supreme Court, attendance at Red Masses or other gatherings, or (for fun) Justice Kagan's confirmation-hearing quip about where she was on Christmas Day.

This CAAL event was an outgrowth of Court/Clergy Conferences conducted in Sacramento, beginning in 2014. During one of those annual conferences, Professor Sonne participated. From that he developed his idea for the CAAL event.

Court/Clergy Conferences were born in North Carolina a quarter century ago. The idea for them came to Judge Adam Grant, chief district court judge, North Carolina's Carrabus County, during a friend's funeral. His friend had been killed by a drunk driver. "The preacher, in remembering my friend from the pulpit, criticized the courts for their handling of drunk driver cases and revealed—at least to me—just how misinformed he was. But that made me

realize that pastors were a particularly influential group in informing the public about the courts.”⁷

“In 1992 President George H. W. Bush awarded Judge Grant a ‘Points of Light’ citation. Adam Grant passed away in his early middle age [roughly 25] years ago, but his programs continue to inspire and to be ‘Points of Light’ in courthouses across our land,” according to Judge Fruin.

Judge Fruin was so impressed with Judge Grant’s work that he brought Court-Clergy Conferences to Los Angeles roughly a quarter century ago. For years, Judge Fruin and his Los Angeles Superior Court colleague, Judge Paul A. Bacigalupo, planned and conducted Court-Clergy Conferences. More recently, Court-Clergy Conferences were replicated for a time by judges in four other California counties, including Judge Franklin Bondonno (Santa Clara), Judge Laura W. Halgren (San Diego), Judge John Pacheco and Judge Cynthia Ann Ludvigsen, ret. (San Bernardino), and Judge James Mize (Sacramento).

There is a sound reason why so many California judges took the initiatives they did with court/clergy outreach. In a conversation with Judge Fruin and Justice William J. Murray Jr., my former Third Appellate District colleague, they suggested to me why this work is important. They believe court/community outreach, including court/clergy outreach, are “multiplier programs.” In a conversation with Judge Fruin and Justice Murray Jr., they suggested to me why this work is important. They believe court–community outreach, including court–clergy outreach, are “multiplier programs.” They conclude, “Multiplier programs leverage the judicial branch’s scarcest resource: the time of its judges. These programs identify audiences that have both a need for information about the justice system and an incentive to convey that information to their own constituencies.” Judge Fruin and Justice Murray’s sage message suggests to judges the utility of leveraging their limited time by reaching out to audiences outside the legal profession, particularly teachers and clergy, who are highly educated, eloquent and articulate speakers, and possessed of permanently and regularly associated constituencies of their own.

Judge Mize and I worked together on Sacramento Court-Clergy Conferences from their beginning in Sacramento. Judge Mize formed and chaired a committee of clergy, judges, lawyers, and scholars. As a result of and as part of that work, he and I decided to reach out to gays and lesbians,

⁷ Judge Richard L. Fruin Jr., Superior Court, Los Angeles County, “Judicial Outreach to Religious Leaders,” *The Judges Journal*, American Bar Association, Spring 2003, at p. 34; and in the same issue, Jean Guccione, “Helping Clergy Help Their Parishioners,” at p. 37; for Judge Fruin’s latest commentary, please see, “Successful Community Outreach: Court-Clergy Conferences,” *The Bench*, Summer 2017, at p. 26, published by the California Judges Association; finally, see Judge Fruin’s book, *Judicial Outreach on a Shoestring: A Working Manual* (1999).

especially the LGBT Judicial Officers of California. We invited several Sacramento judges and lawyers (the latter were members of the Court-Clergy Lawyers Auxiliary) and met with LGBT judges and lawyers in the conference room of the Court of Appeal, Third Appellate District, in November 2017. The group tentatively called itself the *Court/Clergy Liberty Caucus*.⁸

What we were doing in Sacramento, on several fronts, fit nicely and neatly into a broader law and religion context which was then developing throughout the nation. John Witte Jr., Robert W. Woodruff Professor of Law, McDonald Distinguished Professor, and Director, Center for the Study of Law and Religion, Emory Law School, tells us all about what was then going on in his commentary, “The Study of Law and Religion in the United States: An Interim Report.”⁹

As noted, a literature was developing with faith and judicial decision-making and, according to Professor Witte, “Russell Pearce and others at Fordham Law School have been actively engaging fundamental questions of the role of religion in judicial decision making, and more generally in the work of the legal profession.” Back in Sacramento, we hoped to compile a directory of every law and university professor and every education-based project addressing faith and judicial decision-making. We didn’t get that done.

But we did get substantial local help. Leadership in the faith-based bar associations in Sacramento promptly saw that potential in the Fruin-Murray theory of multiplier audiences. They formed the *Court/Court Clergy Lawyers Auxiliary* comprised of visionary leaders of four faith-based bar associations: Misha Igra, President, Leonard M. Friedman Bar Association (Jewish), Minha Javed, President, Greater Sacramento Area Muslim Bar Association (Muslim) (Tawfiq Morrar soon replaced Javed as president); Angela Lai, President, St. Thomas More Society (Catholic), and Paul Hoybjerg, President, J. Reuben Clark Law Society (Mormon).

Also helping were Bishop Jon Fish, Church of Jesus Christ of Latter-day Saints, and President of the Inter-faith Service Council of Greater Sacramento; Senior Chaplain Mindi Russell and the Law Enforcement Chaplaincy Sacramento; and Sacramento Police Chief Daniel Hahn and his department’s Cops & Clergy program and its Ministers’ Academies, with help from Sgt. Sameer Sood and Lt. Roman Murrietta. Dr. John Jackson, President, and Phillip Escamilla, Provost, Chief Academic Officer. Professor Gary Doxey,

⁸ Doug Potts, a lawyer with the Court of Appeal, Third Appellate District, wrote, “Leading us out of the cultural divide, can court outreach inspire the public to dialogue with opposing factions on contentious social issues? It did just that with a group of judges and lawyers in Sacramento,” *Los Angeles Daily Journal*, section 1, p. 1 (December 13, 2017).

⁹ “Study of Law and Religion in the United States,” *Ecclesiastical Law Review* 14, 327 (2012).

School of Law, Brigham Young University, also provided substantial aid.

Together, Judge Mize, his committee on which I was a member, the Court/Clergy Lawyers Auxiliary, and the others just noted, planned and conducted six Court-Clergy Conferences in all before Covid-19 closed us down. These were structured to teach clergy about what judges and courts do and why. Clergy of all faiths were invited to attend. There were plenary sessions and breakouts, but lunches were with everyone spread out, with mixes of faiths grouped at tables. Here are the six conferences:

First Court-Clergy Conference in Sacramento, 2014: A former justice on the Court of Appeal, Third Appellate District, State of California, and now Father Rodney Davis, an Episcopalian priest, was the keynote speaker. He later reduced his address to writing.¹⁰ The conference was held in the Congregation B'nai Israel.

Second Court-Clergy Conference in Sacramento, 2015: Elder Dallin Oaks recently became president, but was then a senior member of his faith's Quorum of the Twelve Apostles of the Church of Jesus Christ of Latter-day Saints. He delivered the keynote address, "The Boundary Between Church and State." President Oaks was a clerk to United States Supreme Court Chief Justice Earl Warren, a University of Chicago Law School professor, legal counsel to the Bill of Rights Committee of the Illinois Constitutional Convention, president of Brigham Young University (the largest religious university in the United States), and oversaw the start of the J. Reuben Clark Law School, and a justice on the Utah Supreme Court.¹¹ The conference was again held in the Congregation B'nai Israel.

Third Court-Clergy Conference in Sacramento, 2016: Judge Mize presided over the entire conference. Presiding Justice Vance W. Raye, Court of Appeal, Third Appellate District, and Presiding Judge Kevin Culhane, Superior Court, County of Sacramento, provided opening remarks and welcoming statements. The morning plenary session was presented by four clergy: Imam Mohamed Abdul-Azeez, Tarbiya Institute; Rabbi Mona Alfi, Congregation B'nai Israel; Reverend Alan Jones, St. Mark's United Methodist Church; and Pastor Lesley Simmons, South Sacramento Christian Center. The afternoon session was presented by three judges:

¹⁰ Father Rodney Davis, "Religion's Place In Judicial Decision-Making," *Sacramento Lawyer*, at p. 18 (January/February 2016); other related stories begin at p. 4, 16, 24; please note, especially, Levin, a lawyer with the Court of Appeal, Third Appellate District, wrote an overview, "The Inaugural Sacramento Court/Clergy Conference," at p. 24 in the same issue of *Sacramento Lawyer*.

¹¹ Doug Potts, a lawyer with the Court of Appeal, Third Appellate District, wrote an overview, "Court-Clergy Conference Address Intersection of Religious Liberty and Civil Rights," *Sacramento Lawyer* (January/February 2016), at p. 25.

Justice Carol Corrigan, California Supreme Court; Justice Patricia Bamattre-Manoukian and Justice Nathan Mihara, both of the Court of Appeal, Sixth Appellate District. Uniquely, these three justices have each been judges and lawyers for more than forty years each and are still serving with great distinction. Even more uniquely, Justice Corrigan and Justice Bamattre-Manoukian are California Judicial Council Jurists of the Year and St. Thomas More Award recipients, the highest legal honors bestowed by their profession and by their faith. Something new and novel, a “judicial benediction,” was presented by three judges, Justice William J. Murray Jr., Court of Appeal, Third Appellate District; Judge Barbara Kronlund, Superior Court, County of San Joaquin; and Judge Garen Horst, Superior Court, County of Placer.¹² The 3rd Annual Court-Clergy Conference was held at the SALAM Center, a Muslim Mosque and community center.

Judge Mize described the new “judicial benediction” generally this way: “Each of the three judges we invite, federal, state, and tribal, speak in ways that reflect our shared reverence for our profession and for the rule of law. Some judges who participate choose to utilize famous and inspired legal quotes such as the Preamble to the Constitution or a passage from Abraham Lincoln’s Second Inaugural Address. Other judges reminisce a bit on why he or she became a judge or reference comments someone may have told them encouraging them to become a judge. Finally, others speak of how Atticus Finch, a fictional character, was his or her actual inspiration to become a lawyer.”

Fourth Court-Clergy Conference in Sacramento, 2017: The traditional format as it had evolved was again utilized; two plenary sessions, five break-out sessions and a luncheon reserved for meet and greet conversations. The 2017 plenary sessions were: “When Courts Fail to Protect Human Rights: Lessons from the Past,” Justice Richard D. Fybel, Court of Appeal, Fourth Appellate District, Division Three (Santa Ana); “Religious Liberty and Freedom of Conscience in a Time of Cultural and Political Polarization: A Panel Discussion” (among the matters discussed was the then-pending *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*), Professor Alan E. Brownstein, School of Law, University of California, Davis, Dean Erwin Chemerinsky, School of Law, University of California, Berkeley, and former Dean and now Professor John Eastman, School of Law, Chapman University. Our judicial benedictions were offered by Justice Louis Mauro, Court of Appeal, Third Appellate District; Chief Judge Richard Blake, Hoopa Valley Tribal Court, and President, National American Indian Court Judges Association

¹² Doug Potts wrote an overview, “Religious Conviction and Judicial Decision-Making: Weighing Justice and Mercy,” *Sacramento Lawyer* (March/April 2017), at p. 10.

and Chair, Northern California Tribal Court Coalition; and Judge Troy Nunley, United States District Court, Eastern District (Sacramento).¹³ The conference was again held at the SALAM Center.

On Friday, March 9, 2018, the California Judges Association replicated the panel cobbled together at the 2017 Court-Clergy Conference in Sacramento. This is the announcement in the conference program:

According to his website, “Jack Phillips creates a masterpiece. Custom designs are his specialty: If you can think it up, Jack can make it into a cake!” May Phillips refuse to “create” a wedding cake for a same sex couple or may a state, in the enforcement of its anti-discrimination law, require him to do so? *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* may be one of the most important United States Supreme Court cases of our time. On the constitutional balance: The right against sexual orientation discrimination vs. the rights of free expression and the free exercise of religion. *Masterpiece Cakeshop* may have the potential for being seen as another *Brown v. Board of Education* or *Plessy v. Ferguson*. However the case is decided, the social divisions in our country may become wider as a result. Two renowned legal scholars, Dean Erwin Chemerinsky of the UC Berkeley School of Law (Boalt Hall) and Chapman University Law School Dean Emeritus John Eastman, will debate the arguments on both sides. Alan Brownstein, Professor of Law Emeritus, UC Davis Law, will be the moderator.

As is now known, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018), was a disappointment all around.

Fifth Court-Clergy Conference in Sacramento Region, 2018: The traditional format was largely utilized in 2018 but three plenary sessions with breakouts and a luncheon again reserved for meet and greet only, without a formal program. Judges and other public officials from both Sacramento and Placer Counties participated. The 2018 plenary sessions were: “Building Bridges in Polarizing Times;” “Demystifying the Child in the Welfare System;” and “The Role of District Attorneys and Public Defenders in the Administration of Justice.” Bishop Jaime Soto of the Diocese of Sacramento and Los Angeles Superior Court Judge Paul Bacigalupo, President, California Judges Association, participated, along with Vance W. Raye, presiding justice of the Court of Appeal, Third Appellate District; the presiding judge of the Superior Court, County of Sacramento; the district

¹³ Doug Potts wrote an overview, “Court/Clergy Conference Tackles Conflict between Religious Liberty and Civil Rights,” *Sacramento Lawyer* (January/February 2018), at p. 28.

attorneys and public defenders of Sacramento and Placer Counties.¹⁴ The conference was held at St. Clare Catholic Church in Roseville, just outside Sacramento County, in Placer County.

Sixth Court-Clergy Conference in Sacramento, 2019: The conference was hosted by the Sacramento County Superior Court, sponsored by the California Judges Foundation, and underwritten by William Jessup University.¹⁵ This conference was held at St. Mark's United Methodist Church in Sacramento. As it turned out, this would be the final such conference in Sacramento. The next year brought the scourge of Covid and the national shutdown and lawlessness and rioting in many cities throughout the country. The courthouses of our nation suffered greatly.¹⁶

With the end of Court-Clergy Conferences in Sacramento, one practical means for mitigating division and demonization in Sacramento and elsewhere has vanished. But the work begun by Liz Igra, Justice Fybel, and Judges Fruin, Bacigalupo, Mize, Bondonno, Halgren, Pacheco, and Ludvigsen—and various other judges, lawyers, scholars, and clergy—has not ended.¹⁷ And, if constitutional governance is to be preserved, many others must join in with energy and enthusiasm. All of us in the law should give serious thought to taking more active roles in mitigating division and demonization if we expect our nation and our citizens to sustain themselves peacefully and constitutional governance to be preserved for another 250 years. Why not spend a little time pondering and responding to that question during next year's 250th birthday of our Declaration of Independence? This little book can help you do that.¹⁸

¹⁴ Doug Potts wrote an overview, "Scholars Promote Bridging the Culture Wars at Court/Clergy Conference," *Sacramento Lawyer* (January/February 2019), at p. 8.

¹⁵ For the full story, members of the Court-Clergy Lawyers Auxiliary, Paul Hoybjerg, Misha Igra, Angela Lai, and Tawfiq Morrar, wrote an overview, "Judicial, Civic, and Religious Leaders Meet in Sacramento to Celebrate Differences and to Develop Solutions," *Sacramento Lawyer* (Spring 2020), at p. 20.

¹⁶ George Nicholson, "Courthouses Under Siege," *The Bench*, California Judges Association (Fall 2020), at p. 23; a slightly different version appears in *Sacramento Lawyer*, Sacramento County Bar Association (Fall 2020), at p. 14, and *Defense Comment*, Association of Defense Counsel of Northern California and Nevada (Fall 2020), at p. 7.

¹⁷ 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 "A Judicial Role in Calming Our Divided Nation," *Journal of Appellate Practice and Process* 21, no. 2 (2021): 231 (the audience for this journal includes all tribal, state, and federal appellate and supreme court justices); [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.

¹⁸ Timothy Sandefur, *The Conscience of the Constitution: The Declaration of Independence and the Right to Liberty* (2015).



Nick and Rich at the Unity Bar Dinner in 2015. (Photo taken by someone at the dinner and sent to Nick.)

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