

## A MIGHTY STRUGGLE

Kenneth B. Morris, Jr.\*

On July 5, 1852, abolitionist Frederick Douglass gave the keynote address at a Rochester, New York, event commemorating the 76th anniversary of the signing of the Declaration of Independence. It was clear from his first utterance that he was in no mood to celebrate. The United States was locked in a protracted and fierce debate over the question of slavery. For Douglass, marking “Independence Day” only served to underscore the hypocrisy of a nation celebrating “freedom” while enslaving people of African descent on its blood-drenched soil.

Douglass told the crowd of 600 mostly white anti-slavery supporters that while he appreciated their moral opposition to slavery, their celebration of American independence rang hollow to him and his enslaved brothers and sisters, saying: “The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought life and healing to you, has brought stripes and death to me.”<sup>1</sup>

Douglass took his audience to task:

What, to the American slave, is your 4th of July? I answer; a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham . . . a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices,

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1. Frederick Douglass, *Oration Delivered in Corinthian Hall, Rochester, New York (July 5, 1852)*, <https://rbscp.lib.rochester.edu/2945>.

more shocking and bloody, than are the people of these United States, at this very hour.<sup>2</sup>

Sadly, 169 years after Douglass delivered this historic speech, America is still guilty of crimes and practices that would disgrace a nation of savages. The rich inheritance of justice, liberty, prosperity, and independence, bequeathed by the Founding Fathers, is not shared by every American citizen. The disease of racism, injustice, and inequality continues to fester and putrefy the soul of our nation.

My name is Kenneth B. Morris, Jr. I am the great-great-great-grandson of Frederick Douglass and the great-great-grandson of educator Booker T. Washington. I'm also Co-Founder and President, Frederick Douglass Family Initiatives (FDFI), an abolitionist and antiracist non-profit organization with a mission to build strong children and end systems of exploitation and oppression.

The Honorable George Nicholson, now retired from the California Court of Appeal, asked me to contribute the preface to this special issue of *The Journal of Appellate Practice and Process* to talk about my great ancestors, their struggle for freedom, justice, and equality, and to offer ideas on how FDFI might collaborate with judicial agencies, institutions, and organizations to help restore faith and trust in our institutions.

I understand this special issue will challenge readers to think beyond their conventional courtroom roles and contemplate what can be done to help mitigate or, better yet, ameliorate our nation's ailments, afflictions, and disease. As legal authorities, public educators, civic leaders, and role models, you carry the weight of responsibility to help build trust in our nation's institutions so that every citizen has faith in the promise of America and its founding ideals. I further understand that the California Standard of Judicial Administration Title 10.5 identifies the promotion of "public understanding of and confidence in the administration of justice" and "the integrity of the court system" as an official judicial function

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2. *Id.*

and encourages taking an active part in the life of the community.<sup>3</sup>

And so, in the spirit of using the example of my great ancestors to help guide how you might think about furthering this role in your communities, I am honored to write to you today.

Whether I am speaking to students, educators, historians, government leaders, or political activists, the question I most consistently receive is a version of, “What would Douglass or Washington say about our contemporary social and political challenges if they were here today?”

It’s difficult to imagine what they would think or say, but because their blood flows through my veins, I will take some liberty and point to what Douglass said in April 1885: “The life of the nation is secure only while the nation is honest, truthful, and virtuous.”<sup>4</sup> By this measure, we have many challenges to contemplate, as faith in American institutions is shaken, and trust is crumbling all around us.

The COVID-19 pandemic has indelibly impacted every segment of our society and has drawn attention to preexisting inequities around access to health care, food, economic opportunity, and racial disparities in policing and other areas. We are also experiencing the emergence of disturbing forces that may represent a more insidious and sustained threat to the United States. The division and distrust within our country have been openly inflamed by the embrace of a radical form of political demagoguery, whose danger is matched by its ruthless effectiveness. Its very lexicon is rooted in casual, yet consistent, mendacity designed to sow anger, fear, despair, and distrust.

Chillingly, this anti-American and anti-democratic sentiment contributes to the erosion of confidence in our nation’s civic and public institutions. The very notion of

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3. See CAL. STATE JUD. ADMIN. STANDARDS, STANDARD 10.5.

4. Frederick Douglass, Speech on the 23d Anniversary of Emancipation in the District of Columbia (Apr. 16, 1885), <https://www.loc.gov/item/mfd.24010/>.

the existence of objective truth has come under assault, leading to unprecedented cynicism toward our traditional and informal societal institutions. As a result, both the concept of justice and ensuring its legal application are increasingly imperiled.

In his first autobiography, *Narrative of the Life of Frederick Douglass, an American Slave*, published in 1845, and speeches to throngs of crowds throughout the world, Douglass condemned the evils of American slavery.<sup>5</sup> But he saved his deepest ire for the stewards of public and civic institutions that not only tolerated slavery but justified it, protected it, and allowed it to flourish.<sup>6</sup>

Like Frederick Douglass, Booker T. Washington was born enslaved. Still, he became one of America's greatest educators; the founder of Tuskegee Institute; an author, orator, social reformer; and the most influential Black leader of his time. Washington posited that African Americans would achieve success only through education, hard work, discipline, and self-help.

Despite the many obstacles and challenges my ancestors faced, they never lost hope in our country's founding ideals. Both men challenged all Americans to recognize the systemic injustices in American institutions. They worked collaboratively and strategically within those institutions to restore the primacy of freedom, liberty, and justice.

While neither formally studied law, they saw America's path out of the darkness through the touchstone of the fundamental ideals enshrined in the Declaration of Independence and Constitution and believed earnestly in the America espoused therein. Key to this hopeful vision was an unwavering appeal to those in positions of power and a particular duty to advance the cause of liberty while upholding, preserving, and defending these ideals and actively champion them in their communities.

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5. See generally FREDERICK DOUGLASS, *NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE* (Bicentennial ed., FDFI 2017) (1845).

6. *Id.*

To be clear, neither Douglass nor Washington viewed the world through rose-tinted lenses. In the wake of Reconstruction, Douglass witnessed the emergence of lynching, the historical origins of the modern criminal justice system built on the exploitation and persecution of formerly enslaved Africans, and the rise of institutions created and administered solely to ensure their degradation and the suppression of their newly won freedoms. Washington lived at a time when Jim Crow laws and violent racial terrorism against African Americans were openly embraced and validated as legitimate reactions to perceived racial progress.

The reprehensible history of racial prejudice, racial terrorism, and racial oppression reverberates to the present day. We see this exhibited in racist policing policies and tactics, a criminal justice system that disproportionately punishes African Americans, and policies thinly veiled as election integrity laws designed to disenfranchise minority and poor voters. Many of these societal ills are present in Douglass's adopted hometown of Rochester, New York, where FDFI is headquartered. Rochester is plagued by some of the worst racial, economic, and health disparities in the country and has recently been roiled by several high-profile instances of police brutality against African Americans.

We take it as sacrosanct that our commitment to national security, civic governance, and justice makes our institutions impervious to those forces that would undermine the values that uphold our nation and American society.

But as Douglass and Washington make clear, progress can be achieved through vigilance. I do not doubt that my ancestors would be outraged and outspoken about the challenges we face today. I also believe they would find hope in young people's activism and encourage peaceful and determined agitation for change. They would hold firm in the optimism that the idealized version of America is achievable.

I challenge you to use history as your guide and think deeply about how you can work within your legal

jurisdictions and the institutions and communities within them to restore faith, increase understanding, and promote public confidence in the integrity of our system of justice and fairness. FDFI would like to assist in this effort, so allow me to offer a few ideas on how we envision collaborating with judicial agencies, institutions, and organizations to advance this noble mission in communities.

We hope to invite a small number of distinguished, retired Tribal, state, and federal appellate and supreme court judges to sit on an FDFI Judicial Advisory Council. We will search for traditional diversity, of course, but we will also seek philosophical and jurisprudential diversity. With the advice and assistance of this Council, we will endeavor to join forces with our nation's Tribal, state, and federal judiciaries.

Judges largely stand above the rampant demonization and division ravaging our country. They have the lofty status and credibility to inspire and assist the rest of us to get better acquainted and to help one another. We are mindful that judges must remain above the external fray while on the bench. But, while off the bench, judges may creatively and energetically pursue court–community outreach, including court–clergy outreach, and civic education programs and projects, without harming their impartiality or independence.

This type of targeted civic engagement can have a tremendous impact on society. One of the most visionary, inspiring, and active legal professionals promulgating this work in communities is the Honorable Richard L. Fruin, Jr., of the Los Angeles Superior Court. You will read about Judge Fruin's inspirational contributions to the pursuit of freedom, justice, and equality in the pages of this special issue of *The Journal*.<sup>7</sup>

Because education is a significant part of FDFI's work, we welcome invitations to partner with the educational arms of the various judiciaries, including the

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7. George Nicholson, *A Judicial Role in Calming Our Divided Nation*, 21 J. APP. PRACT. & PROCESS 231 (2021).

National Association of State Judicial Educators, the National Judicial College, the National Tribal Judicial Center, the National Juvenile Justice College, the Federal Judicial College, the National Center for State Courts, and the American Inns of Court. We would also be honored to receive engagement requests from Tribal, state, and federal appellate court and supreme court justices and the various public and private agencies, institutions, and associations who read this special issue.

If they were here today, I believe my distinguished ancestors would be pleased to know that FDFI aspires to develop working relationships with these judicial agencies, institutions, and organizations. I am convinced that judges would benefit, if not delight, from an association with the direct descendants of two of this country's most influential freedom fighters. To undertake such a wide-ranging series of working relationships will be a challenge for FDFI and me, but we would sincerely welcome the opportunity.

For it was Frederick Douglass who once said:

If there is no struggle there is no progress. Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing up the ground; they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters. This struggle may be a moral one, or it may be a physical one, or it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will.<sup>8</sup>

America is once again in the midst of a mighty struggle, and each one of us must be stewards of the Declaration of Independence and Constitution. We must join in the fight to uphold American ideals and peacefully agitate for a better world for ourselves, our children, and our grandchildren. We stand on the shoulders and walk

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8. Frederick Douglass, West India Emancipation Speech At Canandaigua, New York (Aug. 3, 1857), <https://www.blackpast.org/african-american-history/1857-frederick-douglass-if-there-no-struggle-there-no-progress/>.

in the shoes of those who came before us. Like my ancestors before me, I have faith in our institutions and each individual's ability to reclaim understanding and confidence in upholding American values and ideals.

Freedom's torch has been passed on to us by our ancestors, and we are obligated, by birthright, to ensure that the rich inheritance of justice, liberty, prosperity, and independence, bequeathed by the Founding Fathers, is shared by every American citizen, at this very hour.

On behalf of the Douglass and Washington family, thank you for what you do to uphold justice, and thank you for your commitment to your communities and the restoration of faith in the rule of law.<sup>9</sup>

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9. To learn more about my ancestors, please see FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE (Bicentennial ed., FDFI 2017) (1845); *see also* BOOKER T. WASHINGTON, UP FROM SLAVERY: AN AUTOBIOGRAPHY (Doubleday 1963) (1901).