SERVANTS TO JUSTICE

Shama Hakim Mesiwala*

The law school I attended and where I now teach Appellate Advocacy is named after the great Dr. Martin Luther King, Jr. The year was 1968, and the students and faculty of the University of California Davis School of Law "were actively involved in the legal, political, and social debates of the time."[1] They urged campus administrators to name the building for Dr. King after he was assassinated on April 4 "as a way of honoring the slain civil right leader and dedicating the [l]aw [s]chool to King's ideals of public service and social justice."[2]

Exactly two months before his assassination, Dr. King gave a sermon called *The Drum Major Instinct*, in which he spoke about the value of service.[3] He told congregants of the Ebenezer Baptist Church in Atlanta who were gathered in the audience:

> [H]e who is greatest among you shall be your servant. That's a new definition of greatness. . . . You

* Shama Hakim Mesiwala is a judge of the California Superior Court, County of Sacramento, who teaches Appellate Advocacy at the University of California–Davis, King Hall. Before becoming a judge, she spent eighteen years as an appellate attorney, first arguing cases before the California Supreme Court and California Courts of Appeal and then working as a judicial attorney for the Third Appellate District. She began her career as an attorney at the Office of the Federal Defender for the Eastern District of California. Judge Mesiwala is the first South Asian–American appointed to the Sacramento Superior Court and is among a handful of judges of Muslim descent in California.

1. *History of King Hall*, U.C. DAVIS SCH. L., https://law.ucdavis.edu/about/history-of-king-hall.html (last visited Apr. 20, 2021).

2. *Id.*

3. *See* Martin Luther King, Jr., The Drum Major Instinct, sermon delivered at Ebenezer Baptist Church, Atlanta, Ga. (Feb. 4, 1968) (transcript available at https://kinginstitute.stanford.edu/king-papers/documents/drum-major-instinct-sermon-delivered-ebenezer-baptist-church).

> don't have to have a college degree to serve. You don't have to make your subject and your verb agree to serve. You don't have to know about Plato and Aristotle to serve. You don't have to know Einstein's theory of relativity to serve. You don't have to know the second theory of thermodynamics in physics to serve. You only need a heart full of grace, a soul generated by love. And you can be that servant.[4]

This is my call today—that we be servants to justice in honor of Dr. King's legacy. In this article, I provide examples of what that service may look like in the context of civics education, character, democracy, unity, and redressing wrongs. My hope is that judges, lawyers, law professors, and students will find practical ways to serve the communities of which they are a part.

I. SERVANTS TO CIVICS EDUCATION: BRINGING THE APPELLATE COURTROOM TO STUDENTS

When starting my career as an appellate attorney in my early twenties, I received my first notice to appear for oral argument. Still new to appellate practice, one thing I thought I knew for sure was the location of California Court of Appeal, Third Appellate District, where I filed most of my briefs. It was in Sacramento, just across the street from the California State Capitol. So I thought it must be a mistake when the notice told me to appear at a high school gymnasium in Redding, California. But it was no mistake. "[T]he [c]ourt decided that the time had come to encourage interested individuals to attend argument and learn firsthand how appellate courts operate."[5] It "chose to hold court in a school setting so that we could make it an educational opportunity for students."[6]

4. *Id.* ¶¶ 33–34.

5. *3rd District Court of Appeal, Court Outreach Program*, CAL. CTS., https://www.courts.ca.gov/5131.htm (last visited Apr. 20, 2021) [hereinafter Court Outreach Program].

6. *Id.*

I arrived in the high school auditorium not knowing what to expect. The bailiff asked the lawyers to check in with our business cards at a makeshift clerk's counter (a white plastic folding table at the front corner of the gymnasium) and then take a seat in the front row of court. The front row was a series of brown folding chairs placed on the gymnasium's wooden floor, facing the makeshift judges' bench that consisted of more folding tables pushed together and covered in black drape cloths. As I settled into my folding chair and nervously looked around, I was pretty sure I was closer in age to the high school students than to the other attorneys or justices. I took a deep breath and waited for my client's case to be called. And then it was: *People v. The Minor*. The minor was my client and a high school student appealing his juvenile adjudication for battery on a substitute teacher.

I approached the wooden podium and began my first oral argument. There were about 300 students behind me on bleachers, and three justices in front, asking questions of me and my friend on the other side, who represented the People of the State of California. Those justices were Arthur Scotland, the court's presiding justice;[7] Vance Raye, the court's first African–American justice (who would later succeed Scotland as the presiding justice);[8] and Consuelo Callahan, the court's first Latina justice (who would later be appointed to the Ninth Circuit Court of Appeals).[9]

When my client's oral argument finished, I realized that this was the second day of the court's two-day outreach program. The first day, Presiding Justice Scotland had given "an overview of the appellate process to teachers and students studying American government."[10] The second day included a question-and-answer session at

7. *See Arthur G. Scotland, Presiding Justice*, CAL. CTS., https://www.courts.ca.gov/2667.htm (last visited Apr. 20, 2021).

8. *See Vance W. Raye, Presiding Justice*, CAL. CTS., https://www.courts.ca.gov/2648.htm (last visited Apr. 20, 2021).

9. *See Consuelo Maria Callahan*, CAL. CTS., https://www.courts.ca.gov/2727.htm (last visited Apr. 20, 2021).

10. Court Outreach Program, *supra* note 5.

which the students were "invited to ask questions about the appellate process and the role of the courts of appeal in our system of government."[11] One question that elicited laughter from the audience and justices alike was how much the justices got paid. If I were a teenager in the audience, I would have probably asked that question, too.

The innovation of this court outreach program was it brought the courtroom to hundreds of students who otherwise would have had almost no opportunity to see how an appellate court functioned. The California Court of Appeal, Third Appellate District is geographically vast, "stretching] over 23 counties . . . [and] is larger than the combined area of Connecticut, Delaware, New Hampshire, Rhode Island, and Vermont."[12] It was not feasible that students would be able to travel to Sacramento from these outlying counties to see justice in action. This innovation received statewide attention when the Third Appellate District was recognized by the administrative arm of the California court system in January 2002 with the Ralph N. Kleps Award for Improvement of the Administration of the Courts.[13]

Almost two decades after this first outreach program, I came across a public letter by United States Supreme Court Justice Sandra Day O'Connor calling for "leaders to make civic learning and civic engagement a reality for all."[14] Justice O'Connor had seen "first-hand how vital it [was] for all citizens to understand our Constitution and unique system of government, and participate actively in their communities."[15] She asked our leaders to "commit to educating our youth about civics, and to helping young people understand their crucial role

11. *Id.*

12. *About the 3rd District*, CAL. CTS., https://www.courts.ca.gov/2980.htm (last visited Apr. 20, 2021).

13. Court Outreach Program, *supra* note 5.

14. Press Release, Sandra Day O'Connor, U.S. Sup. Ct. Just. (Oct. 23, 2018), https://www.supremecourt.gov/publicinfo/press/public_letter_from_sandra_day_oconnor_102318.pdf.

15. *Id.*

as informed, active citizens in our nation."[16] Presiding Justice Scotland's prescient court outreach program was just the type of civic learning and engagement our young people need to take their place as informed and active citizens of our country.

II. SERVANTS TO CHARACTER: INSTILLING CHARACTER AS A CRITICAL COMPONENT OF LEGAL EDUCATION

About five years after I began arguing cases before the California Supreme Court and Courts of Appeal, I transitioned to working as an appellate court judicial attorney at the Third Appellate District—the same court in which I had argued my first case at the high school gymnasium. The supervising appellate court attorney, Timothy Schooley, was finishing up many years of teaching Appellate Advocacy at UC Davis King Hall, and he asked me if I might be interested in taking over. I was excited at the possibility of teaching a subject I loved at my alma mater.

In preparing to teach, I came across an essay entitled *The Purpose of Education* that Dr. King wrote for the Morehouse College newspaper in 1947.[17] Dr. King explained that "education has a two-fold function to perform in the life of man and in society: the one is utility and the other is culture."[18] Education needs "to teach one to think intensively and to think critically. But education which stops with efficiency may prove the greatest menace to society. . . . We must remember that intelligence is not enough. Intelligence plus character—that is the goal of true education."[19]

At first, I thought teaching Appellate Advocacy would not lend itself to teaching about character. But as

16. *Id.*

17. Martin Luther King Jr., Editorial, *The Purpose of Education*, MAROON TIGER (Jan. 1, 1947), https://kinginstitute.stanford.edu/king-papers/documents/purpose-education.

18. *Id.* ¶ 2.

19. *Id.* ¶¶ 4, 6.

I thought about the better appellate advocates whose briefs I had read and whose oral arguments I had heard, they shared certain characteristics. Their writing was simple and succinct, showing respect for the readers' intellect and time. They fully disclosed adverse facts and law. And they showed respect for the trial courts and their friends on the other side.

Then I thought about how best to convey these characteristics to my students. In class, I used examples of appellate advocacy techniques from the book, *The Winning Brief* by Bryan Garner.[20] The book cited interviews between Garner and some of the Justices of the United States Supreme Court in which the Justices spoke of these characteristics.[21] I realized that the words of the Justices were among the best teaching tools I could use, so, I began playing parts of the video interviews for my students.[22]

Regarding simplicity and succinctness, here was some of what Justice Anthony Kennedy, Justice Stephen Breyer, Justice Ruth Bader Ginsburg, and Justice Samuel Alito had to say. Justice Kennedy said about legalese, "We might think we're saying something important when we're really not. It can be pretentious."[23] Justice Breyer was a bit bolder: "Legalese—you mean jargon? Legal jargon? Terrible! Terrible! I would try to avoid it as much as possible. No point. Adds nothing."[24] Justice Ginsburg summed it up this way: "If you can say it in

20. *See generally* BRYAN A. GARNER, THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL AND APPELLATE COURTS (Oxford University Press, 2d ed., 2004).

21. *See, e.g., id.* at 4 n.1.

22. *See Garner's Interviews*, LAWPROSE, https://www.lawprose.org/bryan-garner/videos/garners-interviews/ (last visited Apr. 20, 2021).

23. Bryan A. Garner, *Interviews with United States Supreme Court Justices: Anthony M. Kennedy*, 13 SCRIBES J. LEGAL WRITING 79, 98 (2010), https://legaltimes.typepad.com/files/garner-transcripts-1.pdf [hereinafter Garner, *Interview with Anthony M. Kennedy*].

24. Bryan A. Garner, *Interviews with United States Supreme Court Justices: Stephen G. Breyer*, 13 SCRIBES J. LEGAL WRITING 145, 156 (2010), https://legaltimes.typepad.com/files/garner-transcripts-1.pdf.

plain English, you should."[25] When asked about other tips for brief writing, she advised that "it isn't necessary to fill all the space allotted. . . . Lawyers somehow can't give up the extra space, so they fill the brief unnecessarily, not realizing that eye-fatigue and even annoyance will be the response they get for writing an overlong brief."[26] And Justice Alito attributed the overlong brief to "the old adage, 'If I'd had more time, I would have written less.'"[27]

Regarding full disclosure of adverse facts and law, here was some of what Chief Justice John Roberts and Justice Kennedy had to say. Chief Justice Roberts explained that the "more effective oral argument, the more effective brief, is one that is more candid about [the weaknesses in their cases]. . . . [A]rguments . . . can be very effective [when s]omebody gets up and says, 'I think the weakest part of my case is this.' Or, 'If you read this case this way, as the opponents, my colleagues, my brother says you should, you're going to rule against me. Here's why you shouldn't.'"[28] Justice Kennedy phrased it similarly when he advised that the "good lawyer is one who says, '. . . . We recognize that there are authorities against us on this point. We recognize, in fact, Your Honor, that this is an uphill battle, but we are here to tell you why we think this rule should be adopted.' Now, that's an honest statement."[29] And he cautioned against leaving an "opening for your learned friend on the other

25. Bryan A. Garner, *Interviews with United States Supreme Court Justices: Ruth Bader Ginsburg*, 13 SCRIBES J. LEGAL WRITING 133, 141 (2010), https://legaltimes.typepad.com/files/garner-transcripts-1.pdf [hereinafter Garner, *Interview with Ruth Bader Ginsburg*].

26. *Id.* at 137.

27. Garner, *supra* note 22; *see also* Bryan A. Garner, *Interviews with United States Supreme Court Justices: Samuel A. Alito, Jr.*, 13 SCRIBES J. LEGAL WRITING 169, 174 (2010), https://legaltimes.typepad.com/files/garner-transcripts-1.pdf.

28. *See also* Bryan A. Garner, *Interviews with United States Supreme Court Justices: John G. Roberts Jr.*, 13 SCRIBES J. LEGAL WRITING 5, 35–36 (2010), https://legaltimes.typepad.com/files/garner-transcripts-1.pdf.

29. *See also* Garner, *Interview with Anthony M. Kennedy*, *supra* note 23, at 90.

side to say that you have been selective with the facts."[30] Instead, you acknowledge up front that "you're talking about [your client's] side" of the facts, and "say, 'These facts are so important that in our respectful submission they wholly overcome what [the other side] is going to tell you, which is that . . . .' And then you state [that side] and try to take the wind out of his or her sails in that respect."[31]

Finally, regarding respect for the trial courts and friends on the other side, Justice Ginsburg explained:

> it isn't necessary to get your point across to put down the judge who wrote the decision you are attempting to get overturned. It isn't necessary to say anything nasty about your adversary or to make deriding comments about the opposing brief. Those are just distractions. You should aim to persuade the judge by the power of *your* reasoning and not by denigrating the opposing side.[32]

As a conclusion to these video interviews that I played for my students, I ended each week by emailing them inspirational quotes from diverse historical and contemporary figures. But the one quote that I included every time at the very end is that from Dr. King to remind both my students and me, "Intelligence plus character—that is the goal of true education."[33]

III. SERVANTS TO OUR DEMOCRACY: TEACHING THE INTERCONNECTEDNESS OF THE PRINCIPLES OF THE UNITED STATES JUDICIARY TO OUR INTERNATIONAL COLLEAGUES

At the same time that Supervising Attorney Schooley asked if I might be interested in taking over his Appellate Advocacy class, he mentioned he also taught

30. Garner, *Interview with Anthony M. Kennedy*, *supra* note 23, at 86.

31. *Id.*

32. Garner, *Interview with Ruth Bader Ginsburg*, *supra* note 25, at 142 (emphasis original).

33. King, *supra* note 17, ¶ 6.

summer classes at King Hall to foreign judges, lawyers, and law students and asked if I might be interested in taking over those as well. As the child of immigrants, whose parents stressed a love of this country and the importance of education and the opportunities that both provided, this possibility excited me too.

In preparing to teach these summer classes, I pored over Schooley's materials and came across his notes for a class on the United States judiciary. At both the beginning and end of the class, he posed the same question to our international colleagues: "Do you think judges in the United States apply the law objectively, without bias and without regard to politics?" What a probing question and one to which I also wanted an answer. So, when I took over the class from Schooley, I asked this same question at the beginning and end. I was saddened that at the beginning of class, my international colleagues answered "no" to the question consistently and almost unanimously. But what I found heartening was that at the end of class, some had changed their answers to "yes," meaning that at least some now believed that judges in the United States did apply the law objectively.

What do I think caused them to change their minds? Education about how our judiciary functions. In his notes on the United States judiciary—notes that I have incorporated when I teach—Schooley, and then I, explained a number of bedrock principles of the United States judiciary that promote objective decision-making. These include public trials and court hearings, the separation of powers, stare decisis and precedent, and a system of appellate review. My international colleagues at King Hall came from all over the world including Brazil, Argentina, Germany, Japan, India, Saudi Arabia, and the United Arab Emirates. In my interactive classes, I have learned that they come to our country knowing most of these principles. But most have not discussed why these principles taken together strengthen the independence of the United States judiciary.

Like many of us, my international colleagues seemed to learn best by example. An example I've used

to illustrate some of these principles is *United States v. Nixon*.[34] It is a case about whether courts could limit President Richard Nixon's power to claim "absolute executive privilege" over releasing "tape recordings and documents relating to his conversations with aides and advisers" and whether courts lacked jurisdiction to resolve the dispute.[35] The case started in the district court and made its way up to the Supreme Court, with oral arguments open to the public and written decisions that anyone could read explaining the courts' rulings that relied on prior courts' reasoning.[36] At the Supreme Court, the Justices acknowledged that "the President's need for complete candor and objectivity from advisers calls for great deference from the courts" and that our democracy contains the principle of executive privilege.[37] But the Justices rejected President Nixon's claim to an "absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."[38] They reasoned that "an absolute, unqualified privilege . . . would plainly conflict with the function of the courts," because the Framers of the Constitution "divid[ed] and allocate[ed] the sovereign power among three co-equal branches."[39]

In following Schooley's lead to teach these principles together, I am reminded of the words of Dr. King in his *Purpose of Education* essay: "The complete education gives one not only power of concentration, but worthy objectives upon which to concentrate."[40] I believe it worthy to educate our international colleagues about the ways in which the hallmarks of the United States judiciary connect to foster a system where judges apply the law objectively.

---

34. 418 U.S. 683 (1974).
35. *Id.* at 686.
36. *Id.* at 688–91.
37. *Id.* at 706.
38. *Id.*
39. *Id.* at 707.
40. King, *supra* note 17, ¶ 6.

IV. SERVANTS TO UNITY: COLLABORATING FOR AN INCLUSIVE JUDICIARY

While I was continuing to work with Schooley at the Third Appellate District, one of our colleagues introduced me to a fellow South Asian attorney who practiced law in the greater Sacramento area. He was the second South Asian attorney I had met there among the approximately 25,000 South Asians living in Sacramento County. We recognized the value of a group to promote the professional advancement of diverse attorneys and law students, so we formed the South Asian Bar Association of Sacramento.[41]

In outreach for the South Asian Bar, I learned of a revolutionary bar association created two decades before. The Unity Bar of Sacramento was a coalition formed by the presidents of the then-three ethnic bars in Sacramento: Renard Shepard (the Wiley Manuel Bar Association of Black lawyers), Jerry Chong (the Asian Bar Association), and Luis Céspedes (the La Raza lawyers).[42] Shepard and Chong were litigators who met while waiting for their cases to be called at the Sacramento courthouse. [43] Chong was a Marine and Shepard was a soldier in the Army, so they also had that in common.[44] Chong mentioned his association's goal to have an Asian American appointed to the bench. [45] Chong recalled that Shepard thought it would be good to get the three ethnic bars together to talk about how to make that happen.[46] But they did not know the president of La Raza, because there was "no collaboration between the ethnic bars at that time."[47] They quickly discovered that it was

41. Shama Mesiwala, *South Asian Lawyers Kick Off a New Local Bar Associati*on, SACRAMENTO LAWYER, July–Aug. 2008, at 13 (on file with author).

42. Telephone interview with Jerry Chong, Past President of the Asian Bar Association of Sacramento (December 3, 2020) [hereinafter Chong Interview].

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

Céspedes. He would become the "motivational force" and "visionary that made [the collaboration] happen."[48] According to Chong, Céspedes "understood the strength the ethnic bars would gain in coming together" rather than each individually pushing their own candidates for judicial appointments.[49] So the three made a "mutual pact" to support and endorse each other's judicial candidates.[50]

Their collaboration resulted in the first annual Unity Bar Dinner in 1987.[51] Céspedes gave the keynote address in which he "spoke about our alliance and our purpose in coming together."[52] He predicted that "ethnic minorities in California would constitute over 50 percent of the total population in the 21st century."[53] And in conclusion he stated, "We will set the agenda for California in the 21st century."[54] Attending the dinner that night were those influential in judicial appointments, including the Chief Deputy Appointments Secretary for the governor, Terrance Flanigan, and many of Sacramento's trial judges, including then Sacramento Superior Court Judge Arthur Scotland, and Sacramento Municipal Court Judge George Nicholson.[55]

The revolutionary work of Chong, Shepard, and Céspedes in bringing together their three ethnic bar associations now has grown to include several other local bar associations such as Women Lawyers of Sacramento, the Sacramento Lawyers for the Equality of Gays and Lesbians, the South Asian Bar of Sacramento, and its latest addition, the Leonard M. Friedman Bar Association of Sacramento.[56]

---

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *See* VIDEOTAPE: THE CRUZ REYNOSO BAR ASSOCIATION APPOINTMENTS (Apr. 29, 2021), https://cloud.mail.ru/stock/p5T1dmteHLCLDpVMHga1bu29 (remarks by Jerry Chong at 12:26).

53. *Id.* (remarks at 12:38).

54. *Id.* (remarks at 12:48).

55. Unity '87 Program (June 20, 1987) (on file with author).

56. *Id.*

It was the Friedman Bar that invited Justice Richard Fybel of the California Court of Appeal, Fourth Appellate District to deliver a critical keynote address during the Unity Bar's 29th annual dinner entitled, *Lessons from History: The Failure of the Judiciary in Nazi Germany and the Post-War Nuremberg Trial of Judges*, which was based off an article he wrote earlier.[57] Justice Fybel told the 300 judges, lawyers, and law students attending the dinner that night that when judges lose sight of or ignore their duty to apply and enforce the law, unity is forsaken and injustice inevitable.[58] He cited the example of the Katzenberger case involving an alleged relationship between a Jewish merchant and community leader and an Aryan woman who owned a photography shop.[59] In pronouncing the death sentence of the Jewish gentleman for "racial pollution and perjury,"[60] the judges claimed they were "just applying the law."[61] While their opinion did have the "trappings of a legitimate court opinion," including factual findings and reliance on German Supreme Court precedence,[62] an analysis showed they were not "just applying the law."[63] The judges "applied the law in an aggressive manner" and justified their decision "on Nazi race doctrine and [thus] became fully coordinated into the Nazi system."[64] In citing this example, Justice Fybel told attendees of the Unity Bar dinner that judges must "never submit to intimidation" and must be "honorable and ethical in all they do."[65]

---

57. Richard D. Fybel, *Assassins in Judicial Robes*, GAVEL TO GAVEL, L.A. SUPERIOR CT. JUD. MAG. (Spring 2013), http://iviewit.tv/Simon%20and%20Shirley%20Estate/Assassins%20In%20Judicial%20Robes%204-Page%20Article%20Gavel%20to%20Gavel%20Spring%202013%20IsFalsepdf.

58. George Nicholson, Sacramento is a Center for Inclusion and Unity, Part 3, at 2 (Dec. 28, 2015) (unpublished manuscript) (on file with author).

59. Fybel, *supra* note 57, at 31.

60. *Id.* at 32.

61. *Id.*

62. *Id.* at 32–33.

63. *Id.* at 32.

64. *Id.*

65. Nicholson, *supra* note 58, at 2.

Keynote speakers such as Justice Fybel and the Unity Bar as a whole has resulted in our community's education about the importance of inclusion, culminating in a local judiciary that reflects the diversity inherent in the richness of California's population. And thirty-three years after that first Unity Bar dinner, its cofounder and keynote speaker, Luis Céspedes, was appointed Judicial Appointments Secretary in the Office of Governor Gavin Newsom to help "continue to build a bench that reflects the rich diversity of California."[66] Céspedes had the foresight to understand the strength in coming together based on his own decades of work starting "[f]rom his days as a 15-year-old going on strike with the United Farm Workers alongside César Chávez."[67] His life of experience "champion[ing] the cause of civil rights, equal justice, diversity and inclusion"[68] is what I believe Dr. King was speaking of in his *Purpose of Education* speech when he said "[t]he broad education will, therefore, transmit to one not only the accumulated knowledge of the race but also the accumulated experience of social living."[69]

V. SERVANTS TO REDRESSING INJUSTICE: IMPROVING OUR COURTROOMS FOR ALL WHOM WE SERVE

While continuing outreach with the South Asian Bar and after eighteen years as an appellate attorney, I was honored by the opportunity to serve as a commissioner and then superior court judge in California. My first assignment was in the dependency court, which adjudicates cases of alleged child abuse and neglect. I was familiar with these cases, because I represented parents

66. Press Release, Gavin Newsom, Governor of Cal., *Governor Newsom Announces Appointment of Luis Céspedes as Judicial Appointments Secretary* (Dec. 10, 2020), https://www.gov.ca.gov/2020/12/10/governor-newsom-announces-appointment-of-luis-cespedes-as-judicial-appointments-secretary/.

67. *Id.* ¶ 2.

68. *Id.*

69. King, *supra* note 17, ¶ 6.

whose rights had been terminated and helped write draft opinions adjudicating these cases on appeal. My familiarity had taught me that a frequently litigated issue both in the trial and appellate courts was the Indian Child Welfare Act.[70] For those unfamiliar, some context is important.

In 1978 Congress passed the Indian Child Welfare Act (ICWA). It was intended as a federal mandate to those involved in the child custody system to work collaboratively with Tribes to prevent the breakup of Indian families and Tribes and to redress past wrongs of the American child custody system. Congress found "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and Institutions" (25 U.S.C. § 1901(4)).[71]

As a trial court judge, I attended a training on the Indian Child Welfare Act that included a component on historical and cultural perspectives. I learned that my state's capital of Sacramento, the location of my courtroom, was home to a population where 1.5 percent of residents identified as American Indian or Alaskan Native. This included residents from both local and out-of-state tribes. Part of the reason for Sacramento's geographically diverse Native American community was that from the 1950s to 1970s, over 100,000 Native Americans who lived on reservations were forced to resettle in urban areas like Sacramento. And many of them continued live in those urban areas where they were forced to resettle, adding to the "Urban Indian experience."[72] This forced geographic relocation likely explained why, when asked I parents in my courtroom if they had Native American

70. 25 U.S.C. §§ 1901–1963 (1978).

71. CTR. FOR JUDICIARY EDUC. & RSCH., BENCH HANDBOOK: THE INDIAN CHILD WELFARE ACT, at 3 ¶ 2 (2013), https://www.courts.ca.gov/documents/ICWAHandbook.pdf.

72. *Our Community*, SACRAMENTO NATIVE AM. HEALTH CTR., https://www.snahc.org/our-community/ (last visited July 6, 2021).

heritage (as I am required to do by law), so many stated they had such heritage from all over the country.

As the training progressed, I listened to testimonials from Tribal representatives about the poor treatment they had received in our local courtrooms. Here was one example. Tribal representatives who had often travelled four to five hours for a court hearing at significant financial expense were not invited into the courtroom to participate in informal discussions that the judges held before a case was called on the record. When the case was called on record, the Tribal representatives were told the case was continuing and to come back on a date the court had already selected. Often times these dates did not work with the Tribe's schedule.

After listening to the testimonials, I thought there must be a way to improve Tribes' access to justice. During a break in the training, I mentioned to my supervising judge, Jerilyn Borack, the idea of starting an Indian Child Welfare Act courtroom to address some of the poor treatment the Tribes had recounted. She said "yes" on the spot and then asked me to get the final okay from our court's presiding judge, Russell Hom. I emailed him the next day, and he wrote back a "yes," too. At first, I was surprised at how quickly they agreed. Upon further reflection, it made sense to me. Judge Borack was of Jewish heritage, so she was keenly aware of her people's mass and heinous extermination; Judge Hom was of Japanese heritage, so he was keenly aware of his people's internment by our own country. In other words, the idea that governmental institutions could be the cause for deprivation of fundamental human rights was familiar to them.

Within two months, and due to the work of court leadership and of all justice partners including the county agency that files the petitions in child welfare cases, the Indian Child Welfare Act courtroom was up and running in Sacramento. The hallmarks of the new courtroom were simple but effective: cases under the Indian Child Welfare Act were directly filed in one courtroom that specialized in hearing these cases. As a result,

I became familiar with the Tribal representatives who began appearing regularly in my courtroom. With that familiarity came a better understanding of their challenges and ways our court might address them. One recurring challenge was the Tribes' limited financial resources to travel to court to attend hearings and trials. So many times, the Tribes were limited to phone appearances while the other participants participated live in the courtroom. Our court's executive staff suggested solving this problem by installing technology that allowed the Tribes to appear on screen remotely. The technology arrived the week the COVID-19 pandemic hit our courts—so my courtroom became the first in the courthouse to hold remote hearings where all participants appeared live on screen, which benefitted the Tribes and ultimately all court users.

As a result of this improved communication, our justice partners increased their collaboration with the court and Tribes in these cases. The county agency that files the petitions in dependency court assigned a social worker with Native American heritage to many of the cases under the Indian Child Welfare Act. That social worker developed a working knowledge of the resources such as parenting and counseling classes tailored to serving the urban Native American population to help prevent the breakup of their families. The county agency also worked diligently to train all their social workers to call a family's Tribe before the county filed a child welfare petition to work collaboratively with the Tribe to find ways that potential abuse may be ameliorated without court intervention.

As a result of this new Indian Child Welfare Act courtroom, the Tribes have been able to more fully participate in the cases by increased presence, early input, and collaboration. And none of these changes were particularly difficult to accomplish. What they required was listening to how the Tribes were treated in our court system, wanting to make the situation better, and buy in from our justice partners. When I reflect on these changes my court community has made to improving

access to justice for our Native families, I am reminded of a saying from Dr. King about timing: "we must . . . realize that the time is always ripe to do right."[73]

VI. CONCLUSION: THE TIME IS RIPE FOR US TO BE SERVANTS TO JUSTICE

This last quote about timing in the previous section from Dr. King came from his final Sunday sermon at the National Cathedral in Washington, D.C., just four days before his assassination.[74] The sermon was entitled *Remaining Awake Through a Great Revolution*.[75] Dr. King warned us that

> one of the great liabilities of life is that all too many people find themselves living amid a great period of social change, and yet they fail to develop the new attitudes, the new mental responses, that the new situation demands. They end up sleeping through a revolution.
>
> . . .
>
> [N]othing will be done until people of goodwill put their bodies and their souls in motion.[76]

So, the time is ripe for each of us "people of goodwill" to put our "bodies and . . . souls in motion" and be servants to justice in whatever forms that may take.

---

73. Martin Luther King Jr., Remaining Awake Through a Great Revolution, sermon delivered at National Cathedral, Washington D.C., ¶ 20 (Mar. 31, 1968) (transcript available at https://kinginstitute.stanford.edu/king-papers/publications/knock-midnight-inspiration-great-sermons-reverend-martin-luther-king-jr-10).

74. *See id.*

75. *See id.*

76. *Id.* ¶¶ 6, 44.