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**TRIBUTES TO THE HONORABLE
ARTHUR L. ALARCÓN
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

INTRODUCTION

*Laurie L. Levenson*¹

Judge Arthur L. Alarcón was an extraordinary man, as the tributes in this special issue of the *Loyola of Los Angeles Law Review* will attest. He set the standard of what it meant to be a great lawyer, judge, teacher, mentor, and human being. As with so many others, the Loyola Law School community will be forever grateful to Judge Alarcón for his support and friendship.

Although Judge Alarcón attended a different law school, he adopted Loyola Law School as his own. He taught here, helped create a Center for Ethical Advocacy, regularly hired Loyola students as his clerks and externs, and selflessly reached out to help our law school in any way he could. Generations of Loyola graduates have been fortunate to hear him speak, usually on the need for civility in our profession. They have taken those lessons to heart because they saw the living example of what it means to be a man of honor and service.

I am grateful that the *Loyola of Los Angeles Law Review* has dedicated this issue to Judge Alarcón. The tributes in this edition detail Judge Alarcón's myriad accomplishments. We are honored that our nation's leaders, from President Jimmy Carter to distinguished jurists and lawyers, have contributed to this special tribute.

As for myself, I can simply say that Judge Alarcón meant the world to me. He was a friend and mentor. He inspired me to always

1. Professor of Law & David W. Burcham Chair in Ethical Advocacy, Loyola Law School.

be the best lawyer and professor I could be. He believed in me and showed me the power of the law to help others. Four years ago, Loyola Law School dedicated Loyola's Project for the Innocent. We adopted as our motto the words by which Judge Alarcón lived: "Who can I help today?" To honor Judge Alarcón, it is insufficient to simply recall his legal accomplishments. As the tributes today show, there must be a rededication to using the law to help others. That is the true legacy Judge Alarcón has left us.

Laurie L. Levenson

President Jimmy Carter

I am delighted to join in the many tributes to the late Judge Arthur L. Alarcón.

It was my honor as president to select Judge Alarcón to serve on the U.S. Court of Appeals for the Ninth Circuit, and since then to observe his continuing notable service to our nation.

There were substantial pressures at that time to reserve these more exalted judicial appointments for more prominent members of the established national hierarchy, but the accounts I received about Judge Alarcón's service at the state and local level, plus his reputation for political courage and sound judgment, convinced me that he was the best choice for the position. I understand that he was the first Latino appointed to the Ninth Circuit Court, and he has been a wonderful inspiration to everyone, regardless of race or background, who has observed the exemplary legacy that he leaves behind.

Loyola's recognition of Judge Alarcón's contributions is a tribute both to him and to your law school.

President Jimmy Carter

**REMARKS IN HONOR OF JUDGE
ARTHUR L. ALARCÓN
FRIDAY, FEBRUARY 6, 2015
CATHEDRAL OF OUR LADY
OF THE ANGELS**

Justice Nora M. Manella

Judge Arthur Alarcón was an exemplar of a rare and vanishing breed—a child of the Depression, a decorated veteran of the Second World War, and perhaps that rarest of breeds—a moderate Republican.

Although born to modest means, Arthur Alarcón got off to a fast start. Returning from WWII with a Bronze Star, a Purple Heart, and four Battle Stars for leading troops in combat, he apparently concluded that saving Western Civilization was not enough, and thereafter proceeded to devote virtually the entirety of his legal career to public service. He was a prosecutor, a trusted advisor and confidant to Governor Pat Brown, and then, of course, for over half a century, a judge—first on the state trial and appellate benches, and for the past 35 years on the Ninth Circuit.

My own introduction to Judge Alarcón came nearly three decades ago, appropriately enough, in a courtroom in the Ninth Circuit, where I was appearing as a federal prosecutor to argue for the affirmance of a conviction I'd secured in the trial court. Fortunately, both the law and the facts were on my side. For reasons I've never fully fathomed, on the basis of that single oral argument, Judge Alarcón decided to make me his project, and thereafter took every opportunity to encourage and indeed push me to pursue career opportunities I would never have considered. It is no exaggeration to say that every gubernatorial and presidential appointment to every state and federal position that followed had its origins in Judge Alarcón's support and guidance. He never tired of mentioning that oral argument—and protestations to the contrary, I never tired of hearing about it.

But while Judge Alarcón's role in my professional life was unique for me, it was not unique for him. It was classic 404(b) evidence—his *modus operandi*.

Having achieved a high level of professional distinction at a fairly young age, he turned his prodigious energies to looking for ways to help others fulfill the promise he saw. To scores of young lawyers with more potential than confidence, he was a counselor, an encourager, a teacher, a promoter, a consigliere, and a Yoda. There's a reason his former clerks proudly refer to themselves as "Alarcónians"—he truly became a part of their identity, and he is in their DNA.

His mentorship was not limited to those in the legal profession, but extended to providing support and assistance to more civic organizations than I can mention, including the Boys and Girls Clubs, the Council on Mexican-American Affairs, Las Familias del Pueblo, and the Performing Arts Council.

No tribute to Arthur Alarcón would be complete without a mention of his interest in women—not in a louche way—but in a way that demonstrated how much he cared that women of talent fulfill their career potential. Decades before anyone thought of—much less coined—the term "lean in," Arthur Alarcón was making women lean in. To women of my generation—taught to work hard, do their best, and hope to be recognized—Arthur provided critical forward momentum. Like a gentle breeze at their backs, he moved women forward toward possibilities he recognized—even if they did not. The late, great United States District Judge Florence Marie Cooper comes to mind as just one example.

His interest wasn't limited to grown women with law degrees—he was instrumental in seeing the Boys Clubs of LA become the Boys *and* Girls Clubs. In fact, his interest wasn't even limited to women who were alive—he was the moving force behind renaming the Criminal Courts Building in honor of Clara Shorridge Foltz, California's first woman attorney and the country's first woman deputy district attorney. Sixty-eight years after her death, Arthur Alarcón was helping Clara lean in.

I don't mean to minimize Judge Alarcón's mentorship of men, but simply to note that his professional mentorship of women was more remarkable. After all, established men of prominence have been grooming younger men of promise for millennia. That has not been the case with women, and it was nearly unheard of when Judge Alarcón came of age.

If Ralph Waldo Emerson was right—that our greatest want is someone who will inspire us to do what we can—then Arthur Alarcón satisfied that want for countless people who challenged themselves to become more accomplished, more effective, and simply better human beings because of his help and inspiration.

Judge Alarcón had a particular interest in criminal law—he taught it, wrote books on it, and of course, penned the definitive article on the disfunctionality of California’s death penalty system. While some might have tackled such a thorny subject by staking out a moral position on the death penalty itself and then marshaling facts to support it, Judge Alarcón did something different. Taking a more agnostic view, he demonstrated with irrefutable facts and ineluctable logic that however one felt about the penalty in theory, it simply was not working.

In the years to come, when historians document the demise of the death penalty in California, they will cite the work of Judge Arthur Alarcón—and his co-author Paula Mitchell—as the pivot point in the debate.

I probably should mention that in his spare time, Arthur Alarcón had a day job—he was, for over three and a half decades, an eminent judge of the Ninth Circuit. The hundreds (or perhaps thousands) of opinions he wrote, both for the Ninth Circuit and while sitting in other circuits across the nation, will continue to shape the law of the western United States and beyond for years to come.

The tributes of his fellow circuit judges in the past week confirm what everyone would suspect—that as a colleague he was smart, engaged, gracious, and open-minded. His opinions are direct, straightforward, and devoid of showiness. He didn’t speak to hear his own voice, and he didn’t write to admire his own exquisite prose. His opinions are notable for their clarity of thought, their concern for their practical effects, their intellectual honesty, and their notable absence of snarkiness.

This last fact should not surprise us, as Judge Alarcón was, above all, a kind, gracious, and considerate man with genuine respect for his fellow human beings. He had his standards and did not hesitate to take to task those who failed to meet them—particularly prosecutors—but he derived no pleasure from castigating others. He liked a good joke—but not at someone else’s expense. When the

blueprint for Arthur's DNA was being printed, the "snide gene" went missing.

And while for all too many of us, advancing age brings increasing crankiness, cynicism, and even indifference, that was never the case with Arthur. Indeed, when Professor Laurie Levenson and I would pick him up for our regular lunches at Barragan's, he would bound down the steps of the judges' garage at 312 N. Spring Street, slip into the car with the cat-like grace of Cary Grant, launch into a description of some interesting legal issue, and invariably wind up saying, "What do *you* think?" His eyes sparkled, and he was quick to laugh. Indeed, his energy appeared inexhaustible and his intellectual curiosity inextinguishable.

So vivid was Arthur's persona that it's hard to imagine the world without him. The thought of never again lunching with him at Barragan's—ordering corn (not flour) tortillas—never again hearing him recount something new and funny, and never again hearing him ask, "And what do *you* think?" is inconceivable. I guess this also means I'll never again hear him talk about that oral argument. Mercifully, however, no one else will have to hear about it either.

While a eulogy is meant to pay tribute in words, any tribute to Arthur Alarcón would be deficient were it limited to words. The real tribute we owe this extraordinarily decent, kind, loving, accomplished, generous, outwardly-directed man, of course, is to follow the example he set—as best we can—not merely to develop our own talents, but to help the next generation of promise do the same. Anyone who had the privilege of knowing the truly, genuinely "honorable" Arthur Alarcón simply has no excuse for not trying to emulate him. And that is the tribute we should all vow to pay him.

Justice Nora M. Manella
California Court of Appeal, Second District

LESSONS FROM MY FATHER

Judge Gregory W. Alarcón²

My father died on January 28, 2015. I gave a brief eulogy which, in five minutes, attempted to summarize what my father meant to me and the important lessons he taught me about life and the law. That experience, though difficult, unleashed a flood of memories and I wrote down everything I could think of, fully aware that most would be trimmed for the service. What follows is a more complete version of what I would have said if I had more time to describe the impact my father had on my life, what lessons he taught and the call to carry on his lessons.

I was lucky, along with my brother Lance and my sister Jan, to have a front-row seat in the life of my father. He taught us great things. Whether you worked with him, opposed him, or appeared in front of him, or just had the chance to know him, he affected you. As Judge Barry Silverman said, “It didn’t matter whether you were a judge or the janitor.” Everyone mattered to my father.

I am not the only person to whom my father has been a mentor. Many times, after presiding over a hearing, I am approached by an attorney and told stories about my father and the impact that he had on his or her life. Something he did, something he said, or a life lesson he taught. Whether a student, an extern, a law clerk, or an attorney who appeared in front of him, I am told how my father has influenced an entire career. And they all ask me, “What it is like being Arthur Alarcón’s son?” And I respond, “It’s been a great honor and a privilege for me.”

2. Judge Gregory W. Alarcón has been a judge for over twenty-one years. Before that, he was a deputy attorney general for the State of California, a deputy district attorney for Los Angeles County, and an assistant United States Attorney for the Central District of California. Judge Alarcón received a J.D. from Loyola Law School in 1981 and a B.A. from UCLA. For the past twenty-four years, he has been an adjunct professor at Pepperdine University School of Law teaching trial practice and related subjects. He is also active in training and educating new judges and teaching ethics to all judges throughout the state. He is a frequent lecturer on various topics on trial issues including subjects such as “Lessons from Landmark Trials,” “Judicial Personalities,” “Creative Solutions for Keeping and Motivating Jurors,” “Coping With Judicial and Lawyer Stress,” “Civility in Court,” “Hamlet for Lawyers,” “Ideal Mentors for the Courtroom,” and many others. He has written numerous articles on legal issues for lawyers and judges. In 2013, Judge Alarcón was given the 2013 Constitutional Rights Foundation’s “Judge of the Year” award and a Judicial Excellence award from the Mexican American Bar Association. He has co-written a C.E.B. Action Guide instructing lawyers how to present evidence at trial.

His fifty years as a judge created a legacy that was a testament to his concern for others, his endless patience, and his brilliance. But, for me, he was just my dad.

My father spoke little about the end of his life. He was such a vital force; he was consumed with his work, new cases, novel issues, and new adventures. He lived his life as if he would go on forever.

He loved the music of Louis Armstrong. I remember on one of the rare moments that he would acknowledge the idea that he wasn't going to live forever, he asked me to promise to play "What a Wonderful World" at his funeral. I promised him it would be played. He loved the song so much that he clearly wanted to be a witness to his life philosophy played out in two minutes and twenty-one seconds. Six months before his passing, it was played at the close of his final remarks at an event honoring his fifty years of service as a judge at Los Angeles City Hall.

When he died, the Cathedral of our Lady of Angels was set as the location for the service, a favorite place of solace and spiritual reflection for my father. When selecting the music for the service, "What a Wonderful World"³ was requested. It was recommended by the musical director that the song be played as a solo piano piece when people walked in to the service. While I gathered that the intent of this suggestion was to keep the tone of the service solemn and focused on sacred music, I was concerned that the lyrics of the song would be lost. Until that time, I had never focused on the words to the song so as to understand why my father embraced it with such a conviction. I investigated and learned more about the song. First, contrary to my original impression, it was not a standard from the Great American Songbook. Even though it sounds like one, it was written in the 1960s as a call for healing from the civil and racial unrest in the United States.⁴ This insight gave me the idea to focus on selected verses of the song and illustrate how the lines relate to my father's philosophy. The lyrics reveal a great deal about my father. My father taught me life lessons that will likely take me a lifetime to fully understand and appreciate. Some of these lessons are so vivid and etched in me that I wanted to share them.

3. BOB THIELE (AS GEORGE DOUGLAS) & GEORGE DAVID WEISS, WHAT A WONDERFUL WORLD (ABC 1967).

4. GRAHAM NASH, OFF THE RECORD: SONGWRITERS ON SONGWRITING 178 (Andrew McMeel Publishing 2002).

The following are some lessons from the song I presented at the service, with an expanded section that shares a number of other invaluable lessons I learned from my father.

CULTIVATE LIFE

The song begins with images of “trees of green, red roses, too,” and “seeing them bloom, for me and you.”

My father loved his gardens. He loved to watch things grow. In his life, he cared about the dignity of every living thing. At the funeral, there were pictures of that garden with my father and his youngest granddaughter, Polly. He cherished Polly and his two other granddaughters, Laura and Melody, and his great grandson, Vincent.

He also appreciated and sought out the beauty in the world with the love of his life, his wife Sandy. In their 35 years together, they traveled the world and savored every new adventure.

SEE THE BEAUTY IN OPPOSITES AND BRING THEM TOGETHER

“I see skies of blue and clouds of white. The bright blessed day, the dark sacred night.”

These lyrics speak of the beauty and harmony of polar opposites—day and night. The lyrics repeat my father’s approach to life and the law: each side deserves dignity and consideration. Each has worth.

My father was fair. He was a model of integrity. Can you name a lifelong Republican who has been appointed, elevated, or nominated by Democrats? I can think of only one: my dad.

My dad went beyond politics and built bridges and worked with everyone to achieve resolution, harmony, and understanding.

Further, he fully accepted the fact that every choice made in life has its consequences. He suspected earlier in his career—and it was confirmed later—that he would never be appointed nor elevated by a Republican.⁵ Ultimately, politics did not concern him. Only the work and the service to others mattered.

5. Interview by Carlos Vasquez, UCLA Oral History Program, for the Cal. State Archives State Gov’t Oral History Program, 370–71, with Arthur L. Alarcón (1988).

FIGHT FOR A WORLD THAT INCLUDES EVERYONE

*“The colors of the rainbow, so pretty in the sky. Are also
on the faces of the people going by.”*

The song celebrates the inclusion of everyone, without regard to gender, color, or ethnicity. My father stood for the rights of everyone.

Spanish was his first language. My father celebrated his heritage through trips back to Mexico. He remembered fondly a trip with his father in 1960 to discover where his family came from and to imagine the moments when his grandfather had to flee Mexico or face the wrath of an avenging Pancho Villa.

He knew the importance of being the first Hispanic on the Ninth Circuit. He never forgot that. He encouraged all minorities to dedicate their lives to public service.

His encouragement of the careers of women was legendary. I am certain a number of women can tell their own personal story about how he would fight for women and push for their success.

MENTORING IS A LIFELONG COMMITMENT

*“I hear babies cryin’. I watch them grow. They’ll learn
much more than I’ll ever know.”*

My dad filled his chambers with the best and brightest law clerks and externs. He listened to them. He respected them. He cared about their views. Nothing made him happier than to have them become a part of his large extended family.

I fondly remember bringing my own externs on Fridays to my father’s weekly law meetings in his chambers where he would be the audience and the externs would present the latest law. Before actual oral arguments, he would preside over mock oral arguments with the externs so he could prepare and the externs could learn courtroom advocacy.

He celebrated all of the successes of those who worked for him and nothing made him happier than to brag about them. Many of his law clerks went on to be successful and enjoy the type of material success my father would never realize, but it was his choice. One thing I know about my father is he would gladly take the same path

of public service all over again. You knew my father was content when he was serving others.

The song lyrics may have ended, but not the lessons my father taught me.

BE PASSIONATE ABOUT LIFE

My father lived life with passion. He worked valiantly for as long as his health would allow him, working through half of his eighty-ninth year. He had no thought of retiring, ever. He had too much work to do. And he was doing what he loved.

One of my favorite sites in downtown Los Angeles is a mural covering the side of a building on 242 South Broadway. It depicts Anthony Quinn as Zorba from *Zorba the Greek* engaged in the final dance of the film which is itself a tribute to living life to its fullest. I can't pass that mural and not think of my father. Like Zorba, my father encouraged his three children to find their own passion and embrace it.

The three of us knew that being the children of this master judge carried responsibilities. Both my brother Lance and I gave serious thought as to whether it would be wise to enter the same profession as our father. Watching him and learning from him convinced me to do something that many people might have avoided, risk the inevitable comparison to someone who set the standard for excellence. But this was a risk Lance and I took because our father taught us that we have to stand tall on our own and focus on our own strengths. My sister Jan became a psychologist, serving others through helping them deal with their individual issues, also in public service.

My father encouraged and celebrated all of our accomplishments and only wanted the best for us and everyone who worked for him. In his own words "the greatest gift you can give to a child is a feeling of self-worth and confidence."⁶

ADAPT TO CHANGE AND ACCEPT NEW CHALLENGES

My father enlisted in the army in 1943 at the age of seventeen. He had great plans with this life-changing decision: to enroll in an officer training school, to attend Pomona College, and, as part of this

6. Interview by Gayle Tamler, with Arthur L. Alarcón (Jan. 20, 1991).

unique program, to become an officer prepared to assist transitional governments in Germany and Japan after the war. The dream was set for this baker's son to succeed and do his part to change the world.

The army had other plans. After he enlisted, the officer-training program was cancelled due to serious casualties in North Africa. His college plans were put on hold, and he found himself trading those promised college textbooks for a rifle when he was assigned to be in the 94th Infantry in France, Germany, and Eastern Europe, seeing combat as a sniper and fighting in the Battle of the Bulge.

Going through his papers after his death, I uncovered a letter he wrote to his family in 1945. It was after the war but he was still overseas in the infantry in Nepomuk, Czechoslovakia. He emphasized his hunger to receive the education that was put on hold when he wrote, "I feel my education has been neglected enough by the war and now that the war is over there's no excuse to neglect any longer."⁷ Education was vital to my father, but what he learned in Europe would shape his life by giving him responsibility, bravery, and an opportunity to see the necessity to be constant in the fight for liberty.

ALWAYS BE BRAVE

In Europe at seventeen as a Staff Sergeant, my father was awarded a Purple Heart, a Bronze Star, four Battle Stars, and his Infantry Badge, the medal he was most proud of. He took a stand and fought for something he believed was right.

His final wish—to be buried with his fellow soldiers in Arlington Cemetery in Virginia—happened on May 6, 2015. No matter where he served through his career as a lawyer, working in government in Sacramento or as a state and federal judge, no matter how many thousands of decisions he made that affected the lives of others, he ultimately felt at peace knowing he would return to join the soldiers who came together in his life when he was seventeen, barely out of high school, and facing an uncertain future.

RESPECT YOUR COLLEAGUES

Whether he agreed with them or not, he had unwavering respect for his colleagues. He thought about each of them as gifted

7. Letter from Arthur L. Alarcón to family (Oct. 17, 1945).

individuals with much to teach him, even in the last weeks of his life. At Christmas of 2014, at a family gathering, a little more than a month before he passed away, he talked about three places he could not wait to go: Hawaii and Alaska for Oral Arguments with the Ninth Circuit and Cincinnati, Ohio to help out the Sixth Circuit. He was so excited getting prepared but paused and said he was not sure if he was physically able to go. I suggested he handle the arguments remotely via Skype and he said he would consider it, but then he said he was concerned other judges might want to take those trips to Alaska and Hawaii and he did not want to deprive them of the chance. After being been a judge for fifty years and thirty-five years on the Ninth Circuit, my father still thought about his colleagues over himself. Unfortunately, he never made those trips. But his concern for others aptly demonstrates the kind of man he was, excited about the future but always thinking of others.

ALWAYS BE READY TO RECEIVE YOUR CALLING

There was a legendary Los Angeles Superior Court Judge named Charles Fricke (1888–1958)⁸ who had a key role in my father's life. When my father was a deputy district attorney, he was assigned to his court as a calendar deputy. Fricke was already well known for presiding over many high profile cases including the "Sleepy Lagoon" murder trial,⁹ Barbara Graham,¹⁰ Caryl Chessman "the Red Light Bandit,"¹¹ and Alexander Pantages.¹² He also wrote three books on Criminal Law, Criminal Procedure, and Evidence. He died in 1958. When his daughter was going through his papers, she found a request that my father continue to revise those books. My father had a mission that he did not know about—to continue this legacy. This unexpected collaboration became Fricke and Alarcón on

8. In addition to his judicial and writing duties, Judge Fricke was also an adjunct law professor at Loyola Law School.

9. Playwright Luis Valdez would later write a play (1979) and then a film (1981) about these events titled "*Zoot Suit*."

10. Susan Hayward would win an Academy Award for Best Actress portraying Barbara Graham (1923–1955) in the dramatic film based on this case called "*I Want to Live*" (1958).

11. Caryl Chessman (1921–1960) would write a number of books while in prison prior to his execution in 1960. One of the books, "*Cell 2455, Death Row*," would become a film released in 1955.

12. Alexander Pantages (1876–1936) was a theater impresario who launched many theaters throughout the United States, the Pantages in Hollywood being one that still exists, was tried and acquitted for the rape of a seventeen-year-old dancer named Eunice Pringle.

Criminal Law, Criminal Procedure, and Evidence.¹³ I am going to suggest that with my father's passing, we all have been given a new mission, to take my father's lessons and teach them to others.

NEVER LEAVE A CAREER YOU LOVE

When I spoke at my father's celebration for his fifty years as a judge, it made me reflect on why so few judges will stay on the bench for half a century. I have now been a judge for twenty-two years. Many judges leave the bench after twenty years to start new pursuits. While it can be argued that a federal court judge's lifetime appointment may make federal judges stay longer than state judges, the commitment cannot be explained to spend a lifetime in the law on this one distinction. My father so firmly believed in his ability to make a difference that he stayed, flourished, and broadened his scope for more than twice that time. Whether teaching, assisting other circuits, or writing numerous scholarly articles about current issues such as the death penalty, he has made a great impact on the legal community. And of course, he made that impact doing his favorite thing, which was going to work and discovering what his next case was going to be.

DON'T BE AFRAID TO FAIL

In the 1950s, my father was assigned as a deputy district attorney in Santa Monica. At this time, Rodeo Drive in Beverly Hills was just as chic and ostentatious as it is today, but the names from the past hint at a forgotten glamour names such as Chasens, Romanoffs, and Teitelbaum's Furrier. Al Teitelbaum was known as the "furrier of the stars" and the colorful owner was known for serving all of the stars who wanted to be adorned in furs. When the demand for furs started to wane in the 1950s, Teitelbaum experienced financial woes and crafted a complicated if desperate plan to stage a robbery of his store, pretend to be a victim of this armed takeover, and claim the "losses" of furs to the insurance company. The star witness for the prosecution was a man with numerous felony convictions and Teitelbaum's accomplice who worked with him in crafting this scheme. Teitelbaum never testified.

13. FRICKE & ALARCÓN, CALIFORNIA CRIMINAL LAW (1961); FRICKE & ALARCÓN, CALIFORNIA CRIMINAL EVIDENCE (1978); FRICKE & ALARCÓN, CALIFORNIA CRIMINAL PROCEDURE (1974).

A crucial witness was the legendary opera singer Mario Lanza, who unwittingly helped to unravel the purported claim of an actual robbery.¹⁴ My father was assigned to try the case and given two warnings by his supervisor: one, that this was a high publicity case and, two, he was sure to “lose it.”¹⁵ My father willingly took the case, worked it up with meticulous planning, and secured what his own office thought was impossible—a conviction. What my father taught me with this case was to be willing to fail and to always try your hardest regardless of the odds.¹⁶

REVERSE ENGINEERING AS A TRIAL TACTIC

As a deputy district attorney still in his twenties, my father was paired with a legendary prosecutor named J. Miller Leavy to try the first “no-body” murder case in the century in the United States. L. Ewing Scott was charged with murdering his wealthy wife, Evelyn Scott, in Bel Air. No trace of her body was found, no murder weapon was found, and there was no confession by the defendant. My father and Leavy approached the case on two fronts. First, J. Miller Leavy and my father used a traditional approach of showing L. Ewing Scott’s actions after the disappearance of Evelyn Scott by proving drained bank accounts, failure to report her disappearance, flight from Los Angeles, a newly acquired mistress, and other suspicious behavior indicating a motive to eliminate his spouse. The second tactic was genius and deserves more close study for trial lawyers. In court, my father and Leavy recreated or “reverse engineered” every nuance of Evelyn Scott’s life and routine, such that the jury would understand her daily life before her disappearance. Through evidence and testimony of her friends and acquaintances, they proved every daily action of Evelyn Scott which showed, beyond a reasonable doubt, that the only explanation for her disappearance was foul play by L. Ewing Scott. For example, a partial denture belonging to Evelyn Scott was found buried in the backyard of the house in the dirt next to an incinerator. My father had a blow-up of her smiling with the teeth blacked out to show, in

14. RAYMOND STRAIT & TERRY ROBINSON, LANZA: HIS TRAGIC LIFE 143–44 (Prentice Hall 1980).

15. Interview by Justice Judith Ashmann-Gerst, California Appellate Court Legacy Project 8, with Arthur L. Alarcón (2007).

16. *People v. Teitelbaum*, 329 P.2d 157 (Cal. Ct. App. 1958).

one trial exhibit, how it would be impossible that she would have ever left the house willingly without those teeth. Scott was found guilty and the first-degree murder conviction would be studied by all future lawyers who would try “no-body” murder cases, knowing that a path for successful prosecutions had been shown.¹⁷ For every trial lawyer, this case illustrates how important it is to bring into court the real life of the case—including the parties through evidence—so the jury can gain that necessary understanding to make a decision.¹⁸

FIND INSPIRATION FROM THE PAST

While a Los Angeles Superior Court Judge, my father was assigned to the Hall of Justice, across the street on Spring from my father’s final chambers at the Federal Courthouse. The new Criminal Courts Building was built on Temple Street in 1972 and its generic name was quickly shortened to CCB. My father was among the visionaries who looked into the buried treasures of California legal history and championed the renaming of the building to honor the first female lawyer in California who created the Public Defender’s Office, Clara Shortridge Foltz. Consistent with my father’s push for the success of women in the legal field, his dedication to this trailblazer in the law has given lawyers and judges a new reason to discover a legendary figure who would have been lost to the pages of history. Not only bearing her name, the building is also enhanced by commissioned artwork celebrating the life and career of Clara Shortridge Foltz.

My father did not stop with the naming of the building; he also worked with others to create a “Wall of Fame” that celebrates the judges, the prosecutors, and the defense lawyers who made outstanding contributions to the field of criminal justice. Without concern for obvious claims of bias, I doubt it would be much of a secret where my nomination for a new honoree for the “Wall of Fame” would go.

NEVER STOP LEARNING, INVESTIGATING, AND QUESTIONING

My father was a legal scholar who never stopped asking questions. He was excited about reexamining an issue that had

17. *People v. Scott*, 1 Cal. Rptr. 600 (Cal. Ct. App. 1959).

18. *DIANE WAGNER, CORPUS DELICTI* 190 (St. Martin’s Press 1986).

polarized people for years like the death penalty. Rather than handling the issue with a preconception to be later supported by new facts, his approach was innovative in that he looked at the death penalty with new eyes and asked basic questions: does it work and what are the costs, monetary and otherwise. The scholarly works that he created alone and with Paula Mitchell about the death penalty are currently being studied and will undoubtedly be examined in the future as a voice of reason that proposes workable solutions for this hotly debated issue.¹⁹ Rather than being set in a fixed position, my father's action speaks to his resiliency to always look at facts with a fresh perspective and to propose concrete solutions: the perfect judicial temperament.

HELP THOSE IN NEED

In addition to celebrating the success of his colleagues, clerks, and externs, my father was also always willing to open his chambers to help those whose careers had hit bumps in the road, who were having trouble succeeding because of criticism, or who were faced with some other kind of career path dilemma. The door was always open.²⁰ After my father passed, I received condolence notes and I realized how many people my father helped in their careers, in good times and bad. One judge sent me a note stating that she visited my father as a lawyer and detailed a major career setback. My father listened attentively and then said, "Get over it. It is politics and has nothing to do with you." According to this judge, these words changed her life because she no longer felt sorry for herself. Instead, she redirected her energies to move forward, resulting in a highly successful career on the bench. My father always wanted to help others and would take the time to nurture those who needed such assistance so they could return to the arena in their careers and succeed.

19. Arthur L. Alarcón & Paula M. Mitchell, *Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle*, 44 LOY. L.A. L. REV. S41 (2011); Arthur L. Alarcón, *A Prescription for California's Ailing Inmate Treatment System: An Independent Corrections Ombudsman*, 58 HASTINGS L.J. 591 (2007); Arthur L. Alarcón, *Remedies for California's Death Row Deadlock*, 80 S. CAL. L. REV. 697 (2007).

20. One key lesson I learned from my father was simple: listen. I would watch him when I was eight-years old in the same courthouse I work now. He would often tell me it is more important to listen than to talk. Thinking of him on the bench quickly brings forth his affirmations: be fair, listen to both sides, and always reserve judgment.

ALWAYS BE READY TO TAKE THE TORCH AND PASS IT ON

On January 28, 2015, I was teaching trial practice at Pepperdine Law School and, at the end of the class, one of my students approached me to tell me that his girlfriend had received an offer to be a law clerk in my father's court in the fall. He said she was so excited about this opportunity and that she wanted to meet me to express her elation. Later that night, I learned that my father had passed away.

I have thought about that law student and realize the obligation of those who have received my dad's mentoring wisdom and enthusiasm. We all must distill it and pass it along to help others.

CONCLUSION

There is an urban legend about the previously mentioned L. Ewing Scott "no-body" murder case. In trying to show reasonable doubt—that without a body it was impossible to convict—the defense lawyer told the jury to look at the door of the courtroom because "at this moment, Evelyn Scott will walk in." The jurors looked at the door, no one appeared, and the lawyer proudly proclaimed that the fact the jurors looked proved there was reasonable doubt. The jury deliberated and, within an hour, L. Ewing Scott was convicted. The defense lawyer scratched his head and spoke to a juror afterwards and said, "I don't understand, you all looked at the door, you must have had reasonable doubt." One of the jurors replied, "I looked at your client, and he was the only one who didn't look. He knew Evelyn Scott wasn't coming through that door."

No matter how many times my father dispelled this story as pulp fiction, it persists to this day. In many ways I can relate to that fictional defense lawyer and his task. I am trying to do everything I can to bring my father's spirit back in memory through these words. My hope is that by mentioning events about my father, everyone who knew him will be brought back to a time when he or she can remember his trademark smile, his laugh, and his endless wisdom.

I hope that this brief review of my father's great spirit and accomplishments will encourage others to take a measure of his greatness, savor it, and pass it on. If we do that, he will always be with us. We will keep learning his lessons and teach them to others. He will always be in our hearts and we can help others be inspired by

his creative brilliance. What a wonderful father. What a wonderful man.

Judge Gregory W. Alarcón
Superior Court of California, County of Los Angeles

**TRIBUTE TO SENIOR CIRCUIT JUDGE
ARTHUR L. ALARCÓN**

Paula Mitchell

Ninth Circuit Court of Appeals Senior Judge Arthur L. Alarcón had an unwavering commitment to public service and a dedication to promoting justice that served as a beacon to all who had the good fortune to know him. Judge Alarcón's life as a public servant spanned a remarkable sixty-five years.

“WHO NEEDS MY HELP TODAY?”

Even more inspiring than the sheer length of Judge Alarcón's fifty-year tenure with the state and federal judiciaries, is the fact that he continued to work so diligently throughout the entirety of his career—to the very end—to expose inefficiencies and inequities in the legal system that are in need of repair. Through his own independent scholarly research and writing, Judge Alarcón drew on his years of experience to propose remedies to improve the legal system, most frequently in the area of criminal justice. Loyola Law School recognized his commitment to bringing about needed reforms when it created the Alarcón Advocacy Center in his honor, an institution committed to training law students interested in improving the criminal justice system and encouraging them to answer a question that has served as a touchstone throughout Judge Alarcón's career: “Who needs my help today?”

It is thus entirely fitting that Loyola Law School has dedicated this special issue in honor of Judge Alarcón's commitment to serving justice.

Loyola's Alarcón Advocacy Center is home to several successful clinics, including Loyola's Project for the Innocent, which pursues claims of actual innocence on behalf of those wrongfully convicted of crimes. The Project has already helped secure the release of several inmates who were wrongfully convicted of murder and who collectively served many decades in prison for crimes they did not commit. The Center also includes the Capital Habeas Litigation Clinic, where students work in concert with the Office of the Federal Public Defender for the Central District of California on habeas petitions and petitions for rehearing on behalf of defendants

on California's death row. To mark the momentous inauguration of the Alarcón Advocacy Center, United States Supreme Court Associate Justice Anthony Kennedy—a former colleague of Judge Alarcón's on the Ninth Circuit—traveled to Los Angeles to deliver the keynote address.

Over the last seven years, Judge Alarcón published extensively on the unconscionable delays and chronic dysfunction in California's death penalty system. He recommended a variety of reforms that would improve fairness in the system, including a proposal that the state train more attorneys to handle capital habeas petitions on behalf of inmates on California's death row, many of whom currently wait ten years or more before trained counsel can be appointed. His commitment to improving the system is what inspired the founding of the capital habeas clinic at Loyola's Alarcón Advocacy Center. It has also had an impact that reverberated not only throughout the legal community but throughout the state of California, as his research is partly responsible for sparking a ballot initiative in 2012—Proposition 34—asking California voters whether the state should end the death penalty entirely.

The measure failed to pass by a narrow margin, but the conversation on the death penalty in California changed dramatically, due in large part to Judge Alarcón's dogged determination that there be an open and honest discussion about the problems in the system, which he believed comprise the integrity of the criminal justice system. I had the good fortune of working with Judge Alarcón to expose and quantify for the public just how costly the administration of the death penalty in California has been due to the extraordinary delays that are now inherent in the system. In July 2014, a federal district court judge cited to Judge Alarcón's research in holding that the flaws in California's death penalty system have become so severe that its administration violates the Eighth Amendment. That decision is currently on appeal.

Judge Alarcón was uniquely qualified to write about California's death row because his experience with it spanned more than half a century, beginning with his time in the Los Angeles County District Attorney's Office as a Deputy District Attorney in the 1950s and then later in the 1960s as California Governor Edmund "Pat" Brown's Clemency Secretary, where he was charged with reviewing clemency petitions filed by inmates on California's death row. The

role of Clemency Secretary to the Governor during this period must have been an extraordinarily demanding undertaking. While Governor Brown granted clemency to twenty-two inmates during his eight years as Governor, thirty-six inmates were executed.

After serving in Governor Brown's administration, Judge Alarcón continued to dedicate his professional life to serving the public. To fully appreciate his commitment and contribution to public service, it is best to start at the beginning.

THE EARLY DAYS: MILITARY SERVICE IN WWII

In June of 1943, a few months before his eighteenth birthday and fresh out of high school, a young Arthur Alarcón signed up for a military training program that the United States government had put in place in preparation for its post-war administrative needs in Europe and Japan. Immediately after signing up, however, the Allied forces suffered staggering and unexpected losses in North Africa. While he was attending basic training in Fort Benning, Georgia, young Arthur learned that rather than being deployed as part of a post-war effort to normalize relations in Japan, he was to be part of an infantry squad expected to report immediately for duty in the European Theater of Operations.

He landed in Brittany, France, by way of England, where his squad was first charged with containing German soldiers holed up in bunkers along the coast and cut off from their supply lines by the Allied Forces. Once in France, PFC Arthur Alarcón proved himself to be an excellent marksman and sharpshooter. His service in World War II was nothing short of extraordinary. He served as squad leader with the 376th Infantry Regiment, responsible for rations, billeting, and the general welfare of twelve men. Among other remarkable accomplishments, PFC Alarcón, still a teenager, led men on scouting patrols behind enemy lines and participated in four major battles, nearly losing his life. He earned four Bronze Stars, a Silver Star, and a Purple Heart. By the time he returned home, he was the youngest first acting Sergeant in the Army.

Arthur's skill as a marksman and his incredible instincts are surely responsible for his safe return home after the war. Perhaps his training and experience as a sharpshooter allowed him to develop and refine the skills that would later serve him in targeting problems

and issues in the law which, if not addressed, could lead to inequities and injustices.

EARLY YEARS AS A PROSECUTOR: 1952–1961

When he returned home after the war, Arthur enrolled at the University of California in Los Angeles as a political science major under the GI Bill. From there, he attended law school at the University of Southern California, working nights to support himself and his young family. Immediately upon graduating, he started working as a deputy district attorney in the Los Angeles County District Attorney's Office and while there, he worked on several high-profile cases that gained him recognition. In one famous headline-grabbing case, he successfully prosecuted L. Ewing Scott for murdering his wife, Evelyn, a wealthy Bel Air socialite. In November 1957, after ninety-eight witnesses and eight weeks of testimony, the prosecution rested its case. The defense had consistently objected to the prosecution's evidence on the ground that there was no proof that Evelyn was dead because no body had ever been produced. But the jury did not buy it and convicted Scott in California's first ever "no-body" case.

CLEMENCY SECRETARY TO GOVERNOR PAT BROWN: 1961–1964

A self-proclaimed lifelong "Lincoln" Republican, Judge Alarcón took great pride in his reputation as a fair-minded centrist with a consistent record of evenly applying the law and resisting any urge to be guided by politics. His record as a public servant—one held in the highest regard among his peers across the proverbial aisle—is well documented, as he has been consistently and exclusively appointed to his state and federal offices by Democrats: Governor Pat Brown, Governor Jerry Brown, and President Jimmy Carter.

Governor Pat Brown, a Democrat, specifically sought out Deputy District Attorney Alarcón to serve as his Legal Adviser and Clemency & Extradition Secretary in 1961 because he wanted a tough but fair-minded prosecutor to perform independent reviews of the clemency petitions filed with his office. Arthur Alarcón later served as Governor Brown's Executive Assistant and then as Chair of the California Parole Board.

Clemency Secretary Alarcón approached each case with a fresh eye and recommended in more than a few cases that the clemency be

granted by the Governor, recommendations the Governor followed. In one memorable case, Alarcón recommended to Governor Brown that an electroencephalogram be performed on an inmate to determine whether he had any brain damage before the clemency petition was decided. That test was not commonly used on inmates at the time, and had never before been used in the context of investigating claims raised in a clemency petition. When the test results confirmed that the condemned inmate was indeed suffering from trauma to the brain, his clemency petition was granted. That example illustrates Arthur Alarcón's deep commitment to fairness and justice and explains why Governor Brown later decided that he would make an outstanding jurist.

STATE COURT: TRIAL JUDGE 1964–1978 AND
COURT OF APPEAL JUSTICE 1978–1979

In 1964, Governor Brown appointed Judge Alarcón to the state trial court in the Superior Court for Los Angeles County where he served for fourteen years. Judge Alarcón was elevated to the California Court of Appeal by Governor Pat Brown's son, Governor Jerry Brown, in 1978.

NINTH CIRCUIT COURT OF APPEALS: 1979–2015

Judge Alarcón's tenure on the California Court of Appeal was short-lived, however, because in 1979, President Jimmy Carter nominated him for a new seat on the Ninth Circuit Court of Appeals. He was confirmed by the U.S. Senate on October 31, 1979 and received his commission on November 2, 1979. Judge Alarcón watched the Court undergo many changes. In 1978, there were only thirteen active judges on the Ninth Circuit; today there are twenty-nine. As the population of the Ninth Circuit nearly doubled from 37 million to almost 70 million, the Court's caseload continued to grow apace.

Judge Alarcón assumed senior status on November 21, 1992, at which time he began accepting invitations from other sister circuits to hear cases, sitting by designation. Thus, in his time on the Ninth Circuit, in addition to traveling all over the western United States to hear appeals, including trips to Alaska and Hawaii, Judge Alarcón regularly heard appeals as a visiting judge in the Third Circuit (in Philadelphia and Wilmington), the Fourth Circuit (in Richmond), the

Sixth Circuit (in Cincinnati), the Seventh Circuit (in Chicago), the Tenth Circuit (in Denver), and the Eleventh Circuit (in Atlanta, Jacksonville, and Miami). Judge Alarcón truly enjoyed sitting with other circuits and learning about the cultural and regional differences that exist among the various circuit courts. His exposure to circuit court judges from all over the country broadened his experience and allowed him to incorporate into his own working style some of the effective practices he saw functioning well in courts across the country.

After taking senior status, Judge Alarcón was still incapable of actually slowing down. In addition to teaching at Southwestern Law School, which he had done since 1985, he also began teaching as an adjunct law professor at Loyola Law School. In July 2007, Judge Alarcón made judicial history when he sat together with Judges Kim McLane Wardlaw and Ferdinand Fernandez on an appellate panel consisting of three judges of Hispanic descent for the first time since the nation's federal court of appeals was established in 1891.

Judge Alarcón was often asked which are the most significant or important cases he has worked on, and he always gives the same reply: "The case right in front of me that I am working on right now." As one who was fortunate enough to have served as Judge Alarcón's judicial extern and then law clerk for seven years, I can say that he sincerely approached each and every case before him as though it deserved nothing less than his complete and undivided attention. He worked tirelessly to train and mentor the many law students and attorneys who came through his chambers as judicial externs and law clerks. Many of those who have benefitted from his wisdom and mentorship have come to be part of the Alarcón Chambers Family.

FAREWELL, DEAR JUDGE

As one who was fortunate to be counted among Judge Alarcón's inner circle and Chambers Family, I am honored to take this opportunity to pay tribute to the enormity of his contribution to the public, as well as to those he mentored over the years. On a personal note, my family and I have benefitted from our years of friendship with Judge Alarcón, and his real and extended Chambers Families, in ways too many to count. The weight of his loss feels unbearable to me at times. But I take comfort in knowing that I am committed to

working diligently toward furthering the interests of justice that I know were important to him. As we take this moment to honor his passing, it is with the heaviest of hearts that I say this public farewell to Judge Alarcón, and his kind and loving spirit, which I know will live on in the hearts of so many who loved him.

Paula Mitchell

Judge Stephen Reinhardt

One word that describes Judge Arthur Alarcón is “congenial.” He was an extremely pleasant person who showed concern for the feelings of all with whom he came in contact. No one I knew ever thought otherwise. On one significant occasion Arthur’s congeniality and willingness to help all who asked led to a most significant event in his life. Over the years, Arthur provided assistance to Sam Williams, a brilliant African American lawyer who, on the side, served as chairman of a number of political campaigns of leading Democratic candidates. Sam always asked Arthur for help regarding positions affecting law enforcement, and Arthur always provided Sam (and me) with excellent advice. He never turned us down. As it turned out, President Carter named Sam the chairman of his Merit Selection Committee for the Ninth Circuit Court of Appeals. Sam immediately thought of Arthur, regarding him as eminently well qualified, bright, fair, and knowledgeable. He enthusiastically suggested that Arthur, who was then a state court judge, should be a candidate for a Ninth Circuit judgeship, and when the Merit Selection Committee was done with its work, there was Arthur at the head of the group. Things progressed smoothly, and no one opposed Arthur’s appointment. On the day before Arthur’s nomination was to go to the Senate someone in the White House noticed something in Arthur’s record and called Sam. Sam called Arthur that evening and said “Arthur someone is spreading the rumor that you are a Republican. Say it isn’t so—is it?” Arthur said “Yes it is.” Sam said “Oh . . .” It was too late, however, to change course, and the next day President Carter’s nomination of Arthur Alarcón went to the Senate. He was confirmed without dissent. It was, as far as I know, the only nomination of a Republican to the Circuit Courts made by President Carter. Certainly it was the only nomination of a Republican to our Court. Perhaps the Merit Selection Committee discovered true merit when it forwarded the name of Arthur Alarcón. Or, maybe the lesson is that Arthur truly was congenial—as well as well qualified—and that congeniality as well as merit matters.

The story of Arthur’s promotion to our Court is symbolic of Arthur’s career. He rose through the state court system, judicial and executive, without anyone paying attention to his philosophical or political views. He would have told them, had they asked, that those

views were irrelevant because he “called them as he saw them.” We could long debate the validity of that view, which is reminiscent of the opinion that the Chief Justice expressed when he appeared before the Senate Judiciary Committee and stated that a judge really just calls “balls and strikes.” It is not in this respect alone, however, that Arthur manifested some of the qualities of Chief Justice Roberts. Both are indeed “genial,” both have winning ways, and both enjoy the respect of their colleagues and of those who encounter them in their non-judicial lives.

Arthur indeed did yeoman’s service on our Court. He will be missed by those who liked and served with him.

Judge Stephen Reinhardt
U.S. Court of Appeals for the Ninth Circuit

Chief Judge Sidney R. Thomas

I am grateful that Loyola Law School is dedicating an issue of its Law Review to the accomplishments of one of our cherished colleagues, Judge Arthur L. Alarcón. Arthur and his beloved wife Sandy welcomed me to the Court almost twenty years ago. He was a dear friend, and all of us on the Ninth Circuit will miss him very much.

Judge Alarcón dedicated his life to the law and the pursuit of justice and was highly esteemed by his colleagues and members of the bar. Over many decades, he was a significant force in improving the administration of justice, not only in California, but throughout the Ninth Circuit. He was also deeply committed to community service and led or actively supported many programs, taking particular pride in those that served children or supported veterans.

When news of his death became public, there was an outpouring of expressions of appreciation for his life's work. His close friend, Senator Diane Feinstein commented that "Art Alarcón and I worked together when he was head of the California Adult Authority, and we formed a close personal friendship that lasted decades. He was a person of deep thought and great integrity who served the people of California as a judge for more than 50 years." She noted that "he had a keen intellect, a real love of the law, and was committed to justice for all." She concluded by saying, "I will always remember his booming laugh, which was one of the world's best. I will miss him very much."

Among his colleagues on our court, he is remembered for his easy friendship and gentlemanly manner:

"We have lost a most gracious and dedicated colleague, who lived a life rich in California history. Judge Alarcón will be missed by all who knew him," said Chief Judge Emeritus Mary M. Schroeder.

"Judge Alarcón was an old-school gentleman. He had an easy laugh, a modest demeanor, a kind word for everyone, and was unfailingly gracious to everyone, whether you were a judge or the janitor," said Circuit Judge Barry G. Silverman. "Judge Alarcón also happened to be very smart and blessed with an innate sense of fairness and good judgment. I admired him greatly, both on and off the bench."

“Judge Alarcón warmly welcomed me to the court 35 years ago. His good spirit and winning smile remained in full force for the rest of his life,” said Senior Circuit Judge William C. Canby. “He was a fine colleague and a highly productive judge. We will miss him greatly.”

“Arthur was a hero of mine, a wonderful colleague, and a gentleman,” said Senior Circuit Judge Andrew Kleinfeld.

Judge Alarcón celebrated his fiftieth year as a judge in 2014. Most of that half-century of judicial service was as a federal appellate judge. Nominated by President Carter, he came onto the Ninth Circuit bench in 1979, becoming the first judge of Hispanic descent to sit on the court. On a federal appellate court, the character of a judge sometimes means more than a volume of accomplishments. Arthur treated everyone on our Court with warmth and respect. He expressed his views forcefully, but always cordially. He was the consummate professional in every respect. He served as an active judge until taking senior status in 1992. He maintained a full caseload and continued to work for a time even after his diagnosis, never letting on to his colleagues about his illness.

Always prepared to lend a hand to other courts, Judge Alarcón has the distinction of having sat by designation with the courts of appeal of six other federal circuits, including, most recently, the Sixth Circuit last summer. He also took pride in participating in international judicial exchange programs, working with judges in Chile and Argentina.

“Judge Alarcón was, for me, the gold standard in judicial excellence, demeanor, and personal integrity,” said Pepperdine Law School Dean Deanell Reece Tacha, former Chief Judge of the Tenth Circuit Court of Appeal who sat with Judge Alarcón several times.

Prior to his appointment to the federal bench, he served in the Los Angeles District Attorney’s Office. Judge Dorothy Nelson’s husband, Judge James Nelson, worked with Judge Alarcón there. She commented that Jim found Arthur “to be a model prosecutor because of his fair-mindedness and wise application of the law.”

Judge Alarcón served as a judge of the state courts in California for fifteen years prior to his appointment to the federal bench. Appointed by Governor Jerry Brown, Jr., he served as an associate justice of the California Court of Appeal for the Second Appellate District in Los Angeles from 1978 to 1979. He was appointed to the

Los Angeles Superior Court by Governor Edmund Brown, Sr., and served from 1964 to 1978.

Judge Alarcón also worked previously in the administration of the first Governor Brown, serving as a legal advisor and the clemency and extraditions secretary, from 1961 to 1962, and, from 1963 to 1964, as an executive assistant responsible for investigations to assist the governor in deciding whether to commute death sentences received by state prisoners. He also briefly served as chair of the California Adult Authority, the parole board for men.

Over his long career, as a judge and lawyer, Judge Alarcón has been intimately involved in literally life or death decisions. The knowledge and experience gained led him to seriously question the efficacy of capital punishment and, in recent years, he advocated vigorously for reform of the death penalty system. He co-authored the seminal 2011 article in the *Loyola of Los Angeles Law Review* titled *Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle*. He also published *Remedies for California's Death Row Deadlock*, printed in the *University of Southern California Law Review* in May 2007.

Judge Alarcón co-authored three books with judge Charles W. Fricke: *California Criminal Law*, *California Criminal Procedure*, and *California Criminal Evidence*.

Born in Los Angeles, the son of a baker, Judge Alarcón is very much a self-made man. He served in the Army during World War II and was the recipient of a Combat Infantry Badge, four Battle Stars, a Bronze Star, and a Purple Heart. He went to school using GI Benefits, attending the University of California at Los Angeles before earning his B.A. in political science from the University of Southern California in 1949. He received his LL.B. in 1951 from the USC School of Law, where he was editor of the Law Review. He also received an honorary Doctorate in Law Degree from the Southwestern School of Law in 2007.

Judge Alarcón served as an adjunct professor at University of Southern California, Loyola Law School, and the Southwestern School of Law. Judge Nelson remembers that “when I was Dean of the USC Law School, I was delighted to have him as an Adjunct Professor who was loved and admired by the students and faculty. Most important to me, he was an outstanding mentor to many of

these students both while they were in law school and during their careers.”

As noted by his career law clerk, Kathryn Lohmeyer, Judge Alarcón “didn’t seem to understand the idea of slowing down.” Indeed, he worked on pending cases until just days before his death.

Judge Nelson observed that “Arthur was a great advocate for the principle of equality of men and women and was the prime promoter of naming one of our county courthouses after Clara Shortridge Foltz.” His civic involvements reflected that philosophy. They are too numerous to list, but include service on the boards of directors of such Hispanic groups as Las Familias Del Pueblo, Jardin De La Infancia, the Mexican-American Scholarship Foundation Assisting Careers in Law, and the Council of Mexican-American Affairs. He also served on the boards of the Los Angeles Boys and Girls Club, Performing Arts Council for the Los Angeles Music Center, and the Junior League of Los Angeles.

The recipient of numerous accolades, Judge Alarcón recently received 2014 Judge of the Year Award from the Los Angeles County Bar Association, and the Precursor Para Justicia / Pioneer for Justice Award from the Mexican American Bar Foundation in 2010.

Judge Alarcón’s contributions to our legal system cannot be measured. Fortunately, his legacy will endure to inspire others to work to keep striving to improve the administration of justice for all.

Sincerely,

Chief Judge Sidney R. Thomas
U.S. Court of Appeals for the Ninth Circuit

**A TRIBUTE TO THE HONORABLE
ARTHUR L. ALARCÓN**

Judge Sandra R. Klein

I was incredibly fortunate to have clerked for the Honorable Arthur L. Alarcón from 1994 to 1995. Since then, he continued to be my mentor, my friend, and an integral part of my life. Judge Alarcón's passing is a huge loss for the judiciary, the legal profession, and everyone who knew him. I feel his loss every day. Each day I strive to make him proud and to live up to his legacy.

For the past twenty years, The Judge—he always was, and always will be, The Judge; never Arthur, or Art, etc.—and I got together for lunch every few months. He would bound down the Main Street stairs of the courthouse and jump in my car. The Judge had an ageless quality and his youthful appearance belied his true age, which is one of the reasons it is so difficult to believe he is gone. He had a wonderful, infectious laugh and always had a twinkle in his eye. He was an inveterate story-teller and even though I had heard many of his stories a number of times, I still reveled in hearing them again.

The Judge taught me so many lessons, both large and small. It was in his chambers that I learned to write clearly and concisely. He taught me the power of words and how changing just one word can have a significant impact on an entire opinion. During my clerkship in his chambers, we often discussed which word would be most appropriate to use. Those discussions would culminate with us looking up words in the oversized dictionary that was proudly displayed outside of his office. (Yes, that was before computers, when hardbound dictionaries were an integral writing tool and not relics merely collecting dust on a shelf). Even though I now use Internet dictionaries and thesauruses to locate the appropriate word, it is because of The Judge that I take so much time to select the precise term.

The Judge also instructed his law clerks that if it is important enough to write, it should be included in the text of an opinion and not in a footnote. I must admit that I am still a work-in-progress in terms of footnotes, but I do hear his voice each time I write one and I try to eliminate as many as possible. And, whenever I am

contemplating splitting an infinitive, I recall him quoting the Star Trek motto, “To boldly go where no man has gone before,” and explaining why it was not linguistically correct.

The Judge acted as my sounding board and cheerleader and he helped me believe that I could achieve what I considered to be unattainable. And, with his unwavering support and guidance, I accomplished so much more than I ever dreamed was possible and I became a federal bankruptcy judge.

Judge Alarcón was also an outstanding jurist and an excellent role model. He had an unparalleled enthusiasm for the law, and for each case on which he worked. He was patient, gave each party an opportunity to be heard, and considered all sides of an issue before making a decision. He excelled at writing clear, concise and easy-to-read opinions that met his “bartender test,” meaning that the opinion could be understood by the average person.

The Judge also taught me many important “life lessons” that were not related to the law. He showed me the painting of a very rotund woman at Barragan’s and explained that she ate too many flour tortillas. This was a significant lesson for me, a Bostonian, who had never had Mexican food before I started clerking for The Judge. I now only order corn tortillas at Mexican restaurants.

He helped me prepare for life after my clerkship by providing advice and guidance regarding interviewing and negotiating with law firms. He also taught me an indispensable lesson: that not only were the law firms interviewing me but I was also interviewing the law firms.

When I started getting serious with Richard, my then-boyfriend and now-husband, he asked whether Richard made me laugh. He said that there will be ups and downs in any relationship, but if you can laugh about things, everything will be okay.

But, The Judge was so much more than just a former employer, a mentor, and a friend. He and Sandy, his wonderful wife, helped me celebrate the significant milestones in my life: my wedding, my graduation from UCLA’s School of Management, and my Investiture as a judge. In fact, he was the first person who I called after I was selected to be a judge and the first person I asked to speak on my behalf at my Investiture.

The Judge created a community of former Alarcón law clerks and externs, whose numbers now exceed five hundred. I feel

fortunate to have met many of those people over the years during numerous celebrations for The Judge. One of my fondest memories of our get-togethers was a birthday celebration that was held at the Dorothy Chandler Pavilion a few summers ago. I was actually at a conference in San Diego that day, but I would never miss a chance to celebrate with The Judge. So, I left the conference very early in the morning, spent a tremendous amount of time in traffic, and thank goodness made it to the celebration on time. (I absolutely abhor traffic, which shows how important it was to me to be part of The Judge's celebration). There were approximately one hundred people at the luncheon. We each stood up, mentioned how we knew The Judge, and told a brief anecdote regarding the impact that he had on our lives. It was clear from hearing everyone's stories that The Judge left an indelible mark on each of our lives.

The Judge would have celebrated his ninetieth birthday this August. My co-clerks from the 1994–1995 term and I are planning to get together for dinner—and of course to toast The Judge with his beloved Merlot. We will reminisce about the wonderful man who brought us together and helped guide each of us through the twists and turns of our lives and careers.

Although The Judge's passing is a terrible loss for all who knew him, he will never be forgotten. His kindness, his wisdom, and most of all his legacy lives on. Not only through his family, who he loved so much, but also through all of the law clerks and externs who he mentored and guided throughout his fifty-year judicial career. I believe that the best way to honor The Judge is for the hundreds of former law clerks and externs to mentor law students and new lawyers. Take someone out for a cup of coffee, a quick meal, or even a glass of Merlot. Listen to their concerns and provide guidance about life and career opportunities. And, most of all, just be there so that the next generation has the benefit of the wisdom of those who came before. I aspire to do that every day, to honor The Judge's legacy, and to make him proud.

Judge Sandra R. Klein
U.S. Bankruptcy Court, Central District of California

ARTHUR ALARCÓN***William C. Canby, Jr., Senior Circuit Judge***²¹

We will all miss Arthur Alarcón. He was among the first to welcome me when I joined the Court of Appeals in 1980. His winning smile and warm voice would have made anyone feel at home. He was a most receptive person, and was exceptionally good company.

I remember that, during my first official trip to Los Angeles, he drove me through the neighborhood where he grew up, which was only a few blocks from downtown Los Angeles. He took real pleasure in his local roots. That may be one reason why he kept his chambers downtown even after the court opened its courthouse in Pasadena. Arthur's general California connection also had always been strong; he explained to me with some pride that he had worked for the "first Governor Brown," whom he also called "the real Governor Brown."

Arthur never seemed to have much trouble keeping up with our ever-increasing workload. We report periodically on our aging cases, and I envied his repeated zero backlogs, which I was never able to imitate. And all the while he was maintaining his connection with Loyola Law School, teaching regular seminars and devoting substantial time and effort to the education of future lawyers. His interest in providing educational experiences for students was reflected in his regular practice of harboring and instructing interns in his chambers in addition to his regular law clerks.

Arthur's outlook on life and law was basically conservative. That characteristic bore unusual fruit when he contemplated, over the years, the effects of the death penalty in California. He co-authored extensive articles explaining the extreme cost of death penalty prosecutions in California's "dysfunctional" death penalty system.²² In basing his criticism of the system on its costs, Arthur was at the forefront of what has become a larger trend of applying cost-benefit

21. Any statements of judicial or political policy expressed or implied herein are personal to the author, and do not represent the views of the United States Court of Appeals for the Ninth Circuit.

22. Alarcón & Mitchell, *supra* note 19; Arthur L. Alarcón & Paula M. Mitchell, *Costs of Capital Punishment in California: Will Voters Choose Reform This November?*, 46 LOY. L.A. L. REV. 221 (2012).

analysis to penal policies generally.²³ Arthur's common-sense conservative fiscal approach to criminal reform, when joined with liberal forces urging such reforms for other reasons, makes the prospect of political solutions to some of America's penal problems much brighter, as recent developments in places such as Texas indicate.

Arthur's contribution of spirit and cooperation to all who worked with him, and his unfailing good humor, have left us with fond memories. The imprint he has left on the court and on Loyola Law School will last a very long time. As I said in the beginning, we will all miss him.

Judge William C. Canby, Jr.
Senior Judge
U.S. Court of Appeals for the Ninth Circuit

23. See Mary D. Fan, *Beyond Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 581 (2012).

Judge Jerome Farris

Judge Alarcón always managed to be pleasant regardless of the apparent stress of any situation. He found joy in his family, his work, and life in general. He was a valued colleague who will be missed.

Judge Jerome Farris
U.S. Court of Appeals for the Ninth Circuit

Judge Alfred T. Goodwin

When Arthur Alarcón joined our court in 1979, he was probably the most highly qualified person, by experience, record of public service, and general excellence of character, that the President could have nominated. In a relatively short time, his colleagues began to discover that fact, without any hint from Judge Alarcón. He was modest about his achievements as a trial lawyer, as Governor Edmund G. Brown, Sr.'s chief legal advisor, and about his encyclopedic knowledge and understanding of California's state government.

His associates soon discovered Arthur's congenial personal traits and his ability to contribute to the discussion of the issues and the harmonizing of views within a three-judge panel, or when needed, in the deliberations of an en banc court. He had the great gift of ability to disagree about a legal result without being disagreeable.

In a word, borrowed from a language different from his own, he was a mensch. He selected and trained excellent law students as his law clerks. For the next fifty years he was generous with his time and efforts in launching the careers of three or four young men and women each year. These fortunate law clerks loved their mentor, and carried his gifts out into the legal and social environment to become outstanding lawyers, judges, and public officials themselves. He will be remembered throughout these United States and in a number of foreign venues for this continuing contribution to the administration of justice.

Judge Alfred T. Goodwin
Senior Judge
U.S. Court of Appeals for the Ninth Circuit

Judge Susan Graber

I first met Judge Alarcón in the mid-1980s, while in my role as a Lawyer Representative from Oregon to the Ninth Circuit Judicial Conference. As a fairly new Circuit Judge, he went out of his way to be friendly and welcoming to me and to the other young lawyers. His warmth and his kindness set him apart.

The first impression proved to be representative of Judge Alarcón's personality. Once I joined him as a judge on the Court of Appeals for the Ninth Circuit, I had the privilege of working with him regularly. As a colleague, the adjectives that come to mind are low-key, optimistic, gracious, courteous, gentle, and smart. I enjoyed sitting with him on every occasion and cannot even recall, without research, when one of us dissented from a view taken by the other. That's not because it never happened, but rather because he remained unfailingly delightful no matter the outcome or professional disagreement.

My experience working with Judge Alarcón on the Ninth Circuit bench for over fifteen years was not unique. His geniality garnered him many friends among his colleagues, even among those with whom he disagreed or took a differing judicial stance. Moreover, his personal amicability, absence of strident ideology, and professional grace are reflected in his record of appointments to his several judgeships: Judge Alarcón was a lifelong Republican who was consistently appointed to the bench by Democrats.

I admired Judge Alarcón's open-mindedness and willingness to persuade and be persuaded. His effort to change California law to provide for "true life" rather than for the death penalty in murder cases stands as a notable example, both of these characteristics and of his desire to serve society at large.

His extrajudicial endeavors—speeches, writings, the Alarcón Advocacy Center at Loyola Law School in his hometown of Los Angeles—illustrate his willingness to put forth his best efforts and to use his position of influence in the name of public service. A mentor to many, Judge Alarcón—quiet, hard-working, thoughtful, and fair—led by example and inspired countless lawyers, judges, law clerks, and other individuals (myself, of course, included) to push ourselves not just to do our best legal work, but also to do work that betters our community.

When I think of Judge Alarcón, I particularly picture his warm and very special smile. He was a kind man who seemed to have no rough edges. I will miss him.

Judge Susan Graber
U.S. Court of Appeals for the Ninth Circuit

ARTHUR ALARCÓN: A DEDICATION TO DECENCY

Judge Michael Hawkins

By my luck of the draw, several of the cases I argued as a lawyer before Ninth Circuit panels included Judge Arthur Alarcón. He had a wonderful way of calibrating his questions from the bench to the experience and preparation of the advocates who appeared in front of him. The first time I stood before a panel he was on, he sensed—quite accurately—that I was bit nervous. The pace and delivery of his question calmed me down and produced an answer that made a modicum of sense. The next time, there were no warm up pitches; the questions, still delivered in that calm sweet voice of his, were focused and aimed right at the weakness of my client’s case. The unspoken undertone was clear: “You’ve been here before and now we expect your A game.”

When I joined the court of appeals as one of his colleagues, I had the hardest time calling him anything but “Judge.” It took more than a few gentle corrections before his first name parted my lips. Now that we have lost him, the one word comes to mind when I think of him is decency. It was part of his DNA. It fairly oozed from him.

There is an old saw: “The only praise that is worth a damn is from someone who has worked at the same bench.” All of us who had the honor and privilege of working at the same bench as Arthur Alarcón can sing his praises having done so.

Judge Michael Hawkins
Senior Judge
U.S. Court of Appeals for the Ninth Circuit

Judge Andrew Kleinfeld

Judge Alarcón befriended me shortly after I became a district judge, in 1986, and I have felt great affection for him ever since.

Thinking about my remarks, I decided to take a look at the very large number of decisions in cases where we sat together as circuit judges or where he sat as a circuit judge on a case where I had been the district judge. What most surprised me was that disagreement between us was not especially rare. My feeling was that Arthur and I usually saw things about the same way, but the evidence showed that, not rarely, we did not.

That we could like each other as much as we did, yet disagree without our disagreement even affecting our feelings, showed what a fine colleague he was. Arthur's intelligence and judgment were unsurpassed. And so was his civility. People often like people who agree with them. The better indicator of what someone is like is whether you like them when you disagree. Working with Arthur was always a constructive engagement that enabled me to benefit from his wisdom and experience.

Arthur was distinguished also by his humility and sense of humor. He liked to tell the story of when President Carter had picked him as a circuit judge, and he was being interviewed at the White House. Some staff person said to him, "Of course, you are a Democrat." Arthur replied, "No, I'm a Republican." And the staff member said, "Well, too late to do anything about that." Evidently they had just assumed he was a Democrat because he served the public for so long assisting Governor Brown and was close friends with now-Senator Feinstein and other prominent Democrats. Partisanship did not stand a chance against Arthur's civility, fairness, and dignity.

Arthur even enjoyed jokes when he was the one being teased. When he visited my wife and me in Fairbanks, we drove him over to the viewing site near our house so that he could see the Alaska Pipeline, at a section of its 800-mile length where it is above ground. Arthur dutifully looked at all the engineering details, and said, "So, is this a mockup they prepared for the tourists?" We told him, "No, Arthur, that's Disneyland where they do mockups for the tourists, in Alaska we don't have mockups, it's just the pipeline." Arthur told that story himself many times.

The public will miss Arthur for his work, and I will miss Arthur for the man he was.

Judge Andrew Kleinfeld
Senior Judge
U.S. Court of Appeals for the Ninth Circuit

JUDGE ARTHUR L. ALARCÓN*Judge Dorothy Nelson*

My life and that of the remarkable Judge Alarcón have intersected over the past several decades. When my husband, the late Judge James F. Nelson, was hired in the 50s by the Los Angeles District Attorney's Office, Judge Alarcón was his mentor. He impressed all in the office with his amazing knowledge of the law, but more importantly, with his fair mindedness—a commitment not just to winning but to doing what was right. When I was dean of the USC Law School, I was delighted to have him as an adjunct professor who was loved and admired by faculty and students alike. Most important to me, he was an outstanding mentor to many students, both while they were in law school and during their careers, including my son, a USC graduate. He also helped the Western Center on Law and Poverty negotiate an agreement with our police chief about harassment of African Americans in the Los Angeles community.

I was delighted when he was appointed to our Ninth Circuit Court of Appeals. He was my next-door neighbor for five years before I moved to the Pasadena Courthouse. My law clerks and I gained a great deal from our many discussions with him and his law clerks.

Service to the community was at the forefront of his life. He was a great advocate for the principle of the equality of men and women and was the prime promoter of naming a county courthouse after Clara Shortridge Foltz, the first woman lawyer in California.

Arthur epitomized what I call "moral readiness." He used his knowing and loving qualities in service to the world of humanity. I am proud to have been the colleague of this very special man.

Judge Dorothy Nelson
Senior Judge
U.S. Court of Appeals for the Ninth Circuit

Judge Mary Schroeder

Arthur Alarcón was a congenial and collegial member of our court. I have never heard him say a nasty word about anyone. He believed in folks working together, a trait always symbolized for me by the sign that used to hang on the door of his staff office in the Spring Street Courthouse in Los Angeles: “The Alarcónians.”

As our Court’s first Hispanic Judge, Arthur was justly proud of his Latino heritage. Never a complete conformist, Arthur grew a beard not long after his appointment to the Court. Visitors accustomed to seeing clean-shaven white faces on the Court were surprised at one of our early eleven-judge en bancs to see a Latino face with a greyish beard, smiling back in the middle of the pack.

Arthur had great loyalty to those he served, including the people of California and of the United States. His services as a key secretary to Governor Pat Brown was legendary.

The one thing I believe Arthur disliked was delay. His opinion writing assignments never appeared on the “aging cases” list, and when a colleague circulated a proposed disposition to him for his review, it came back with his comments by return mail. His most recent extracurricular work was in analyzing the delays in the California death penalty system, where he called for reform. I never heard him say out loud to a colleague that “Justice Delayed is Justice Denied,” but he must have thought it many times.

We will miss his friendship, and his eyes that seemed always to be smiling.

Judge Mary Schroeder
Senior Judge
Chief Judge 2000–2007
U.S. Court of Appeals for the Ninth Circuit

JUDGE ARTHUR L. ALARCÓN: A QUIETLY BRILLIANT LAWYER AND JURIST

Judge Richard C. Tallman

On an early spring day near the Potomac River in a cemetery called Arlington, the Nation paid its final salute to a humble son of American immigrants, a war hero, and a dedicated public servant of the law. The still of the afternoon air was broken by the final volleys of the firing party and “Taps” sounded its melancholy farewell. And if the judiciary awarded a Medal of Honor to its finest judges, it would go to Arthur Alarcón.

Arthur Alarcón was a quietly brilliant lawyer. Raised in Los Angeles as the son of an immigrant baker from Mexico, Arthur was the first in his family to go to college. During World War II, he answered the call to duty and saw active combat in Europe. He was wounded and awarded the Bronze Star for gallantry under fire. After graduating from USC’s Gould School of Law in 1951, he considered entering politics. He decided against it, electing instead to pursue a different—and more private—life of public service. But first he became a trial lawyer; and as a Los Angeles county prosecutor, Arthur handled some of LA’s most notorious cases. Governor Edmund “Pat” Brown took note of Arthur’s skill in the courtroom and appointed him as his Executive Secretary on Clemency and Extradition.

Notwithstanding the fact that he was a moderate Republican, Arthur was appointed three times by Democrats to judicial office. Arthur served Governor Brown for three years before the Governor appointed him, in 1964, to the Los Angeles County Superior Court. In 1978, Governor Jerry Brown appointed Judge Alarcón to the California Court of Appeal. President Jimmy Carter tapped him for the Ninth Circuit Court of Appeals one year later. Arthur’s decision to forego electoral politics for a quieter life of government service exemplifies what I most respected about my colleague: He was apolitical on the bench, intensely humble, brilliant yet quiet, and always a perfect gentleman.

Judge Alarcón’s judicial style reflected his humility. It was a delight to hear cases with him. He treated counsel with respect and decency, reflecting his own experiences as an advocate. He was not

the most active questioner on the panel, but his questions were extremely poignant, and they always required a thoughtful response from the lawyers. One could disagree with him in case conferences without being disagreeable. And he timely circulated his dispositions. In every way, he was both a judge's judge and a lawyer's judge.

Judge Alarcón was a beautiful writer who approached his opinions with elegant simplicity. He did not write in lofty prose or legalese, a style that is comprehensible (if at all) only to those with a law degree. Rather, he wrote clear, concise opinions accessible to even non-lawyers. For example, in *Jews for Jesus, Inc. v. Board of Airport Commissioners of the City of L.A.*,²⁴ Judge Alarcón tackles a complex First Amendment issue with characteristic clarity and brevity, holding that “the Central Terminal Area at LAX is a traditional public forum” in which a religious group may distribute literature.²⁵ One recent article about Judge Alarcón describes his “bartender test”: “[T]o gauge whether an opinion was clear and correct—could you explain it to a bartender and have it make sense?”²⁶ He employed this test frequently. The clarity of his style reflected his belief that the law belonged to everyone.

Finally, Judge Alarcón was both a practical and compassionate jurist. Nothing demonstrates this better than his continuing study of the death penalty in California. Even though Arthur was for the death penalty and Governor Edmund Brown opposed it, Governor Brown trusted Arthur's judgment enough to appoint him as clemency advisor in 1961. In 1983, Judge Alarcón co-authored with then-former Governor Brown and then-Professor Florence-Marie Cooper an article in the *San Fernando Valley Law Review* entitled *The Caryl Chessman Case: Irreversible Error*.²⁷ In 1960, California executed Caryl Chessman for the kidnapping and sexual assault of two women. A jury convicted Chessman of violating California Penal Code § 209—which criminalized “kidnapping for the purpose of robbery”²⁸—even though he moved his victims only a short

24. *Jews for Jesus, Inc. v. Bd. of Airport Comm'rs of L.A.*, 785 F.2d 791 (9th Cir. 1986).

25. *Id.* at 795.

26. John Roemer, *Arthur Alarcón 1925–2015, Senior Appellate Judge Encapsulated Decency*, DAILY J., Feb. 2, 2015, at 2.

27. See Edmund G. Brown Sr., Arthur Alarcón, & Florence-Marie Cooper, *The Caryl Chessman Case: Irreversible Error*, 11 SAN. FERN. V. L. REV. 21 (1983).

28. *Id.* at 23.

distance²⁹ (movement, or “asportation” is generally an element of kidnapping),³⁰ and the robberies were apparently incidental to the sexual assaults.³¹ The authors sought to “analyze the conduct of the defendant which constituted the two capital crimes, to apply the law as it was at the time of his trial, and the law as it is today, and to formulate an answer to the following question: What would be the outcome if Chessman were tried today?”³² After surveying changes in the law before and after Chessman’s conviction, the article concludes that “[n]o case in California history can stand as precedent for the execution of Chessman,”³³ and that “if the California or the U.S. Supreme Court were to review the imposition of the death penalty in Chessman’s case, it would unequivocally find that the punishment was excessive and in violation of the 8th and 14th Amendments to the U.S. Constitution.”³⁴ This conclusion reflects Judge Alarcón’s pragmatic stance on the death penalty: He was not morally opposed to it, but he tirelessly advocated that its use be appropriate and limited.

More recently, Judge Alarcón published a comprehensive analysis of the cost of imposing the death penalty in California.³⁵ In 2011, when the article was published, California had 713 inmates on death row, but it had executed only thirteen individuals since 1976.³⁶ This “dysfunctional death penalty system”³⁷—in which many are sentenced to death and housed on San Quentin’s death row, but few are executed—has cost state and federal taxpayers “roughly \$4 billion” since 1978.³⁸ After analyzing why death penalty trials are so costly,³⁹ exploring the impact of the ballot initiative process on

29. *Id.* at 29.

30. *See, e.g.*, MODEL PENAL CODE § 212.1 (2014) (“A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or unlawfully confines another for a substantial period in a place of isolation” to accomplish certain purposes).

31. Brown et al., *supra* note 27, at 31.

32. *Id.* at 22.

33. *Id.* at 41.

34. *Id.* at 41–42.

35. Alarcón & Mitchell, *supra* note 19.

36. *Id.* at S51.

37. *Id.* at S41.

38. *Id.* at S51.

39. *See generally id.* at S65–109. The authors developed their cost estimate primarily by comparing the cost of a death penalty trial with the cost of a trial in which the state seeks punishment of life without the possibility of parole. The authors also reviewed the cost of state

retaining the death penalty in California,⁴⁰ and offering potential alternatives to California's system,⁴¹ the authors issued this challenge to California voters: "Unless California voters want to tolerate the continued waste of billions of tax dollars on the state's now-defunct death penalty system, they must either demand meaningful reforms to ensure that the system is administered in a fair and effective manner or, if they do not want to be taxed to fund the needed reforms, they must recognize that the only alternative is to abolish the death penalty. . . ."⁴² This challenge is emblematic of a thoughtful jurist and a wise counselor. Judge Alarcón issued it not from the point of view of an individual opposed to the death penalty, but as one experienced in many facets of imposing the ultimate punishment, and after objectively comparing the benefits of California's system of justice in capital cases with its immense financial drawbacks and interminable delays. The article, like all of his work, exemplifies Judge Alarcón's informed pragmatism and astute insight.

These are but some examples of Judge Alarcón's profound impact on his home state of California and on the entire federal judiciary. I will fondly remember him not only because of his faithful adherence to the rule of law, but also by his quiet brilliance and compassionate pragmatism, always accompanied by an engaging smile and a twinkle in his eye. It was my honor to have called him my friend and colleague.

Judge Richard C. Tallman
U.S. Court of Appeals for the Ninth Circuit

and federal habeas review, the cost of incarceration, and the cost of hiring and training attorneys capable of defending and prosecuting death penalty cases.

40. *See id.* at S158–60.

41. *See id.* at S212–14.

42. *Id.* at S46–47.

ARTHUR L. ALARCÓN*Judge J. Clifford Wallace*

I first met Arthur Alarcón in 1979, when Congress increased the size of the Court of Appeals for the Ninth Circuit from thirteen to twenty-three judgeships. The task was to secure approval by the United States Senate before recess—thus, obviating the possible need to reintroduce the authorization.

Then Chief Judge Browning asked me to do all that was necessary to be sure we received all ten new judges. We assumed President Carter would nominate just Democrats, so we planned our strategy accordingly. We were successful. However, to my surprise, I was advised that Arthur was a Republican!

But Jimmy Carter did not make a mistake. Neither did both Democrat Governors Brown, who appointed him to state judicial posts. Political leaders on both sides of the fence found Arthur to be the type of non-political person who makes his call based on the law—not political instincts.

It should then be no surprise that in working with Judge Alarcón over the thirty-six years we served together on our court, I sensed his desire to find the answer called for by the Constitution, statutes, and the precedent case law. No one could have a more affable and pleasant colleague. It was always a pleasant experience to hear arguments with him.

But Arthur never forgot his roots. He wore his heritage well and he was an excellent example of how the “melting pot” should operate to bring people of diverse cultures into one whole, rather than wary and suspicious groups. He led for the right reasons and his many accomplishments speak volumes about how our country should be.

We will miss you, Arthur.

Judge J. Clifford Wallace
Senior Judge and Chief Judge Emeritus
U.S. Court of Appeals for the Ninth Circuit

**TRIBUTE TO THE HONORABLE
ARTHUR L. ALARCÓN**

Judge Kim McLane Wardlaw

Arthur Alarcón was an exceptional judge and a true gentleman. He epitomized decency, had a kind word for everyone, and eagerly reached out a helping hand to lift up others, especially women and minorities. The way he conducted his life sets an example for all lawyers, judges, and, indeed, all people, to follow. I am honored to have the opportunity to pay tribute to my colleague.

From humble beginnings as the son of an immigrant baker with virtually no formal education, Judge Alarcón became an incredibly productive public servant who never slowed down, even at the age of eighty-nine. After serving his nation in combat during WWII, for which he was awarded four Battle Stars and a Purple Heart, Judge Alarcón served the Los Angeles community as a prosecutor, and later as a judge on the Superior Court. He served California as Governor Pat Brown's clemency advisor. And since 1979, Judge Alarcón has served the Ninth Circuit with tireless dedication. After taking senior status in 1992, Judge Alarcón maintained a full caseload and still managed to find time to sit as a visiting judge in six other federal circuits. He even served the international legal community through his participation in judicial exchange programs in Latin America. All the while, he continued serving on numerous boards, including the board of Las Familias del Pueblo, a Los Angeles Skid Row community center.

Of all the accomplishments in Judge Alarcón's life, he was proudest of fulfilling his version of the American Dream, and he has used his position to help others do the same—myself included. Judge Alarcón was the first person of Hispanic descent to sit on the Ninth Circuit, paving the way for future Hispanic judges. In 2007, I had the privilege of sitting with Judges Alarcón and Fernandez, to comprise an historic, all-Hispanic panel. Such a panel had been possible since 1994, but because panels are drawn randomly, it was not until more than a decade later that the occasion arrived. Judge Alarcón was delighted to inform Judge Fernandez and myself that we would be the first all-Hispanic three-judge panel to sit not only in the Ninth Circuit, but in any of the nation's federal courts of appeals since they

were established in 1891. In that sitting, we heard six cases, one of which resulted in a published opinion, *Card v. Everett*, 520 F.3d 1009 (9th Cir. 2008), one in a series of Ten Commandment cases resulting from the Fraternal Order of Eagles' distribution of over a hundred granite monuments inscribed with a non-sectarian version of the Ten Commandments in association with Cecil B. DeMille, the Hollywood producer of the movie by that name. In Judge Fernandez's words, Judge Alarcón and I engaged in a "scholarly and heroic attempt to create a new world of useful principle out of the Supreme Court's dark materials," referring to the recent Establishment Clause decisions stopping just short of eliminating the well-known *Lemon* test for determining whether a state had violated the Clause.

Judge Alarcón also earned praise from organizations such as the Women Lawyers Association of Los Angeles, of which I am a past President, for promoting the advancement of women in the law. Judge Alarcón had a long history of hiring female law clerks, and, with his support, one of the first clerks he ever hired, the late Florence Marie Cooper, went on to become a federal district court judge on my former court, the Central District of California. Judge Alarcón also fought to ensure that the criminal courthouse in downtown Los Angeles was named after Clara Shortridge Foltz, the first woman admitted to the California bar. For decades, Judge Alarcón was a champion of gender equality in the law.

I will perhaps remember Judge Alarcón most for the warm welcome he extended to me when I was first asked to sit by designation on the Ninth Circuit. Though I was not sitting with him, Judge Alarcón learned that I would be hearing cases by designation as a Ninth Circuit judge. He invited me to his chambers to offer his assistance as I prepared to hear cases as an appellate judge for the first time. That this distinguished circuit court judge, who had a full caseload of his own and countless other demands on his time, still took it upon himself to lend a hand to a newly-appointed district court judge speaks to his limitless capacity to help his colleagues. I wondered at the time whether he did so because we enjoyed the support of our mutual friend, U.S. Senator Dianne Feinstein, who had recommended me to the district court, and, only later, wondered whether he had been involved in promoting yet another woman to a federal judicial career.

Judge Alarcón did more than welcome me to the Ninth Circuit with his characteristic kindness, booming laugh, and twinkling eyes. He also passed along invaluable advice and an approach to reviewing cases that I use to this day, and, in turn, have passed on to my law clerks. He treated each case before him as the most important case of his career, and he felt an obligation to meticulously study new authorities, even those not cited by the parties, to deepen his understanding of the law. A self-described student for life, Judge Alarcón never viewed himself—or other judges—as founts of wisdom who possessed all the answers. Rather, he considered it his duty to learn all he could and to put everything he learned into each decision. He hoped that his preparation would allow for constant progress, and, having sat with Judge Alarcón as recently as 2011, when he was eighty-five years old, in Hawaii, no less, I can say that it did. Judge Alarcón also worked to reach unanimous results. In the many cases we heard together, there was only one dissent, and it was by me in a Title VII discrimination action.

The world has lost a great man. I extend my deepest condolences to Judge Alarcón's family and hope that they take solace in reflecting on the rich life he led and the many people he helped along the way. He will be fondly remembered and greatly missed by all who had the pleasure of knowing him.

Judge Kim McLane Wardlaw
U.S. Court of Appeals for the Ninth Circuit

