

2020 WRITING COMPETITION VIRTUAL ROUNDTABLE

For the first time, the California Supreme Court Historical Society met by video conference to congratulate the 2020 winners of its annual Selma Moidel Smith Student Writing Competition in California Legal History.

The award-winning students introduced themselves and presented summaries of their papers. Participating in the discussion were California Chief Justice Tani Cantil-Sakauye, recently retired Justice Kathryn Mickle Werdegar, Society President Richard H. Rahm, and Selma Moidel Smith who initiated and conducts the competition.

Each year, the competition is judged by distinguished legal historians and law professors. The 2020 judges were: Stuart Banner, UCLA School of Law; Christian Fritz, University of New Mexico School of Law (Emeritus); and Sara Mayeux, Vanderbilt University School of Law, who was the first-place winner of the competition in 2010.

The following is a lightly edited transcript of the video conference that took place on August 26, 2020.¹ The complete papers appear immediately following in this volume of *California Legal History* (vol. 15, 2020).

¹ The video conference is available on the Society's website at <https://www.cschs.org/programs/student-writings> or on the Society's YouTube channel at <https://www.youtube.com/watch?v=ToP6rkZpaxU>.

RICHARD H. RAHM: I've been asked to do a "welcome and introductions," so I'd like to welcome everyone here. Chief Justice Tani Cantil-Sakauye has served as Chief Justice of California for nearly ten years now and during that time the Chief has championed the cause of bail reform, she leads an initiative called "The Power of Democracy" to support civil discourse — education for students — and finally, perhaps most importantly, the Chief serves as chair of the California Supreme Court Historical Society Board of Directors.

Next up, I'd like to introduce Justice Kathryn Mickle Werdegar who's been a champion of environmental law, recently retired after twenty-three years as associate justice of the California Supreme Court. Last year, Justice Werdegar established, in honor of Selma Moidel Smith, a student travel grant to help fund California legal history research. Justice Werdegar continues to serve as a long-time member of the Society's Board of Directors.

Next up is Selma Moidel Smith, whom we all know, formerly of the law offices of Moidel, Moidel, Moidel and Smith. I hope I didn't miss anyone there. Selma has been a leader in the legal profession generally, as well as bar associations, local, national, and international. In addition to being a long-time member of the Society's Board of Directors, Selma is not only chair of the Society's Publications Committee, she is editor-in-chief of the Society's *California Legal History* journal. In 2007, Selma initiated the Society's writing competition, which was renamed in her honor in 2014. Now, although Selma turned 100 last year, her powers of discerning first-rate writing are not diminished. The winning submissions this year are the best I've ever seen, and this is a tribute to Selma and her legacy. Thank you.

Excuse me, Chris,² do we know if Taylor Cozzens is going to be coming?

SMITH: I just got a message from our first-place winner. He will join us now. You just asked, and you just got it at the very moment it happened. What delayed him, and I do want to share this with you — his wife just gave birth, and he's been very carefully being with her at this time. He confessed, "I completely forgot what time it was." She was in the hospital and the baby was just born. And he did not want to miss this, and I'm sure you'll be able to give him congratulations, I want to say "in person," but I

² Chris Stockton, CSCHS Director of Administration.



VIRTUAL ROUNDTABLE PARTICIPANTS —

TOP, LEFT TO RIGHT: CHIEF JUSTICE TANI CANTIL-SAKAUYE, JUSTICE KATHRYN MICKLE WERDEGAR (RET.), COMPETITION CHAIR SELMA MOIDEL SMITH, AND SOCIETY PRESIDENT RICHARD H. RAHM.

BOTTOM, LEFT TO RIGHT: WINNING AUTHORS TAYLOR COZZENS, GUS TUPPER, AND BRITTNEY M. WELCH.

can't say "in person" — but it will look like we're all in person. So, you see, we have something from beginning to end here.

Actually, I do want to thank Richard very much — he has done a very selfless kind of thing in being here with us because he already was scheduled for surgery —

RAHM: It's just knee surgery —

SMITH: Let us begin now, and again, thank you, Richard — and I just want you to see how much that means for everyone. Yes, at that point, I hand that over to you to do the guiding along of the rest of our program.

RAHM: Now we have the student presentations. Each one of you, starting with Taylor, Gus, and then Brittney, if you could introduce yourself and summarize your paper for a couple of minutes, that would be great.

TAYLOR COZZENS: Thank you very much. My name is Taylor Cozzens. I just completed a master's program in history at the University of Oklahoma, and I'll be starting the Ph.D. program this fall. The paper that I wrote looks at the California Rural Legal Assistance, a legal service agency from the era of the War on Poverty, and specifically the agency's efforts to help mostly migrant farm workers.³ As I studied that agency, I first started by looking at their efforts to ban the short-handled hoe in California agriculture,⁴ and from there I looked at their work related to environmental justice — protecting workers from pesticides and other environmental hazards.

But as I worked on those other projects, I kept coming back to this truly dramatic standoff between Governor Ronald Reagan and this agency. That's what this paper was about. It was about Reagan's efforts to discredit and ultimately destroy this agency that the federal government was funding. Ultimately, he was unsuccessful, but it was, to me, a very dramatic and important story because it gets at the legal representation of mostly Latino farmworkers who had not had representation prior to that point. I really enjoyed writing the piece. Thank you.

RAHM: Thank you, and then Gus, would you like to introduce yourself and your paper?

GUS TUPPER: Hi, I'm Gus, a 2020 graduate of Berkeley Law, and my paper is about juvenile transfer, which is the process by which the juvenile court waives its jurisdiction over a juvenile defendant and transfers their case to adult court.⁵ In the paper I was trying to do three things:

The first part maps this theory called “the cycle of juvenile justice” onto transfer policy in California. “The cycle of juvenile justice” is a widely accepted understanding of the development of the juvenile court over the twentieth century, and I argue that California's transfer policy follows a similar arc. At the turn of the twentieth century, the lenience that the juvenile court was founded on basically meant there were no rules governing transfer at all, which led to all kinds of abuses, including what I identify

³ Taylor Cozzens, “Ronald Reagan v. CRLA: Politics, Power, and Poverty Law,” *California Legal History* 15 (2020): 175–206.

⁴ Taylor Cozzens, “Defeating the Devil's Arm: The Victory over the Short-Handled Hoe in California Agriculture,” *Agricultural History* 89, no. 4 (Fall 2015).

⁵ Gus Tupper, “Breaking California's Cycle of Juvenile Transfer,” *California Legal History* 15 (2020): 207–253.

as a transfer project where older “incorrigible boys” in California’s early reform schools were surgically sterilized. And then harsher punishments arose out of the increased crime of the Great Depression. The transfer process became more punitive, so that it was easier to transfer kids to adult court, but the deaths of two Mexican-American boys, Benny Moreno and Edward Leiva, in state custody in 1939 Los Angeles led to calls for more lenient treatment. And then federally mandated procedural rules were supposed to help alleviate some of the excesses of juvenile court punishment, but in the middle of the twentieth century and with the tough-on-crime era in the eighties and nineties and early 2000s, some of the harshest punishments were brought back into vogue. In the last few years, we’ve entered a period of backlash to these tough-on-crime policies, including California’s punitive transfer policy.

The second part of my paper is about S.B. 1391 which took effect in 2019 and made it impossible for California’s juvenile courts to transfer kids to adult court until they turn sixteen. Prosecutors are currently challenging the constitutionality of that law, and the Courts of Appeal are split. The vast majority are in favor of upholding it, and I argue in the paper that that majority of the Courts of Appeal are right, and the Supreme Court is hearing the case and will probably decide in the fall.

But I think the most interesting question is how to break out of the cyclical pattern, and that’s the subject of the third part of my paper. Thomas Bernard, who’s kind of the father of this “cycle of juvenile justice” theory, casts it as inevitable, but I think there’s real promise in abolitionist organizing in California right now, particularly recent successful calls to defund school police and reinvest money in transformative justice projects. I think movements led by groups like the Black Organizing Project in Oakland and Youth Organize California might actually be able to keep us in this current lenient moment in the cycle of juvenile transfer.

RAHM: Thank you very much, Gus, and then finally, Brittney.

BRITTNEY WELCH: Hi, I’m Brittney Welch. I was born and raised on a farm in northeastern Ohio, about an hour from Cleveland, and the farm is actually where I spent all of my summer while working remotely for the Department of Justice Antitrust Division. I’m currently a 3L at Moritz College of Law at Ohio State. I’m in Columbus right now. And I’m really

passionate about public interest work and I hope to have a career working in government someday. I'll actually be clerking for a state supreme court after I graduate, in Vermont, which is a place I've never been but as a history nerd I can't wait to go and dig into New England's history.

My paper was actually inspired by my 1L summer job. I worked for the Department of Transportation in D.C. I didn't work on the rule that I wrote about — I was in the Federal Highway Administration — but it was something that I heard about from afar. My paper is about the One National Program Rule, which is a rule that was promulgated by the current administration which destroys, in my opinion, the iterative federalism scheme created by California in the realm of environmental regulations in favor of a national fuel emissions standard, which is much less considerate to the environment.⁶ It examines the deeply embedded aspects of federalism in California's Clean Air Act waiver, which they've had for quite a long time, and which has continued to enable California to be a leader in auto emissions regulations for half a century. California's high environmental standards of regulation don't only touch California. There are about 120 million people who reside in states that have adopted California's standards, and the number is even higher when you consider that states bordering those compliant states can sell the California-compliant cars as well. So, in my paper, what I do after discussing the history, is that I propose a framework that emphasizes the central role that federalism should play in any analysis of an eventual court's decision on the rules, and there are in litigation now some cases related to the rules. Overall, my paper concludes that the continued existence of California's ability to opt out of the Clean Air Act standards, and go above and beyond those with their own emissions standards, is not only essential to advancements in environmental regulations, but it's essential to the vitality of modern-day federalism.

RAHM: Thank you very much, Brittney. I'm going to go off-script just a little bit and ask a question. It's really interesting to me that Brittney, with your paper, and Taylor, with your paper, they're almost like bookends in that Taylor is writing a paper about the success of the federal government in imposing a

⁶ Brittney M. Welch, "Stop! Turn the Car Around Right Now for Federalism's Sake! The One National Program Rule and How Courts Can Stop Its Impact," *California Legal History* 15 (2020): 255–290.

standard and not getting it overturned or somehow sabotaged by Governor Reagan, and then Brittney, with yours, you're basically touting federalism in that, "Gosh, these states should have the right to go do what they want to do" — kind of at odds with Taylor's paper. Any comments?

WELCH: Taylor, you can go ahead first.

COZZENS: It is ironic. The easy answer is that it's political, I suppose. Whoever is in the Oval Office, whoever is in Sacramento, their policies at different times disagree, but in different ways. In the case of California, after Reagan, Governor Jerry Brown — I'm thinking of Miriam Powell's recent book, *The Browns of California* — both of his terms were very fundamental in perhaps moving California toward the direction that Brittney's paper analyzes.

WELCH: I found it really interesting while I was doing my research that federalism is a term I've almost always associated with a conservative viewpoint — that's what you hear when federalism is touted — and I hadn't really been looking into the environmental space before, and it kind of amazed me how federalism is being used in a way that I had never looked at and I had never seen. So I think it was a learning lesson for me that sometimes — and again, federalism is great if you agree with the point of view, but at the same time it's really easy to flip back on the other side and be like, "Oh, actually I don't agree with that kind of federalism." So I think it's just been a learning lesson to me in a lot about how these tools can be used for things you might agree with and things you might not agree with.

RAHM: Very good, and Gus, does your paper fit in somewhere in between this, or is it a case study in and of itself?

TUPPER: The sort of federal interplay, I guess, comes in more with Earl Warren who was a really important player at multiple stages in the development of juvenile policy in California, first as attorney general when he instituted a lot of reforms including creating the California Youth Authority, which was the youth prison system through the rest of the twentieth century, and then obviously as governor and chief justice. He wrote some of the most important U.S. Supreme Court cases about juvenile law, including *In re Gault*, which guaranteed due process rights to juveniles. So that's sort of the federal line that I see, definitely some interesting federalism questions there, too.

RAHM: Very good. Well, thank you all. Going back onto the agenda — sorry about that, Selma — Chief, if you have some closing remarks?

CHIEF JUSTICE: Thank you. I know, listening to your descriptions of these distinguished works, that all of us will benefit because of that inspired writing. I found all of your subject matters very interesting, and hearing you describe them.

As a jurist — I know that Kay Werdegar also, probably — lightbulbs were going off in our heads thinking about what you wrote about, Taylor, regarding the struggle and conflict in power enforcing policy and how the relationship of the three branches of government makes a difference — and brute power or incentivizing action — and I think those of us who either still remember the Reagan years, or remember jurists from the Reagan years, or have dealt with policies in the Reagan years, will find it fascinating — fascinating actually, when you talk about CRLA. You know, Justice Cruz Reynoso is a founder and an awesome megastar of CRLA and served on our court, and then after he left our court, he went on to teach young minds in law school and is considered still today to be an iconic influence in California policy.

And then I think of Gus's subject matter about juveniles and, again, the federal government plays a role, in the sense that — while it doesn't fund it like CRLA — it certainly started with the *Roper-Miller* line of cases, where Kay and I are very familiar with the young, growing, juvenile mind and the way the courts have finally begun to humanize our approach to the juvenile mind and rehabilitation. So, we watch with fascination the entanglements of transfer now at the California Supreme Court, having to do with Prop 57 and others.

And then, of course, I seriously enjoy Brittney's emphasis on federalism because this is what I try to preach over at the Legislature when they get out of their lane, violate separation of powers, and try to tell the judicial branch what to do. Or, often I hear it when the judicial branch at the state level tries to guide the trial courts at the county level. I find federalism fascinating; I wish more people knew about it, more people respected it and thought about it in an abstract way. I think it would improve our policies, at least in California.

And so I'm greatly excited and inspired by your minds, thinking about this and your view and approach. All of these issues come to us at the

Supreme Court, brought to us by good attorneys like Richard and Selma, and this is what moves policy forward. So thank you for this opportunity. I'm excited and impressed.

RAHM: Thank you very much, Chief Justice Werdegar?

WERDEGAR: Yes, well, I enjoyed the Chief's remarks, and I enjoyed the image of the Chief trying to educate the Legislature, but if anybody could do it, she could. First, I want to congratulate Taylor on a new baby, am I right?

COZZENS: Yes, the baby just barely arrived. Thank you very much.

WERDEGAR: My goodness! Is it a baby boy or a baby girl?

COZZENS: A girl.

WERDEGAR: Her name?

COZZENS: Eleanor.

WERDEGAR: Well, congratulations to your wife and to you, and we're glad that you could still make an appearance. At least you didn't have to fly to California. As said by the Chief so eloquently and completely, all your topics touch us in the judiciary, and us in California. I was interested that you looked to Ronald Reagan as governor, which so many people forget — that he was governor of the State of California before he became president — and I do remember when the CRLA was going into effect and the issues of that time.

With Gus telling us about the juvenile transfer cycle, as a judge, I've watched that, I've lived through it, I've suffered through it, and it's an ongoing issue that this state faces.

And finally, the federalism about Britney's paper, "Stop! Turn the Car Around": We are living that now, too. So these are very timely, very important, topics, and I congratulate all of you for coming up with these, and I think you know it's unprecedented that each and every one of you would be published in our California Supreme Court Historical Society journal, and that's because, in addition to the first-place winner, the other two are also worthy of publication and will get the exposure they deserve. So congratulations to all of you.

RAHM: Thank you Justice Werdegar. Selma?

SMITH: Many, many thoughts have already been going through my mind, as I'm sure it is with you. I wanted to say simply that this has been quite a learning experience. This is the first time, of course, by force of circumstances that we are in this particular mode of doing it, and I'm looking forward to our ability to return — on behalf of all of us — to where we can all sit together and enjoy each others' personal company as well, but I'm very grateful that we have this, and I shall have many occasions to look back.

As each of you spoke, I was making mental notes, and when I see your names again in any of your activities — without your even knowing it — I will have an extra heartbeat for your endeavors and accomplishments. So, I shall not lose you; I shall simply be adding to my large, well — I'm the eldest here — so, I simply want to take advantage of that by saying, as we go along, we also keep learning. And these examples that you've given are splendid examples of what is done at a particular level, and the opportunities you make use of, and what you are giving to your work. I'm going to be particularly proud because all three of you, your papers, I can assure you will be in the fall journal, our scholarly journal of which I'm editor-in-chief. I just want you to know that I will be thinking of you, and I appreciate so much your taking your time, your efforts, to come and share with us, and I look forward to these names again. Thank you, all of you, for coming.

I want to thank our Chief, who is always available to me at any time that I am going to make an honor of this nature, as the result each year of these particular competitions, this very one, which they were kind enough to — simply because I came up with it — they put my name on it, so they call it that.

RAHM: That's not entirely true —

SMITH: At any rate, I just want to say thank you, and I'll be thinking of each one of you, wishing the very best for you.

Chief Justice Tani, in spite of the fact that you are not at *that* point — you are at a different point — I want to see all the recognition possible for you, and for all the splendid ideas and the manner in which you conduct yourself, the manner in which you hold court. I saw you as you became chief justice, and I look back to that moment, of our first glance to each other, and you came up to me so kindly to introduce yourself, and I

appreciated that. And now, I appreciate this opportunity in a very public way, again, to say we're very fortunate here in California, very fortunate.

Chief, it's delightful to see you again, and I'm sorry that at this time, contrary to all the other times we've had, when we were actually meeting together, we can't just reach out and make a hug — which we know is practically our signal to each other.

CHIEF JUSTICE: Thank you, Selma. I don't have much to say except to tell you, of course, that I miss you, and it's wonderful to see you, even if onscreen and to hear your voice. I know that Kay [Werdegar] and I have always enjoyed this celebration of the students who win the award, the terrific work of the historical society, but particularly, Selma, your leadership with this program that mentors young students. And they get to meet you, and I hope that all of you, if you have not already, that you "Google" Selma, because if I were to tell you about her background, we would be here until midnight, and I think she's only giving me a few minutes. And I will also say I thank Richard [Rahm] for his leadership, and Chris [Stockton], because of how important it is to have this focus. I'm also grateful that, in looking at where you all hail from, these are truly national winners. Your topics sound very exciting and provocative. So, thank you, thank you for this privilege of being able to share this celebration of these honors with you, with the great Selma Moidel Smith.

RAHM: Thank you.

SMITH: Thank you. You see, that's who we have that we can be so proud of. When I have national meetings, I'm so pleased and proud to be able to say, yes, I'm from California, and, of course, we have our "Chief Tani."

RAHM: I agree.

CHIEF JUSTICE: Thank you, Selma. It's a privilege; thank you.

SMITH: As she also knows, my closing words will be with Kathryn. She has gone with me from one to another of the occasions in which we have had our annual students' competition. On each occasion, she has added her good thoughts, her kindness. It's the kind of friendship that lasts, and has, over years, all on the Board of Directors in the California Supreme Court Historical Society. So, like it or not, we become captive to our attributes, to our wishes, to our good thoughts for others.

I just want to say, if I could possibly do it all at one time, I would reach out and make a big hug and thank you for all the contributions.

WERDEGAR: And we'd reach out to you —

SMITH: We'll see your articles in our journal in the fall, and all of you will see your papers and you will see each others'. And I just want to tell you that you've made a bright day, and a bright year, and added to a bright life. Thank you so much to all of you. And Chris, thank you for guiding the technical process, and I want you to know that I expect you will take my thank-you back to your office. And Richard Rahm gets my absolute thanks because not too many people who are scheduled for surgery — thank you again for moving out your really personal matter — and I hope you're never in that spot again. I wish you the very best on your knee operation, and I'll have a good thought for you, as I'm sure we all will.

Thank you, thank you, thank you, in every language that ever existed and one that comes only from the heart. Thank you all.

RAHM: Thank you so much, Selma. Actually, you remind me of a quick anecdote. Once, when I was working on an article for the *California Legal History* journal, I was in my office sending emails to Selma around midnight, thinking, you know, that sometime the next day we would discuss them, and — bam! — immediately, she replied at midnight, and there would be emails waiting for me at 7:00 in the morning. So, I don't know when she sleeps, but — just absolutely incredible.

I want to thank you, Taylor, and congratulations — what fantastic news — and thank you for your paper; I really enjoyed reading it. And likewise, Gus. Thank you very much, and congratulations. And, finally, Brittney, thank you so much for your paper. And then, Chief, thank you for your remarks. Thank you for being here. Justice Werdegar, thank you so much. And again, Selma, thank you. Chris, thank you for putting this together online. With that, I think we've concluded.

SMITH: Have a lovely day. And also — when my heart is in it, there they go [gesturing a hug to everyone].

RAHM: Yes!

ALL: Yes, definitely [gesturing the same].