

FIFTEEN YEARS OF CALIFORNIA LEGAL HISTORY:

The Role of a Journal in an Emerging Field

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This is the fifteenth volume of *California Legal History*, the annual journal of the California Supreme Court Historical Society, and the twelfth that I have had the privilege to edit. These anniversaries offer the occasion for a brief review.

The founding editor, Professor Harry N. Scheiber, had the foresight to join the name of the journal with its subject. Four volumes of the Society's previous journal, the *Yearbook*, had appeared under his editorship from 1994 to 1999, and he concluded his tenure in 2006 with his launching of the present publication. In his preface, he declared it was the journal's purpose to "provide sound building blocks for the construction of California legal history in its many dimensions."¹

California legal history does not have a long record as a field of study. Courses in *American* legal history are offered widely at law schools in California and the rest of the country, but the legal history of California is rarely mentioned at any of the leading law schools, even in California. Similarly, the

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¹ Harry N. Scheiber, "Editor's Preface," *California Legal History* 1 (2006): 1.



**PROFESSOR HARRY N. SCHEIBER
AND SELMA MOIDEL SMITH
AT THE NOVEMBER 15, 2016
CELEBRATION TO MARK THE
PUBLICATION OF THE HISTORY
OF THE CALIFORNIA SUPREME
COURT EDITED BY SCHEIBER.**

Photo: Jane Scheiber

literature on American legal history is vast, but there are no treatises or textbooks devoted primarily to California.

As a result, neither professors nor students regularly produce papers that could be published in the journal.

The response has been to create a comprehensive program to promote the study of California legal history. Mindful that any academic field consists of scholarship, education, and research materials, the goal has been to support each of these through the medium of the journal. Therefore, the content was planned to serve as both a stimulus and a resource for the study of California legal history. This has been pursued in the following ways:

1. SCHOLARSHIP

The principal goal of the journal is to publish new scholarship and to encourage the writing of publishable new work.

EDITORIAL BOARD: A first step was to appoint an Editorial Board of distinguished legal historians for the dual purpose of increasing awareness of the journal in academic circles and promoting their participation in the journal. Over the years, each Editorial Board member has made one or more substantive contributions of new scholarship to the journal. These range in type from book reviews and articles to the previews of forthcoming book chapters published by former Justice Joseph R. Grodin in the 2011 and 2012 volumes.

ARTICLES: Nearly all of the articles published in the journal have been ones solicited directly from scholars whom I observed were engaged in relevant work. Because no legal historian specializes in the legal history of California, it has been necessary to acquaint potential authors with the journal and assure them of its standing as a peer-reviewed journal and its distribution both in print and online. Ultimately, the response has been uniformly positive.

SYMPOSIA: To increase awareness of the journal and also engender articles for publication, I invited Professor Reuel Schiller of UC Hastings to organize a panel of legal historians to present papers on California topics at the American Society for Legal History 2012 Annual Conference in St. Louis. It appeared in the conference program as “The Golden Laboratory: Legal Innovation in Twentieth-Century California (Co-Sponsored by *California Legal History*, the journal of the California Supreme Court Historical Society).” The three presenters’ papers were published in the 2012 volume. Further initiatives of this type remain a continuing goal, but subsequent ASLH conferences — before the coronavirus pandemic — have generally been far from California at a time when many institutions have cut back on travel funding.

WRITING COMPETITION PAPERS: When I initiated our Society’s student writing competition in 2007, the prize immediately included publication of winning papers in the journal, both as a reward for the student and to provide up-to-the-minute content for the journal. This has continued each year, providing one, two, or three papers for the journal, and ensuring coverage of the most topical subjects being taught and studied in current coursework. Fortunately, the coronavirus did not discourage but seemingly enlarged the pool of entrants, including the students from three states whose winning papers appear in this volume.

SOCIETY BOARD MEMBERS: It also seemed likely that worthwhile scholarship for the journal might come from those who had already indicated their interest in the field by their membership on the Society’s Board of Directors, so I have tried to make the journal a platform for work by these authors. So far, thirteen Board members have been published by the journal on twenty-four occasions: Jake Dear (2009, 2015, 2017, 2020), Douglas R. Littlefield (2009, 2010), Mitchell Keiter (2009, 2014, 2018), John F. Burns (2009), Ellis Horvitz (2010, 2020), Harry N. Scheiber (2013, 2018, 2019), Gordon Morris Bakken (2010, 2013), Roman Hoyos (2013), Richard H. Rahm (2014, 2020), Molly Selvin (2015), Kathryn Mickle Werdegar (2015), George W. Abele (2016), and John S. Caragozian (2020).

2. EDUCATION

Another principal goal has been to use the journal to promote the teaching of California legal history. This has been accomplished in several ways:

STUDENT SYMPOSIA: I have invited professors of courses in American legal or constitutional history to encourage their students to choose California topics for their course papers. This has resulted in a number of excellent articles for the journal and also several writing competition winners. Recent budget cuts have reduced the number of such elective courses offered by law schools, but so far there have been three student symposia published in the journal, introduced by their professors:

“California Aspects of the Rise and Fall of Legal Liberalism,” Professor Reuel Schiller, UC Hastings, 2012;

“The California Supreme Court and Judicial Lawmaking,” Professor Edmund Ursin, University of San Diego, 2014;

“Three Intersections of Federal and California Law,” Professor John B. Oakley, UC Davis, 2015.

WRITING COMPETITION JUDGES: As another means of increasing awareness of the journal and the field of California legal history, I have invited a deliberately wide range of professors to serve as judges in the Society’s annual student writing competition. So far, twenty scholars have served as judges: Stephen Aron (UCLA), Stuart Banner (UCLA), Mark Bartholomew (SUNY Buffalo), Michal Belknap (UCSD), Mirit Eyal-Cohen² (Alabama), Christian Fritz (New Mexico), Sarah Barringer Gordon (Pennsylvania), Ariella Gross (USC), Laura Kalman (UCSB), S. Deborah Kang (CSU San Marcos), Gregory C. Keating (USC), Sara Mayeux³ (Vanderbilt), Charles McClain (UC Berkeley), Peter L. Reich (Whittier and UCLA), Reuel E. Schiller (UC Hastings), JoAnne Sweeny (Louisville), Edmund Ursin (University of San Diego), Chris Waldrep (SFSU), Robert F. Williams (Rutgers-Camden), and Victoria S. Woeste (American Bar Foundation).

MENTORSHIP: I have asked individual professors to inform promising students about the opportunity for publication offered by our writing competition, which has resulted in more than one winning paper (as well as faculty awareness). In one instance, when a student submitted a paper that lacked the organizational skill to be selected for an award by the judges, but which had unusual merit in subject and thought, it was possible to find a faculty member

² First-place winner, 2007 CSCHS Student Writing Competition.

³ First-place winner, 2010 CSCHS Student Writing Competition.

at the student's law school who agreed to serve as a mentor in writing legal history and which resulted in an article published in the journal.

SOCIETY PROGRAMS: Over the years, the Society has been active in presenting educational programs on topics in California legal history. The journal has proved the ideal vehicle for preserving these oral presentations in an accessible written form, with the addition of a scholarly apparatus. Commencing with last year's volume and continuing with the present volume, five such programs — ranging in date from 2006 to 2017 — have now been published.

3. RESEARCH MATERIALS

The third principal goal for the journal is to make materials available for scholarly research. This has been accomplished by highlighting archival collections, publishing unpublished materials, and by making known previously published and unpublished scholarship.

ARCHIVAL COLLECTIONS: Commencing with the 2009 volume, I have invited an ongoing series of articles by different scholars on the holdings of various archival collections, wherever materials might be found that would be useful for research in California legal history. So far, these have included the California State Archives (2009), Huntington Library (2010), Bancroft Library (2011), Stanford Law Library (2012), UC Hastings Library (2013), Autry National Center (2015), UCLA Special Collections (2016), and Los Angeles County Law Library (2019).

UNPUBLISHED PRIMARY SOURCES: It has been possible to locate a number of items that would otherwise remain little known, but which are important for the field, and to publish them in the journal. Some examples are: "Fifteen Unpublished Papers of Justice Stanley Mosk (2009), "Nine Speeches by Justice Roger Traynor" (2013), speeches by Chief Justice Donald Wright, Justice Raymond Sullivan and Bernard Witkin (2014), and address and speeches by Justice Kathryn Werdegar (2012, 2017), and "Ten Unpublished Speeches by Justice Carlos Moreno" (2019).

ORAL HISTORIES: Most volumes of the journal include a section that publishes oral history as a primary source for research on legal history in California. The collecting of oral histories of California Supreme Court justices has been funded by the Society as an ongoing project. Oral

histories published by the journal have included those of justices and other significant legal figures in California. So far, the journal has published complete or significant sections of oral histories by Justices Frank C. Newman (2006), Joseph R. Grodin (2008), Jesse W. Carter (2009), Chief Justice Phil S. Gibson (2010), Chief Justice Donald R. Wright (2014), Cruz Reynoso (2015), Kathryn Mickle Werdegar (2017), and Armand Arabian (2020).

UNPUBLISHED DISSERTATIONS: For the three most recent volumes, it has been possible to locate doctoral dissertations that were written several decades earlier and which, usually for personal reasons in the lives of their authors, were not published at the time but still merit publication for the benefit of present-day scholars. Unlike an academic press that would publish only current research, the journal is uniquely suited to publish such works in their original form, making them available both for their scholarly content and as primary sources on the state of research and thought at a given time.

BIBLIOGRAPHY ON CALIFORNIA LEGAL HISTORY: A special project solicited for the journal is the monumental annotated bibliography prepared in 2015 by Scott Dewey (then of the UCLA Law Library). With thousands of entries in 469 categories, it is the answer to the long-felt need for a comprehensive guide to published and unpublished writing on the legal history of California, available at: <https://www.cschs.org/wp-content/uploads/2016/01/CLH15-Dewey-Web-012016.htm>.

These projects have drawn an increasing circle of scholars and students (many now lawyers and law professors themselves) into the study of California legal history. In pursuing these goals, I am grateful for the confidence of the Society's Board of Directors over these many years.

If I have referred here only to the past, it is because — having reached the age of 101 in April of this year — I would not presume to discuss plans for the future. Nevertheless, I hope for the continued success of the Society and the journal. Let me say simply, as I have said elsewhere, that I am grateful for the gift of time — for the privilege of years.

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