

# LEGAL HISTORY IN THE MAKING:

## *Innovative Experiential Learning Programs in California Law Schools*

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### INTRODUCTION AND CONCLUSION

#### *From the Editor*

My career as a lawyer began almost eighty years ago when I was sworn in by the California Supreme Court, meeting in Los Angeles, on January 5, 1943. Among the many future events unimagined by this young lawyer was that I might have the honor and pleasure of editing *California Legal History*, the Journal of the California Supreme Court Historical Society, these past fourteen years.

As introduction to this special section, “Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools,” I return to a topic that was urgent when I was new in the law — the need for clinical education in law schools. In 1948, I was invited by the International Bar Association to present a paper on legal education at their annual conference at the Hague. My paper was a plea for practical training as a necessary part of legal education.

With the enthusiasm of youth, and the quaintly gendered language of the time, I argued that law schools “have taken the money of the student under the false pretense that they are preparing him to practice law, when in fact, he will

have to learn the *practice* of the law after admission to the bar.” In contrast, I referred to the pathbreaking example of Duke University, which required clinical training of law students at that time, and to the *optional* programs at schools such as Northwestern, Harvard, Cornell, Cincinnati, and Texas.

I made the case for the public benefit to be gained from well-prepared new lawyers at a time when “the vast majority of them have not seen the inside of a courtroom, have never prepared pleadings, have never seen many of the legal documents they pretend to know how to draw, and know absolutely nothing about the orderly presentation of a case.” I urged that the law student should have “as many opportunities as possible to deal with a live flesh-and-blood client. He should learn how to get the facts, how to gain the confidence of his client, and how to recognize when his client is withholding the facts.”

No other presenter addressed the topic of practical training, yet I am gratified to report that the IBA House of Deputies adopted the resolution: “That any system of legal education should provide for an adequate measure of practical training before a student is permitted to practice the profession of the law.”<sup>1</sup> At later IBA conferences, I found that my paper had been reprinted both in English and other languages.

Since that time, I have observed three waves in the move toward wider adoption of practical legal education. Each wave has emphasized the pedagogical value of such training for the student. The differences have come in the intended beneficiaries of the students’ efforts. In the first wave, the most that I or the schools named above dared to hope was that clinical programs should provide pro bono services to individuals in need. This was reflected in the early legal-aid clinics at leading law schools. In the second wave, commencing in the 1970s, the mood of the times broadened the focus to aiding worthy social groups and causes.

For the past decade or so, a third wave has again redefined the beneficiaries of law students’ clinical efforts, in tandem with a broader trend of redirecting aid from charity toward self-reliance (often citing the well-known adage, “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.”). That is the theme of this special section.

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<sup>1</sup> International Bar Association, Second International Conference of the Legal Profession, August 15–21, 1948, The Hague, “Summary of Proceedings and Resolutions Adopted by the Conference,” Symposium VI: Legal Education and Admission to the Profession (including “Curricula for Legal Education” by Selma Moidel Smith and Resolutions on Legal Education, p. 26).



AT THE FIRST UC BERKELEY SCHOOL OF LAW CONFERENCE ON THE CALIFORNIA SUPREME COURT, NOV. 14, 2008: (L.-R.) CHIEF JUSTICE RONALD M. GEORGE, JUSTICE KATHRYN MICKLE WERDEGAR, CHIEF SUPERVISING ATTORNEY JAKE DEAR, SELMA MOIDEL SMITH, IMMEDIATE PAST PRESIDENT RAY MCDEVITT, AND PRESIDENT DAVID MCFADDEN.

On the following pages, you will find a series of articles “devoted to current law school initiatives that, beyond providing *assistance*, also promote positive *change* in the law and society.” With those words, I invited an article from one experiential learning program at each of the seventeen ABA-accredited law schools in California that offer such programs. To our good fortune, twelve were ultimately able to provide such articles. As you will see, they come from diverse — and at times divergent — social, political, and teaching perspectives, yet they have a shared earnestness of purpose.

My invitation said, “The piece could include some historical background on the creation of the project (how this need came to be felt and put into action), its past accomplishments, current efforts, intellectual content given to the students, and particularly some discussion of current or recent individual students and their outcomes, both personal (growth, awareness, background, motivation) and results in the community.” I hope you will find they have each delivered more than I asked.

And, as you have no doubt surmised, this is also the introduction to my own farewell. Having reached the age of 103 this past April, I feel the time has come to declare my work as editor complete. Two years ago, I reflected on the course of *California Legal History* as both a journal and a field of study,<sup>2</sup> so I shall not repeat myself. Instead, I will say that I chose,

<sup>2</sup> Selma Moidel Smith, “Fifteen Years of *California Legal History*: The Role of a Journal in an Emerging Field,” *California Legal History* 15 (2020): 1–6.

with this return to an early interest, to dedicate my final volume to a forward-looking topic.

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And to "Chief Tani" — California Chief Justice Tani Cantil-Sakauye — for being herself, and for giving me the privilege of sharing her friendship.

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