

A Conversation with Selma Moidel Smith

AND

The Selma Moidel Smith
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through the feminist lens

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Selma Moidel Smith (left) and NAWL President-Elect Sarretta C. McDonough.

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A CONVERSATION WITH SELMA MOIDEL SMITH

**Lawyer, composer, volunteer extraordinaire – trailblazer –
she is both a role model and an inspiration to all.**

By Sarretta McDonough

SELMA MOIDEL SMITH, a NAWL member since 1943, is a woman of purpose. She received NAWL's Lifetime of Service Award from President Susan Fox Gillis in 1999, and she was honored with the creation of NAWL's Selma Moidel Smith Law Student Writing Competition by President Stephanie Scharf in 2005 (See page 10 to read the 2017 award-winning paper).

She is the first and only honorary life member of the Women Lawyers Association of Los Angeles, of which she was president for two terms in 1947 and 1948. She was also president of the Los Angeles Business Women's Council.

Selma was invited in 1953 by the president of the Woman's Medical College of Pennsylvania to be a charter member of their new national board, on which she served throughout the board's 50-year history, including two years as president.

She is one of 100 women nationwide included in the ABA Women Trailblazers in the Law Oral History Project, available at: <http://bit.ly/moidel>.

Selma has been an inspiration to generations of the NAWL family and has served as a guiding light and mentor to NAWL's leadership for more than a half-century. NAWL's President-Elect, Sarretta McDonough, sat down with Selma in July 2017 at NAWL's 2017 Annual Meeting & Awards Luncheon in New York to discuss and reflect on her extraordinary career and life. A transcript of that conversation, which has been edited to conform to this publication, follows. We hope you enjoy learning more about this wonderful woman lawyer and friend of NAWL.

McDonough: You were born in 1919, the year after World War I came to an end. At 98, we could devote this entire Q&A to your background and history alone. Could you summarize for us what you consider the important early life events that played a key role in your choice to become a lawyer?

Smith: I didn't know at the moment I was born that I had been born to a woman of purpose – whose purpose was that she wanted to be a lawyer. You know my age. Picture what the chances would have been at that time for my *mother*. She did succeed, however: all three of my older brothers were lawyers; my older sister also graduated from law school though she didn't practice.

I grew up in the midst of an unusual family, in an atmosphere where they were going back and forth to the library, speeches and debates were being prepared, and they were busy at the typewriter. My eldest brother had qualified to take the bar – but he had to wait six months to take the exam because he was not yet 21. A few weeks later, when I was just six years old, I had my first turn at public speaking, which was featured in our city newspaper. When I was eight, I used his typewriter to write an article that was published in the city newspaper. My second brother, who was the youngest president of the National Amateur Press Association, would give me his writing to check for supposed typos, and my youngest brother would stand me up on the kitchen counter to recite poetry by Tennyson. In my family, there was no distinction between the opportunities considered appropriate for men and women. This was a feeling strongly shared by my beloved father, who passed away suddenly when I was eight.

When I was 10, we moved from Warren, Ohio, where I was born, to Los Angeles, where I entered sixth grade. At the end of that year, even though I was a new student, I was given the school's only "Honor Award." I remember it listed, among other qualities, "Because she has splendid executive ability, and uses it."

Years later, when I would go to court, my mother would take something of hers, like a pin that my father had given her, and pin it on me, saying, "Where you walk, my feet will never go" – and in that way, she was able to be there – through me.

McDonough: Recent academic studies have pointed to grit and an open mind as key indicators of a person's ability to succeed as a lawyer. When I think of entering law school in 1939, I can only imagine how much of both you may have called upon over the course of those

Sarretta McDonough is president-elect of NAWL and has served on the NAWL Board of Directors since 2010. She is a member of the California Bar and a solicitor of England and Wales. She regularly represents multinational clients in connection with competition and corruption issues around the globe. She was recognized earlier this year by Global Competition Review as one of "the future stars of competition worldwide." She is Of Counsel in the Los Angeles office of Gibson, Dunn & Crutcher LLP and a member of the firm's Antitrust and Competition and White Collar Defense & Investigations practice groups.

'I was sworn in as a lawyer by the California Supreme Court on Jan. 5, 1943'

years. Can you tell us about your own experience and what challenges women faced in law school at the time?

Smith: I was a political science major at UCLA, but didn't stay long enough to get a degree. UCLA didn't yet have a law school, so I had sent an application to USC and was accepted during my junior year. The entering

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class at law school was 150 students, of which there were five women. I was one of them. When a woman was called on in class, you could hear a pin drop. Every one of us carried the burden of answering the question, "What are you strange creatures doing here?" The boys would have a study group, but no woman was allowed in. They'd have somebody come to speak, like a lawyer or judge, who would give them tips, and the girls had no access to that whatsoever.

McDonough: In the midst of World War II, in 1943, you started out as a lawyer. At the time there were not many women lawyers. Were there role models or mentors – whether lawyers or non-lawyers – who you looked to for guidance or took as a model as you began your career?

Smith: I was sworn in as a lawyer by the California Supreme Court on Jan. 5, 1943. I could have taken the oath in San Francisco in December, but I waited until they came to Los Angeles so my mother, who was in a wheelchair with rheumatoid arthritis, could be there. My second and third brothers had enlisted in the Army

soon after Pearl Harbor, even though they were over draft age. My brothers had a law office suite in the Continental Building in downtown L.A., and my oldest brother was waiting for me to join him. Right away, I had to learn on my own by doing – so no, I didn't have any mentors. Instead, on the same day I was admitted, I walked over to the office of the Southern California Women Lawyers and paid my dues. I wanted to be among my women lawyers. I love people, and working with people – and they came to know me. Four years later in 1947, they elected me president and again the next year – without my trying in any way. This pattern has repeated throughout my life. When I joined a group or organization I did so because I was interested in their work and their mission. I never sought the spotlight or a leadership role but, time and again, my colleagues would honor me by recognizing my contributions in that way.

Now, let me turn your question about mentoring around and say that I saw the need for just that sort of mentoring among our women lawyers, so I created a program of continuing legal education – 45 years before it became mandatory – in which I'd invite prominent judges and legal specialists to speak and at the same time give our members the opportunity to learn from them in ways that might be helpful in their practice and career.

McDonough: Can you describe some of your fondest memories involving the practice of law?

Smith: My practice was always a general civil practice, largely involving litigation, but it was my relationships with colleagues that I remember most fondly. One day in Department One, which is where the lawyers would assemble to hear their cases assigned to the various courtrooms, I heard the presiding judge call my name and announce in front of everyone that his friend, Judge So-and-So, had told him that he'd received the finest introduction of his life from me when he was the guest speaker at one of our women lawyers' events, and that he hoped for the same for himself one day. I remember the lawyer colleagues, often men I might have prevailed over in court but who came to like and respect

me, who would then refer cases (as women lawyers did) or even send me flowers.

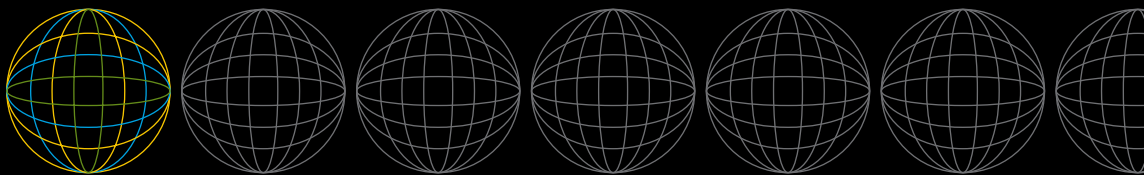
McDonough: That is high praise and, I'm sure, well deserved! On the flip side, can you describe for us particularly challenging times or events involving the practice of law?

Smith: They were rare and usually involved the challenges faced by women in earlier times, when we were only three percent of the profession. When I think back, I recall one incident involving a judge I needed to see who sent his bailiff out to hand me back my card, saying, "The judge says to tell you he doesn't see lady lawyers." On occasion, there was the lawyer who lost in court or with whom I stood my ground in negotiation who would slam down the phone in anger or make personal threats of a sort they wouldn't have dared



Selma taking her place of honor and greeting friends at NAWL's 2017 Annual Meeting & Awards Luncheon.

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She chaired or served on more than 20 different committees for NAWL

with a male lawyer. And, of course, there was the time in 1948 when a well-known lawyer was organizing a Council of Bar Associations in L.A. County and invited me to represent the women lawyers, but when I arrived at the meeting place – the University Club, now long gone – I was told by the doorman that women were not allowed.

McDonough: You have been a member of NAWL since 1943 and have written for the WLJ a number of times. Do you remember why you got involved in NAWL and can you share with us your involvement

over the years?

Smith: When I joined the Southern California Women Lawyers in 1943, they had also been for some years the Southern California Council of NAWL – in those days NAWL had a number of local councils – and I immediately became a NAWL member. Early on, I was elected Regional Director for the western states and Hawaii, and over the years I was appointed to chair or serve on more than 20 different committees. More recently, in 1996, the chair of the ABA Senior Lawyers Division asked NAWL to appoint a liaison to the Division, and President Sally Lee Foley appointed



Selma, always at the ready with useful advice, outlines her ideas for the interview topics.

Photo: Marty Morris/MPM Photography LLC

me. I had always been active in writing and editing, and so I was appointed to the editorial board of the Division's magazine, *Experience*. To promote the recognition of women lawyers, I proposed and wrote as a cover story the Centennial History of NAWL, which was then reprinted in the WLJ. This was followed by an article on my research discovering the first two women members of the ABA – both state vice presidents of NAWL – and many other articles that I wrote on leading women lawyers of our own time, all now available on NAWL's website.

I was soon appointed chair of *Experience* magazine – the first woman chair – and this led indirectly to my current position as editor-in-chief of *California Legal History*, the annual scholarly journal of the California Supreme Court Historical Society. I had invited the leading legal historian, Professor Harry Scheiber of UC Berkeley, to write an article for *Experience* on the role of California as a legal innovator. A short time later, in 2001, he asked if I “would have any objection” to his nominating me to the Society's board of directors, where I've been elected and re-elected since that time.

McDonough: You have had two careers, one in law and the other composing music in classical, Latin and other styles. How important has music been in your life and how do you think it impacted your career in the law?

Smith: Law and music have really been two separate parts of my life, but at times they've come together. Parenthetically, I should add that composition is not something I “work at,” but rather, that the music has come to me unbidden, just as you might turn on the radio. They are all melodic, and I hear them from the first note to the last.

Last year, when the Fellows of the American Bar Foundation created an inaugural award, the Life Fellow Achievement Award, it was presented to me

Music has come to me unbidden, just as you might turn on the radio.

by Judge Bernice Donald of the U.S. Sixth Circuit at a special champagne reception at the ABA Midyear Meeting, and they asked for recordings of my own piano performances to play at the reception. When I was Law Day chair for the Women Lawyers Association of L.A. in 1966, I provided the entertainment by playing a group of my compositions at the piano in the International Ballroom of the Beverly Hilton Hotel. A few years later, other pieces were played by a dance orchestra at the installation dinner of the Lawyers' Club of Los Angeles. In the last few years, the Los Angeles Lawyers Philharmonic has performed my music in their concerts at Walt Disney Concert Hall and also at my 95th birthday celebration in 2014. It was a “Musical-Legal” celebration, commencing with greetings by the Chief Justice of California, Tani Cantil-Sakauye, who opened the festivities. Associate Justice Kathryn Werdegar summed up the party well when she told the gathered musicians and lawyers (and some lawyer-musicians), “Today represents the coming together of two aspects of Selma's life – her talent and success as a practicing attorney and a leader of women attorneys, and her gift and passion for music.”

McDonough: I have fond memories of your 95th “Musical-Legal” celebration, not only the music and the remarks by lawyers and musicians alike, but your dancing as well! When I think of a life well lived, I think of you. You are a true, life mentor to so many of us. Thank you for all you have done for NAWL for over 74 years (and counting!). ■

SELMA MOIDEL SMITH, in whose honor the competition is named, has been an active member of NAWL since 1943. Smith is the author of NAWL's Centennial History (1999), and recently received NAWL's Lifetime of Service Award. In the ABA Senior Lawyers Division, she was appointed the chair of the Editorial Board of Experience magazine (the first woman to hold that position) and was elected to the governing council for four years, also serving as chair of several committees and as NAWL's Liaison to the ABA's Senior Lawyers Division. Smith is a member of the board of directors of the California Supreme Court Historical Society and is publications chair and editor-in-chief of the Society's annual journal, California Legal History.



I. Introduction

The United States Constitution has played a central role in feminist legal scholarship since at least the early 1900s, when women's rights activists began lobbying for an Equal Rights Amendment to the Constitution.¹ Contemporary feminist legal theorists continue to analyze and reinterpret the Constitution because "the Constitution addresses many issues that affect the interests of women."² For example, "[t]he equal protection clause is central to disputes about gender discrimination, affirmative action and sexual orientation; substantive due process, privacy and liberty provisions affect women's right to abortion, other reproductive freedoms and freedom from spousal abuse; and the first amendment is implicated by efforts to regulate pornography, hate speech and sexual harassment."³

In spite of feminist concern with the United States Constitution,⁴ no feminist theorist has attempted to clearly articulate and codify a general theory of feminist constitutional interpretation.⁵ Instead, while a few feminist legal scholars have described their own particular versions of constitutional interpretive theory, there has been no attempt to analyze these specific feminist interpretive theories in order to describe feminist constitutional interpretation generally. This paper aims

to describe the commonalities between different versions of feminist constitutional interpretation and analyze this general theory of constitutional interpretation in relation to more mainstream constitutional interpretive theories. Specifically, this paper asserts that feminist constitutional theory involves a concern for the legitimacy of the Constitution for women and other historically marginalized groups, leading feminist theorists to advocate for improving the Constitution through interpretation. These improvements generally involve expansive interpretations of the "equality" and "liberty" provisions of the Equal Protection and Due Process Clauses, and also include expanding constitutional protections to positive protections and the private realm. This interpretive theory is beneficial because it exhibits concern with remedying injustice and allows flexible interpretation to arrive at the best results.

Part II of this paper describes feminism and feminist legal theory generally to give the reader the necessary background within which to place feminist constitutional interpretation. Part III describes the major principles of feminist constitutional interpretation, and Part IV analyzes the benefits and criticisms of this approach. Part IV argues that feminist interpretation has numerous benefits, with the primary benefits being its concern for how the

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