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Eleanor Swift Interview: Paula Fass and Christina Maslach, "Academic Pioneers: Women at Berkeley in the 1970s and 1980s." Interviews with Berkeley's pioneering women professors, Berkeley, CA. Conducted 2019-2023.

I was born in 1945 and grew up in Chicago, close to the University of Chicago campus. My father was an archeologist and my mother was a homemaker. My sister Alice was five years older and my brother Gus was 2 years younger. I went to the Laboratory School, the creation of John Dewey based on his theories of education – learning by doing - from kindergarten through high school. Dewey did not believe that an eighth grade year was necessary, so I graduated from high school when I was 16 and went to college at that age!

I attended Radcliffe College, which at the time was not wholly integrated with Harvard, although our classes were with Harvard students. After my sophomore year, I took a year off and with a high school friend, Sara Winter, went to Vienna. We did not join in any organized educational program. We both had studied German in school and we lived in Vienna for about eight months, but not together. We each had our own apartment. I think that I matured there at the age of 18 to 19.

In Vienna, I was a visiting student at the university, but it was an awful method of education. The professors would walk in, open their blue book, speak in German, no questions, no response, close their blue books and leave. It was not really a good learning experience and I stopped attending classes. What did we do? Read books, made friends, went to museums, stood to watch operas in the Vienna Opera House, and lived very independently. Sara and I also traveled together quite a bit during that year – to Egypt for two weeks, across Eastern Europe from Vienna to Greece, and to Turkey where my father was working as an archaeologist on an excavation of the city of Sardis.

I went back to Radcliffe more mature and politicized by the Vietnam War. I joined the Harvard Crimson and wrote editorials when I had opinions on things, which was a lot of fun. My first two years had been more of an extension of high school, but my junior and senior years were very good. I majored in American history, graduated in 1967 and decided to go to law school because of my interest in social justice. Not very many women were going to law school at that time. I applied to the smaller schools - Yale, Chicago, and Stanford – and went to Yale. There were only eight women in my class of about 170. That was a small number! (The number of male students got smaller in my second year when quite a few were drafted because of the Vietnam War.) The next year there were 20 women in the first-year class, and the next year 40 including Hillary Rodham (Clinton).

The classes in the first semester were all required. Every student was placed in one small class of about 20-30 students. The women students were divided up, so there was only ONE woman in each of these small sections. This was not a great idea. I was very fortunate to be in the only

small section with two women members - Rhonda Copelon and I. We became very close friends, and I had strong friendships with many classmates.

While the number of women in law schools grew at that time, there were still classes in which I was the only woman. I think most of the professors did not treat the women differently. There was only one female professor at the time, and I did not take a class from her.

I was married in law school. After I graduated in 1970, I was hired to work for one year as a law clerk for a Federal District Court Judge in Hartford. My son Ben was born during my clerkship. I remember very well telling Judge Blumenfeld about my pregnancy during my interview. I would be his first woman law clerk, so I was nervous to say the least. But his reaction was to say: "If it is not twins, I think we'll do fine."

After my clerkship was finished in 1971, my husband served for two years in the Navy as a psychiatrist. We moved to Washington D.C. I had a part time clerkship with Judge David Bazelon, who was the Chief Judge of the Court of Appeals for the District of Columbia Circuit. He was an important and very creative judge. And he was willing to hire me as one of his law clerks to work for only three days a week. I was able to be at home with my son for the other four days and this was very important to me. After two years in Washington we moved to Houston Texas. I worked for a large major law firm, Vinson and Elkins, in the litigation department. It was a full-time job and a very good experience, working with the top litigating attorneys. Ben went to a very progressive nursery school and then to public school. I was divorced while still in Houston and was awarded custody of my son.

By 1979 I knew that practicing law in a large firm was not what I wanted to do. I started looking for law teaching jobs and interviewed at several law schools - Berkeley, Chicago and Stanford. I wanted to teach at a relatively small school. I chose Berkeley, although I did not know anybody on the faculty. I liked that it was a public university and that it had many more women students than the other two schools.

I moved to Berkeley in the summer of 1979 without any connection to the place and not knowing anybody. I bought a house just a mile from the campus, and Ben went to the local public school. I started teaching Civil Procedure in the Fall of 1979, a course that related to my law practice experience.

At the start of my first semester of teaching I met Robert Cole who was a member of the Law School faculty. We quickly became a couple. Bob was a brilliant teacher. Throughout my teaching career he was an important influence in my understanding of the legal subjects that I taught and in developing an approach to teaching. The first time I taught Evidence in the Spring of 1980, Bob was also teaching an Evidence class. He persuaded me to use the very classic Evidence casebook that he used. He helped me understand how to think about the Evidence course itself, as a theory of reasoning as well as a body of very disparate rules. We had a lot of fun sitting outside for lunch and discussing the material that we would both teach.

Several years later, when Bob's three children were all in college, he sold his house and moved into my house. After some years together we traveled to Israel and agreed it was time to get married. We bought our wedding rings there. We were married by a Judge who was one of Bob's closest friends.

My son Ben now lives with his wife Noa in San Francisco. Bob's son Adam also lives in San Francisco; his daughter Felicia lives in Berkeley with her husband and their children; and his daughter Sarah lives in New York City with her husband and their children.

When I started teaching in 1979, the School of Law also used the name "Boalt Hall." The major early donor to the school, Mrs. Elizabeth Jocelyn Boalt, wanted to honor her husband with this naming. This name was recently removed from the School, however, due to Mr. Boalt's disturbing and biased views of Chinese immigrants. The School is now known as Berkeley Law.

When I arrived at Berkeley, only four women had ever been appointed to the law faculty- of something like 30 men. The first woman was Barbara Nachtrieb Armstrong, a graduate of the school, who joined the faculty in 1922. The second and third women members of the faculty, Herma Hill Kay and Babette Barton, were members of the faculty when I arrived in 1979. They had been on the faculty since 1959 and the early 1960's respectively. Since that time, no other women had been hired until Marjorie Shultz, the fourth woman, was appointed to the faculty in 1977.

Marj was a graduate of Boalt and was considered very bright and very special. (One other woman graduate around that time was interviewed but not given a job offer. She is now a Federal Court of Appeals Judge on the Ninth Circuit Court in San Francisco.) I think that the law faculty was impressed by my work at Yale, my clerkships with distinguished judges, and the practice experience that I had in Houston.

I gave a talk as part of my interview, but I had not yet written an article. I talked about a problem from my practice that I felt could be an article. Professor Mel Eisenberg, a major figure on the law faculty, took me to lunch at the Women's Faculty Club and we had a very good talk. There was not anything in the whole hiring process that didn't feel right. And I think they viewed me as a qualified hire.

I also met with several students, including one who was a transfer from Harvard. He told me that Berkeley is just much, much better than Harvard; it is a wonderful community, people have lots of liberal views, this is not about prestige and hierarchy. That sounded good to me. At that time, 1979, the top law schools had only a very small number of women on their faculties. I did get a job offer from Berkeley and from Stanford. I accepted Berkeley.

In the first several years I was learning how to teach. I taught classes that were relevant to my practice - Civil Procedure and Evidence. Both were litigation and trial type classes. And, right from the start, I was very interested in developing the clinical side of the curriculum in which second and third year students work on issues of law in real cases for real clients under the

guidance of a faculty member or lawyer and get class credit for it. I thought that many law schools were ahead of Berkeley in establishing clinics. From my practice experience, I felt that working in a law clinic was a good way to develop students' thinking about the substance of the law, the legal skills needed to represent clients, and how law cases are decided.

Teaching was really my focus, and I have to say that I felt a bit intimidated by "scholarship." I wrote a very long article, which I then divided into two publications. Thus at the time of my tenure decision I had two published pieces. The Law School did not expect more than that. But in the interim, Marj Shultz, who had written two articles about family law and contracts, was denied tenure in 1985 in a very, very bitter division of the faculty vote.

That really threw me. Marj was a very, very popular, very distinguished teacher. And her tenure denial raised concern among the women students in particular, but really among all students. I came up for tenure in 1987 and my tenure was also denied, so it was two women in a row.

During that year there was a lot of student activism about both Marj's and my case – marches at the school, a banner flown by an airplane over the Greek Theater during the Law School graduation ceremony - "Give Shultz and Swift tenure" - but to no avail. I packed up my office and went home.

Ben was then a sophomore in high school and I thought "I'm just going to stay home." I thought I could certainly find things to do, whether law or something else. But the tenure denial was an agonizing and exhausting experience. I left the school by the 1st of July in 1987 and simply worked on recovering from my tenure ordeal.

Then in October, Professor Sally Fairfax, who had been appointed UC Berkeley's Faculty Advisor on the Status of Women by Provost Doris Calloway, asked to meet with me for a coffee. I did not know her, nor did I know anything about her position.

Sally and I met for coffee and she said the following words to me in the course of our conversation about my situation: "The Provost has authorized me to say that, if you file a grievance with the campus Committee on Privilege and Tenure, my report will come out."

And that was all Sally was authorized to say. And that was all she did say. I really did not know what her "report" was. She was talking in code. As it turned out, Provost Calloway was very, very concerned about the Law School's record with hiring and awarding tenure to women, and Sally had spent the summer working in the top floor of California Hall, analyzing the hiring cases and the tenure cases in the Law School for the last 50 years. And she had written a report, a report that has never seen the light of day. But suffice to say that she was doing an analysis of whether the law school had a fair set of criteria for whom they were hiring and promoting to tenure.

I went home and talked about it with my husband Bob. I was very torn about what to do

because in my practice as a litigator, I knew what it is like to try to prove a discrimination case. It is not easy. But then I thought to myself, if I do not raise these issues, no one will.

I hired two women lawyers, Mary Dunlap, a graduate of our law school, and Charlotte Fishman, both of whom practiced employment and discrimination law. I filed a grievance with the campus Committee on Privilege and Tenure. This Committee is made up of five faculty members from Departments and Schools all over the campus. It hears cases brought by professors against their Department or School, as well as cases brought by the University against members of the faculty. Filing my written grievance was the start of my case.

My grievance had to show that the Law School's decision in my case was biased by gender. There were men of my age and rank who were granted tenure and I was not. What I would have to prove could include examples of outright bias or that my scholarship was the equivalent of the scholarship of male faculty, say within a period of 10 years. The excellence of my teaching could also be important. The fact that Marjorie Shultz had also been denied tenure by the law faculty would be very important in proving discrimination.

A Privilege and Tenure case is first presented in a written document to the Committee. This document summarizes the claim and the evidence that is available to prove the claim. The Committee then makes an initial decision on whether the grievance document presents a "prima facie case" - that is, does it describe facts that could prove gender discrimination. If the Committee thinks that the facts described in the grievance document could not prove discrimination, or any other type of complaint, it can dismiss the grievance without a hearing. In my case, the Committee found that I had made a prima facie case of discrimination, and thus the case was qualified to be presented at a full hearing – with witnesses and documents – in front of the entire Committee.

My lawyers and I then started to work on preparing the proof that we were going to present to the full Committee on Privilege and Tenure in a trial-type proceeding, which would include testimony about the history of treatment of women faculty at the School. Appearing before the Committee was going to be a painful experience for Marj and me.

As we prepared, Jerry Falk, a distinguished lawyer in San Francisco and a graduate of the law school, contacted the Dean and my lawyers. My husband (who knew Jerry ever since he had been a student) had suggested that perhaps Jerry could help the law school find a way to avoid a bitter battle over the discrimination charge. Jerry agreed that the dispute was hurting the school. He offered to help negotiate a private resolution of the case instead of a hearing by the Committee on Privilege and Tenure. Jerry met with both sides separately in a law office. My lawyers and I were on one floor and the Dean and his people were on another floor. Jerry was moving back and forth between the two floors trying to develop the terms of a settlement. I think that a member of the Office of the General Counsel to the Regents was there with the Dean.

The agreement that was reached was to construct a comparative review of my tenure case by a panel of outside law professors. My recollection is that the idea of comparing my case with the men who had received tenure was first mentioned by Professor Rod Park, who was the Executive Vice Chancellor. But I do not know exactly how this solution became a part of the negotiations. I can only assume that Park and Doris Calloway and perhaps even Chancellor Heyman authorized the Law School to agree to a procedure along these lines.

The plan was that a review committee would be formed made up of two professors from the Berkeley campus (not the Law School) and three law professors from around the country. My tenure file would be submitted to this group of five, along with the tenure files of the men who had been granted tenure at the Law School in the past seven or eight years. This would be a comparative review of my tenure case in context. What would “good enough for tenure” mean? It would mean my work measured by the work of the men on the faculty who had been recently tenured.

Both the Law School and I agreed to this plan, but Dean Choper and I had to negotiate all the details of this process. It was crucial that the men who had been granted tenure by the Law School would agree that their tenure articles would be given to this outside committee. They all did agree. This was very gutsy of them and very supportive of me.

Dean Choper and I also agreed on a slate of law professors from around the country who could be asked to serve on the committee. The identities of the five members of the Committee who were to decide my case remain unknown to me. Two were professors at Berkeley (not from the law school) and three were law professors from other law schools, one of whom specialized in Evidence law, the subject of my publications. I believe that I submitted the names of several prominent Evidence specialists. The five professors on this committee gave their time, read all the files and conferred together. That was a very special service.

The process was completed by the summer of 1989. The Committee found that my scholarship met the same standard as four out of the five men, and that I should be given tenure. And I was! The comparative review, obviously, was critical to the decision. I do not know whether the Privilege and Tenure Committee could have engaged in such a review.

The Committee did not address the question of why the School wrongly did not think my work met its standards; so it made no finding about gender discrimination. The student body at the law school had been politically active during this whole time. There had been marches, “Give Swift Tenure” signs and buttons, some demonstrations, and anger among the women students. This result vindicated their anger and frustration.

My first meeting with Dean Choper was in his office. He said something like “Eleanor, here are your keys to your office and this is over. I want you to feel completely like you belong here and that everything will be fine. If you have any problems with the faculty, just let me know.” This was a very important and decent message to me! And there were in fact older men on the faculty who did not speak to me.

I was assigned to teach a first year Civil Procedure class. I had missed one week of class because of the timing of my reappointment. I came into a very large classroom and many of the Law School staff were there with flowers. It was a class of about ninety students and everybody was cheering and it was great. Walking into the first faculty meeting, that was a little bit scary, but I just went in and sat down!

Very quickly I became committed to expanding “clinical education” at the Law School. Later, under Dean Kay, I was the chair of the committee, and the principal architect of its work, that developed in-house law clinics located at the law school and an off-campus community law center (already founded by students), all of which had the philosophy of “learning by doing.”

I actually taught in the school’s community law clinic for several years, led the Clinical Committee, wrote reports to the faculty, studied clinics at other schools, worked on the hiring of clinical faculty, and helped to articulate the goals for clinical education for the school. Our in-house clinics are just fantastic, really. And the clinical professors who teach and practice in the clinics are fully integrated into the faculty. All of this made a big impact on the school. I view my contributions to all aspects of the clinical program as my major contribution to the law school.

Then in 1995, while Herma Hill Kay was serving as the first woman Dean of the Law School, the UC Regents adopted SP1, which forbade the use of race in admissions to UC schools. Shortly thereafter Proposition 209 was adopted by the California electorate. It, too, eliminated any kind of affirmative action based on race in student admissions. The School’s 1996-97 admissions cycle, the first under SP1, was a disaster. No African-American students accepted admission to Berkeley Law that year and only a handful of Latino students enrolled. One African-American who had deferred admission the year before did enroll. The School was the target of a frenzy of outrage and negative national news. The Dean asked my husband, Bob, to serve as her Associate Dean and to address this admissions disaster. Bob created and led a committee on admissions, and he wrote the report that laid out the work the Law School had to do on every single step of its admissions program. The Cole Report developed the message that the School had to generate, the kind of outreach it had to do, the way it made actual decisions on the files, the recruiting effort that had to persuade minority students to come to the School, and curricular changes that would make the School more attractive and supportive of them. The Report was adopted by the faculty, and it was applied in the 1997-98 admissions cycle. In that one year it raised the number of admitted minority students to something like 75% of what it had been under affirmative action. Bob’s work really saved the School.

When Bob left the Associate Deanship, Herma asked me to be the next Associate Dean. In those next two years I continued to work on developing a clinical education program that was presented to the faculty as a blueprint. Also, Professors Angela Harris and Rachel Moran and I developed the idea of creating a Center for Social Justice at the Law School. We persuaded Herma that such a Center would be crucial for attracting and supporting students of color, as well as all students who wanted to work with clients beset by poverty and racism. The Center thrives beyond our hopes. It is a major institution at the School.

Herma was very highly respected by the campus, by Law School alums, and by women law faculty across the country. She made significant efforts in getting more women on the faculty and more women students to be leaders in the student body. So that changed the School also.

In my last years of active teaching, I wrote several law review articles on Evidence Law and served twice as Chair of the Evidence Section of the American Association of Law Schools. And I continued to work on developing opportunities for clinical education. The Law School now includes its own in-house clinics, led by clinical faculty, in the fields of Environmental Law, Law and Technology and the Death Penalty. Students can also work in the East Bay Community Law Center or in a placement in a governmental agency or public interest practice.

I am very proud of my contribution, both in terms of standing up against what I felt was discriminatory treatment, and then being able to come back and work on significant programs for the School that I cared about.

Looking back, had Sally Fairfax not spent the summer of 1987 looking at all the files of all the men given tenure at the law school starting in the 40s and 50s, I would not have thought of filing a grievance. Her work turned my life around.

My two lawyers were terrific and I remained good friends with them. Mary Dunlap was a graduate of the Law School, very loyal, a fantastic litigator and advocate in San Francisco. She passed away much too early. Charlotte Fishman, my other attorney, was also practicing in the field of employment discrimination. Just after my case, two other women faculty were contesting their tenure denials. One was in Art History (Charlotte represented her) and one in Mathematics. Both cases were successful and the women are now important members of their Departments. I would say that our three cases had a significant impact on the campus. They sent the message that discrimination was real, that it was unacceptable and that women could prevail.

I am very happy with what I contributed to the law school – my teaching, my leadership in the clinical program, and my scholarship in the field of Evidence. I received the Campus Distinguished Teaching Award and the Law School's own teaching award. In my classroom teaching, too, I taught litigation types of classes and tried to make them come alive with role playing by the students, learning how to represent clients and to make courtroom arguments rather than just policy.

In 2014 I made the decision to retire and to share retirement with Bob. I had no specific plans but soon Sally Fairfax got to me again. She nominated me for a position on the Board of Directors of The Women's Faculty Club. I served for a year or two and then was elected as President of the Board. The Club has been my vocation and avocation, and I really enjoy my ongoing work there and the friendships I have made with the really impressive group of women and men on the Board.

