

UC Berkeley

The 150 Women Project - Holding Series

Title

HERMA HILL KAY

Permalink

<https://escholarship.org/uc/item/8w67t39q>

Author

Swift, Eleanor

Publication Date

2023-12-18

HERMA HILL KAY
By Professor Eleanor Swift, Emerita
UC Berkeley School of Law



Professor and Dean Herma Hill Kay was the second woman hired to teach at the School of Law at Berkeley. She was appointed to the faculty in 1960 and never really retired. Her commitment to the Law School, and to legal academia, was remarkable. She was appointed the School's first (and only) woman Dean in 1992; she served on leadership Committees on the Berkeley Campus and for many other significant legal academic institutions; and she was honored many times for her contributions to her substantive fields of teaching and writing – Conflict of Laws, Family Law, Sex-Based Discrimination and Women

and the Law.

Herma took her undergraduate degree from Southern Methodist University and her law degree from the University of Chicago. She was one of only four women in her law school class of 1959. During law school, Herma worked as a research assistant and co-author with Professor Brainerd Currie, a founder of modern Conflict of Laws. She then served for one year as a law clerk to Justice Roger Traynor, a highly distinguished member of the California Supreme Court. In 1960, Traynor encouraged Herma to apply for a teaching position at his alma mater, the School of Law at Berkeley. When Herma was hired, she always said it was to replace Barbara Armstrong, the first (and only) woman member of the Law School faculty, then retired. She also said that she had the very good fortune to be mentored by Barbara – in her teaching of their common subject matter interests, in understanding how to function in a largely male environment, and in supporting women students in their struggle to survive and flourish in an essentially male institution. After the appointment of Babette Barton to the faculty as a professor in 1965, it was 12 years before any more women were added to the Law School faculty.

The substantive revolution in women's rights that swept through California and the nation in the late 1960's and 1970's shaped Herma's professional career. Based on her conviction "that women ought to be free and conscious actors... [t]hey ought to determine their own role in this world," she engaged in both academic and political work to promote women's opportunities for self-realization.

She worked on no-fault divorce laws through her appointment to Governor Pat Brown's Commission on the Family. The Commission's Report paved the way for California's path-breaking adoption of its no-fault divorce statute in 1969. This in turn prompted Herma's appointment as Co-Reporter of the Uniform Marriage and Divorce Act, a law reform project which had nation-wide impact. Herma worked on the American Law Institute's Family Dissolution Project, recommending legal reforms to ensure that women would receive the kind of support and property awards they needed. She was active in the passage of California's therapeutic abortion statute and testified in favor of California's ratification of the Equal Rights Amendment.

Throughout her career, Herma was a dedicated and popular teacher. Early on she was awarded the Campus's Distinguished Teaching Award. Herma also turned her attention to supporting the women law students who began to arrive in larger numbers after 1971. Legions of women have attested to the importance of the support that Herma provided. Two events exemplify Herma's legacy of mentoring women in the Law School and beyond.

First, in the late spring of 1969, she contacted all of the women students, then about 10% of the student body. She invited them to meet to talk about women's position in the legal academy and the profession. They gathered in the Women's Student Lounge—a space consisting of a bathroom and a tiny couch for “resting.” The Men's Lounge was much larger, with chairs, tables and couches. In an act of political consciousness-raising so popular on the Berkeley campus, the women “took over” the Men's Lounge for their meeting. The women students were ready for the opportunities that Herma's meeting gave them – the issues grabbed them, the “Women's Movement” had already begun, and “consciousness-raising” was the catchword. By the end of the semester, the women students formed The Boalt Hall Women's Association to address the ways in which they were treated differently from the men and to develop concrete law projects in which their interests as women would be served. The Women's Association still thrives today.

Second, in 1971 Herma and three of her women students attended a nation-wide Conference on Women and the Law. There she met for the first time the future Supreme Court Justice Ruth Bader Ginsburg, then a law professor at Rutgers University. The two professors agreed to co-author a law casebook on Sex Discrimination, and thus began a firm friendship that enriched both their lives for more than forty years, as well as creating a burgeoning field of law. And the three women students decided on that trip to create a women's rights law firm, the first of its kind, which they did with Herma's blessing.

Herma was appointed Dean of the School of Law in 1992, the first woman to hold that position. She stepped down as Dean in 2000. Two significant events in her Deanship should be noted.

In 1995, the Regents of the University of California adopted SP1, a policy which forbade the use of race in admission to UC schools. Shortly thereafter Proposition 209 was adopted by the California electorate. It, too, eliminated affirmative action based on race in student admissions. The 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 Latinx 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. Herma spent much of the following year defending the School among alumni, the press, public officials and the general public.

Herma asked Professor Robert Cole to serve as her Associate Dean and to address the admissions disaster. He created and led a committee on admissions, and with committee input drafted the report that laid out the work the Law School had to do on every single step of its admissions program, including the message it had to generate, the extensive kind of outreach it had to do, the way it made actual decisions on the files, the recruiting effort it must make to persuade minority students to come to the School, and the curricular and program changes it needed to make the School more attractive and supportive of them. Herma entirely supported the Cole Report, the faculty approved it, and the administration implemented it 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. These actions saved the School.

Herma also recognized that the Law School was behind in the field of “clinical” legal education – that is, students receiving class credit by working with live clients on their legal problems, thus “learning by doing.” In 1993 she asked Professor Eleanor Swift to take the leadership role in developing a broad live client clinical education program to present to the law faculty. Professors Steven Sugarman and Swift had already been co-teaching a class for students engaged in clinical work at the off-campus Berkeley Community Law Center, founded by Boalt students. Swift’s Committee proposed the development of an in-house program. Clinics and clinical instruction inside the Law School would allow students to work on real legal problems with real clients who could not obtain or afford representation. Clinical Law Faculty would supervise students in the

practice of law, focusing on the relationships with clients, on the skills they developed, and on the insight they gained about the role of law in promoting social justice. Herma was enthusiastic about the proposals and persuaded law school alums to contribute to the start-up of the clinical program. Today, live client clinics staffed by the Law School's own Clinical Faculty, a field placement program in which students work in public interest law organizations for credit, plus a full curriculum of professional skills instruction flourish at the School.

After serving as Dean, Herma returned to law teaching. She passed away in 2017. The story of the life of Herma Hill Kay is not complete without mention of her beloved husband Doctor Carroll Brodsky who entered her life in the 1970s. Carroll and his children, and then all the grandchildren she was so close to, meant everything to her.

What was truly remarkable about Herma was her generosity of spirit. This generosity inspired her, throughout her career, to create opportunities for others, especially for women, to thrive in legal academia and beyond. The creation of these opportunities represents some of her most significant and enduring contributions to the law and to legal education. Throughout the chronicle of her own history, the names of Herma's former law students appear consistently, as academics, judges, public officials and public interest lawyers.

For additional information about Professor Kay see:

<https://www.law.berkeley.edu/article/iconic-professor-former-berkeley-law-dean-herma-hill-kay-dies-82/>

Photo from the UC Berkeley School of Law website.