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Marjorie Shultz 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.

Christina Maslach:

First of all, we just wanted to ask you, Marjorie -- could you please just do the basic demographic background, where you were born and early school and history before you got to Berkeley into your career?

Marjorie Shultz:

So, I was born in Cincinnati where my dad was a minister of a large Presbyterian church. But not for long. He was in a huge ruckus (I guess I come by it naturally) within the church. He was fired not by the congregation, but by the Presbytery because this was at the beginning of World War II, and he was a pacifist. He was a conscientious objector. But also, he was involved with people who were moving toward the founding of CORE and he had (shock!) black people in the manse. The church owned the place where my parents lived. And although the congregation, the majority of the congregation supported him, the Presbytery, the next governing level above the congregation, voted to remove him. He was quite young at that time and had built a reputation as a wonderful preacher.

Marjorie Shultz:

And so he was jobless, and he was also sent to do alternative service when he wasn't being a minister. My mom went back to live with her family in Pittsburgh, and he didn't find another job for quite a while because he was sort of marked by his involvement in race mixing and pacifism. So, we moved from Cincinnati when I was just a few months old and my mother's family lived in Pittsburgh, then the family moved when he got a job with the University/ and College YMCA, which was not the camps and swimming pools, but a very social activist organization. You have a YM and YW here (Berkeley) that have a long, long history. So, we moved to South Central LA. I lived in what I think is now Watts, in Southwest LA.

Paula Fass:

It was already African American?

Marjorie Shultz:

It was changing as we moved in and was changing throughout the time we were there. But I remember at least some of my friends were Catholic and Latino. And there were some early blacks. So anyway, I grew up in a family that was very social justice oriented from before I was born. We stayed in LA in that location for more than 10 years. My dad traveled throughout the Pacific Southwest, and then he was offered the national exec job for the student Y, and we moved to the New York area. We actually lived in Northern New Jersey and he was in that job until he retired. Before we moved, we went to Disneyland on the first day it was open, which was the day before we left Los Angeles.

So I went to high school in New Jersey and then to college in Ohio. I went to a small Presbyterian college named Wooster. Two O's, not O-R. Yeah, good school. I got a very excellent education there. My brother went to Oberlin. He was two years older than me, we're the only two kids. The thing the school is probably most famous for is its independent study

program: every student writes both a junior and a senior independent study, about the length of a master's degree in the senior year. And I majored in history.

Paula Fass:

Was that the Swarthmore program?

Marjorie Shultz:

Uh huh. I graduated from Wooster in 1962. My husband to be was then a graduate student at the University of Chicago. He has both a BD from the seminary and a PhD from the University of Chicago. Well, he was going to be there awhile, right?

Christina Maslach:

Yeah.

Marjorie Shultz:

I thought I would prepare to teach college history. I had two outstanding women professors in history at Wooster. And a third in my minor, which was English literature. And, I applied to the only two grad schools that were on my mental map, which were the University of Chicago and Northwestern. Both of them told me that I was extremely well prepared, but that they wouldn't waste their financial, and institutional support on a married woman because I would just go and have children. So, they both turned me down. (By the way, I've never given a dime to the University of Chicago, even though both my husband and I are graduates). They recommended that I should get an MAT, a degree that I'm not sure even exists anymore.

Paula Fass:

MA in teaching?

Marjorie Shultz:

Yes, for high school teaching, it was the "women's" equivalent of a master's in history. It was a 2-year program plus all the teaching credential stuff, and "kept you in your place." So, I have an MAT in history. The supervisor of my master's thesis tried hard to persuade me to apply for a PhD program at University of Illinois where he was visiting from, but that wasn't on the program. Before I stopped giving to U Chicago, I wrote them a letter that told them I had worked every day of my married life except for the one year of my first child's first year after birth. I said that they were so bad on how they treated me as a married woman, that I was never going to give them any money. I got no answer to the letter. And I have never given them a dime. I still get a small ping of glee when I throw their unopened mail into the trashcan.

So I finished there in 1964 with the MAT and my husband finished his doctorate and BD in '68 and I taught, I did practice teaching, at Evanston High School. I was terrible. The age group was too young for me, I guess. And I wasn't skilled yet. I taught at the Chicago lab school for a short time before Evanston and that was better -- smarter students. Several months later, we moved to his first job in Washington DC. Our older child was born six weeks before we left Chicago. We were in Chicago during the '68 convention when we had experienced what it feels like to have soldiers and tanks on your street. We lived fairly near the campus. In Chicago, the university was taking over two blocks, the whole length of the Midway, I don't know if you know, the

University of Chicago physical site, but the Midway that runs for about 10 blocks down to the water, we lived on the “wrong” side of the Midway, in a mixed white and black community and, there was a lot of crime because everybody knew that the university was going to take over that whole area, and so they just let the buildings go downhill. It's now all replaced with university buildings. But anyway, we had somebody shot on our shared back porch which was pretty scary. After Chicago, we were in D.C for four and a half years, with my husband working for National Training Labs. After nearly a year spent home caring for my first child, I took part-time work first with a couple of political scientists writing a book on political change in the early 60's and 70's (I did loads of interviewing and event-tending for them). Next I worked for the McGovern Caucus at the 1972 Democratic Convention, managing important parts of the major reform and democratization through rules changes in the Democratic Party. Next I worked in development for Antioch Law School (in D.C.), a radical reinvention of legal education helmed by Jean and Edgar Cahn, Yale Law grads and founders of the OEO Legal Services program. They wanted to start a law school that would be not for rich kids, headed for big salary jobs, but for people typically left out or oppressed by the legal profession. Antioch had a whole different curriculum, whole different admissions process, a different career focus.

That role was challenging, but eventually my husband decided he wanted to study Tibetan Buddhism on the West Coast. He had decided he didn't want an academic job though he was certainly qualified. (I should have listened to him!). Being a good wife, following his preferences, leaving behind two challenging and interesting jobs myself, I moved with him to the West coast in 1968.

Paula Fass:
Antioch, California?

Marjorie Shultz:
No, this is Antioch College in Ohio which founded a law school in D.C that was to appeal to minority and poorer students and put them into law jobs that were public service oriented. So, when I came to Berkeley, I thought I wanted to go to law school and I thought, well, we moved to Berkeley because Jim was studying with a Tibetan lama at the Nyingma Institute. He became the Dean there and did lots of volunteer teaching and leadership with that organization for many, many years. He studied Buddhism for 20 years+. So, we were living in Berkeley, and I figured, so I'll apply to my “local neighborhood law school.” I had not learned the status hierarchy of legal education, indeed had been exposed mainly to the anti-status approach. So, I applied to Berkeley and was admitted and went there. I think I graduated first in my class, which I wouldn't normally know because the law school had a weird grading system, but you'll see why I think so later. By the way, you'll also see later that one of the Law School's former Deans said that “I didn't know how to write the English language” (one of multiple insults I sustained during the tenure process). But I was first in my class from grammar school, high school, college, the MAT program and law school (i.e., at every institution I attended). But apparently, I'd never learned to write the English language!

So, I had my second child in the middle of my third year of law school, although I had tilted my course load heavily toward the first semester. He was born between semesters in the last year of my law school time. I finished law school before he was six months old and I thought, well, I

don't want to commute to the city with that young a baby, I should apply for a teaching and writing instructor position. Those jobs are very low status, poorly paid, temporary job. But I thought, I should be able to manage that even with a four-year-old and a 6-month-old.

So I applied and whoever I talked to about it said something like, are you kidding? You should be applying for a regular faculty job! With that urging, I guess it was Bob Cole probably that urged me to do that, and I did. Faculty people began interviewing me. They excused me from giving a job talk because I wouldn't, of course, be good enough or ready enough or whatever to do that. I didn't even know what was involved and I knew nothing really about law faculty roles other than observing my own teachers. It had not occurred to me that I might apply for that. One interesting thing about things at this stage that I never thought about until much later is that the law school never gave my name to any other school in the country although they were actively recruiting me, which is pretty unusual. And how do I know this? Because Larry Tribe (Harvard Law) called me up at seven o'clock in the morning one day.

I was breastfeeding at that moment. I was certainly not expecting a business call at seven in the morning and he, (I obviously can't duplicate it, but he sounded approximately like this. No introduction except his name and Harvard): "I hope I haven't made a terrible mistake. We didn't know about you. I should have probably found out, but this is a terrible mistake. I'm very embarrassed, but are you still looking for a job, or have you accepted one already?" It was a very bizarre call, the most awkward and non-professional call I could have ever imagined. Fit right in there with the University of Chicago and Northwestern History department chairs saying, "Oh, well, we don't want you as a doctoral student because you're married and would just waste our resources." That's the only call I ever got from any other school. It was clear that Tribe might've been told about me that morning. I had already accepted the job here at Berkeley. And since no one at Berkeley had given me any info about how faculty were hired (and I had failed to seek any advice, between breast feedings), I said that no, I wasn't interested in moving to the Boston area. And that was the end of that. But this experience and my *inexperience* and the lack of any preparation from any faculty at Berkeley illustrate what some of the problems might have been about seeking to hire women for law faculties.

Paula Fass:
This is 1976?

Marjorie Shultz:

Yes. That's when I graduated. So anyway, I was ecstatic to get the job. I didn't know bargaining about conditions. I said even though I had a Masters, which at that time was considered a plus. Now of course they try to get people that have a PhD as well as a Masters. Of course, I could have explained to them that I would have tried to get a PhD, but it wasn't on. I've indicated they started me at the absolute lowest salary level despite my having 10 years of work experience, four of them in the law school. I was selected as the person at the 1972 democratic convention that was tapped to brief the whole McGovern caucus on the credentials fights that were a very prominent aspect of that presidential convention because there were black-white conflicts and women-men conflicts all over. So, you know, I had some decent professional experience working directly with the co-deans of Antioch and, doing that with the top politicians in McGovern's campaign though that was short, of course, six weeks or something. I had worked as

a primary researcher for these two guys that did a book on political change. They thanked me for my “charm” in the book’s Forward. But the fact is that I interviewed a number of big political players, developed an insider’s knowledge of much of the political ferment occurring at that time and did a huge proportion of their research for this book. More learning for the neophyte me.

So anyway, because I was very invested with my new baby, having a job a mile down the street was great. And I felt confident about being a teacher; teaching wasn't the hard part. It was the atmosphere, and the people. So anyway, I started at Boalt three months after I graduated, which was unheard of. There were two women on the faculty at that point. One senior woman had been there 16 years. And another who was now on the faculty, although I heard via the rumor mill that she received a tenured position because she had taught as a Lecturer and Acting Professor for so many years that questions were raised under AAUP rules about her teaching too many years without receiving tenure. Now I'm not sure that's true. I didn't have that from her. That's what I heard from somebody on the administrative staff. So, at the time I started, she was the second woman, and I was the third.

Paula Fass:

Could I just ask you, I mean, I know something about the Berkeley culture. Do you think the fact that you came from Berkeley having your JD here or a PhD, which is often counted against people...

Marjorie Shultz:

I thought it was counted against me.

Paula Fass:

Do you think that had something to do with your subsequent experiences?

Marjorie Shultz:

Well, of course, I don't know. It may be it had to do with it. While I was there, Berkeley would market their top students all over the country to try to get them jobs, but that didn't happen with me. Now, of course, I was pregnant in the fall. I often wondered about that, but I have no real evidence except sitting through far too many hiring meetings in which all we seemed to want to hire were people that Harvard was trying to hire. We wanted people that Yale was trying to hire. We wanted Chicago prospects. That was about it. We weren't interested in others. We did hire several Boalt people in the period just after I was hired. But none of us turned out to be “distinguished” in the faculty's view. And I just don't know. But I used to say, they hired me because I was handy or whatever. Maybe they even thought I wouldn't make tenure.

Paula Fass:

See, they may have thought precisely that...

Marjorie Shultz:

Yeah. I mentioned the Antioch experience because that law school is closed now, but it was a big deal when it opened because it was going to be so radically different. When I was interviewing with faculty for the Berkeley position, Paul Mishkin said to me, looking at my bio, he said, "You're not interested in law. You're interested in politics." Oh, thank you for telling me about

who I am. But of course, my real response would be, there's lots of overlap. But of course, that would have offended his core notions. I would say they were pretty nervous when they hired me. Not only was I a Berkeley grad and they weren't, they were always insecure about themselves. Big time. You saw this in many ways, not just hiring, but anytime we were going to consider a curricular change or this or that, the question was always what is Harvard doing? What is Yale doing? It's as though we couldn't think on our own or do anything on our own without having it validated by a higher status school.

And between my having been involved with this “radical” new law school and my being a Berkeley law grad, I learned about another weird thing. When I was being evaluated for a position on the regular faculty, the Chair of the Appointments Committee kept checking on my academic status. More than most faculty, as a student, I was friendly with administrative staff, most of whom were women, of course. One of the people in the registrar's office told me that spring when I knew they were considering me, something like “if he comes back here one more time asking me to research your academic record, I’ll tear my hair out.” She said, first he came in and asked me how many High Honors grades you got. (That's the grade given to those in the top 10% of the class). I had all High Honors grades; I think except one or two. She said, he came in here first to ask me for your grades, your Honor's grades, then for your High Honors. Then he wanted to know by how times you got the highest score, then by how many points you were the top in the class. She said, I'm ready to tear my hair. It's as though he thought he could assure himself by how many points I score and they had, they must have had a conflict between my academic record despite “my inability to write the English language,” between my academic record, and the fact that various things, you know, Democratic party national convention staff, Antioch law school staff, and plus I was active in things in women's issues and race issues. Well, I was a student.

Paula Fass:

Do you know who else was up for the job that you were...?

Marjorie Shultz:

I do not, I'm not sure. But I think they were under pressure to hire women.

Paula Fass:

We were going to ask you that.

Marjorie Shultz:

I don't know that, but my guess is that is true because really there was only one regularly hired woman, and the faculty at that point was 40 plus. The student body was getting to be 50% women or was shortly after they hired me, and they were certainly getting more pressure about hiring women.

Paula Fass:

Affirmative action had come into play by that time...

Marjorie Shultz:

Yeah. But I do not know. I think they probably had some open slots, and they hired several more

women in the next couple years: Both I and the woman hired next after me had huge tenure fights, each of us was denied twice. The next woman went through the tenure process smoothly, and quickly soon after us, based on the article she wrote. Of course, she came up for tenure after the campus-wide battles over our two tenure cases and both were reversed. But she did not write much else after she got tenure.

Christina Maslach:
Wow.

Marjorie Shultz:
So I started teaching in August 1976 after graduating in May. And taught through with, you know, a couple of sabbaticals and whatever until I retired in 2008, which I did partly because I felt I literally couldn't bear it anymore.

Christina Maslach:
'08 yeah. Okay.

Paula Fass:
32 years.

Marjorie Shultz:
Yeah. Something like that.

Christina Maslach:
Wow. But that's an unusual path in the sense of finishing the degree and then switching from...

Marjorie Shultz:
It's extremely unusual. And then, there was the tenure fight, which was also very weird and broke various personnel manual rules, and so on.

Paula Fass:
You want to talk about that?

Marjorie Shultz:
Sure. The actual tenure process evolved like this. As I think I said, I'd been told by the senior woman on the faculty that a tenure piece should be a major article that altered the way scholars looked at an entire field of law. I had written a long article on the compatibility of marriage and contract law that sought to meet that criterion. I circulated the draft of my article in the fall of 1981 to half a dozen influential people in family law, contracts, and general scholars. The reactions were mixed. Several readers had a moderately positive response, several had mixed or negative views. One view was negative ("The topic of marriage bores and irritates me."). Another from the senior person in Contract Law was resoundingly negative, seeing the work as trivial and poorly reasoned. Two people had strongly positive views. One was the senior woman on the faculty who was also the dominant person in Family Law. One normally very influential male faculty member (he tended to be the gold standard for evaluating scholarship) told me he thought I was 90% of the way to something truly outstanding and original. (He later

appeared to have changed his view after interacting with others. He never told me that he had or explained why).

I decided I should rework the piece responding as well as I could to the critics. I worked another year on the piece adding illustrative examples, expanding the analysis. I then resubmitted it in winter of 1982. (That was a mistake as virtually no one changed any aspect of the views expressed earlier). I should note that a generally much-admired contemporary of mine, a philosopher recently tenured himself, wrote a multi-page memo after the meeting saying he was startled by the negative reactions to my work. In three dense pages, he sought to defend the strengths of my article. It was not enough. I was denied tenure. My paper was accepted and published by the Cal Law Review in 1982.

After my denial, in 1982-83, students at Berkeley created a letter writing campaign with current students and alumni nominating me for the campus Distinguished Teaching Award. I was viewed by students as an outstanding teacher, both demanding and supportive. Many letters said they learned more from me than any other course they took in law school. Others said they attended my course in contracts rather than the one to which they were assigned because it was so much more stimulating while also being clear and effective. I won the Award in 1983, although the law school nominated a candidate (which it didn't usually do) as a competitor. I also understand that the dean was soundly scolded by colleagues who raged, "Why did you let her win that Award?" (Not that he did).

After the first denial, I went back to work on a new paper without so many gender dimensions; I had begun teaching health and medical ethics law and decided to propose a new analysis of the recently established doctrine of informed consent to medical treatment. This article was accepted and published by the Yale Law Journal in 1985. I also submitted this second piece for tenure in early 1985. [I should note that in light of my having a 6-month-old infant when I started teaching in 1976, I initially taught only 60% time for the first 3-4 years; it was decided that this part-time status would extend my tenure clock to 1985, a campus concession, I believe, to the goal of increasing the viability of women candidates for the faculty.]

This piece, despite its acceptance by Yale Law Journal, was negatively reviewed by at least two of the torts professors who saw it as an insignificant and ill-advised policy proposal. The piece made a rather nuanced argument about increasing control by patients of medical decisions and demonstrated the significant ways in which that goal could be defeated under then-current law. The main faculty evaluators of this article had strong negative views about the economics of my proposal and were not as interested in the philosophical, familial and emotive considerations that motivated my concern about the caselaw. Boalt had no one centrally committed to teaching or writing in health law as a field; informed consent doctrine was a small topic tucked into a day or two of the more general tort law courses. Evaluation letters from outside Berkeley were generally positive.

My tenure case was considered again in 1985. The faculty has a 2-step procedure in voting on tenure. On the first vote, if the candidate gets more than 60% of votes, s/he is in. If less, there's a second vote taken. On the second vote, people are supposed to consider the strength of the views expressed by others, and the general effect on collegiality of the candidate being admitted

to the faculty. This vote carries if more than 50% support the candidate. My case failed on the second vote.

I was strongly advised by the Title IX officer to appeal my case, to not raise gender as an issue, with strong hopes of winning the appeal. She had the data on comparative cases and thought my case was very strong. I appealed. Once again, students reacted very angrily to this second denial of my tenure, staging protests, sit-ins in the dean's office, campus-wide publicity and letters to the newspapers. They were angry not just about my case, but also about my next junior woman colleague who had also sustained her first (of two) denials during this period. Meanwhile, the accrediting organization for law schools issued a notice of concern to Berkeley regarding its hiring, promoting and retaining a diverse faculty. It noted that special attention is needed "to improve the law school's hiring record and "ensure that procedures for reaching tenure and promotion decisions operate in a non-discriminatory fashion..." Around this same time, a number of law schools around the country were denying tenure to ground-breaking women on their faculties, and there was a good deal of ferment on the subject. Once my case was appealed, there seemed to be a great deal of conflict and a lot of time passed.

Paula Fass:

So now you've gotten tenure at the law school. What was your relationship with your colleagues after that? Apart from Eleanor.

Marjorie Shultz:

Sort of OK but not very good. I have to tell you, you'll see in here, that while Eleanor's case was pending, a senior faculty member and Dean came to my office one day and said, effectively, I'm going to be stuck with one of you. It ought to be you. You're the stronger of the two.

Paula Fass:

Oh my god. Even to say something...

Marjorie Shultz:

I mean that's the climate we were in. I mean, everybody's very cordial in the halls: Hello. How are you? You know, knives. One notoriously grouchy senior faculty member wanted the Title IX officer fired from her tenured position in another department because of the memo she wrote with comparative data on myself and the other woman denied right after me. What else happened? Oh, I know. Once we were both tenured, the two of us went to a faculty meeting that was discussing the Privilege and Tenure committee's report to the law school about what it needed to improve on its procedures. The faculty were so angry about the whole P&T report. The two of us recently tenured women were sitting side by side. Can you believe it? They said, the Privilege and Tenure committee told them they had to put their rules in writing, that they had to include this and that about the way the committee would function. And people were like, That's ridiculous. That's none of their business. Who are they to tell us? You know, it was that kind of thing. And they said, we don't *need* written rules. *We trust us.*

Paula Fass:

Were there young people in the room at that point?

Marjorie Shultz:
You mean non-tenured?

Paula Fass:
Yeah, of course, that's exactly...

Marjorie Shultz:
Well, I don't remember. I was probably too preoccupied with my own reaction. Maybe it was only tenured faculty because it was a report on our tenure process. But of course, the more recently appointed men, ones from our cohort, were tenured before we were, so they probably were.

Christina Maslach:
When I was chairing the SWEM committee, and Sally Fairfax was the Title XI officer, we pulled together the statistics on the Budget Committee, and it turned out that what we were finding (aside from the fact that there are very few women and very few minorities) was that there were certain departments, of whom the most egregious was law, which always had a person on the Budget Committee.

Marjorie Shultz:
Yes. It was viewed by law faculty as virtually their *right*...As in, who'll have the Budget Committee role this year?

Christina Maslach:
That's what I'm saying. So there may have been other things that the Title IX officer was involved with.

Marjorie Shultz:
Yeah, she was involved in several cases the year my case came up, I remember her working on the math woman's case. and several others.

Paula Fass:
So there was never any counter pose to what the Law School said in the Budget Committee because the Budget Committee had a law person...

Marjorie Shultz:
That's probably right.

Paula Fass:
There was no balance.

Marjorie Shultz:
That's right. I didn't even think about that, but this word had come to me to appeal and when you do, don't raise the issue of gender discrimination. And late in the process when I knew it was at the Budget Committee or had been finished there, the word I got was that "we've got it set." The next thing that happened was a call from the Vice Chancellor on Sunday.

Christina Maslach:
Oh, okay.

Marjorie Shultz:

That was my last day on salary, the day I heard. I got the call from the Vice Chancellor. He said something like, I guess you're a heck of a good teacher, but the answer on tenure is no. But in light of your teaching record, you'll be offered the position of Lecturer with Security of Employment. The Title IX office and the female Provost were reportedly furious. I can't remember who the source was, but I was told definitively that the Law School Dean had been over at California Hall, talking to the Chancellor or the Vice Chancellor all day Saturday before the final decision was made. The Provost was apparently caught by surprise about the ultimate decision being no tenure.

Christina Maslach:

Interesting. Because the Budget Committee doesn't decide, it recommends – but the Committee is pretty influential because it's rarely a decision that goes differently than what they've recommended. But occasionally it has.

Marjorie Shultz:

Well, I have the impression, but I'm not sure, that the Vice Chancellor may not have taken the recommendation from the Budget Committee. I do not know. That's complete speculation on my part. But maybe I'm only flattering myself, but so that's the tenure outcome Lecturer with Security of Employment. I asked the VC some questions about what it meant. I knew that individual faculty had raised objections, saying that the SOE decision was a breach of the campus personnel rules, and wanted it not to be offered to me.

I think I got tenure as a faculty member maybe a year after the other woman challenging her tenure denial won the review committee decision on her case, maybe a little less, maybe seven or eight months. They voted to give me full tenure. They, the faculty. They had asked me to submit another article I had going into publication, but I said “No way. I'm not going to submit to their judgment again. You decide what you're going to do.”

Christina Maslach:

So I mean, how did that work? Had you raised the complaint? Who said we have to reconsider it and vote again? I mean that's another very unusual thing...

Marjorie Shultz:

To reconsider.

Christina Maslach:

To reconsider that.

Marjorie Shultz:

Well, it was to move me from this illegal status.

Paula Fass:

But in that sense, the illegal status was a good thing for you...

Marjorie Shultz:

Yes, that's true. They might've, I guess left it permanently. I don't know.

Paula Fass:

Otherwise they wouldn't have been able to reconsider. That's my suspicion, and maybe that was something that the Provost knew.

Marjorie Shultz:

Oh, maybe. I don't know. You know, I never spoke to Doris about my case, at any point. It started like the, we trust us. You know, they were as angry about intrusion from the campus on law school decisions as they were about the substance of my appointment.

Paula Fass:

I'm sure, yeah.

Marjorie Shultz:

Maybe more.

Paula Fass:

This was a tumultuous time in your life...

Marjorie Shultz:

It lasted a very long time.

Paula Fass:

What were the consequences in your family life?

Marjorie Shultz:

My sons grew up with a mother who was crying all the time. That's one thing. My older son in particular, he and my younger son, they and probably mostly the older one, used to joke about coming over and bombing the law school or giving flat tires to various people, I mean, I just was devastated. Very immature of me. I had not had a hard life. But I'd had a very successful academic life, you know, being first in my class in every academic setting from kindergarten through law school did not prepare me for being told I was incompetent by the very people who were my teachers and cheerleaders, the people who had hired me while I was still a student.

I also wasn't mobile. If I'd been single, I suppose I would have immediately started looking for another job. I did visit at Davis instead of teaching at Berkeley that next year (1982) after the first denial. I began looking for another job, although interestingly, Davis now said it had no interest in me at all.

After the big uproar with campus protests and stuff about mine and the other woman's case, (1982-1989), the Law School hired several more women, including several minority women and

one black man. After getting tenure, the black woman later left Berkeley for Davis, and the Latina faculty member left for UCLA.

Christina Maslach:
Yeah.

Marjorie Shultz:
An African American man taught corporations at Berkeley; he tried to get the senior corporations person's guidance and advice, etc. but early on, that senior faculty member began roundly and consistently criticizing him. This particular faculty member had a pattern of supporting people while they were students or incoming faculty but then devastating them in tenure reviews. I was one of those whom he opposed. It was very, very hard. I felt mortified. I was buoyed by the support from women faculty, and from around the campus and from students. But I felt like I had a red strike through my name. And I wasn't used to that. And in that sense, I know I had been spoiled. I thought about, thinking about trying to go to Davis. Davis made clear they didn't want me; they didn't want to pick up Berkeley's rejects. So I would have had to move somewhere out of California probably, and that would not have been easy in terms of my husband and kids.

Paula Fass:
Santa Clara law school never came into consideration?

Marjorie Shultz:
No, I didn't consider it. The commute would have been horrendous. After we two women who'd been denied back-to-back in the 80's both got tenure in 1989, our small sub-group of women and the new hires (two people of color -- one black and one Latinx, three women), we thought things would begin to change more significantly. For a while it seemed like they were going to, but then they didn't. And things closed back down. On issue after issue in that period, faculty votes broke down with virtually all women and minority faculty on one side and all the white men on the other. (There were big struggles over dean selection, other hiring decisions, etc.) Then a black tenured woman left, the tenured Latina left, the black male corporations' lawyer was denied tenure; an Asian woman decided to go to Santa Clara and didn't even seek tenure at Berkeley. Things went back to business as usual, except that during this period soon after the faculty had denied myself and my colleague, they tenured another white woman with apparently no significant debate. All the women and minority faculty were discouraged about the climate and culture. I began thinking about leaving, too. I thought I would apply to be a fellow at the Hastings Center on Ethics in NY. I had taught for a number of years in the intertwined fields of law and medicine policy and ethics in which Hastings was a leading think tank. I thought I could reconnoiter, I could meet new people in legal and medical ethics and rebuild, looking for a job elsewhere after that year. This period also brought a national uproar about the situation for women faculty at Berkeley Law.

Christina Maslach:
Wow, okay.

Marjorie Shultz:
I'd have to go back and look at some records and women at other law schools. I think we started

having a bad reputation. So, we thought there was reason to think the dam might be breaking, but gradually it became clear in how we were treated, women and minorities, and increasingly people feeling they might as well leave.

In the '90's, evidence that little had changed arrived on my doorstep. An influential faculty member and former Dean came by my office when we were choosing a new Dean, when we were doing a Dean search, and said, Well, we're going to have to let [the senior woman faculty member] be Dean for a year and then we'll get a "real" dean.

Marjorie Shultz:

So when our first female faculty member's deanship was ending, most of the men on the faculty were supporting a mid-career faculty member to be the next Dean. I recall that *every* woman on the faculty went to the meeting to select a new Dean...most of us felt we desperately needed an outside Dean to create any real change. And all the women spoke strongly against the inside candidate around whom the men coalesced.

Paula Fass:

And said you can't hire this man.

Marjorie Shultz:

After the internal faculty vote chose the inside male candidate whom the women all opposed -- the women were so upset, we decided to request to meet with the then-Provost. Essentially, we said, you know, there were nine women in the meeting where this male candidate was recommended. Every single one of us spoke against his selection. Again, we had zero impact.

Paula Fass:

Wow.

Marjorie Shultz:

Every one, nine out of nine. Another nail in the coffin of hope that things were going to change. After I and the other disputed female tenure candidate were tenured and the new hires included a number of women and minorities, it was as if we were totally disregarded.

So I was ready to look elsewhere but shortly after this, my younger son was catastrophically injured in a high-speed head-on collision in early 1995. He was in the hospital unconscious for four+ months, and in acute care for 18 months in all. They told us he would die in the hospital, and that in any event, he would never have a life, never speak, never learn, never recognize us, never walk, etc. He is, and has been, is still very seriously disabled.

So, our whole lives stopped for years; for two years one of us was at one of the 4 hospitals he was in, at all times, 7 days a week except for a few hours at night. Then he came home, and in addition to caring for my aging and dying parents over the next two years, we continued to work with Matt on speech, walking, thinking, moving, memory, etc. The stress was unbearable. But Matt made an unbelievable degree of recovery. We're now 25 years later. But that ended all consideration of moving or changing jobs. My husband was self-employed. We needed my salary, my health insurance, needed to know the treating doctors. And so here I still am (much

probably to everybody's annoyance), but so our life just froze at that point. We needed every erg of energy we could dredge up for his care and rehabilitation. You asked me how I felt... The devastation of the 14 years of conflict over my tenure followed by the catastrophic injury of one of my two sons; I didn't have much left.

Christina Maslach:
Wow. Oh my God.

Marjorie Shultz:
You didn't know about my son's accident?

Christina Maslach:
No. I am so sorry....

Marjorie Shultz:
So I didn't move.

Paula Fass:
You needed whatever religious background, you had and whatever Buddhist teachings you...

Marjorie Shultz:
Yes. Oh, indeed. Jim brought not only that, but Jim's ability to help Matt in those months and months and months was unbelievable. I mean I spent half of my life, you know, at Matt's bedside too, but Jim did all kinds of things that he, well, he has a PhD in Human Development. He has a BD as a minister, he has studied Buddhism for 25 or 30 years. He got a degree in special ed and taught emotionally disturbed and students for four or five years. He's been a consultant for years to hospitals. He made incalculable contributions to Matt's recovery. I'll tell you just one example.

Three months after the accident, Matt was still in a persistent vegetative state. He spent two weeks at John Muir, then a month to Alta Bates ICU, then 8 weeks in Kentfield Rehab Hospital in Marin. Kentfield was the best hospital in northern California for coma recovery. We fought a huge fight to get him transferred there, but he'd made little progress there. One story. The person evaluating whether he had any awareness of the world outside his body (which is the first step in coming out of unconsciousness), the therapist would do things like hold a pencil in front of his face and tell him to grab it. He made no response. She put a Koosh ball on his chest and told him to pick it up. My husband said this is bull. You have to reach him emotionally. He said, "I'm going to make him mad." And Jim put a washcloth in ice water. Matt was 19 at the time. And so, father-son competition had been pretty intense before the accident. Jim puts an ice-cold washcloth on Matt's face. Matt's whole body spasms. Jim tells him if you don't like it, throw it away. (The only movement Matt could make was of his right arm. He didn't do anything the first time, but after about 10 more times, sure enough, Matt grabbed the corner of that icy washcloth, and threw it onto the floor. And that was absolutely crucial. He responded to something outside himself. That was the first sign that he was in there.

Paula Fass:

Yeah. Wow. I just got the chills of the ice cold down my back.

Marjorie Shultz:

It's a pretty amazing story. But anyway...

Paula Fass:

Have you written about it?

Marjorie Shultz:

We haven't, I often feel we should have. But you know, there are a lot of books out there about brain injury.

Paula Fass:

But it's not your book...

Marjorie Shultz:

Yeah, well initially we had no time or energy.

Paula Fass:

I understand.

Marjorie Shultz:

We still have no time or energy. We just got through babysitting his dog who's dying and his breakup with the person we hoped he might form a stable relationship with. Anyway...

Paula Fass:

Sorry to hear that.

Marjorie Shultz:

So where were we? So, after Matt's accident, I didn't leave, but a number of the others had left. Reva, Angela, Rachel, Bryan...

Paula Fass:

Reva left before she got tenure?

Marjorie Shultz:

No, no.

Paula Fass:

No, she had gotten tenure...

Marjorie Shultz:

She got tenure. They were all scared to death of her and attracted to her at the same time. She was so unbelievably smart, in any argument, she would leave them in a puddle on the floor. She was not there or tenured when my or my parallel female colleagues' cases were up. She came after us. That was part of what we hoped was going to break through the barriers.

Christina Maslach:

So when you came back, what was your focus?

Marjorie Shultz:

Well of course I disappeared to some extent. I mean I stayed full-time. The Law School/campus gave me a semester of Family/Medical Leave after Matt's injury; I taught the following spring and then for several years my focus was entirely on him. I would teach my classes and I would read still. But as I said, Jim was unbelievably good with him, and one of my research assistants, a graduate of Boalt, volunteered to come and work with us with Matt, and she trained and transferred to a wheelchair and she was unbelievably wonderful with him and she worked with him for two years. Several other students worked with him and we paid them, but she was killed in a head-on collision with her baby a year after she stopped working for us, and we still feel it as if we'd lost a daughter. Anyway, she was working for the Three Rivers Tribal Indian legal authority in Eureka. Anyway, Laura Beth Nielsen, a JSP doctoral student who's now with the American Bar Foundation and director of it, worked with us for Matt, students brought us dinners for a year, I mean we got tremendous help from students. Not particularly from faculty, but then I was not everybody's favorite neighbor. One male colleague said at one point that he would vote for me for tenure if I smiled more. This was in the period after Matt's accident.

Paula Fass:

Oh, god.

Marjorie Shultz:

I wanted to get back to my research and writing, but not be centered in the Law School. I began working on issues I cared about with people not in the Law School. Shelly Zedeck and I worked from 1996 to 2006 on a major empirical study to demonstrate how a different type of admission test than the LSAT would very substantially contribute to the racial diversity of law school while also producing exceptionally competent lawyers. We and lots of others thought our study was a really good product, and there was lots of national discussion about it. But the LSAC, which administers and hugely profits from the LSAT, was unwilling to seriously consider it because it was a threat to their dominant role in the status quo.

Paula Fass:

And you reached out beyond the Law School.

Marjorie Shultz:

Yes. The second major project came out of being an author on a book that I wrote with Troy Duster and five other people; it's called "*Whitewashing Race*." We didn't just write separate chapters; someone wrote a chapter draft, and then the whole group would discuss and debate it, tie it into what each of us was doing, push the narrative theme throughout. That group of seven met monthly, typically for about 3 hours a session. The whole book was an integral product of all seven of us. That's the book that somebody said I'd get a merit increase for sure after it was published, but I don't think I did get a salary increase. I don't believe I got a merit increase other than range adjustments any time after I finally got tenure. I'm not sure, but although we spent hundreds of thousands of dollars on Matt's rehab, frankly, salary wasn't my top priority.

Paula Fass:

It wasn't on the top of your head...

Marjorie Shultz:

I mean it maybe should have been because of course I've split my pension to support Matt after my death, and... So money is not abundant. Indeed, one of the things I said in my unsent letter is that one of the ways that women who were discriminated against in these various ways I've described, from my day one salary to the end of my service will have suffered tremendous salary loss compared to men. Of course, the Law School people are paid outrageously well compared to everybody else on campus. So I don't mean to complain, but you know, if I saw my male colleagues' salaries, I would probably have complained, but I don't remember getting a merit increase anytime in the last 10 years, which includes both Shelly's and my published product, and the group's book on race.

The bottom line is that I went outside the Law School for comradeship, friendship and support, as well as for work colleagues. I found it all, but it was still very hard to be treated as "less than" by your own department.

Paula Fass:

So you managed to recover.

Marjorie Shultz:

Yes. Both of those projects were very satisfying to me, and they were both multi-year.

Paula Fass:

Super. Great.

Christina Maslach:

Okay. So post-tenure...

Marjorie Shultz:

Yeah, people didn't see me much and I didn't see them much. I went to faculty meetings. I did small, rather limited committee work. I saw some students, but not like I had before, and I taught, but I withdrew a lot. And of course, doing these two research projects, that was all outside the Law School.

I don't think hardly anybody congratulated or welcomed me when I did get full tenure. One male colleague came in and said, well, welcome and all that, but sort of then went back out the door fairly quickly. I don't think anybody other than other women and the junior males that had been contemporaries congratulated me. So, there was no great rapprochement of warmth and sociability, but I certainly withdrew from a lot of things, and I probably looked like hell burned over after Matt's accident, you know. But what do I remember? Oh, the main thing I remember is that we were looking for somebody in health law. I was the only person that had taught any sort of health law for a number of years. Health law was becoming a more and more important legal subject and I wanted to continue teaching it. Initially, we hired a couple of lecturers and then

Ann O’Leary, the wife of Goodwin Liu (now on the California Supreme Court) wanted to teach it. I didn’t get that opportunity much more.

Finally, in 2006 or 2007, I think, we decided we wanted to hire somebody in health law, which is of course an exploding, really important area of the law at that time. I had done a lot of things with various federal departments (Clinton’s Lawyers’ Review Commission for the ‘93 health law proposal, Office of Research on Women’s Health Advisory Committee). At some point the Chair of the Appointments Committee told me that we’re looking to hire somebody in health law. Nobody on the committee really knows the field. Would you review work by these people and tell us what you think? So, I felt, well, I hadn’t really been pulling my weight in internal Law School committee work, so I agreed. And I read everything by everybody they asked me to look at and named some people I thought they should look at beyond their list. I spent a fair amount of time doing it. This is like 10 or 11 years after Matt’s accident, so it’s still taking a lot of our time, but I felt this is good. I’ll learn from this, and it’ll be a contribution I can make. In the past when somebody outside the appointments committee extensively reviewed candidates they usually reported like a member of the committee in the meeting of the faculty.

I assumed that was how this would go. In the faculty meeting, each member of the committee was asked for comments on the candidates and then the Appointments chair opened the floor for a general discussion. They didn’t call on me. And I thought, okay, well maybe we don’t do it that way anymore. The Appointments chair who was the one who had asked me to review candidates was running the meeting. Up until the tenure conflict, I participated actively, and I tended to be several notches to the left of most of the faculty other than four or five others. I was trying to decide when to enter the conversation when two different people raised their hands and said, approximately, since we don’t have anybody in health law to help us evaluate candidates, we should ask somebody at Stanford to do this for us. Literally, my jaw dropped. I had somehow become invisible. Even the Committee Chair who had asked me to review the candidates’ work and was still running the meeting didn’t say anything and seemed to agree about asking Stanford faculty. At that point I was furious! I got up and left the meeting, slammed the door, and several days later wrote a memo to the entire faculty describing what I felt had happened. I got no responses to my memo. I was now even more *persona non grata*.

Paula Fass:

And you still didn’t raise your hand...

Marjorie Shultz:

No, I didn’t.

Paula Fass:

...to give them a piece of your mind.

Marjorie Shultz:

I actually walked out and slammed the door. It’s the only time I ever did something like that. Then I wrote a three-page memorandum to the entire faculty and said, I have been teaching and writing in this field for 25 years, and I was asked by the committee to review these candidates. I

did so. Maybe I was supposed to put it in writing, but my sense was that people usually reported orally. My memo was angry; it said, that's why I left. I feel invisible. I feel unvalued.

I retired the next year. Maybe they had a party to celebrate. It wasn't quite as bad. I mean, things one to one were cordial with almost everybody. I don't mean I went around biting people or throwing red paint on them or.... but this was like, I couldn't believe it. I had not gotten the tenure. The book was out by this time. The admissions research was out. I just lost it. That's not like me. I don't think I've ever done that in my life in any setting.

Christina Maslach:
Wow. Unbelievable.

Marjorie Shultz:
So as I said, people remained cordial. I don't think anybody ever suggested lunch, or very often suggested tea or something except that visitors sometimes did. But then I had been around much less. I was over at the Center for Social Change, or I was over with Shelly in his office, or he and I were meeting for hours. By now, two more junior law faculty joined our admissions research, and they were often in my office or I in theirs

Paula Fass:
I want to ask you a little bit of a provocative question. You don't have to answer it. There's so many, if one looks at your experience, there are so many factors involved in what may have contributed to that whole later experience. One was the fight over the tenure, it seems, and before that of course the fact that you're a woman.

Marjorie Shultz:
Yeah.

Paula Fass:
And then the fact that you're very left-leaning. Together they create a particular kind of portrait. Of course. Do you think that the gender issue was the dominant one?

Marjorie Shultz:
I think my politics played a role. But I listened to other people, I always was careful to be respectful, to not go on and on, to not talk six times in a meeting, to not be gratuitously insulting. I mean, I try, I was aware of my politics being not mainstream. Maybe I didn't do a very good job. I don't know. You'd have to ask some other people. Certainly, I provoked more anger than the other woman at that time did, although you couldn't be much more left-leaning than a younger female colleague. Remembering the comment that I needed to smile more, perhaps not only that colleague's brilliance, but also her sometimes flirty style sat better with them. But they were scared to death of her. She was smarter than any three of them put together. I think my politics were relevant. And I think students' adulation toward me might have played some role, too. People said sarcastic things like, "they like you because you mother them, go easy on them." In fact, many students over the years told me I was the hardest professor they ever had in law school and that they learned the most from me. But I think probably the politics did hurt. But you know, I didn't go around giving speeches for presidential candidates. It was, you know, "we

should let the students, you know, meet with us about X,” or “it's really important that we move on getting more women hired.” It wasn't like I called them fascists or something.

Paula Fass:

You might've been better off...

Marjorie Shultz:

Maybe, because I might have been protected by craziness.

Paula Fass:

Not only protected, but that's kind of external to the campus.

Marjorie Shultz:

Yeah.

Paula Fass:

Whereas the kind of sentiment that was left bound...

Marjorie Shultz:

You're right.

Paula Fass:

...were deeply internal to the campus and to the Law School.

Marjorie Shultz:

Yeah. Well, and I tried always though, you're right, I tried to be reasonable, to think carefully, but I said things people sure didn't like. One time when they were complaining about how low our salaries were and that we should get a 10% increase or something. I don't remember the details. Whether it was hiring somebody for a social justice center position or what. I said something like, “you know, we make more money than 90% of the people in the country. “The discussion was about what priorities we should pass up the ladder; the people who spoke thought salary increases were the number one priority. I'm sure my comment wasn't popular, but it was roughly true.

Paula Fass:

Yes.

Marjorie Shultz:

But you don't say it. The meeting on a Dean candidate all the women had opposed, you know, I certainly said my piece though he never harassed me. He was a student of mine. He liked me as a teacher very much. I never had any personal trouble with him, but I knew that many women had, so I spoke against him being chosen. I spoke that we needed an outside Dean because our meetings had been so divided on gender and race grounds, and we did. When he came, in my view, Chris Edley was a huge improvement because we'd had only internal deans who left the power structure untouched.

Christina Maslach:

Oh, I hadn't thought about that, yeah.

Marjorie Shultz:

So I think, yeah, my politics probably played a role, but I think in a fair department, I conducted myself in a fair way on my differences of opinion. Is that a fair statement? We should ask Eleanor or somebody whether they would've thought I stood out. I know I was not as confrontational as our two Latinx faculty were, but it was clear that I got under people's skin more. And I never did know exactly why.

Paula Fass:

But that may have been a compounding of the experience of the tenure? So, I mean, people perceived you from that vantage point.

Marjorie Shultz:

Yes, certainly they did. And you know, I did lunchtime talks to students and so on, and I don't know. I never understood why I seemed to engender so much resistance. I'm not a shrinking violet, but I'm also not a bomb thrower.

Paula Fass:

Maybe after this I'll give you my theory.

Marjorie Shultz:

Okay. I mean, the Title IX officer during my case would have been much harder for them to deal with.

Paula Fass:

I know but I have a theory about this... Okay. Not about you. No, it's not that. It's a social rather than individuals.

Marjorie Shultz:

I was their student. Maybe it was that, but of course I'd gotten the highest grade in the class from every one of them that taught me with maybe one exception.

Christina Maslach:

Interesting. Wow.

Marjorie Shultz:

This is not, I mean, I'm glad I got through without turning into a weeping mess. This was very, very, very hard for me. I often feel like I wasted my life, you know? And that I could have found some place where I was valued.

Paula Fass:

Well, the truth is that you were valued. Your students clearly valued you. And I don't think, you know, it's easy to forget that because of the hierarchy at the university. But in fact, it's an important thing for a lot of people to remember, is that they are valued even if they haven't

gotten all the merit increases that they should have for example...

Marjorie Shultz:

Right. And it was important. I put a lot into my teaching, and I think I was a really outstanding teacher.

Christina Maslach:

Yes.

Paula Fass:

All those students bringing you dinner for a year...I mean, that's an expression of them.

Christina Maslach:

Yeah. Absolutely. To be there, that's really true. And I think the value of the work you did afterwards with Shelly, with Troy and all of those people, really stands on its own, you know, the tests of the quality of the thing that was going on.

Paula Fass:

But it might have be helpful to you to reach out to the rest of the campus.

Marjorie Shultz:

It would've. I know that Eleanor found it very helpful. She developed a real support network of women on campus. Beyond my research work with colleagues in other departments, I also made a number of very strong connections with women law professors at other schools and was active for years in a FemCrits group and in the Society of American Law Teachers, both inter-law school organizations.

Paula Fass:

But that's, you know, water under the bridge sort of thing, but at least you found it at a certain point.

Marjorie Shultz:

Yes. My last years were much happier as a result of being involved in both of those projects I cared about a lot. Put my heart into it, and a lot of hours.

Christina Maslach:

Yeah, sure. Yeah. And for important things, you know, and especially with the book tying back to your childhood beginnings and the kind of family and the kind of life you were coming up with.

Marjorie Shultz:

Right.

Christina Maslach:

You know, finding something to then be able to move forward in a new way.

Marjorie Shultz:

Yeah. And to get to know the other authors much better than I had previously. It was fun and it was good work, and I learned a lot, and felt like I contributed my share.

Christina Maslach:

That's very good. Yeah, that's really wonderful. So, I hate to ask, is there anything else you want to add?

Marjorie Shultz:

Don't encourage me!

Christina Maslach:

No, no. But I mean, are there things that we should have asked or, or that you think were important that we haven't talked about?

Marjorie Shultz:

No, I think we covered most of what was important. In a sense, the tenure thing was only a portion of my whole career. But of course, if you'd had told me, I might not get tenure, I'd have been stunned.

Paula Fass:

Well we are very grateful for you to share this with us.

END.