

ORAL HISTORY

HERMA HILL KAY



HERMA HILL KAY  
DEAN, BOALT HALL SCHOOL OF LAW, UC BERKELEY, 1992-2000

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*Oral History of*

## HERMA HILL KAY

ELEANOR SWIFT\*

### INTRODUCTION

Professor and former Dean Herma Hill Kay was celebrated a few years ago for completing her fiftieth year of teaching at Boalt Hall, the School of Law at UC Berkeley. Her commitment to our law school, and to legal academia, is remarkable. She was selected by the faculty, and appointed by the chancellor, to be the school's first woman dean; she has served on boards and committees for almost every significant legal academic institution in the country; and she has been honored many times for her many contributions.

Herma's commitment to Boalt continues to this day — in the classroom, at faculty meetings, and in her office, where she is finishing a book on the first fourteen women law professors in the U.S. and is still mentoring our junior faculty members.

What has struck me about Herma in the thirty-four years I have been her colleague at Boalt is her remarkable generosity of spirit. This generosity has 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 for others is, I think, one of her most significant and

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\* Professor of Law, School of Law, UC Berkeley.

enduring contributions to the law and to legal education. I want to describe briefly only four examples.

First, as chronicled in her oral history (pages 83–93), Herma was an active participant in the substantive revolution in women’s rights that swept through California and the nation in the late 1960s and 1970s. Based on her stated conviction that “women ought to be free and conscious actors . . . [who] 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 participated in the enactment of 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 adoption of a no-fault divorce statute in 1969, which 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. Women’s equality was then addressed directly by the American Law Institute’s Family Dissolution Project, for which Herma served on the Advisory Group, to ensure that upon divorce women would get equitable support and property awards. She also testified in favor of California’s ratification of the Equal Rights Amendment by the California Legislature.

Second, through her inspiration, active encouragement and concrete support, Herma generated opportunities for generations of Boalt graduates, men as well as women, to engage in legal activism on behalf of women and other underrepresented groups. Throughout her oral history, the names of Herma’s former law students appear consistently, as academics, judges, public servants and public interest lawyers.

Just before joining the Boalt faculty in 1979, I attended a national conference on Women and the Law. It was an exciting venture for me, as I was introduced there to many women law professors and legal activists engaged with the legal issues outlined above. At the conference, Herma was often surrounded by friends and admirers. I met many former students of hers who spoke warmly of the inspiration and encouragement she had given them.

My third example is an opportunity that Herma opened to me personally, and to future generations of Boalt students. In 1992, when Herma became dean at the law school, she asked me to take the leadership role in formulating a proposal to bring live client clinical education into the halls of Boalt. At that time, Steve Sugarman and I were co-teaching a class for students engaged in clinical work at the Berkeley Community Law Center,

which had been founded by Boalt students in 1988. I was more than thrilled to have this chance to put into practice one of my principal motivations for entering law teaching — to support students interested in public interest legal work. Clinics in the law school would give all students, and those interested in public interest careers in particular, the opportunity to work with real clients, under the supervision of clinical faculty. Such clinical work would train them to reflect on the skills they developed and the insights they gained about the role of law in promoting social justice.

The plan put forward by the Clinical Committee that I chaired, fully endorsed and supported by Herma (pages 137–141), was gradually approved by the faculty over the course of more than ten years. The live client clinics, the field placement program, and a full professional skills curriculum now flourish at Boalt. There is no doubt that this success was grounded on Herma's own commitment to develop these important clinical opportunities for our students.

Finally, I want to celebrate the special generosity with which Herma has embraced two of our younger law faculty colleagues who teach and write in her own fields of specialization — family law and conflict of laws. Some of Herma's work in the family law field is discussed above, and her introduction to, and abiding interest in, conflict of laws is described in the oral history (pages 43–57). These colleagues describe their ongoing relationship with Herma:

Herma invited me to sit in on her Conflicts class when I arrived last fall and invited me to guest lecture twice. We've also had lunch many times, and she's allowed me to pick her brain on issues large and small. She's been unfailingly encouraging of my work and teaching, and she's steered me back to the right track in my research when I have been discouraged. Perhaps most importantly, she's made me feel like my ideas are interesting and worthwhile, and that is invaluable coming from someone who has played such a large role in the development of the field.

Since I came to Berkeley, Herma has been my stalwart champion and mentor, relentlessly encouraging and extraordinarily generous. She has shepherded me through to tenure, insisting that she would not retire until I received tenure (though she warned me not to take too long in going about it!). I am enormously grateful for her kindness, friendship, and example.

Of course such interest in, and mentorship of, one's very own successors in teaching and research should be the norm for law faculty, but I fear it is not. This aspect of Herma's character, and of her commitment to the future of our law school, deserves to be celebrated and emulated.

One explanation of Herma's ongoing commitment to creating opportunities for others — for her students, her colleagues, and the less powerful who seek justice through law — may be the mentoring she herself received at home from her father (page 38), in college (pages 28–34), in law school (pages 43–48) and, in her career, from California Supreme Court Justice Roger Traynor (pages 60–61) and Professor Barbara Armstrong (pages 67–68). She appreciated the riches she received, and she has devoted much of her career to passing these riches on to others.

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## EDITOR'S NOTE

The oral history of Professor and former Dean Herma Hill Kay was recorded in eight interviews by Germaine LaBerge, senior interviewer of the Regional Oral History Office at UC Berkeley, from June to September 2003. It is presented here in its entirety and has received minor copyediting for publication. Insertions in square brackets were added by Professor Kay shortly after the interviews concluded. She has generously assisted the present publication by reviewing the text and providing illustrations from her personal scrapbooks. Additional illustrations appear by courtesy of the UC Berkeley Law Library and the efforts of Archivist William Benemann.

The oral history is reprinted by permission of The Bancroft Library at UC Berkeley. The sound recording may be accessed at the Library, and the original transcription may be viewed at the Library and at the UCLA Department of Special Collections or online at [http://digitalassets.lib.berkeley.edu/roho/ucb/text/kay\\_herma\\_hill.pdf](http://digitalassets.lib.berkeley.edu/roho/ucb/text/kay_herma_hill.pdf).

In LaBerge's introduction to the original transcription, she acknowledged the assistance of four professors in providing background information for the interviews: Eleanor Swift, Jesse Choper, Earl F. Cheit, and Robert H. Cole.

The Curriculum Vitae and Bibliography following the oral history have been updated to late 2013 by Professor Kay for publication in this volume.

— SELMA MOIDEL SMITH

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**HERMA HILL KAY**

INTERVIEW 1: JUNE 2, 2003

LABERGE: I'm in Professor Herma Hill Kay's office at Boalt [Hall]. It's June 2, 2003, and this is our first interview. We always like to start at the beginning, so why don't you tell me the circumstances of your birth that you have been told.

KAY: You don't think I remember?

LABERGE: I doubt it. [laughs]

KAY: Well, I'm told that I was born on the eighteenth of August, 1934, and that my father, who was a Methodist minister but also an avid sportsman and deer hunter, was terribly nervous because the deer hunting season had opened on the fifteenth of August, and here he was hanging around waiting for me to be born.

LABERGE: [laughs] And this is in South Carolina?

KAY: South Carolina.

LABERGE: Okay.

KAY: So finally I appeared, and he went off to his deer hunt. That is all I have been told about the surroundings of my birth.

LABERGE: Do you have siblings?

KAY: No, I'm the only child. My father, whose name is Charles Esdorn Hill, had twelve people in his family — brothers and sisters — and my mother, Herma Lee Crawford, had ten in her family. I can only assume that they decided that was too many on both sides. [laughs]

LABERGE: What do you know about your grandparents on either side?

KAY: I actually only knew one on each side. The other on both sides had died before I was born. I knew my mother's mother, whose name was Molly Crawford. I think her true birth name was Margaret Lee Fraser; they called her Molly. My grandfather Benjamin Hawkins Crawford, my mother's father, died the year I was born, in 1934, but Grandmother Molly made a habit after her husband died of visiting all her many children, and she would come and spend three/four weeks a month at everybody's house. So I got to know her quite well. My father's father, whose first name I do not remember, I only called him Grandfather Hill — I can probably find that out from one of my many cousins — was a farmer in the lower part of South Carolina. His wife had died before I was born, and he was living with a companion who we all called Miss Minnie. I had no idea what Miss Minnie's last name was.

LABERGE: Do you know your grandmother's name on that side?

KAY: No.

LABERGE: Okay. How far away from you did either of your grandparents live?

KAY: We lived in various places because my dad was a Methodist preacher, and in South Carolina in those days you — what they called "rode circuit" — you had four churches at a time. You preached at two of them every Sunday, and you lived in wherever the main parsonage was and you just went to the other churches. We moved every four years — at least that's the way they did it. But we stayed in South Carolina except when he became a chaplain in World War II, and then Mother and I went with him to Texas where he was stationed. That would have been roughly between 1942–1945, somewhere around there. After he was discharged we came back to South Carolina and resumed all this again. And everybody else was in

# HERMA HILL KAY

## CURRICULUM VITAE

### PRESENT POSITION

Barbara Nachtrieb Armstrong Professor of Law, School of Law, University of California, Berkeley.

### EDUCATION

B.A., Southern Methodist University, Dallas, Texas, 1956.

Phi Beta Kappa; Magna Cum Laude; Departmental Distinction in English.

J.D., The University of Chicago Law School, 1959.

Member, Order of the Coif; Book Review Editor, *Chicago Law Review*.

### HONORARY DEGREES

LL.D. (Honoris Causa), Southern Methodist University, 1992.

LL.D. (Honoris Causa), Mills College, 2000.

### PROFESSIONAL EXPERIENCE

University of California, Berkeley:

Barbara Nachtrieb Armstrong Professor of Law, 1996–.

Dean, 1992–2000.

Richard W. Jennings Professor of Law, 1987–1996.

Professor of Law, 1963–1987.

Associate Professor of Law, 1962–1963.

Assistant Professor of Law, 1960–1962.

Hamline University School of Law:

Bush Foundation Distinguished Visitor, September 1985.

Northwestern School of Law, Lewis & Clark College:

Distinguished Higgins Visitor, October 1984.

Harvard Law School:

Visiting Professor, Fall 1976.

University of Manchester, England:

Visiting Simon Professor, 1972.

National Conference on Uniform State Laws:

Uniform Marriage and Divorce Act, Co-Reporter, 1968–1970.

# HERMA HILL KAY

## BIBLIOGRAPHY

### BOOKS

TEXT, CASES AND MATERIALS ON SEX-BASED DISCRIMINATION (with Tristin K. Green) (7th Ed., 2012; West Group).

CONFLICT OF LAWS: CASES—COMMENTS—QUESTIONS (with Larry Kramer and Kermit Roosevelt, III) (9th Ed., 2013; West Group).

### BOOK CHAPTERS

“Same-Sex Marriage in the Conflict of Laws: A Critique of the Proposed ‘Defense of Marriage Act,’” in *THE CIVIL LAW IN THE 21ST CENTURY: Festschrift in Honor of Koji Ono on the Occasion of His Sixtieth Birthday* 831–843, (Hougakushoin, 1996).

“Perspectives on Sociobiology, Feminism, and the Law,” in (D. Rhode, ed.) *THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE* 74–85 (Yale U. Press, 1990).

“Beyond No-Fault: New Directions in Divorce Reform,” in (S. Sugarman & H.H. Kay, eds.) *DIVORCE REFORM AT THE CROSSROADS* 6–36 (Yale U. Press, 1990).

“Reproductive Technology and Child Custody,” in (A. Skolnick & J. Skolnick, eds.) *FAMILY IN TRANSITION* 405–419 (6th Ed. 1989).

“The Offer of a Free Home: A Case Study in the Family Law of the Poor,” in (L. Nader, ed.) *LAW IN CULTURE AND SOCIETY* 304–326 (Aldine Press, 1969); reprinted in (Y. Cohen, ed.) *MAN AND ADAPTATION: THE INSTITUTIONAL FRAMEWORK* 162–175 (Aldine Press, 1971).

“Facing the Community Backlash,” in (Farber & Wilson, eds.) *TEENAGE MARRIAGE AND DIVORCE* 130–135 (Diablo Press, 1967).

“The Outside Substitute for the Family,” in *MAN AND CIVILIZATION: THE FAMILY’S SEARCH FOR SURVIVAL* 3–14 (McGraw-Hill, 1965).

### ARTICLES

“What I Learned About Feminism From the Early Women Law Professors,” *ISSUES LEG. SCHOLARSHIP*, Berkeley Electronic Press, 2011.