

# Lunching with a Legend: A Tribute to Herma

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If you know anything about Family Law, you know that Herma Hill Kay is the doyenne of the field—an elder stateswoman who has literally transformed the legal landscape of American family life. In the late 1960s and 1970s, as a revolution in substantive sex equality was sweeping California and the nation, Herma was at its center. As a member of Governor Edmund Brown’s Commission on the Family, she participated in a rigorous study of California’s family court system.<sup>1</sup> The Commission’s report paved the way for California’s adoption of a no-fault divorce statute in 1969,<sup>2</sup> a development that triggered a seismic shift in family life and Family Law.<sup>3</sup> Firm in her conviction that “women ought to be free and conscious actors . . . [who] ought to determine their own role in this world,”<sup>4</sup> Herma was actively involved in the passage of California’s therapeutic abortion statute and testified in favor of California’s ratification of the Equal Rights Amendment. More recently, Herma served on the Advisory Group for the American Law Institute’s Family Dissolution Project,<sup>5</sup> which studied the changing demographics of the American family and the issue of women’s equality in and outside of the family. The Project produced an influential report that articulated broad

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DOI: <http://dx.doi.org/10.15779/Z38QS1D>

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1. Herma Hill Kay, *An Appraisal of California’s No-Fault Divorce Law*, 75 CALIF. L. REV. 291, 300 (1987).

2. *Id.* at 298.

3. LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 16–17, 71–72 (1985).

4. Eleanor Swift, *Introduction to Oral History of Herma Hill Kay*, 8 CAL. LEGAL HIST. 1, 4 (2013) (quoting Herma Hill Kay).

5. *See* AM. LAW INST., *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS* (2002).

principles for ensuring gender equality and fairness throughout the process of family dissolution.<sup>6</sup>

Nine years ago, when I entered the entry-level teaching market looking for a job as a law professor, Herma's slate of impressive achievements was well known—especially among those of us who studied Family Law. Almost every casebook in the field excerpted her articles. Any discussion of no-fault divorce mentioned her work on the California Governor's Commission. She was—and still is—synonymous with Family Law.

So imagine my utter terror when I learned not only that Berkeley Law had invited me to interview for a job but that Herma Hill Kay, Berkeley's resident Family Law expert, was "very interested in talking to [me]." For days, I parsed the meaning of the appointments chair's message. Did "interested" mean she liked my work? Or did it signal something more ominous? Either way, I boarded that plane to California in a cold sweat, dreading the moment when I would come face to face with Family Law royalty.

Our first audience began inauspiciously. I perched awkwardly on a chair in her office, trying hard not to stare at the photos and newspaper clippings that dotted the wall and shelves. There was Herma, resplendent in navy blue and gold, the first female dean of Berkeley Law (and, indeed, any elite law school). A framed certificate honored Herma's service as the President of the Association of American Law Schools. On an adjacent shelf was the American Bar Association's Margaret Brent Award, honoring Herma's work advancing women's rights and professional progress. A photo showed Herma and Justice Ruth Bader Ginsburg, heads together, editing their seminal Sex Discrimination casebook. A framed newspaper article featured a photo of Herma throwing out the first ball at an Oakland A's game with perfect form. (Her pitch easily made it over the plate. Well, of course it did.) More curiously, there was a photo of Herma piloting a single engine plane. What?

I tried hard to pay attention, but I was dazzled. Everywhere I looked, I came face to face with Herma's status as a living legend. Herma, however, was focused on the business at hand—critiquing my paper. In that hour-long interview, she volleyed questions—hard questions—and I did my best to keep up, whilst stealing glances at all of the Herma-bilia surrounding me. (Was that Herma with Susan Sontag?)

At the end of the day, as I was being spirited back to the airport to catch my return flight to New York, I ran into Herma. We shook hands again and she smiled, "I enjoyed the paper and your talk. I like what you're doing." I do not remember what I stammered back, but I know my heart was leaping out of my chest. I smiled the whole way home—and it was a red eye flight and I had a middle seat.

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6. *See id.*

Since joining the Boalt faculty, I have had the opportunity to admire Herma up close, as a colleague. And indeed, it has been my sincere pleasure to be Herma's colleague for the last nine years. I have benefited from Herma's graciousness and generosity more times than I can count. She has read every paper that I have written, attended my classes, and provided helpful criticism—and more often, calm assurances that everything would work out in the end.

More importantly, on my first day in the building, Herma made me a promise that underscored her commitment to my professional success. As I chattered to her over lunch at the Women's Faculty Club, she interrupted me to make an announcement. "Melissa," she announced solemnly between sips of water, "I just want you to know that I will not retire until you get tenure." She paused, weighing her words carefully, "But please, don't take too long going about it!"

I was flummoxed. It was my first day on the job as a professor. I had just begun my professional journey toward tenure and could not even conceive of its completion, and here was Herma committing to stay the course with me—to steer me through whatever turbulent shoals I might encounter and get me safely to the other side. I was so overwhelmed that I probably teared up, or did something equally embarrassing. But if I did, Herma was gracious enough to ignore my outsized show of emotion.

I have so often been on the receiving end of Herma's kindness that it is easy to forget that I am not the only beneficiary of her friendship and care. From coast to coast, the legal academy and the profession are filled with young women and men who Herma has mentored, befriended, and guided over the years. Some of these scholars were former students who, inspired by Herma's example, went on to become first-rate legal scholars in their own right. Others are simply fellow travelers with whom Herma found common cause. In either case, her influence cannot be overstated.

Today, more than fifty years since she began her career, Herma's commitment to Berkeley, its students, the legal academy, and the cause of women's social progress is as robust as ever. At Berkeley, she remains a popular and beloved teacher—her courses on Family Law, California Marital Property, and Conflict of Laws are staples of our curriculum. In recent years, she has encouraged her students in these classes to use their training in new and innovative ways. For example, three years ago, a group of Berkeley Law students founded the Family Violence Appellate Project to offer support to battered women pursuing legal claims in the appellate courts. Herma was among the group's most stalwart supporters. And she continues to be a first-rate colleague and friend. When my colleague Kristin Luker and I thought that we might coauthor the first law school casebook on Reproductive Rights and Justice, Herma was the first person we told. Not only did she offer us encouragement, she put us in touch with the academic press that eventually published the project.

Beyond her support of students and colleagues, Herma, as always, is a thoughtful presence in the governance of the law school and actively mentors each new crop of junior faculty members. Impressively, she does all of this while keeping up with an active slate of scholarly projects—she recently completed a book on the first fourteen women law professors in the United States. (With characteristic humility and grace, she decided to stop at fourteen because she was the fifteenth!).

It is no surprise that Herma is the subject of an event like this *Festschrift*. Her career has been marked by her extraordinary commitment to service and a record of incredible accomplishment. But while Herma is certainly worthy of our tributes, I fear that words alone cannot adequately capture the full extent of our admiration and affection. Words alone cannot do justice to what she means to her friends and colleagues, and to this institution.

But expressing one's gratitude and admiration in prose is exactly the point of a *Festschrift*. So in that spirit, let me conclude with a final anecdote. In my first semester at Berkeley, I was assigned to teach Family Law, a course that Herma had taught for over forty years. To prepare for the class, I practiced my lecture in the mirror and drilled myself on the various questions I thought my students would ask.

The moment of truth came on the first day of class when I walked up to the podium and took out my notes. A young woman in the front row immediately raised her hand to ask a question. "Is Professor Kay teaching this class this semester or in the future?" My heart sunk, but I summoned all of my bravado and confidently asserted, "Professor Kay will teach this course again in the spring of 2008. But for now, you're stuck with me." There were a few titters—the students, it seemed, appreciated self-deprecation. But not everyone was satisfied. The young woman had her hand up again. "Are you going to be as good as Herma Hill Kay?" she challenged, an eyebrow arched in expectation. It was a question for which I had not prepared, but I instinctively knew the correct answer. With no hesitation, and complete conviction, I blurted out, "No one is as good as Herma Hill Kay."