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MARJORIE SHULTZ

By Professor Eleanor Swift, Emerita



Marjorie Maguire Shultz, a gifted teacher and born reformer, was the fourth woman professor hired at the School of Law. She grew up in a family that was oriented toward social justice. Her father was a young Presbyterian minister in Cincinnati at the start of World War II. He was an impressive preacher but also a pacifist (and conscientious objector), and he supported early meetings of CORE at the pastor's manse.

Following controversy about his pacifism and his hosting of the CORE group, the governing Presbytery voted to remove him. While Marj's father served his alternative service and her mother and brother moved in with her mother's family, the Maguires then moved to South Central Los Angeles where her father worked for the regional college and university student YMCA. After a dozen years, the family moved to New Jersey where her father was national executive of the student Y. She graduated from Wooster College in Ohio in 1962 and after graduation married Jim Shultz whom she had met while he was National President of the student YMCA.

When the couple moved to Chicago, Shultz applied for admission to graduate programs in history at the University of Chicago and Northwestern. Both turned her down for any scholarship help (essential and ordinary at that time) because "as a married woman she would just go and have children." Instead she entered University of Chicago's Master of Arts in Teaching, taught in two high schools and then at George Williams College, a school affiliated with the general YMCA. She taught history and was the Director of Student Activities for four years. In 1968 the family, now including their son Steven, moved to Washington, D.C. There Shultz first worked for two professors as a researcher for their book on political change in the 70's.; then moved to a key position for the McGovern Campaign and Caucus at the 1972 Democratic Convention. Her next role was in planning and development for Antioch Law School, a school founded to provide a legal education for lawyers working with clients typically ignored by the legal profession. The family moved to Berkeley in 1973 largely because Jim wanted to study Tibetan Buddhism with a llama there.

Shultz applied to law school at UC Berkeley, commonly known then as Boalt Hall.

She graduated first in her class in 1976. Her second son, Matthew, was born during her third year. She was a founder and first Chair of the Board of Directors of the Berkeley Law Foundation, a student-led organization created by her graduating class. The Foundation raised funds from classmates who were working in law practice to support one or more of their fellow students who wanted to do public interest work. This was a path-breaking model for the support of public interest law practice, a number of which were founded at other law schools in ensuing years.

After graduation, Shultz applied for a position as a legal writing instructor at Boalt. But many people, including Boalt faculty, urged her to apply for a regular faculty position. She was interviewed by faculty but without having asked to be, was excused from giving a job talk “because she wouldn’t be ready.” She received the job offer and started teaching at Boalt in 1976, three months after she graduated, which was unheard of at the time (and still is).

At the time of Shultz’s hiring in 1976 there were two women on the Boalt faculty, Herma Hill Kay who was hired in 1960 and Babette Barton, who taught first as a lecturer for five years and was then promoted to a full-time tenure-track position in 1966 when issues were raised about AAUP rules about continuing to employ someone without granting them a regular faculty position. No woman had been hired for the 40-some member faculty since 1961.

From the start, Shultz was a great success at teaching and was a very popular teacher. For the first three or four years, she taught part-time (the 6 unit course in Contracts, a 60% load) because her second son Matthew was an infant. She then moved to a full-time load. Marj loved teaching, combining an updated Socratic method with her own philosophy and practice of teaching. She learned every student’s name (up to 130), created a norm of rapid and widespread interaction, and found she could identify some value and utility in almost any comment, even if needing to correct or expand on what the student said. The student’s contribution could be commented on on various level -- doctrine, values, legal process, ethics, history, or social policy, etc. In this way, each student got an accurate takeaway but rather than “feeling stupid” could see his/her comment as advancing one of the multiple other agendas being highlighted and taught.

Once this atmosphere was set, as many as 30 students would participate in any given class, with 1 or 2 having been called on to begin a case and others weaving in agreements, criticisms, counterpoints, or related examples. This approach articulated both the fine points and the architecture of doctrine while refining focus, analysis and thought. Every student would know Shultz’ mantra; she asked all students to be always a “potential participant” rather lapsing into being a “permanent observer.” And she made it possible for virtually all students to participate without fear of being humiliated.

The tradition at Boalt at the time was to consider younger faculty for promotion to tenure on the basis of one major published law article. As the senior woman faculty member told Shultz, the article should “alter the way in which scholars look at an entire field of law.” Shultz’s article addressed the compatibility of marriage with contract law.

In her piece Shultz analyzed traditional assumptions and values law and society hold about marriage and contract law, then identified and tracked emerging trends in each of the fields, showing that use of contracts to structure and resolve disputes within marriage was both possible and potentially helpful in strengthening the vital social institution of marriage. Faculty reactions to the article were mixed, with several readers moderately positive and several mixed or negative views. The senior woman on the faculty, the dominant person in Family Law, was strongly positive. One multiply married and divorced senior faculty member complained, “The topic of marriage bores and irritates me.” In response to the critics, Shultz extensively revised the article over the next year. It was published in the California Law Review in 1982 but did not appear to change the minds of the negative faculty members and she was again not granted tenure by a majority vote of the faculty.

Many law students then created a letter writing campaign asking current students and alumni to nominate Shultz for the Campus Distinguished Teaching Award. They praised her as an outstanding teacher, both demanding and supportive, and many said that they learned more in her class than in any other at the law school. Some on the faculty were not pleased when she won this Award and scolded the Dean for “letting her win it” which of course he did not do.

Shultz then worked on a second article with fewer gender dimensions, generated by her teaching of health and medical ethics law. The article proposed a new analysis of the doctrine of informed consent to medical treatment and was accepted and published by the Yale Law Journal in 1985. Despite the acceptance by Yale, the article was negatively reviewed by two of the Torts professors on the faculty while the evaluation letters from outside Berkeley were generally positive. The main faculty evaluators had strong negative views about the economics of the proposal and were not as interested in the philosophical, family, and emotive considerations that motivated Shultz’s concern with the case law.

At that time, the law faculty had a 2-step procedure for voting on tenure. If the candidate received more than 60% yes votes, tenure was awarded. If less, a second vote is taken in which faculty are supposed to consider the strength of the views expressed by others and the general effect on the collegiality of the candidate being admitted to the faculty. The second vote requires the support from 50% of the faculty; Shultz failed on the second vote. Shultz was then advised by the Campus Title IX Officer to appeal her case, but not to raise the gender issue. The Officer,

Professor Sally Fairfax, working under the guidance of the Provost Doris Calloway, had data on comparative tenure cases in the University. The Officer thought that Shultz's case was very strong and could be won by comparison with cases across the Campus. Shultz filed an appeal.

The Berkeley Law students were again very angry at this second tenure denial, staging protests and sit-ins in the Dean's office, distributing campus-wide publicity and letters to newspapers. After its site visit, members of the joint ABA-AALS (Association of American Law Schools) accreditation review body noted issues about faculty diversity and the Executive Committee

determined, however, that certain matters should be addressed, in particular the law school's commitment to hiring, promoting, and retaining a diverse faculty including women and members of minority groups. The Executive Committee believes that special attention is needed to improve the law school's hiring record, ensure that procedures for reaching tenure and promotion decisions operate in a nondiscriminatory fashion, and provide a supportive environment for all junior faculty members.

At this time there were a number of cases of ground-breaking women being denied tenure at law schools around the county.

On the last day of her appointment to the faculty, Shultz received a call from the Vice-Chancellor, Rod Park. He told her that she would not be given tenure but would be given the position of Lecturer with Security of Employment in light of her excellence in teaching. The Title IX Officer and the Provost were reported to be furious about this decision. Shultz was voted full tenure by the law faculty in 1989 after her woman colleague Eleanor Swift, also denied tenure, prevailed in an outside comparative review of her tenure case and received full tenure.

After Shultz and Swift became fully tenured members of the Law School faculty in 1989, they bonded with the recently hired and diverse group of women and minority faculty. However, struggles over hiring decisions and Dean selection still continued, with women and minority faculty on one side and white men on the other. Several newer women members of the faculty left for other schools.

In 1995, Shultz was thinking about looking elsewhere for an academic position. This ended when her son Matthew was catastrophically injured in a high-speed head-on collision. Marj and Jim were told that he would die in the hospital or never have a life – never speak, never recognize them or learn to walk. Their lives stopped for two years, one of them at the hospital every day, working with Matt on speech, walking, thinking, moving, and memory. Their support was heroic and ended any thought of moving or a new job. Now 25 years later, Matt has made a remarkable

degree of recovery and has many achievements, with still significant input of time and energy from his parents.¹

Shultz was then determined to work on research and writing on issues that she cared about. She was invited to work on two significant projects with faculty outside the Law School. She and Psychology Professor Sheldon Zedeck worked from 1996 to 2006 on a major empirical study to demonstrate how a type of law school admission test different from the LSAT would contribute to the racial diversity of law schools and produce exceptionally competent lawyers. There was much favorable discussion of the project but the Law School Admissions Council, which administers and profits from the LSAT test, was unwilling to seriously consider it.

A second book project titled “Whitewashing Race: The Myth of a Colorblind Society”² was authored by Shultz, Professor Troy Duster and five others. This was a true collaborative project, meeting monthly for 3 hours, creating an integrated product from the seven authors. Using detailed historical and statistical evidence of long-standing and continuing race discrimination in multiple aspects of American society, the book sought to demonstrate that the then-dominant notion of “colorblindness” had not in fact nearly solved the nation’s problems of pervasive and severe racial disadvantage experienced by Blacks. Shultz’s particular contributions centered on racism in health care, and on the flawed assumptions that colorblindness offered solutions.

These two projects, on issues of great importance to law schools and to understanding the racial divide in our country, can be viewed as the capstone of Shultz’s career. She retired in 2008 and did only very minimal further teaching at the School of Law.

¹ Betsy Levin, Accreditation and the AALS, 41 J. Legal Educ. 373 (Sept-Dec. 1991) at 383.

Photo is from the UC Berkeley Law School website.