

Conversation with a Courageous Woman:

Justice Joyce Kennard

BY ELIZABETH VRATO

From 1987 to 1992, Senator Hillary Rodham Clinton served as the first chair of the ABA Commission on Women in the Profession. In 1991, she established the Margaret Brent Women Lawyers of Achievement Award to recognize women who had distinguished themselves in the legal field and helped to increase the participation of women in the profession. Margaret Brent is considered to have been the earliest woman legal representative in America, appearing in over one hundred cases in seventeenth-century Maryland representing her family's land interests.

*Attorney Elizabeth Vrato set out to interview a number of Brent honorees in order to share with readers the stories of their struggles to overcome barriers. Vrato gathered these interviews into a book entitled *The Counselors: conversations with 18 courageous women who have changed the world* (Running Press, 2002). With a focus on mentoring, Vrato was particularly interested to learn about "the men and women whose guidance, wisdom, and encouragement" inspired the award winners to persevere.*

California Supreme Court Justice Joyce Kennard was honored with the Margaret Brent Award in 1995. We reprint here Vrato's moving interview with Justice Kennard.

"I was born during World War II on the island of Java, then a part of the Dutch colonial empire," Joyce starts. "I'm of Indonesian, Dutch and Chinese descent. My father died in a Japanese concentration camp when I was a year old." She then spent her early childhood in an internment camp with her widowed mother.... "Shortly after liberation by the Allied troops, when I was about five, a playmate showed me the thickest, most beautiful book I had ever seen. It had thousands of pictures of toys and pretty dresses, things I had never had, things I associated with a fairytale world. It was a Sears catalog!

"Five years later," she continues, "after Indonesia gained its independence from the Dutch, my mother and I left for the last remaining Dutch colony in the East Indies – the western half of New Guinea. My mother found a job as a typist with a Dutch oil company.... We lived in a racially segregated area in a small Quonset hut shared with four other families.... The bathroom was a filthy ditch at the edge of the jungle.... I attended a tiny school run by Catholic missionaries. My fellow students were the sons and daughters of natives whose not-too-distant ancestors had been cannibals.



"The school folded when I was thirteen.... The only other school was five days' sailing away, so that was where my mother took me," Joyce states simply, as though this remarkable move was the only logical next step. "Then a year later, when I was fourteen, there was no more schooling to be had there.... My

education had been woefully inadequate, but I had been taught the rudiments of English – and I picked up a lot of simple words related to love and heartbreak by listening to Radio Australia, which regularly played the American top hits. To this day," she smiles, "I can either sing or hum hits from the early fifties."

Joyce's mother continued to be resourceful in seeking new opportunities to further her daughter's education. "My mother realized that the wild jungle of New Guinea – basically a man's country – was no place for a fourteen-year-old girl. Determined to get me an education, my mother decided we should leave for Holland.... In Holland I experienced such wonders as making my very first telephone call and getting my first peek at television.... My mother found a job in a restaurant peeling onions. And eventually she talked the director of a high school into accepting me as a student on a trial basis.... When the director noted my lack of background in math, my mother pointed to my high grades in whatever subjects the New Guinea missionaries had taught. I was accepted on the condition that I would get special tutoring in math."

But only six months later, Joyce's schooling would come to an abrupt end: "A tumor on my leg had led to an operation and then resulted in an amputation above the knee.... I knew I could never catch up in school. And there were no second or third chances in Holland at that time." Thus, Joyce learned typing and shorthand and became a secretary at sixteen.

"A couple of years passed. And then around 1960," she relates, "America opened up a special immigration quota for people of Dutch nationality who were displaced from New Guinea when it changed from Dutch to Indonesian rule. My mother and I fit into this category.... In those days, it was extremely difficult for anyone born in Asia, as we were, to immigrate to America. So this new quota was great news to us – a door into America – the land of liberty and opportunity, the land of an immigrant's dreams."

THE LAND OF OPPORTUNITY

In 1961, Joyce arrived in California alone. "My mother

stayed in Holland so that if I could not make it in America, I could return there.... America exceeded my wildest expectations. All I had expected was an assembly-line job in a factory. Instead, 'fresh off the boat,' so to speak, I was hired as a secretary at a large insurance company with a salary of \$280 a month."

Six years later, Joyce was able to realize her dream of getting a college education. "My mother passed away and left me her entire life savings of five thousand dollars. I know she had scraped that together for me at great personal sacrifice.... I became a college freshman at the age of twenty-seven and completed four years of college coursework in three years, while still working at least twenty hours a week to help pay my expenses." Despite this difficult schedule, Joyce graduated from the University of California magna cum laude and Phi Beta Kappa.

Her boss encouraged her to make the transition from working for him as a legal secretary to becoming a lawyer in her own right. Taking the challenge, Joyce pursued a joint degree program in law and public administration at the University of Southern California; her masters' thesis earned the school's Outstanding Thesis award.

She gained experience as an attorney for a dozen years, first in the State Attorney General's Office and then as a research attorney in the State Court of Appeal. In the mid-eighties, Governor George Deukmejian appointed her to be a judge on the Municipal Court. He then advanced her over each of the next three years with appointments to the state's Superior Court, Court of Appeal, and Supreme Court. She has been on the California Supreme Court since 1989 – only the second woman to serve on the seven-member court. Joyce has earned a reputation as an independent thinker who does not shirk from disagreeing with her colleagues. She has put her name to numerous dissenting opinions to prove it. Before she was appointed, some people thought she would fit a certain "moderate conservative" role, and she must have disappointed them – and perhaps pleased others – when she did not play out their expectations.

For example, one case in which she may have surprised people is a lead opinion she wrote for a case where the California Supreme Court prohibited school-endorsed prayers in public school graduation ceremonies. The Court advanced the public policy that in a religiously diverse society, religious neutrality must be respected. (*Sands v. Morongo Unified School District*, 53 Cal. 863, 884 (1991).) In the opinion, Joyce wrote, "Respect for the differing religious choices of the people of this country requires that government neither place its stamp of approval on any particular religious practice, nor appear to take a stand on any

religious question. In a world frequently torn by religious factionalism and the violence tragically associated with political division along religious lines, our nation's position of governmental neutrality on religious matters stands as an illuminating example of the true meaning of freedom and tolerance."

ONLY IN AMERICA

Today Joyce is in a position where she impacts many people's lives. She asserts, "While I was growing up on the Indonesian island of Java, later in the jungles of New Guinea, and then as a teenager in Holland, I never imagined in my wildest dreams that one day I would be lucky enough to live in the United States. I never thought that I would ever be an attorney. I never thought that I would ever be a judge. Today I can truly say that I have lived the impossible dream. My success could have happened only in America.

"I have a deep love of America. America gave me a chance to get an education when I was well beyond normal school age. America gave me a chance to succeed against all odds. And America taught me that the boundaries of achievement are set largely by the individual. As former President Lyndon Johnson said, 'America is the uncrossed desert and the unclimbed ridge.' There's so much to be gained by setting out to conquer those yet unclimbed ridges."

Joyce has other advice to share. "Have integrity. Temper your drive for success by fair play and fair dealing, which is a concept that has withstood the test of time.... The ethical dimensions of life are not incompatible with success. To the contrary! It is only by adhering to the highest standards of ethics and fair play that one can become truly successful and respected. Finally, don't give up on ideals, on dreams. In the words of the poet Langston Hughes, 'hold fast to dreams, for if dreams die, life is a broken-winged bird that cannot fly.'"

The Thirteenth Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon will be held in San Francisco on Sunday, August 10, 2003. If you would like to attend, contact the ABA Commission on Women in the Profession at www.abanet.org/women/home.html, or (312) 988-5715.

California claims association with more recipients of the Margaret Brent Award than any other state. The California Supreme Court Historical Society congratulates these women on their trailblazing efforts in the legal profession. The following is a chronological listing of California award recipients and their affiliation at the time of the award:

JOANN GARVEY, Partner, Heller Ehrman White & McAuliff LLP, San Francisco (2003)

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Trailblazer
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better than most – it would have been far harder for the other women who followed in her footsteps to be appointed to the bench.

But then, sometimes a trailblazer gets too far ahead of the rest. For Justice Lillie, that is where she found herself in 1971 when President Nixon sought to appoint her to the United States Supreme Court. A recent book by John Dean, *The Rehnquist Choice*, is devoted entirely to that Supreme Court appointment which ultimately went to now Chief Justice William Rehnquist. Dean's book fairly well documents what Justice Lillie, I think, always suspected. The real reason the ABA committee put the kibosh on Justice Lillie's appointment (as well as that of the only other female candidate) was because she was a woman. Memos, correspondence and John Dean's interviews unearthed some revealing comments from ABA committee members made during its deliberations on Justice Lillie's nomination, comments in the nature of "women are too emotional," "the presence of a woman would disrupt the deliberations among the justices," and the like.

It took another decade, the decade of the seventies, to change all that. During this crucial ten year period, women moved from maybe five percent of law school classes to over forty percent, a critical mass of women judges was appointed at lower levels, and the feminist movement and related developments changed public attitudes about women's capacity to perform in society's top leadership roles. By the time Sandra Day O'Connor's name surfaced in 1981, the attitudes held and comments expressed a decade earlier about a woman's suitability for service on the Supreme Court would have been considered untenable – indeed laughable. And, I am convinced, had the White House submitted Mildred Lillie's name that decade later she would have passed muster easily with the ABA.

I served over eighteen years with Justice Lillie on Division Seven and have no doubt she would have been a sterling member of the U.S. Supreme Court. I might have disagreed with a few of her opinions, as I have on the Court of Appeal. But I would have known those opinions, as I did the ones she authored for our court, resulted from a principled consideration of the law and not a result-oriented justification of her personal preferences. That alone would have made her a particularly valuable member of the Supreme Court during the past three decades – and the failure to appoint her to that court is a great loss to our country.

But the nation's loss proved to be California's gain, as our state enjoyed another thirty-one years of exemplary service from this outstanding jurist. Those of us

on Division Seven gained even more – Justice Lillie's extraordinary leadership for over eighteen years. And personally, I had the opportunity to develop a close personal friendship with the warm, caring and in so many ways amazing human being behind the imposing facade, an experience I shall treasure forever.

The Los Angeles County Law Library Building will be named in honor of Justice Mildred Lillie on November 6, 2003. The Society will provide further details as they become available.

Courageous Woman
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MYRNA SHARON RAEDER, Professor of Law, Southwestern University School of Law, Los Angeles (2002)

IRMA HERRERA, Executive Director, Equal Rights Advocates, San Francisco (2001)

SHIRLEY M. HUFSTEDLER, Senior Counsel, Morrison & Foerster, LLP, Los Angeles (2000)

BARBARA ALLEN BABCOCK, Judge John Crown Professor of Law, Stanford Law School (1999)

JUDITH RESNIK, Arthur Liman Professor of Law, Yale University Law School, New Haven, Connecticut (formerly on the faculty at the University of Southern California Law School) (1998)

ANTONIA HERNANDEZ, President and General Counsel, Mexican American Legal Defense and Educational Fund, Los Angeles (1997)

HON. JOAN DEMPSEY KLEIN, Presiding Justice, California Court of Appeal, Los Angeles (1997)

DRUCILLA STENDER RAMEY, Executive Director and General Counsel, Bar Association of San Francisco (1997)

HON. BERYL LEVINE, North Dakota Supreme Court, retired and living in Palo Alto (1996)

NANCY L. DAVIS, former Executive Director, cofounder of Equal Rights Advocates, San Francisco (1994)

VILMA S. MARTINEZ, Partner, Munger, Tolles & Olson, Los Angeles (1994)

HERMA HILL KAYE, Barbara Nachtrieb Armstrong Professor of Law, University of California, Berkeley, School of Law (Boalt Hall) (1992)

ANDREA SHERIDAN ORDIN, attorney, private practice, Los Angeles (1992)

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