

ORAL HISTORY II

JUSTICE
MILDRED L. LILLIE

CALIFORNIA COURT OF APPEAL
(1958-2002)

Oral History of
JUSTICE MILDRED L. LILLIE

INTRODUCTION

EARL JOHNSON, JR.*

When Justice Lillie completed the oral history below, she still had another dozen years of life and service to the California legal community ahead of her. As someone who worked closely with her for that dozen years (as well as a half dozen years before that), the most useful thing I probably can do is cover some of the highlights of her life after the interview and also convey what it was like to be a member of the appellate division she headed.

But before I move on to the years after those Justice Lillie spoke of in her interview, I will begin with an event that happened years earlier that had a profound influence on her life, but which she had no way of knowing and hence wasn't mentioned in her oral history. It happened in 1984 when Division Seven was just in its second year of operation. The first presiding justice, Richard Schauer, had announced he was retiring from the judiciary. This meant Justice Leon Thompson and I, both of us selected by Governor Jerry Brown, were facing the prospect of working under a new P.J., one selected by Republican governor George Deukmejian. It didn't take us

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EDITOR'S NOTE

The oral history of Justice Lillie was recorded by attorney Mary Louise Blackstone of the former State Bar Committee on History of Law in California, in two sessions: November 20, 1989, and July 26, 1990, in which she taped and later transcribed the narrative presented by Justice Lillie.

The provenance of the oral history is provided by Carol Hicke of the Regional Oral History Office (ROHO) at The Bancroft Library, UC Berkeley, in a prefatory note dated December 5, 1997: "In 1991, the interviewer gave a copy of the transcript and tapes to The Bancroft Library. . . . The Bancroft Library sent the transcript and tapes to the Regional Oral History Office. I sent a copy to Justice Lillie and asked her to review it, which she did, making a few minor corrections."

The oral history is presented here in its entirety, incorporating Justice Lillie's corrections, and reedited for publication. It is printed by permission of the State Bar of California. The original transcript may be viewed at the Library or online at http://digitalassets.lib.berkeley.edu/roho/ucb/text/lillie_mildred.pdf (last visited Dec. 1, 2010).

— SELMA MOIDEL SMITH

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HUSBAND: A.V. FALCONE

My immediate family consists of my husband, A.V. Falcone, who is a lawyer. We were married in 1966. My husband has two adult children who have families of their own; I have no children.

My husband is a fine lawyer. He is by far the best lawyer I know. Prior to our marriage, he appeared before me on numerous occasions when I was on the municipal and superior courts, so I know his ability. I also know his knowledge, experience, intellect and dedication to the law and to justice. He is one of the few lawyers who, in his case is adequately prepared on the facts and on the law. There is no question you could ever ask him about his case to which he would not know the answer. He has a running knowledge of civil and criminal law, which is due primarily to his phenomenal memory, the fact that he reads constantly, his long experience and his active practice. He presently [November 20, 1989] is involved in filing a petition for certiorari in the United States Supreme Court. He is very tenacious and fights for the rights of his client. He is also a person who projects well and speaks well. He participated in a great many landmark cases. One case involved a boundary dispute, *Daluiso v. Boone*, and the California Supreme Court established that there was no self-help in California. He represented a man who had been approached by four men on horseback who had shotguns at their, sides. They claimed his fence went over the boundary line; and when the client refused to move it, they tore down the fence. My husband sued on his behalf and prevailed. Another case was *Los Angeles v. Frew* wherein, through the Supreme Court, he established that an owner of property had a right to testify to the value of that property. *Aetna v. West*, was a case wherein an employee had quit his job and the customers followed the employee; the plaintiff ran a janitorial service. My husband was able to establish for his client, the employee, that as long as it's fair, the employee can accept former customers of the employer — that is, if it's done fairly and the employee doesn't go out and solicit. He established the doctrine that it is unfair competition that is illegal, not fair competition. And there are a variety of others. I am very proud of him.

I like to talk to him about the law, but we have an agreement: he doesn't tell me anything about his cases and I don't tell him anything about mine. So unless it's a general rule of law or issue or a publicized matter, we do not

discuss the law. I remember one time he was in superior court and between the time the court took his case under submission and he returned for the court's decision, I had filed an opinion that was not in his favor. The attorney on the other side could hardly wait to advise the court, "Your Honor, his wife just wrote an opinion . . ." and when I got home, I heard about that. He didn't lose the case, however, because he was able, after a short recess, to distinguish his case.

He is a well-adjusted person who is very, very supportive of me. He is loyal, considerate and understanding and, am I lucky! He says I can do anything, and he has given me a tremendous feeling of self-confidence. He has convinced me I can do whatever I want to do, and has encouraged and helped me. For example, when we were married in 1966, I continued to sign my name "Mildred L. Lillie." It was before the days when a woman retained her maiden name. He said, "You know, I think that I should change your name to 'Mildred L. Lillie' and, further, legally. Because you have to run for retention, and the public knows you as Mildred Lillie, I think to avoid any question about whether it is your legal name on the ballot, we should change it." So, he filed a petition in superior court for change of name. And the judge who heard it was Jackie Weiss. Notices were published in the *Daily Journal*. There was no objection. It was interesting because just prior to that time, Ivy Baker Priest had remarried and was running for State Treasurer. She wanted to change her name to Ivy Baker Priest for the ballot. So she did the same thing, but I think there was some objection voiced to her change of name. But, I had no problem, and so my name was changed legally to Mildred L. Lillie.

BIRTH, CHILDHOOD, AND FAMILY, 1915-31

My maiden name was Kluckhohn; my father's family came from Germany. The family originally was named von Kluckhohn, but there was a schism in the family and one branch stayed where they were and my father's branch came to America and dropped the "von" and became known as Kluckhohn. The other branch of the family changed its name to von Kluck and produced the General von Kluck of World War I fame.

I have only been to Germany once, but I was there in such a hurry that I was unable to try to go back and see who my antecedents were. I hope