

Tooling Around Berkeley in a Yellow Jag:

A TRIBUTE TO PROFESSOR HERMA HILL KAY

BY RICHARD H. RAHM*

HERMA HILL KAY, after graduating third in her law school class at the University of Chicago, and clerking for California Supreme Court Justice Roger Traynor, in 1960 became the second woman to teach at Berkeley Law (then known as Boalt Hall) at the University of California at Berkeley. During her almost six decades on the faculty, Professor Kay attained numerous achievements and honors. She was appointed co-reporter of the Uniform Marriage and Divorce Act in 1968; co-authored the California Family Law Act in 1969; co-authored in 1974, with Kenneth M. Davidson and (then



Herma Hill Kay

Columbia Law Professor) Ruth Bader Ginsburg, the first law school casebook on sex discrimination (now in its 7th edition); became the first woman dean of Berkeley Law (1992–2000); was named one of the 50 most influential female lawyers in the country by the *National Law Review* in 1998; received the Association of American Law Schools (AALS) Triennial Award for Lifetime Service to Legal Education and the Law in 2015; and was, undoubtedly, the first female law professor to regularly fly a plane and drive around Berkeley in a yellow Jaguar.

Professor Kay died on June 10 of this year at the age of 82. The California Supreme Court Historical Society previously published a 200-page oral history of Professor Kay.¹ Here, we remember Professor Kay with tributes from those in the legal profession who knew her.

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FROM U.S. SUPREME COURT ASSOCIATE JUSTICE RUTH BADER GINSBURG, JANUARY 3, 2015:

Herma and I first met in a women-in-the-law conference in 1971. For the rest of that decade, she was my best and dearest working colleague. Together with Kenneth Davidson, we produced, in 1974, the first set of published course materials on sex discrimination and the law. Ever after that joint venture, Herma has remained my wise, brave and cherished friend. Before our first conversation, I knew Herma through her writing. . . . Her extraordinary talent as a teacher, I knew as well, had garnered many awards, lecture invitations and visiting offers. I was also aware of Herma's

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reputation as a woman of style who had a private pilot's license, flew a Piper Cub weekly and navigated San Francisco's hills in a sleek, yellow Jaguar. But Herma in person, I quickly comprehended, has a quality that cannot be conveyed in words. There is a certain chemistry involved when one meets her, something that magically makes you want to be on her side. Herma's skill in the art of gentle persuasion accounts, in significant part, for the prominent posts she has held in legal and academic circles. . . . Herma's appointment to the Berkeley faculty in 1960 was a momentous event. Her persistent effort

over a span nearing 55 years, has been to make what was once momentous, altogether commonplace — law faculties and student generations that reflect the full capacity, diversity, and talent of all our nation's people.²

FROM CALIFORNIA SUPREME COURT ASSOCIATE JUSTICE (RET.) AND BERKELEY LAW ALUMNA KATHRYN M. WERDEGAR, JULY 28, 2017:

It was the spring of our first year, 1960, when word came that starting the next fall Boalt was going to have a female professor. A female professor. Excitement reigned. Everyone was abuzz; not just the males in the class, but we two females as well. Most of us had never had a female professor, not even as undergraduates. So it came to pass in the fall of 1960 that Herma Hill arrived on campus. Young, attractive, soft spoken with a tinge of the South in her voice, always stylishly dressed, that first semester she taught us Marital Property. Only a year or two older than her students, if that, she was firm in her expectations, but open and accessible in her personality. One day she took me to meet the venerable Barbara Armstrong, then professor emeritus at Boalt. Herma never said why. She just did it. On reflection, I think she wanted me to see that there was a path in the law for women. This of course was typical. At every opportunity Herma went out of her way to encourage and advance women, always without fanfare. Her legacy is vast and will long endure.

FROM CALIFORNIA SUPREME COURT ASSOCIATE JUSTICE AND BERKELEY LAW PROFESSOR GOODWIN LIU, OCTOBER 5, 2017:

Herma Hill Kay was a giant in the law: law clerk to Roger Traynor, first woman to be dean of Berkeley Law, key

architect of California family law, and an admired and beloved teacher to thousands. Her modest demeanor and understated style masked a piercing intellect and exceptional quality of judgment. I feel lucky to have been Herma's friend and colleague on the Berkeley faculty. Many years ago, she moved my admission to the U.S. Supreme Court bar, and the certificate in my chambers bears her name — a tangible reminder of all that is great and good in our profession.

FROM UNITED STATES NINTH CIRCUIT COURT OF APPEALS JUDGE AND BERKELEY LAW ALUMNA MARSHA S. BERZON, OCTOBER 9, 2017:

Herma was my Family Law professor, mentor, friend, and role model. She played a critical role in guiding younger lawyers and law professors in the 1970s and 1980s in developing legal theories designed to eliminate sex-based discrimination and advance the rights of women. I was sometimes among that group, and valued her wisdom — and equanimity, as doctrinal disputes raged — enormously.

I remember particularly her debut as a Supreme Court lawyer, in a case called *Hisquierdo v. Hisquierdo*,³ concerning whether, in light of California community property laws, a divorced wife was entitled to a portion of her husband's Railroad Retirement Act pension when he retired. Given Herma's background in community property and family law, she was a natural to represent the wife in the case. I wrote an amicus brief in *Hisquierdo*, so Herma invited me to a gathering of lawyers she put together to discuss the oral argument strategy — I do not remember if it was a formal moot court, although it might have been. What I do remember about that gathering — aside from Herma's and her husband Carroll's amazing apartment on Telegraph Hill, and the delicious dinner she served us all afterwards — was that after Herma received the advice of all present about the substance of the upcoming oral argument, she asked for guidance on what seemed to her a more pressing matter: What should she wear? (Herma was quite confident of her legal prowess, as she was quite right to be.) I believe the key attire question was whether her blouse should have a bow. The group duly weighed in on the issue — I think we came down for the bow. Whether she followed our advice I do not recall.

Herma's side lost, not because of her blouse, I am confident. She said afterwards that the problem was that the seven members of the Supreme Court who voted in the majority did not really understand community property law. Interestingly, Justice Rehnquist, the only member of the Court who had practiced in a community property state, joined Justice Stewart's dissent. So I suspect Herma was right about the source of the problem — as she pretty much always was.

I last saw Herma for a substantial conversation a year or two ago, when we had dinner at a San Francisco res-

taurant with Wendy Williams. Herma was her indefatigable self despite considerable physical challenges, her convictions, sense of humor, and deep wisdom intact. Then Wendy and I took her home to her still-glorious apartment — Carroll now gone, but the place still alive with their life together. I will miss her enormously.

FROM UNITED STATES NORTHERN DISTRICT OF CALIFORNIA JUDGE (RET.) MARILYN HALL PATEL, OCTOBER 10, 2017:

The closing stanza of one of my favorite poems, "Renaissance," by Edna St. Vincent Millay, speaks so aptly of my dear friend, Herma Hill Kay: "The world stands out on either side/No wider than the heart is wide/Above the world is stretched the sky/No higher than the soul is high." Herma had a breadth of vision and heart that was all-encompassing. She had a depth of spirit and soul that was genuinely magnanimous. She was a daughter of the South as evidenced in her soft accent and demonstrated in her gracious gentility. But be not misled, for hers was a steely gentility. How else could she have forged the unwalked paths that so many of us were fortunate to follow?

Professor Kay was a beacon, a mentor, a leader, the first among firsts. She led and she lived what she inspired in all of us. Not only women law students, women lawyers and women faculty members benefited from her leadership and scholarship, so did their male counterparts. Herma transformed the academy, the law, and the profession for all of us. Her leadership was inclusive. And she did it all with extraordinary grace.

We are indebted to Herma for her contributions to family law, antidiscrimination law and improving the landscape of the law for all us, civilians and professionals. We are fortunate to have known her and to be blessed with her wisdom and the generosity of her heart and soul.

FROM ERWIN CHEMERINSKY, DEAN, BERKELEY LAW, AUGUST 24, 2017:

Herma Hill Kay was a legendary figure in legal education and an enormously influential presence at Berkeley Law, where she taught for 57 years and was dean. One of the first things I did as the founding dean of University of California, Irvine School of Law was to create a board of visitors and Herma was one of the first people I asked. She participated in virtually every meeting and was invaluable in her thoughtful suggestions. She combined a stunning intellect with great personal warmth in a way that should be a model for all of us. ☆

ENDNOTES

1. *Cal. Leg. Hist.*, 8 (2013): 1-206.
2. Ginsburg's remarks on presenting Kay with the AALS Section on Women in Legal Education's Ruth Bader Ginsburg Lifetime Achievement Award, reprinted in *Cal. Law Rev.*, 104 (2016): 575-578.
3. *Hisquierdo v. Hisquierdo* (1979) 439 U.S. 572.