

Remembering Justice Kaufman

BY JO LARICK

The State of California lost a leading light of California jurisprudence upon the recent death of Marcus M. Kaufman, 73, a former Associate Justice of the California Supreme Court and, earlier, of the Fourth District Court of Appeal.

Justice Kaufman often played down the brilliant intellect that was the hallmark of his career, once calling himself “just a common person blessed with some certain talents.” He had an unwavering passion for the things that mattered most to him: the love of family and the cause of justice under law. Although his passion sometimes led to impatient outbursts – he was famous for his booming and pointed questions at oral argument – it was nonetheless informed by an impeccable integrity. His legal colleagues might disagree with him, but his decisions were always based upon principle.

A big man with a big heart, Justice Kaufman was devoted to his family, friends and community. A true portrait of the man would be incomplete without acknowledging the contributions of his wife of 52 years, Eileen. She was his partner in every sense of the word. When in 1957 the young Kaufman expressed regret upon leaving his clerkship with then-Associate Justice Roger Traynor at the California Supreme Court, it was Eileen who reassured him, “Don’t worry, you’ll come back some day.” He did, in 1987, when he was appointed to the Court by Governor Deukmejian. Eileen was right there with him, his biggest fan and cheerleader. Unlike some of the other court members from Southern California, Justice Kaufman took up full-time residence in San Francisco upon his appointment. There, he and Eileen could be seen taking a walk around the block, holding hands like high school sweethearts.

Justice Kaufman was a compassionate, as well as a passionate, man. Professionally, his background shaped him. His parents, first-generation Americans, had run several small businesses while he was growing up. He helped out, doing part-time maintenance in his parents’ small hotel. He not only became ingrained with an indefatigable work ethic, he also saw the effects of World War II-era governmental regulation on his parents. The laws put onerous demands on them, and their naiveté left them unable to negotiate effectively with the government against the inflexible regulations.

Ever after Justice Kaufman was determined not to let what he felt were similar injustices befall others. As a result, he saw himself as the champion of the “little guy,” often siding with the individual against large

institutions or groups. Upon his departure from the Supreme Court, he criticized the effect of certain trends in the Court’s decisions, closing off whole classes of cases from the courts. He feared that congestion in the courts at all levels had led to the elimination of numerous legitimate claims, such as those of wrongfully terminated workers or victims of insurance bad faith, in the name of efficiency. He lamented that, “You’re defeating the whole purpose of the system, ultimately.”

Personally, Justice Kaufman was unfailingly generous and loyal. He extended a helping hand to many young lawyers beginning their careers. Anyone who had earned his friendship felt uniquely blessed by the warmth and sincerity of a truly special relationship.

Although Justice Kaufman was devoted to the law, his family was his first love. When he retired from the Supreme Court in 1990, he explained that he and Eileen had felt keenly the privations of being away from the rest of their family in Southern California. Their elderly parents required care, and their adult daughters had young families; the Kaufmans naturally wanted to spend time with their children and grandchildren while they were still youthful enough to enjoy them. The earlier devastation of their son’s death in 1977, as well as Justice Kaufman’s own brush with colon cancer in 1988, made even more imperative their desire to return to family life and recreation. Soon after Justice Kaufman’s retirement, he took his grandson on a fishing trip to Alaska and reported that “the fishing was great and the bonding even better – the trip of a lifetime.” A family friend remarked that Justice Kaufman was never so proud of any title as he was of the appellation “Zaydie” – Grandpa.

Justice Kaufman’s scrupulous devotion to duty, his careful and thorough scholarship and his record of public service were exemplary. He was a complete human being, with a full range of emotions, virtues and faults. He never pretended to be anything he wasn’t; that was part of his considerable charm. Justice Kaufman remarked at his Supreme Court confirmation hearing that his tastes ran far more to beer than to champagne. He kept the common touch, saying, “I don’t think being on the Supreme Court elevates us at all.” He nonetheless strove zealously for truth, justice and excellence. Thus, his example has shown us that from humility comes genuine greatness.

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