

*Tribute to*

## JUSTICE KATHRYN MICKLE WERDEGAR

MING CHIN\*

It is my distinct pleasure to honor the remarkable career of Justice Kathryn Mickle Werdegar. On August 31, which just happens to be my birthday, Justice Werdegar ended her incredible twenty-three-year career as an associate justice of the California Supreme Court. I suppose I am uniquely qualified to talk about the beginning of Kay's Supreme Court experience. I was literally there the day it happened. As a matter of fact, other than Governor Wilson, I was probably the first person to find out about Kay's appointment. You see, the governor called me first to tell me that I was *not* getting it. A few minutes later, Kay came into my chambers in the First District Court of Appeal, which was right next door to hers, to share the good news. She said that when the governor called her, all he talked about during the first part of the conversation was me. And so, when he finally finished, she wanted to say, "So why don't you appoint Ming?" I said to Kay, "Well, why didn't you?"

---

\* Associate Justice, California Supreme Court. Adapted from remarks delivered at Justice Werdegar's final Supreme Court oral argument sessions — in San Francisco, May 30, 2017, and Los Angeles, June 6, 2017 — and the Retirement Celebration at the Supreme Court in San Francisco, August 2, 2017.

Of course, I was very happy for Kay. And I wasn't at all disappointed. I have to agree that Kay was the right choice. Of course, I *can* be magnanimous, because Governor Wilson appointed me to fill the next opening on the court less than two years later.

Kay and I were the last two justices appointed to serve on the Lucas Court. When Chief Justice Malcolm Lucas retired in 1996, Terry Flanagan, who was Governor Deukmejian's appointment secretary and a very talented artist, was commissioned to do a drawing. Terry called it *The Last Luncheon*. It was inspired by Leonardo da Vinci's *The Last Supper*. It just happens that there were twelve justices who served with the late Chief Justice Malcolm Lucas. If you look at the picture, Kay and I are seated at the far right. I am told that Kay is Saint Jude, and I am Saint Simon. We are both grateful neither of us is Judas.

When Kay was appointed to Division 3 of the First District Court of Appeal, she was the only woman justice on that court. Fortunately, she never seemed to hold it against me that, a year earlier, I had been appointed to replace the first woman justice on the First District, my good friend and former colleague on the Alameda County Superior Court, the late Justice Betty Barry Deal. Kay, of course, later became the third woman justice appointed to the California Supreme Court. I might add that in the last six years of her service on the court, women held the majority. So, a lot has changed in twenty-three years, and Kay has led the way.

During her twenty-three years on the court, Kay authored landmark majority opinions, from *Romero* to *Brinker*. They have been widely recognized for their high level of scholarship. At the same time, she remained fiercely independent and steadfast in her principles, willing to go her own way when convinced of her position. In fact, she recently told the press she was most proud of her dissenting opinions. And it turns out that the two dissents of which she is proudest were in cases where I authored the majority. Are you beginning to see a pattern here? She gets the appointment before me, is proudest of dissents to my opinions, and retires on my birthday. Should I be taking offense?

Seriously, even when we had legal differences of opinion, Kay was unfailingly cordial. When she announced her retirement, I told her I could not recall one harsh or angry word passing between us during all of the twenty-four years of working together. I was pleased when she replied that

was her recollection as well. We have disagreed on some major issues, but our working relationship has never been disagreeable. I attribute that to Kay's legendary grace and dignity.

When she announced her retirement, I also said to Kay, "I'm not sure I know how to do this job without you sitting next to me." At conferences after oral argument, I've gotten to hear Kay's wisdom before I speak. It's going to be hard to get along without that. I'm grateful to David, Maurice, and Matthew for sharing this truly remarkable person with us. I hope that, in her retirement, she finds time to get reacquainted with her piano and to find new hiking adventures that will lead to wonderful untrammelled spots and to beautiful vistas. Kay, we will miss you. Good luck and Godspeed in your retirement.

★ ★ ★