

*Tribute to*

## JUSTICE KATHRYN MICKLE WERDEGAR

GOODWIN LIU\*

It's my pleasure to say a few words about our departing colleague, Justice Kay Werdegar. To say that I admire Justice Werdegar is kind of like saying Catholics admire the pope. Justice Werdegar is not the pope, but she is a judge who is liked and admired by virtually all other judges, no matter how young or how old, no matter which way they lean on issues of the day.

When I joined the bench six years ago, Justice Werdegar was starting her eighteenth year on this court. At that time Kay had thirty-five more years of experience in the law than I did. But from the very first day she treated me as an equal, and we became fast friends and close confidants. For the past six years I have regularly turned to Kay for a dose of common sense, for a thoughtful sounding board even when we disagreed, and, I will admit, to trade occasional gossip.

Like all of my colleagues, I am so proud to have served with Justice Werdegar. And while I am very well happy for Kay and for her husband, David, and her sons, Maurice and Matthew, that she will now take well

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\* 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.

deserved time to smell the roses, I cannot hide my melancholy in losing Kay as a colleague on this court.

Justice Werdegar's ascent in the legal profession was not foreordained. She was born in San Francisco to a mother whom she lost unexpectedly when she was four. She overcame significant challenges growing up and, inheriting her father's belief in education, went to college at UC Berkeley. At the time, the workplace more closely resembled *Mad Men* than what we have today. But Kay once said, "I was not going to be a secretary." She had other interests, however unconventional for that era.

After college, Kay was admitted to Boalt Hall, one of two women in a class of 350. In law school, she excelled. Her friend and classmate Pete Wilson said, "In the first semester, everybody wanted to carry her books. After the first semester, everybody wanted to look at her notes." By the end of her second year, she had been elected editor-in-chief of the *California Law Review*, the first woman in that role. But she did not assume the office, instead moving to Washington, D.C., for her third year of law school to be with her husband as he finished medical training. She graduated first in her class from George Washington Law School in 1962.

Kay's first job out of law school was working in the Civil Rights Division of the United States Department of Justice under Attorney General Robert Kennedy and his deputies, Burke Marshall and John Doar. Imagine for a moment what it was like to work in the Civil Rights Division from 1962 to 1963. Among other things, Kay helped write an amicus brief to help free Martin Luther King, Jr., from jail. At the end of her one-year stint, in August of 1963, Kay was among the thousands who attended the March on Washington for Jobs and Freedom and heard Dr. King give his "I Have a Dream" speech on the steps of the Lincoln Memorial. With these early experiences, it is no wonder Justice Werdegar has always viewed the law with an eye toward its impact on the lives of everyday people.

When Kay returned to California, her gold-plated resume was met with rejection letters from all the major law firms. Kay is reluctant to attribute this to sex discrimination, but her experience echoed what happened a decade earlier to another top-of-the-class graduate, Sandra Day O'Connor, who likewise had trouble getting interviews with law firms and, in the one interview she got, was asked, "Now, Miss Day, how well can you type?" Justice O'Connor once said, "The view that women could not

cut it as lawyers enjoyed an embarrassingly long shelf life in our United States.” Like Justice O’Connor, Justice Werdegar has done her part, and more, to shatter that myth, all the while being a devoted spouse and engaging mother to her two sons.

After a distinguished career as a research attorney and then justice of the First District Court of Appeal, Kay was appointed to this court by Governor Wilson in 1994, and has twice been retained by the voters.

Her accomplishments on this court over a twenty-three-year career are too numerous to name. She has authored many important opinions on workers’ rights, privacy, discrimination, the right to die, and much more, including several dissents later vindicated by this court or the United States Supreme Court, including the recent *Bristol-Myers-Squibb* decision in which she was vindicated once again. Her writing is serious and penetrating, never flashy or pretentious, with a careful calibration of fidelity to doctrine and practical judgment.

It can be said without qualification that inside the conference room Kay is truly liked and respected by all of her colleagues. The over-forty crowd here will appreciate the paraphrase to E.F. Hutton: “When Justice Werdegar talks, people listen.” It is not just because of her legal acumen; it is also because Kay herself listens well. She has good judgment, she disagrees without being disagreeable, and she is tough, independent, and no-nonsense, but always modest and quick with the right touch of humor. She is, in many ways, the very model of a judge.

Personally, I will miss Kay on the bench, in the conference room, and down the hall, and I will miss Kay off the bench, as on the several occasions when she took time to attend an event where I was speaking just to hear what I had to say. I remember returning the favor once, five years ago, when Kay gave the prestigious Jefferson Lecture at UC Berkeley. For forty-five minutes, she captivated the audience with a scholarly talk on direct democracy in California. You could hear a pin drop. On that occasion, I sat next to the former dean of Boalt Hall, Jesse Choper, who whispered in my ear, “She is really impressive.”

So, Kay, I will miss our conversations about the law to be sure, but also about our travels, our mutual interest in piano, our experiences as parents and work-life balance. Although I am reluctant to accept your departure, the quality of your judgment again shines through, for you are leaving at

the top of your game. Every day you bring intelligence, grace, and quiet dignity to the work we do, and history will record that Kay Werdegar is one of the most able justices ever to serve on this court.

The people of California are indebted to you for your lifelong contributions to the cause of justice. You have more than earned your retirement, and we all wish you and David much happiness in the years ahead.

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