

Tribute to

JUSTICE KATHRYN MICKLE WERDEGAR

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To be honest, I have been dreading this day because my first reaction when I heard that Justice Werdegar was planning to retire was understanding and empathy. I cannot fault her for recognizing that, at this point in her career and after so many decades of service, it's exciting to start a new chapter. I have to say, Justice Werdegar, you have earned some extraordinarily beautiful days. But I found myself almost reluctantly tempted to try to talk her out of it. Once I got over that, I found myself inclined to call up the governor and try to talk him into nominating Kay Werdegar to the Supreme Court of California. And the reason why is that there is no way to describe this job, what it feels like, what it means to be on this court without having Kay as a colleague.

Every day that I've been on this court I've thought about how her influence is felt, not only in the pages of our opinions, but in the norms that we have, and the ways we interact with and listen to each other. I'll just

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highlight a few reasons why that has been so meaningful for me and why I know I will miss her so much.

It's been almost three years since I was nominated to this court, and this is the greatest professional honor I've ever had. It's a very humbling experience, though, because you learn constantly about your own limitations. You learn from people around you. And what I will cautiously observe is that something that sounds really simple can be difficult to even describe. Judging is about judgment, and what I feel extraordinarily privileged about in getting to work with Justice Werdegar is that I've seen judgment in action, and I've had the privilege of learning from it. She's persuasive, she's persuadable, she's practical, and she's principled.

When you're a new Justice, one of the more intimidating things that happens on occasion is when somebody you deeply, deeply respect — which basically means anybody on this court — disagrees with you. You have a sort of fantasy when you begin that pretty much every decision you make, every time you try to persuade your colleagues, that they're going to look at you across the table and say, "Oh, I'm persuaded; that makes sense." But it doesn't always turn out that way.

That's why the job is difficult and also why it's challenging and interesting. And I remember quite clearly one of the first times that Justice Werdegar disagreed with me. When Justice Werdegar talks, everybody listens. I'm listening, and I'm doubting my own conclusion. And after additional reflection, I decided to go down to her chambers and we had a chat and exchanged some emails, and eventually she conveyed to me that I persuaded her. And there were as many times later when she persuaded me. The grace with which that interaction played out, because of her questions and her probing intellect, left me with a really lasting impression of what the ethics of being on this court really meant and showed me what I should aspire to achieve — kind of asymptotically; you never quite get to that ideal, but you hope for it.

That level of interaction with a colleague's respect, erudition, thoughtfulness, and patience combines with something else that is extraordinary about her: she is particularly well prepared, sharp, and absolutely engaged with the cases and the materials. I often find myself about to ask a question, and she asks the question better than I could have.

I am reminded a bit of an important textual legal source for many of us, which is, of course, the Star Wars movies. There's a line in the third Star Wars movie — it's perhaps not the best Star Wars movie — but it's a line where two Jedi are interacting and Mace Windu says to Yoda, "You refer to the prophecy of the one who will bring balance to the Force." And Yoda says, "A prophecy that misread could have been." In this context the prophecy was not misread; Justice Werdegar has brought balance to our court, and I thank her for that.

And then that leads me to an observation about judging that I feel almost humbled to make because I've only been on the bench for a tiny fraction of the time that she has. But it's quite clear, even in the time I've been on the bench, that this is a job about trying to understand how the world works. And trying to bear in mind that perspective as you think about how to make sense of our laws and how to be faithful to the ideals behind those laws. And I see that in Justice Werdegar.

I admire that. I find that especially meaningful and important at a time when so many Americans are thinking about the courts. So, I want to just say thank-you for the chance to learn from you. But I also want to say thank-you for something else.

I have very much etched in my mind the first interaction between Justice Werdegar and my daughter, who was then about thirteen, and I can see how Justice Werdegar inspires people. So here is this conversation unfolding about piano, about music, and about what's important to my daughter. And I remember just how my daughter's eyes sparkled, and afterwards we said goodbye to Justice Werdegar, and my daughter asked me a little bit more about her life. And I tried to distill, some of what Justice Werdegar had done in her life. My daughter looked up at me and said, "You're very lucky you get to work with her." And I thought about how in these simple acts of grace, the scope of her career, her judgment, and tone of her voice could inspire a child in a way that I know will leave a lasting impression on her forever.

So, Justice Kathryn Werdegar, my friend, my colleague, I have to express my great happiness and excitement for you but also my sadness that you're leaving the court. I have enjoyed tremendously having you as a colleague and learning from you, and I must say that in the last few days I've been reflecting quite a bit on what your leaving the court means. It is in a

way a close of a chapter in your own remarkable career but it's also in a way a close of a smaller chapter perhaps in my career, where this was the court that I joined. You were one of the colleagues I had joined, and I am eternally grateful to you for your insight, your patience with me, your wisdom and wit — so much wisdom, in fact, that there should be a musical in your honor. It would perhaps be called, “Kay’s Way: A Very Traditional Musical,” and it would have just incredible songs. There’d be one song called, “The Doctor and Lawyer”; there’d be another song, perhaps, about the inner workings of the court, but it would be “Going from three to four, and four to three.” You could imagine the suspense and bittersweet moments — but especially the joy — built into that musical. Its centerpiece will be a song called, “Kay’s Way,” and the last few bars of it would go something like this: “But what else to say, it’s just Kay’s way.”

For letting me experience Kay’s way, for being such a great friend and inspiration — thank you. Best of luck and congratulations again.

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