
In Conversation with Justice Kathryn Werdegar

CSCHS'S FALL PUBLIC PROGRAM

BY MOLLY SELVIN*



Journalist Jim Newton and retired Justice Kathryn Werdegar.

ONE MISSION OF the California Supreme Court Historical Society is to present public programs that explore the past in order to enlighten the future. Continuing that tradition, the Society hosted a compelling and timely conversation on November 7 between retired Associate Justice Kathryn Mickle Werdegar and veteran Los Angeles journalist Jim Newton.

Their event drew a hundred or so to the historic Los Angeles Central Library downtown on a balmy evening. The conversation dove deep into a number of issues affecting courts, the state and the nation, including judicial elections and lifetime tenure, science and technology, California's recent governors, and the nomination

of federal Judge Brett Kavanaugh to the U.S. Supreme Court.¹

Justice Werdegar served for 23 years on the Supreme Court before retiring in 2017. She was the third woman appointed to the high court and is admired for her sharp intellect, modest demeanor and grace — qualities much in evidence at the evening event. Some highlights:

ON STATE BALLOT INITIATIVES

Noting the long list of state measures on the November 2018 ballot, Justice Werdegar said she shares the concerns of many observers that California's initiative and referendum

process often produces unworkable, blunt-force laws. She cited the original initiatives from prior decades mandating "three strikes and you're out" for criminal defendants and strict term limits for legislators, and noted that most Californians eventually came to regard those measures as unduly harsh. But, as she noted, amending them also required voter approval, a costly process that took multiple tries.

At the same time, Justice Werdegar views the decision by voters in 2010 to take redistricting away from state politicians as positive. The voter-created Citizens Redistricting Commission now draws California's state legislative and congressional districts in a non-partisan and more transparent process. She hopes for even greater transparency, specifically concerning the top funders for future ballot measures.

* Molly Selvin is the CSCHS newsletter editor.

BELOW LEFT: *Retired Justice Carlos Moreno with Public Counsel President and CEO Margaret Morrow, who introduced Justice Werdegar and Jim Newton.*

BELOW RIGHT, FROM LEFT: *Journalist Jim Newton; CSCHS President George Abele, Paul Hastings LLP; attorney and CSCHS Past President Jennifer King; and Bob Wolfe, attorney and CSCHS board member who organized the evening.*



ON JUDICIAL APPOINTMENTS

Justice Werdegar described California's judicial appointment and confirmation process as "the best system" in part because it has remained largely non-partisan. "California has been very fortunate," she said, noting that each of the three chief justices with whom she served (Malcolm Lucas, Ronald George, and Tani Cantil-Sakauye) has been "outstanding." And while she is sympathetic to voters confronted by long lists of judges on the ballot, "I don't think lifetime appointments are a good thing," she said.

PHOTOS THIS PAGE, TOP TO BOTTOM:

Audience at L.A. Central Library.

FROM LEFT: *Retired Justice Kathryn Werdegar with Justice Lawrence Rubin, 2nd Dist. Court of Appeal (Los Angeles) and Dan Grunfeld, attorney and former CSCHS president.*

FROM LEFT: *Justice Lawrence Rubin, 2nd Dist. Court of Appeal (Los Angeles); Dan Potter, chief executive officer, 6th Dist. Court of Appeal (Santa Jose) and Jonathan Steiner, executive director of the California Appellate Project, Los Angeles.*

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She also noted that recent governors took different approaches to judicial nominations. Gov. George Deukmejian, she said, generally tapped former prosecutors with significant bench experience. Gov. Jerry Brown, on the other hand, has appointed academics without judicial experience directly to the Supreme Court, including Justices Mariano-Florentino Cuéllar, Leondra Kruger and most recently, Joshua Groban.

Jim Newton pressed Justice Werdegar for her thoughts on the confirmation hearings for U.S. Supreme Court Justice Brett Kavanaugh. "It was terribly painful to watch," she said. "His response was disturbing, immoderate and intemperate." Kavanaugh "made it very plain" how he would judge a number of issues, she said, raising the question of whether he will recuse himself in those instances.

ON WRITING OPINIONS

How is writing dissents different from writing majority opinions? Justice Werdegar said she sometimes omitted non-essential points from her majority opinions in order to win a reluctant colleague's vote. "In a dissent you're freer," she said. "I'm very fond of my dissents," she added, noting they offer an important window, and should be viewed alongside her majority opinions, in order to understand her thinking.

ON SCIENCE, TECHNOLOGY AND SOCIAL CHANGE

Justice Werdegar said she and her colleagues struggle to deal with societal and technological change. Yet issues like privacy, water rights, environmental degradation, an individual's right to his or her biological material, and surrogacy increasingly come before courts. "Reasoning by analogy is difficult in these cases," she said. "These issues more properly belong in the Legislature," she suggested, which unlike courts, can undertake outside research to help make policy.

Special kudos to Society Board Member Bob Wolfe for organizing a fascinating program, and thanks also to John F. Szabo, city librarian of the Los Angeles Public Library, and Public Counsel President and CEO Margaret Morrow for their help and participation. ★

ENDNOTES

1. For more on Justice Werdegar, see "Oral History of Justice Kathryn Mickle Werdegar," *Calif. Leg. Hist.* 12 (2017) 64–481.

BREAKING NEWS: On Nov. 14, Governor Jerry Brown nominated a senior advisor, attorney Joshua Groban, as associate justice of the California Supreme Court to fill the seat vacated with Justice Werdegar's retirement. The Newsletter will include a profile of Groban in the Spring/Summer 2019 issue.