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# Justice Kathryn Mickle Werdegar: A Singular Path to the Supreme Court

EXCERPTS FROM HER FORTHCOMING ORAL HISTORY

BY LAURA MCCREERY\*

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JUSTICE KATHRYN MICKLE WERDEGAR, a 23-year veteran of the California Supreme Court who will retire in August, graciously made time between the fall of 2014 and the fall of 2015 to sit for a comprehensive series of oral history interviews. Upon completion, the project will reside in the research collection of UC Berkeley's Bancroft Library and will be made available to scholars, students, the bench and bar, and the public. Although the oral history has not yet been released, Justice Werdegar has allowed publication here of selected excerpts, edited for flow, concerning her education and early career. The passages represent the first miles of a long alternative path she forged as one of few women of her generation in the law and the judiciary.



At age 5.

A note about her early background: Justice Werdegar is a third-generation San Franciscan. Born in 1936, she lost her mother when she was four and a half years old. Because her father, now a widower, had no way to care for his two children, she and her brother lived for a time with a family in Healdsburg, Sonoma County, where she attended a one-room school with eight grades. She later attended boarding schools in San Francisco and Southern California and ultimately lived with an aunt in Lafayette, California. After graduating from Acalanes High School in Lafayette, she matriculated at the University of California in Berkeley, where she received her B.A. four years later.

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PHOTOS COURTESY  
KATHRYN MICKLE WERDEGAR COLLECTION

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**ON LOOKING INTO THE IDEA OF GRADUATE STUDY** *at the suggestion of her future husband (and on whether she consulted him or others in choosing the law):*

No, I didn't consult anyone. This is the theme of my life. No advice. It was just my choice. But it seemed like a very good idea — and it still does. I think what's different about my background and upbringing is, clearly there was no deep parental involvement. But nobody said I *couldn't* do anything. I was on my own, and so I chose this path. I was sort of naïve, actually. I hadn't thought that being a woman would be an issue. To me the idea of law school was exciting, and I'd come out of it with a solid education, I hoped, and a degree that would take me I didn't know where, but someplace.

**ON BEING NAMED THE FIRST WOMAN EDITOR-IN-CHIEF** *of the California Law Review at Boalt Hall (a role never fulfilled owing to transfer to George Washington University Law School for the third year due to her husband's military service at Walter Reed Hospital):*

At the end of our third semester I ended up first in my class at Boalt. Just as invitation to law review was strictly by the numbers, so too the choosing of the editor-in-chief traditionally had always been: the number one person in the class is editor-in-chief. Ultimately it was announced that I had been elected editor-in-chief. What I learned only later was that this did not come as a matter of routine. It was only after tremendous resistance — and I'm not exactly clear the extent of the resistance. But I do know from sources inside that there was a fight on the board itself concerning whether they would give it to me.

**ON STAYING IN WASHINGTON, DC, FOR A YEAR** *after completing law school at George Washington University in 1962:*

I applied to both the Commission on Civil Rights and the Civil Rights Division of the Department of Justice. Both were very new, having been established in 1957 as a result of the Civil Rights Act of 1957. I also applied to serve as a clerk with Chief Justice Earl Warren. In light of my reticence that probably seems a little incongruous, which it was. In any event, no offer was forthcoming and I was happy to join the Justice Department.

A significant part of our work in the Civil Rights Division was writing *amicus curiae* briefs seeking to hold in contempt recalcitrant Southern governors who would not accede to federal orders to desegregate their schools. These efforts would be driven by the attorney general, Robert F. Kennedy, but we would draft the briefs that we were told to draft, and we also became experts in contempt of court for these governors. They were in contempt of court, and I remember researching this wholly new area of law.

We also would write *amicus* briefs to get Martin Luther King, Jr., out of jail when he was arrested. In this context *amicus* — “friend of the court” — really makes sense because we wouldn’t and couldn’t be a party. It would be a state entity that would have arrested him and put him in jail. I think as a political effort to show solidarity with Martin Luther King and the black community, the Kennedy administration decided to submit briefs as friend of the court, urging the court to release him.

Living in Washington and working in the Civil Rights Division of the Justice Department at this time was so exciting. These were the news events of the day. I would go home and turn on the television, and I would see events that peripherally if not directly were what I was working with. A lesser thing that we did, but important to the people involved, was respond to proper *habeas corpus* petitions by federal prisoners. So we drafted legislation, we wrote briefs on behalf of the government in civil right cases. It was quite thrilling.

**ON APPLYING FOR WORK** *in the California Attorney General’s office in 1963–1964:*

Armed with letters of reference and recommendations from the Justice Department, I first applied to the state Attorney General’s office, hoping to work in the constitutional rights section. I made some inquiries about clerking for a particular federal district court judge, and I also made some inquiries about clerking for one of the justices of the California Supreme Court.

Having started out in civil rights, that was now my interest. But Boalt called me and said that there was a firm

in San Francisco that was thinking of taking its first woman if they could persuade the senior partner to do this, and would I interview? Which I did. They took me to lunch. It may not have been the best interview. I remember asking them about their *pro bono* opportunities, and maybe that’s not where their mind was at that time. In any case, nothing came of that. At that time, it’s my understanding, there were no women in any large law firms in San Francisco. Women were perhaps practicing law, but if so they were sole practitioners or maybe practicing with a husband or a father.

There was no law against discrimination in employment at that time. The Civil Rights Act of 1964, which prohibited discrimination in employment, was passed some months later in July of 1964. Many years later I was told that the Attorney General’s office at that time did not hire women, that the only women in the office were those who had been hired in the years of World War II when there were no men.



THIS PAGE, CLOCKWISE FROM TOP:

*Autographed photo from Attorney General Robert F. Kennedy.*

*Souvenir from Justice Department days — she attended the March on her last day in Washington.*

*With Court of Appeal Justice Panelli as a staff attorney, circa 1989.*

*Classic pose, classic car, with friend Judy Novell during Washington DC law school days, 1962.*





This is hearsay, but I also was told that the attorney general at that time, Stanley Mosk — later my colleague on the California Supreme Court — did not begin to hire women until one of two things happened and maybe both. The first part of the story is, that until Boalt Hall, my alma mater, let it be known to the attorney general they would stop sending applicants there unless he started considering women. The other related story is that he stopped his practice of not employing women when he was considering running for the United States Senate in 1964, and the women in the office — the ones that had been hired during World War II — threatened to go public unless he changed his ways. I can't say, but that was the understanding that was conveyed to me. I'm very happy I had the opportunity to serve with Justice Stanley Mosk. He's a legend in California political history of a certain era, and he certainly brought that to the court.

**ON PIECING TOGETHER AN ALTERNATIVE EARLY LAW CAREER while raising two sons:**

In 1969 Boalt again called to say that the California College of Trial Judges was planning to write the first statewide benchbook for judicial officers. This volume would cover misdemeanor procedure, and would I be interested in assisting them in that under the guidance of a committee of judges? I was delighted to do that. So once again I undertook part-time employment, writing and research, and I produced — under their auspices, but I wrote the entirety of it — the first statewide benchbook.

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After the events described in these excerpts, Justice Werdegar went on to serve as associate dean and associate professor at the University of San Francisco School of Law. She later joined Justice Edward A. Panelli as his senior staff attorney on the California Court of Appeal, First Appellate District, and after his elevation to the Supreme Court, on that court as well. In 1991 Gov. Pete Wilson appointed Justice Werdegar to the First District Court of Appeal, where she was the lone woman among 19 justices. Three years later, in 1994, Wilson appointed her to the California Supreme Court where she assumed the seat vacated by Justice Panelli's retirement and became the third woman to serve on that court. As before, her path was strictly her own. ☆

**TOP TO BOTTOM:**

*Being sworn in as a justice on the First District Court of Appeal, Division 3, by Gov. Pete Wilson, August 26, 1991.*

*With Gov. Wilson and Chief Justice Malcolm M. Lucas after being sworn in as appellate justice.*

*With family (husband David, sons Maurice and Matt) after swearing in as Court of Appeal justice.*

*Hiking in Yosemite, circa 1989.*