

INTERVIEW 2 (NOVEMBER 6, 2014)

MCCREERY: Good afternoon, Justice Werdegar. We would like to begin our second oral history interview session by giving you a chance to look back at some of the topics we discussed last time. What did you want to add to that account?

WERDEGAR: Laura, thank you. It's nice to see you again. I would like to back up and set the scene for my application to law school, the scene in the spring of 1959, when I applied. As I mentioned, virtually all my friends from college had married right after college or very soon after. They were on track to fulfilling what was expected of them and what they aspired to, which was to get married and have a family and support their husband in his career.

I was out of sync, but I want to emphasize that scene because I have, right here, Gail Collins' book called *When Everything Changed: The Amazing Journey of American Women from 1960 to the Present*. She starts at 1960, and I'm starting at 1959. I'll just quote to you what one of her interviewees said:

"It was understood that you'd be engaged for a year, and then you'd get married as soon as you graduated."

Quoting another interviewee, she says, "A girl who gets as far as her junior year in college without having acquired a man is thought to be in grave danger of becoming an old maid." [Laughter]

That may be a little overstated, but it's the reality. You'd get pinned your junior year, engaged your senior year, and married in June or maybe in July or August. So I was definitely out of time.

As I mentioned, I went to UCSF to work, and I was what they called a ward secretary. There, again, I saw these two women doctors. Reflecting on that, I want to say they really changed my life. No one had heard of women in the professions, and seeing them made me realize that there were other opportunities. I did mention that it wasn't going to be medicine, but it did lead me to aspire to something beyond what otherwise I might have considered as an occupation for myself. So I have to belatedly thank them very much.

MCCREERY: Did you get a chance to speak with them about their work and their experiences?

WERDEGAR: Oh, no. I was a ward secretary. They were doctors. I was so impressed. No, but they certainly were critical to my future.

At that time, after working there, having met my — I didn't know it, but — my future husband, David, I decided I had better go on, and he was encouraging me to get a graduate degree. I rather arbitrarily went over to Berkeley. I think I've told you this. I thought about getting a master's in English. I looked into librarianship. I thought about social work. It's not like I was driven to be a lawyer, but ultimately, as is now history, I settled on law school.

I will say I applied to Hastings and to Berkeley. I never thought of applying beyond the Bay Area. Indeed, applying to Berkeley took me out of my environment. [Laughter] Looking back, I think Yale would have been a very fascinating school because in that era, maybe even today, it was the most intellectual law school. It turned out so many of my professors at Berkeley Law were from Yale, and they were brilliant.

But in the fall of 1959, I was accepted at Berkeley, and I moved into I-House, International House, on Piedmont Avenue.

MCCREERY: What was the atmosphere at that time?

WERDEGAR: International House was, as its name suggests, supposed to be a place where international students — Berkeley has educated so many future leaders of their countries — came and lived and interacted. To apply I had to express my interest in mingling with these young people, which was a rare opportunity. But the truth was, a lot of law students applied to live there because the law school was just half a block away down the hill. Happily, International House accepted my application, and I moved in. That was good because there were a lot of other future classmates there, and I did become acquainted with a couple of them that were especially important in my life.

MCCREERY: Which classmates were those?

WERDEGAR: Pete Wilson, whose name might be familiar to our readers as the future governor of California. Believe me, none of us knew that we'd be the future anything. And John Niles, whose father was dean of New York University Law School. John and I became very good friends, and we impacted each other's lives in a way that will come out. John was the future

editor-in-chief of the *California Law Review* for our class, and he was the future law clerk to Chief Justice Earl Warren.

I remember when I first met John at I-House. He was a very intelligent fellow, and success was written all over him. He, early on, asked me what had my SAT score been. When I gave him the number — I have no recollection now what it was, but it was a bit higher than his — it set him back on his heels, which was funny. But we did become friendly competitors and good friends throughout his life. John, maybe ten years ago, passed away.

MCCREERY: What sort of person was he in the years you were law students together?

WERDEGAR: He was smart. He was fun. He was good company and just a friend to be with and play tennis with and so on. I will remark that once we had got to law school, the seating at that time was alphabetical. I don't know if they still do that. But most of the people I knew then and can remember now, their last names start with M, since mine was Mickle at the time. [Laughter] I still am acquainted with Mr. Milch, who sat on my right side. If I didn't meet them at I-House or they had my same initial or we didn't happen to socialize, I wouldn't likely know them.

MCCREERY: Would you say a few words about Governor Wilson at that time?

WERDEGAR: We were all friends. John Niles, Pete Wilson, and I would have coffee together, and so forth. We all lived at I-House. Pete Wilson and I spent time together. We had an occasional date, and we studied together. He was just a fine person and a very good friend to me.

MCCREERY: What did you know of his background early on?

WERDEGAR: Nothing. He didn't come from California, which is interesting. I don't know if you're aware of that, but I think he was born in Missouri and raised in Illinois. His biography is well known. But he came out to California to law school and, as so many do after they come to California, he decided, "This is the place where I want to live."

I'll get ahead of myself, but when I was elected editor-in-chief of the law review and a little apprehensive about the responsibilities, he was very supportive of me.

MCCREERY: Would you say a few more words about what I-House was like and the actual living arrangements?

WERDEGAR: All right. I had a room to myself. I can't remember if I had a bathroom to myself. I do remember the telephone arrangement. You just can't imagine what it was like when there were no cell phones, and in those days we didn't have a private phone in our rooms either. So if you got a phone call your room would be buzzed, and you would go down the hall to the communal phone and take your call. The technique that was used by people who cared — this little button protruded from the wall, and you'd put a bobby pin on top of the button. So if you'd been gone and you came back and the bobby pin had fallen, you'd know you'd gotten a phone call.

MCCREERY: Knowing how busy you were when school began, what chance did you have to interact with the international students who were there?

WERDEGAR: Probably not a lot. But I'm sure — to show my good faith and also to my own personal benefit — I'm sure I showed up at some of the mixers and the minglers and so forth. But it was not central to my life, nor do I think it was to most of the law students' lives. Maybe in the future they might have been more selective. Of course, now Berkeley Law, formerly called Boalt, has a dorm for students. And students get apartments, which I did after my first year. Everybody I knew at I-House did too after their first year or maybe after their first semester.

But I love going back there. It's a wonderful building and a wonderful institution. I have many memories of sitting out on the terrace and having coffee or walking up the stairs with my books after class.

MCCREERY: Say a few words, if you would, about the very beginning of law school. That first year is a storied thing. What was your experience?

WERDEGAR: I remember that I had to register and that there was orientation for the new students. I believe there were only four women. Sometimes I've said there were six, but people I've checked with agree with me. There were only four. So I joined the little huddle of four women.

I did say, trying to make conversation, "Can you imagine? They asked me if I was here on the G.I. Bill." This was in 1959, so I was making this comment.

One of my classmates said, "Well, I am." [Laughter]

So that set me back. It was the classmate Joan Smith, who completed her education at Berkeley, the only one who actually did because, as will appear, I transferred my last year. So Joan was there on the G.I. Bill. I can't

remember if she'd been in the Marines or the Army. I don't know. But I was surprised to hear that.

The two other women. One was a truck driver. One was a woman who had been a philosophy major, and her name was Alison. Actually Alison, after her first year, picked up her grades and withdrew. She decided that law school was not for her. I think she went back to where her heart was, which was to study philosophy. Somewhere along the first year the woman who was a truck driver disappeared, so that left Joan and me.

MCCREERY: What about the makeup of the class in general? Four women —

WERDEGAR: I think the actual number of the class was 300. Again, I've checked this with people, including professors and classmates, and they agree. They think it was 300. I hesitate because it shrank quite a bit. Maybe at graduation it was 200. Actually, that fits with what I'm going to say.

Orientation came, and you're seated according to the initial of your last name. Then you are introduced to what law school is going to be. In those days it was said to you, and it was also absolutely true: "Look to your right. Look to your left. One of you is not going to be here by the end of the year."

They don't do that anymore, and I think one reason they don't is I think maybe they're more selective in who they admit. Maybe in those days their admissions were more liberal and it was just known that not everybody was going to be able to complete it — or love it, like the young woman Alison. She didn't like it at all. She said it was a trade school. It wasn't for her.

I was fascinated by it. I bought my *Black's* dictionary, and there were all these Latin phrases that would come up in our classes. I was just fascinated.

I also was scared to death. I looked at these men around me, and I thought, "All right. Now I have met my match academically, no question." That was my initial impression.

As I said earlier, the people I came to know in the two years that I was there, either they were at I-House and they became friends like Pete Wilson and John Niles or their name started with M. There were only two African Americans in our class. I don't think there was anything like affirmative action at that time.

One of them, I'm so sorry to say, I just saw his obituary this weekend, Gene Swann, who became, I believe, a public defender. At one point he

was asked to head up the police oversight commission in San Francisco. The other was the renowned Thelton Henderson, a famous judge of our time now.

Actually, Gene and I became friends. He was married to Cherie Gaines, an African-American woman who also was a lawyer. They were an extraordinary couple because, if you think it's unusual for a woman or for an African American to be in law, she was a female attorney and African-American and very, very smart. I really enjoyed knowing her and, through her, getting some perspective on what it was like to be the person she was.

Gene was very outgoing, and he would gather some of us — another friend that was a dear friend of mine, Bert Danziger — to go have a Seder at his house. [Laughter] He was just full of fun and high spirits, and his wife Cherie was extremely smart and engaging.

Thelton I actually did not really know, except to say hello, in law school. He was married at the time — and although Gene was married I did get to know him. But mostly I wouldn't have gotten to know any of the married male students.

MCCREERY: Why is that?

WERDEGAR: Because they'd go home to their wives. They're not taking me out or asking me out or studying with me or hanging out at I-House. Their lives are very occupied by school and home, I'm sure.

Let's see. I do want to make the point that, insofar as who I might have come to know, *The Paper Chase* in its time, which was after my time, became quite a famous book — I've met the author, actually, years ago — and a movie. I think it portrayed law school as very rigorous and maybe a little intimidating, which of course it was.

But study groups, as far as I'm aware — and being the only woman in so many circumstances, there's a lot I'm not aware of — but there were no study groups. Now, if there were, the men were having them. I did study with Pete Wilson. But otherwise I studied on my own, which, let me say, is completely congruent with my preference. I would go to bed at ten o'clock before finals. I'm not ever one to burn the midnight oil.

But I did find *The Paper Chase* very, very interesting. Maybe they still have study groups. I wanted to make that point.

MCCREERY: Another theme in *The Paper Chase* is the actual classroom setting and how the sessions were conducted by the faculty. Can you make any comparisons there?

WERDEGAR: I don't remember too well if it was intimidating in *The Paper Chase*. It was intimidating in my experience but not because the professors — with one exception that I'll get to — were trying purposefully to intimidate the students. But they were much enamored of the Socratic method. If you have any familiarity with the Socratic method, you never — the law student wants to know the black-letter law. "A=B and it results in C." But the professors don't get you there that way. It's circuitous and probing, and I think it makes all students a little uncomfortable. Some would say it's hiding the ball. But we did have what's called hornbooks. There you would go and have the great relief of seeing what we called the black-letter law set out.

We did have at Berkeley at that time a crop of young professors who were brand new. Maybe they'd been there a year or two before we came, and they were young. They were just a tiny bit older than many of the students. I will say, at that time the men students perhaps had spent a year or two out discharging their service obligation. And I had been out of school a couple of years, which I don't think is a bad thing before you go to graduate school.

So the professors were young and my class, to this day, will make fond reference to the "four H's." That's Professors Halbach, Heyman, Hazard, and later Herma Hill, who I'll speak about later. We felt we had a golden era. Some of those professors are still teaching, maybe at Hastings, so you can see how young they were. They were all at the time brilliant but developed so as to be authorities in their field and nationally renowned.

Mike Heyman, who was my property teacher and my constitutional law teacher, had just come from clerking for "the chief." In that era and I think for some time after, "the chief" could only mean Earl Warren. He was a big bear of a man, Mike Heyman was, and just wonderful. He would sit back, put his feet on the desk, these enormous feet, and talk to us about what it was like to be clerking for the chief.

He taught me constitutional law, and a point I want to make about that is, in that era — this 1959–1960, or maybe I took it the second year, which would be 1960–1961 — we would study about the Commerce Clause and

other aspects of constitutional law. Criminal procedure would be, perhaps, the last week if the professor hadn't run out of time.

Now criminal procedure is a course unto itself, which I ended up teaching later in my career at University of San Francisco. They even have advanced courses. You might ask why. Because at that time the Warren Court was just beginning to incorporate the rights of the Bill of Rights through the Due Process Clause to apply to the states. This was a revolution and, of course, received with very mixed emotions by the states on whom these rights were being imposed.

Let me say, the states had their own Bill of Rights. In fact, many of their Bills of Rights preceded the federal Bill of Rights. But the Warren Court was incorporating these different federal constitutional rights through the Due Process Clause, and therefore the United States Supreme Court interpretation of those rights would have to govern as well.

So that was interesting about the development of criminal procedure. I ended up teaching it many, many years later. It was an entire course and always a fascinating course.

MCCREERY: As an aside, in general what sort of presence was the working of the U.S. Supreme Court and Chief Justice Earl Warren in your class work at Berkeley?

WERDEGAR: I can't remember that it had any impact except stories from our professor who had clerked for the chief. Sometime in that era, maybe before I went to law school, there were "Impeach Earl Warren" signs around the country. I don't think California was high in that movement. There was so much that California was not actively involved in at that time. We were a very different state, as I will mention when I talk about moving to Washington, D.C.

You asked about my professors. I had these four H's. Also Dean Prosser, William Prosser, who was dean of Boalt when I entered Boalt. Later it became known to me, and it was well known to everybody, he did not countenance or want women in the law school.

His view — and he was not alone in this view by any means — was that a woman is taking a man's place, a man who will need his degree to support his family. A woman is occupying his seat, the implication being

that she certainly isn't going to practice law or she certainly doesn't *need* to practice law. That was the late fifties and early sixties.

Nevertheless, historically it's quite a wonderful thing to have taken torts from William Prosser, whose hornbook, *Prosser on Torts*, at that time was renowned nationally, and I don't know that it's been supplanted. Looking back, "You had torts from Dean Prosser?" "Yes, I did."

MCCREERY: How did you come to learn his views about women in law school?

WERDEGAR: It was "known," and I think I even learned more particularly after I left because there were women — he did not interview me when I applied, but there were women who are on record and I don't know if they came after me — they must have — who said he did interview them and it was a very unpleasant, unwelcoming experience.

But I will tell you, as a student in his torts class and the only woman in the room — because we had sections and I guess the sections stopped at M and my compatriot, Joan Smith, would have been in some other section — I was the only woman in the room, and the subject of torts lends itself to salacious and titillating fact patterns. I do remember that when we were discussing cases such as that, he would pointedly turn to me and say, "Miss Mickle, what do you think?"

I'm known to blush. I blush to this day. I would blush then, but I would answer. I didn't think of it as harassment, but looking back it was rather pointed. [Laughter] Yes. I don't know how the rest of my classmates felt, but I was asked a question and I would answer it.

MCCREERY: Would you say a few words also about the other H's, Professor Halbach and the others?

WERDEGAR: Halbach taught wills and trusts, and he might have written his own textbook. I think later he was head of the Law Revision Commission's national organization on wills and trusts and a very kindly, intelligent, wonderful professor of what I found to be a very complex subject.

They were delightful professors, and except for Professor/Dean Prosser I never felt that any of them, whatever their private feelings were — and I didn't get any sense that they had any negative private feelings — I never felt any of them particularly targeted me or took any extraordinary notice of me.

Professor Hazard taught criminal procedure. And later on, Herma Hill Kay. She came our second year.

At the end of our first year, Berkeley Law had a very meticulous, decimal-point precise class ranking system. After finals you'd go and look at the chart. I think we had numbers on our exams — they certainly do now — so there would be no prejudice according to personalities. So you'd look up your number and what your class standing was.

My class standing at the end of our first year — I was number three in the class. I was absolutely *astounded*. Anybody who took notice — I think my good friend John Niles did — he was very close — he was either second or fourth, I don't know — everybody was surprised.

That put pressure on me because I was as surprised as anybody else. I thought, "I absolutely have to show that this is warranted and it's not a fluke." So I continued studying, and in the second year — at the end of the first semester of the second year — I was number one in my class.

But, backing up, at the end of our first year and during that summer, the word came to the students that a woman professor was coming to Boalt. This sent ripples of excitement through the student body. We were going to have a woman professor. Everybody was excited. That tells you that it was unprecedented.

Berkeley did have Barbara Armstrong as a professor emeritus, who I think graduated in 1915 from Berkeley Law, if you want to talk about a woman out of time and a pioneer. But she was emeritus. She had an office. She did not teach.

Herma Hill Kay, Herma Hill when she came, was going to teach us. She was young, and she had a soft, still does, slightly Southern accent, which was attractive. She taught family law, and that was such a big event.

Looking back on it, I realize — and I've read some other woman of my era's comment about having a woman professor — not only had the law school not had a woman professor, but actually, going through university we'd never had a woman professor, nor had we thought that was odd. That gives you a sense of the times.

Herma Hill. I took family law from her. She didn't say anything at the time, but she later, in her remarks about what it was like, said that I was the first woman she ever taught. So she and I would be the only women in this classroom.

She was kind to me. She took me to meet Barbara Armstrong. She didn't say why. She just said, "I'd like you to meet her." So I met Barbara Armstrong. But I've subsequently said in commenting on Herma Hill that I think what she was trying to do is convey to me a role model, the idea that women could — as she herself was doing but as Barbara Armstrong had done — women could pursue law as a career.

At the end of your first year, if you qualify at the top 10 percent of the class — and it's strictly by the numbers — you're invited to join law review. Nowadays, schools have academic qualifications for law review but you also can "write on . . .," so if you write something and it's acceptable and your grade point average is of a certain level, and not the best, you can be on law review. But then it was strictly grades.

So I was invited, and I did join, law review. I was under the impression that you really should accept that invitation. It was a good credential.

MCCREERY: You had mentioned that your classmate, John Niles, ended up editing the law review.

WERDEGAR: I'll get to that. [Laughter] I'll get to John because our histories were intertwined. He, of course, was also on law review.

What you do on law review, or did then, you choose a topic and you write a "note," a student note, and if it's worthy it's published. Mine was published — hardly worthy. I think John's was of much greater import. Don't ask me what mine was. I can hardly remember. But it was a trivial case note.⁴

But anyway, what I like to say and I did say to a law review reunion after I was on this court was that my little law review note was published in an issue where William Prosser wrote a note about privacy, I think referring back to a law review note that Brandeis had written about privacy. I used that as an example to show what law reviews can do when I was speaking to the law review group. Here was my little student note in the same issue that this giant of a professor, Dean William Prosser, also had his article.

You had to do lots of other things in law review, probably cite checking. I learned the *Bluebook* by heart and learned to love it. [Laughter] That's the citation bible. I don't think it's so universal anymore.

⁴ Kathryn J. Mickle, *Insurance: Effect of Probate Code Section 258: Participation in Proceeds by Beneficiary Convicted of Voluntary Manslaughter*, 49 CAL. L. REV. 571 (1961).

At the end of our third semester, as I said, I ended up first in my class. In the ensuing weeks and months, the law review board chooses the next year's editor-in-chief, and the board itself makes the choice. I don't know what input the faculty has.

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, how much Dean Prosser resisted it, if at all, I don't know, or faculty — but I do know from sources inside that there was a fight on the board itself if they wanted to give it to me.

At this point I want to say that one validation or verification of this is from Joanne Garvey. I don't know if you've heard of Joanne Garvey. Joanne very sadly recently passed away in the last few months. She was my second-year law review adviser. She was a trooper, Joanne. Her later career just fully displayed her talents and her generosity.

But going back to law school, I read her obituary and this is what it said as it recounted all the achievements that Joanne Garvey had accomplished. They went on to say — it was noted in her obituary that — “While at UC Berkeley School of Law in 1962, Garvey cast the tie-breaking vote on a committee that made Kathryn Mickle Werdegar, now a Supreme Court justice, the first woman editor-in-chief of the *California Law Review*.”

That was in her obituary, and until I read that obituary under the very sad circumstances of noting her passing, I did not know that Joanne had cast the tie-breaking vote, which would be so typical of her.

There was another student on the board that I know was a champion for me, and he has been a champion for me all my life including my judge-ships, and that was Marcel “Marc” Poché, who ultimately became a Court of Appeal judge. I didn't know him at the time. I came to know him very well later. So those were two of my champions.

I was elected, without awareness of the contentiousness of the election, editor-in-chief of the *California Law Review*. This was in the spring of 1961.

I want to mention Joanne, since we're speaking about her. She was an extraordinary woman who during her career accomplished innumerable

firsts. I once was honored to give a speech about Joanne, and I said to the audience, “Don’t expect you’re ever going to be the first at anything because Joanne Garvey has been there before you.”

I asked at that time, which probably was ten or twelve years ago, what she valued or thought was best about what she had done. She said, “I really can’t say. Perhaps I haven’t even done it yet.” [Laughter] Joanne was marvelous and a champion for women.

MCCREERY: What can you tell me about how she advised you as a rare other woman in this field? What kind of interactions did you have?

WERDEGAR: My first law review adviser was a man, and we got along fine.

MCCREERY: Are you able to say who it was?

WERDEGAR: Yes. Richard Rahl. Dick Rahl. He was an extremely intelligent, wonderful man. We stayed somewhat in touch over the years.

The second semester they gave me Joanne, and Joanne and I — in my memory — did not dwell on the fact that — I don’t know how many women were in her class. There might have been three. I don’t know. We didn’t dwell on that at all. She was just an approachable, supportive, good-natured law review adviser.

Joanne was also quoted — I don’t think in the obituary, but it’s a quote that I seem to have — actually, I think this *was* in the obituary. Joanne was also quoted as saying, since she was the first in so many things, that being the first, you don’t want to be the person who — and I now quote her, in her words, “ — to put it bluntly, screws up. So there’s always that feeling, don’t do something bad because it may affect somebody who’s behind you.” I can relate to that. And that does take me to my tenure as editor-in-chief of the Berkeley law review.

MCCREERY: Please.

WERDEGAR: All right. This really does reflect on the saga of my tenure. David, the physician whom I’d been dating since we met at UC Hospital and who had encouraged me to go to graduate school, about the time I was elected editor-in-chief made plans to go to Washington, D.C. to discharge his service obligation by serving as a captain in the Army at Walter Reed Army Hospital.

We had only very recently become engaged, so the question was how to handle the separation. You should know that at that time there was never any tension between the man and woman as to what their schooling or their careers were going to be. It was unheard of for couples to commute or to separate for a year, and of course the communication systems — there was no Skype and no cell phones — [Laughter] so it would have been extraordinary. We talked about my continuing with my Berkeley education. He suggested, “We could meet in Las Vegas once in a while.”

I didn’t find that all that appealing, so I really had some stress as to what I was going to do. I finally rejected the option of his going to Washington and my staying at Berkeley. I even felt that the added responsibilities of being editor-in-chief would make that even more — of course, that’s why he wanted me to stay, because I had this opportunity. But I felt it would be an additional responsibility that would greatly interfere with my new marriage that was going to happen.

So I had to resign as editor-in-chief of the law review, and I want to say here it was an agonizing decision. I was deeply embarrassed and deeply concerned, going back to Joanne’s quote, that it would set back women’s rights for a generation. I was sure they would say — maybe they did. I never heard it. Maybe they did. “Typical woman.” You can imagine how hard that was, but I did it.

But the good news was that my good friend John Niles, who was born to be editor-in-chief, who aspired to be editor-in-chief, was next in line, and he was appointed editor-in-chief. I know that it meant everything to him. Remember, his father had been dean of the New York University Law School, a fine gentleman who later came to Hastings and I met him, Dean Niles. In his time, he was much admired. And I think it had a great impact on John’s career down the road when he ultimately took his first job as a law clerk to Earl Warren.

MCCREERY: Thank you. Before we leave Berkeley, would you say a bit more about how your own legal interests were developing during that time?

WERDEGAR: They were not focused. When I entered law school, I had no idea where this education was going to take me. It turned out, as my grades might suggest — I received, by the way, five American Jurisprudence Awards, which means you were the best student in that class. Five

times I did, so I guess I was a good student. But where it was going to take me I had no idea. I was open to the possibilities.

Once I became engaged and marriage was on the horizon, again, I didn't know how that was going to fit in at all. I had absolutely no role models, no idea, but I was open to the possibilities. It was only later, when I went to GW, where I began to have a focus, which we'll get to, perhaps, at a later interview.

I can say courses that I liked. Everybody loves constitutional law and property. I was thrilled to get an A+ from Mike [Ira Michael] Heyman in property. That was quite a thrill for me. Mike Heyman later played a role in my getting a degree from Berkeley, but we'll get to that later maybe. Do you have more questions about Berkeley?

MCCREERY: Maybe just a couple more. If you would be so kind as to return to Professor Herma Hill, you touched on the fact that she was teaching family law.

WERDEGAR: She was.

MCCREERY: I wonder what sort of place that field had in the curriculum at the time and how much interest there was in that specialty?

WERDEGAR: Divorce law, I think, had not — I think Herma Hill herself became instrumental in advocating for what came to be known as no-fault divorce. I know this only abstractly, not anything that was presented in class. I think we had to be students of community property and understand that not every state was a community-property state.

It is interesting to note that at that time in divorce somebody had to be at fault, and it's known anecdotally that people would create scenarios where it could be said that one spouse was at fault. You couldn't just go in and get a divorce. But that's what I remember. It was mostly about community property, in my memory.

Mind you, I haven't practiced family law, and I haven't thought about it except to be admiring of Herma Hill, who later became Herma Hill Kay, and her impact and her influence on women. She was very supportive of women. Long after I left she brought the few women of the school — many, many more than when I was there — but brought them together and said, "We need a women's union."

That goes to my experience about interacting with men. There was a men's lounge where 99 and 10 percent of the students would hang out. [Laughter] So of course I didn't have a lot of casual interchange. There was a women's lounge too. There were two or three of us. There were a couple of women getting their LLM's.

It's not that I didn't have a social life. I was included with some of these people I've mentioned on outings to go to Sausalito for an afternoon or something. But when I would go back to our class reunions — I've only attended a few — people would reminisce. They had played bridge in the men's lounge, and they'd done this and that. They weren't my memories.

I became friendly with Thelton Henderson after law school. Our paths crossed, and we've become very warm friends. He, of course, is a wonderfully warm person of astonishing accomplishment. But we would compare notes about law school, and our impressions were exactly the same for the same circumstance that we were odd people out. Thelton wasn't a woman, and I wasn't an African American, but we were outsiders, so it would seem. I certainly was.

He was married at the time, so he wouldn't have been hanging out usually. I don't know what the men did, frankly. But it was fun and it still is fun to talk to Thelton because we shared some of the same impressions and the same memories.

MCCREERY: You mentioned the other African-American student, Gene Swann. Were you ever able to make such comparisons in conversation with him?

WERDEGAR: Later, no. No, we didn't.

I do want to go back to Thelton, though. He's a true gentleman and often in speeches, if it was at all appropriate, he would say that back in the day when we were at Boalt the phrase was that the number one man in our class was a *woman*. [Laughter] It was very cute. I think that phrase was original with him.

MCCREERY: But it was quite an accomplishment, and I wonder how your fellow students responded when you were named number one?

WERDEGAR: I think with shock. I don't know. But I think if there was resentment in any quarter I would have been oblivious to it. And I didn't feel that there was any resentment.

At the reunions I've gone to, my classmates are most warm and friendly and admiring. I've had one wife of a classmate very touchingly say to me she really envied me and wished she had done something like that, but she understood at the time that she had married and thus wasn't able to go on to graduate school.

MCCREERY: At the time that Professor Herma Hill came and joined the faculty, what observations could you make about her place at the faculty level?

WERDEGAR: I don't know. I do know — again, secondhand — that later on, as more women were perhaps qualified or seeking to be on the faculty — this is just hearsay — Boalt, like other universities had its issues about whether these women were being treated fairly and so forth. My conversations with Herma, which have not been in depth about this, but I deduce from them that she never felt anything but welcome.

But I can't speak for her. She has done her own oral history, as a matter of fact, which I did read and I intend to look back at again. It's published in the California Supreme Court Historical Society journal.⁵

MCCREERY: Yes. She did go on to have, and does have, a very impressive career. Were you able to stay in touch with her?

WERDEGAR: In recent years. I was not at the forefront of anything when we came back to California. I was not involved in alumni affairs or anything. Herma and I came back in touch when I had a more forward career. I was appointed to the Court of Appeal here, and Berkeley rediscovered me. We'll get to that whenever you like.

But when I left Berkeley I asked them — I had to transfer. I had one more year of law school. "I'm going to Washington, D.C." What did my professors recommend? Where should I go? The choices that I put forth were either Georgetown or George Washington. I think opinions tilted toward George Washington, so I applied to George Washington and to my great good fortune they accepted me as a third-year transfer student.

At the time, I wanted very much to know if I was going to get a Boalt Hall Berkeley law degree, and the answer was, "No, we can't do that. You're not taking your third year here."

As my husband said, "It was basically goodbye and good luck."

⁵ *Oral History of Herma Hill Kay*, 8 CAL. LEGAL HIST. 1 (2013).

I did go to George Washington, which we'll talk about at a later time, and I might repeat this next time. I want to say I'm so appreciative that they took me as a transfer student. It was not common in those days at all for anybody to take their third year elsewhere. Later Berkeley instituted a program with Harvard, I think — I learned that — where students were encouraged to go at least to Harvard for their third year, and there was no problem getting their Berkeley degree.

But then it was extraordinary that George Washington would accept my credits from Berkeley, would give me a degree when I'd had only the third year, which is the least rigorous year in law school — give me a degree and, again, allow me to be pronounced number one in the class and give me their cherished Charles Glover Award for Highest Achievement in the Law. I don't think any school would quite accommodate anybody then or today that way, so I'm very, very loyal to George Washington. When we talk about how I got my Berkeley degree, maybe we'll revisit that.

MCCREERY: You can add that now if you like.

WERDEGAR: All right. We're talking about Berkeley. No degree. But as education institutions will do — it's not like they lost track of me — I was always invited to financially contribute to the school. [Laughter] I was an alum for that purpose.

Time passed, and this fellow I mentioned, Marc Poché, who was a year ahead of me at Berkeley and who had championed me to be editor-in-chief but whom I didn't know at the time, he took an interest.

I did cross paths with him later because I was clerking as a staff attorney for the Court of Appeal and he was one of the justices. Backing up, I think somebody, maybe Marc Poché himself, had earlier approached the university, saying, "Maybe it might be equitable to give her a degree."

Mike Heyman, my professor and then chancellor of Berkeley at that time — I later learned — presented it to the Academic Senate at Berkeley. The Academic Senate said, "We will, but she has to give up her George Washington degree."

The word came back to me and I said, "I won't." Imagine. I wouldn't give up my George Washington degree, even though I wanted a Berkeley degree. So that put that to rest for a while.

Then somebody, maybe Marc Poché again — Pete Wilson was elected governor in 1990, and Marc Poché, being the astute fellow he always was and active at Berkeley Law — I think he taught there as an adjunct and so on — and a champion of people — I’m told after the fact, said to somebody, “You might want to give this woman a degree.”

I think he sensed that my classmate, who admired my academic standing and who was my friend, might be turning to me for something. But the story I finally heard is there was a Boalt Hall alumni dinner where Pete Wilson was going to be honored with the Boalt Hall Citation Award. It’s the highest award they give to their alums.

It turned out at that time he was in the [U.S.] Senate, and there was a vote pending. He at the last minute let Berkeley know that he would be unable to attend. They asked him, “Who would you have accept the award on your behalf?”

He said, “I’d like Kathryn Werdegar, Kay Werdegar, to do it.”

Berkeley called me, I think, that morning. Maybe Pete Wilson called me that morning — I was working at CEB [Continuing Education of the Bar] at that time — and said, “I’d like you to do that.”

This was a tremendous honor for me but also a tremendous burden. I remember that day I walked around wherever I was working at the time trying to compose a speech.

We arrived at the alumni event where he was going to receive the Citation Award. We had already decided to go because Pete Wilson, my classmate, was going to get the award. But as attendees we had been assigned, my husband and I, a table back by the bussing station, which was befitting our, probably, contributions and our accomplishments. [Laughter]

I arrived now as the one who was going to be accepting the award for the senator. So I’m whisked up from my bussing station table to the head table. [Laughter] Oh! Well! Who was I seated next to? It was someone I had never met before but who is fabulous and still is at Berkeley and has played a fabulous role in the law school, but after my time. It was Jesse Choper.

I introduced myself to him. He asked about me, making conversation, and I explained to him that although I had attended Boalt and I was a classmate of the senator’s, I left and I never got my Boalt degree. I then proceeded to accept for Pete Wilson and go my way.

What I'm told is that Jesse Choper didn't forget our conversation, and he felt there was something wrong. Lo and behold, in December 1990 I was awarded my J.D. from Boalt Hall, Berkeley School of Law — in 1990. I've seen Jesse Choper many times since and asked him, "How did you do that?"

The only other time he did that was for Secretary of State Dean Rusk. I'm not clear on the story, but Dean Rusk — who one unfortunate student was showing around to tour the school and said, "Dean, won't you come this way?" [Laughter] But anyway, Dean Rusk evidently had attended Berkeley for two years and gone into the military. Somehow this came to Jesse's attention about Dean Rusk, and he saw to it that Dean Rusk got a Berkeley degree.

In my case, I was presented with this degree in 1990, and I never quite knew how he did it. But finally he told me recently. As dean — Choper was dean right after my time — it was time to make up the diplomas for the midterm class of 1990. He said, "I'm just going to put one in for Kay Werdegar." Jesse spoke at my investiture in 1991 to the Court of Appeal and pointed out that I had received my degree in 1990 and I was now becoming an appellate justice, surely the most fast-tracked graduate of Berkeley ever. [Laughter] We're getting ahead of ourselves, but that's how I got my Berkeley degree.

MCCREERY: This was not an honorary degree. This was an earned degree?

WERDEGAR: That's right. It was not an honorary degree. I know Justice Ginsburg refused an honorary degree from Harvard, and good for her. No, this was my real degree.

MCCREERY: What did that mean to you, even in 1990?

WERDEGAR: It meant a lot to me. It means a lot to me today. But Jesse Choper means a lot to me. He's such a *mensch*, a good Yiddish word meaning a salt-of-the-earth good person. They both mean a lot to me. So I'm very loyal to my law schools.

MCCREERY: We will, of course, talk at a later time also about Governor Wilson again — Governor Wilson, as we know him today. But can you say a few more words about your friendship during law school and how he fared in school, as you observed it?

WERDEGAR: Governor Wilson had been, I'm sure — he was a Yale graduate — a very strong student, and he had his choice of law schools. Stanford accepted him and I think every school he applied to in the country did. To my good fortune he chose to come to Berkeley. He was not a top student, but I'm not conversant with where he stood in the class in those days when everybody had a rank, to the decimal point.

I've always felt that was not really a good system, and I don't think they adhere to it anymore. It's just slicing hairs way too thin. Now Berkeley will just have "honors, high honors, pass." They've gone the other direction, and I think other schools will say "top quintile" and so on. I benefited by the system, but I would never encourage that system. It just was far beyond what the value of academic standing could be.

We did study together. He remembered what a good student I had been, and it was in his mind when he considered who he wanted to appoint to the Court of Appeal.

I do want to back up a little bit and tell you one more thing. When I was in law school and my brother came to visit me — my brother, as I mentioned, went on to medical school — my brother spent a little more time with our father than I did. He would occasionally stay with him, whereas I never lived with him after I was five. He said to me, "Dad always told me, 'Don't be a lawyer.'"

I said, "Well, I guess he forgot to tell me." [Laughter]

My father was alive when I did go to law school, and I think he was quite surprised at my academic achievement, but pleased. I don't think he had a strong investment in it one way or the other.

MCCREERY: Thank you for telling me about Governor Wilson. What were his own interests in the law and in career, as you remember it then?

WERDEGAR: I don't remember it, and I don't know if his interest in politics — I know after I left, I think he became more active in a Republican group at the law school. I don't remember that being the case when I was there, and I don't know how clear he was that he wanted to pursue a path of politics. I'm sure he has given interviews where perhaps he's elucidated that better than I can.

MCCREERY: And your other close friend, John Niles?

WERDEGAR: John and I continued our friendship. We enjoyed each other very much. In Washington — well, I'm getting ahead of myself, but he was there clerking and I was there in the Justice Department, and we socialized.

MCCREERY: As you reflect upon your two years of law school at Berkeley, what stands out as most influential to you?

WERDEGAR: Nothing stands out as most influential. I was in the midst of a challenging, in my judgment, academic course, thrilling. I had no idea where it was going to take me. Clearly, in retrospect, it has marvelously impacted my life. I remember the school fondly and my experiences fondly, and I'm just grateful I had them, including studying under Dean Prosser. [Laughter]

MCCREERY: Is there anything you'd like to add about law school?

WERDEGAR: In our next session when I go on to George Washington, I will have something to speak further.

David and I did marry in the fall of 1961 and move to Washington. He then was doing his duty as a captain, and I will say that — as I was rather atypical as a female law student — our marriage was also extremely unusual for the time in that David was Jewish and I'm not. We were very much in a minority then and my understanding is that only 6 percent of Jewish individuals married non-Jews. I believe now it's more like 50 percent or higher. I didn't mention it, but when I started law school it was my understanding — it was from reading a scholar's book on the subject — that 1 to 2 percent of attorneys in the country were women, and California may have had 3 percent of women attorneys. Those circumstances were both a little ahead of the times.

MCCREERY: Thank you for telling me about your difficult choice to leave law school at Berkeley and go to Washington. What kind of support were you getting from your husband in those first couple of years?

WERDEGAR: He certainly was encouraging that I go to graduate school. He has always enjoyed that I have this training and career.

It's not the Ruth Bader Ginsburg story, which I recently read, where she and her husband [Martin D. Ginsburg] co-parented and he took half the responsibilities, and so on. No. But David has always enjoyed and been proud of my career.

MCCREERY: Congratulations on those academic achievements at Berkeley. Thank you very much. Anything to add today?

WERDEGAR: No, thank you. I'll look forward to our next session.

MCCREERY: Thanks so much.

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