

INTERVIEW 4 (JANUARY 21, 2015)

MCCREERY: Good afternoon and happy new year, Justice Werdegar. We talked at great length last time about your time living in Washington, D.C. in the early 1960s. What would you like to add to that account before we get you back to California?

WERDEGAR: Thank you, Laura. Reflecting on our last conversation I realized that in discussing the employment offers that I had in response to my applications, the Commission on Civil Rights did offer me a position and of course the Civil Rights Division of the Department of Justice, which I accepted.

But I wanted to mention that a law firm also — I think it's the only law firm in my history that offered me a position, and that's Covington & Burling, which is the same firm that — the year before when I was still at Boalt — when they interviewed me they had offered me a summer position, which I declined because I was going to be going to Washington after marriage, in any case. But on the completion of my law studies they again offered me a position, which I appreciated then and I appreciate now. I am sorry that I didn't have that experience, so I just wanted to add that.

MCCREERY: To what extent did you seek out further talks with Covington & Burling?

WERDEGAR: I wrote to them as I was completing my studies, and I explained that we likely were only going to be in Washington another year, given my husband's expectation of returning to California, but would they consider me? I got a most cordial letter saying yes, they would. I appreciate that.

MCCREERY: You described last time that your last day in Washington was August 28th, 1963, and that you were able to attend the March on Washington that very day. What transpired next?

WERDEGAR: Next my husband and I took a delayed honeymoon, so to speak. We took a month off before he assumed his responsibilities at UC San Francisco to go to Europe. We rented a little Volkswagen and had a marvelous time. Looking back on it, we think we should have stayed longer. Those times in your life when you can do something like that are so rare.

We came back to California, and David did assume his calling and responsibility as a professor at UC San Francisco. We took an apartment in Sausalito, and I began to consider what I was going to do in my career and what direction was that going to take.

I should interject that barely one month or a little more than one month after we'd been here, in November of 1963, President Kennedy was assassinated. I can't overstate — of course, for the country, but for us personally — what a shock that was. Having just returned from Washington, especially having worked in his administration and having been a deep admirer of his charm and his wit and what we thought he was trying to do for the country, it was just devastating.

We were riveted to the television, the filming of his funeral procession. It wasn't long after that there was a video of Jack Ruby shooting Harvey Oswald, who was the presumed assassin. The shock from both events and the grief over the Kennedy assassination was tremendous.

Soon after we returned, I enrolled in a bar review course — I had to take the California bar — and that was the Wick's bar review course, which at the time was the only bar review course around. Since then it's become, of course, a big business.

I also at that time was thinking about, as I said, what I wanted to do with my career. I first applied — I was armed with letters of reference and recommendations from the Justice Department — to the state attorney general's office, hoping to work in their 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.

Meanwhile, I was taking Wick's bar review course, and I'll mention that — I don't know how many students there were — it was for the February bar, which is a lesser bar than the fall bar. But there must have been 100 or 150 people. I remember only one other woman — there may have been two others — which wasn't surprising because at that time in California only 3 percent of attorneys were women. At that time in the United States, only 1 percent of attorneys were women. So as you will see, the world changed dramatically and rapidly in the years still to come.

MCCREERY: Which of the justices on the California Supreme Court did you apply to?

WERDEGAR: I'd prefer not to say. Just leave it that way. But going back to my applications, I was interviewed by the assistant attorney general in the Department of Justice. I was a little surprised that I was also interviewed at the same time by his wife, who I later came to understand was his executive assistant.

Then Boalt called during this time. No offers were forthcoming from the other applications. It did not occur to me, but the natural question today is, "Oh, were you discriminated against?" It did not occur to me that I was. It's fair to assume that there were other candidates that better suited what the office was looking for.

MCCREERY: What did you know about California's attorney general office?

WERDEGAR: I didn't know anything about it except that when I was back in Washington certain officials in the Department of Justice suggested it might be a good fit. People there knew people here, and I think that's probably why I was given an interview.

MCCREERY: You had identified this constitutional rights section?

WERDEGAR: Oh, yes, because now, having started out in civil rights, that was now my interest. But, in that connection, I will say Boalt called me and said 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.

MCCREERY: Can you say which firm it was?

WERDEGAR: No. But at that time — it's my understanding — this is 1963, 1964 — 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. This is my understanding.

You should know that 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. Joanne Garvey, whom I've referenced before, who was a year ahead of me — and she was my adviser on law review — she had to go to Santa Barbara

to get her first law job. She later came back and became a major tax attorney with two different law firms, the first woman president of the San Francisco Bar Association, and first female member of the State Bar Board of Governors.

That's how it was. Many, 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 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, “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 U.S. 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.

MCCREERY: Given that you went as far as an interview with that office, how was it conveyed to you that you would not be offered a position?

WERDEGAR: Oh, it was conveyed by a letter that there wasn't an opening that would fit my wishes, my qualifications. They didn't have an opening, which could very well have been the case.

MCCREERY: Did you happen to try other law firms in addition to the one that you mentioned?

WERDEGAR: No. I did not. I didn't do that. At the same time that I was studying for the bar and I had had these interviews, I was deeply interested in starting my family. David and I moved from our apartment in Sausalito to our home in the late spring of 1964. Not long after that, I did discover that I was pregnant and I'd be having a baby in January of 1965.

Meanwhile I did obtain temporary employment with the California state Study Commission on Mental Retardation, which — today the term would be on developmental disability, I believe. They needed someone to research the laws affecting the mentally retarded in California.

MCCREERY: I'm going to interrupt you here because I found a copy of this study, published in book form, in UC Berkeley's library, and I've brought it today to give you a look.

WERDEGAR: I have not seen it since that time. [Laughter] Later on I would like to look at this. This is my product. It says: compiled by Kay Werdegar for the state Study Commission on Mental Retardation.

MCCREERY: May I just read one other brief thing from the foreword? This just describes your role. "The work of researching the statutes and compiling this volume was done by Mrs. Kay Werdegar, an attorney, of Ross, California. Although the Study Commission is the sponsor and publisher of this report, and the work was done under the general supervision of the chairman, the selection of material was by Mrs. Werdegar, who is also responsible for the interpretive comments."⁷

WERDEGAR: That's a disclaimer or a credit, depending on how you want to look at it. [Laughter] I'm really pleased to see that. I don't know that I've ever had a copy in my hands, or if I did, it has gone by the wayside.

MCCREERY: Without delving further into those pages right now, what else can you tell me about how you got that assignment and what it involved?

WERDEGAR: I think I got that assignment — I asked my husband about that the other evening. I think as a professor at the medical center he was involved in some kind of project relating to mental disability. That being the case, he may have been acquainted with someone — I think the man's name was Littlefield, Mr. Littlefield — who was doing this project. One thing led to another, and I was the choice to help him do the research and the writing. That's the best I can say. I don't really know.

But it was a good thing for me because it filled that time from when we came back until the late spring of 1964. As I was saying, I then realized that I was pregnant. My concern then was — I was thrilled, but I was concerned that if I didn't have a job waiting for me after the baby was born, I would never go back to work. I don't think this is unusual for women who begin to start their family. Having experienced it, I'll tell you it's a reality.

⁷ From the Foreword, *MENTAL RETARDATION AND THE LAW: A SURVEY OF CALIFORNIA LAWS AFFECTING THE MENTALLY RETARDED* ("compiled by Kay Werdegar for the Study Commission on Mental Retardation," State of California, 1964).

Someone told me that over at Boalt the dean at the time, Frank Newman — later a member of this court, but not one that I served with — was doing a special project on the Department of Justice in Washington and the development of civil liberties. I thought I might be a pretty good match for that, having just come from the Civil Rights Division of the Department of Justice and also being a Boalt student — not yet a Boalt graduate, but — [Laughter]

In my pregnancy I went over and spoke with Frank Newman. He very graciously agreed to take me on to the project, and it was understood that I would start after my baby was born. He secured an appointment for me at the Center for the Study of Law and Society at Berkeley, a think tank.

For the next two or three years I worked on a subset of his larger project, which was the role of the solicitor general of the United States in the development of administrative due process, looking at the attorney general's briefs in cases over a twenty-five-year period involving prosecutions under the Loyalty Oath Act. In other words, this was the McCarthy era, the post-World War II communist concern era, where the federal government had passed a loyalty and security act. Federal employees had to take a loyalty oath, and some of that filtered down to universities as well. What he wanted to see in the direction of the project was, what were the arguments that the solicitor general made in these cases? And what would the Bill of Rights have looked like if the solicitor general had won his cases?

MCCREERY: How did you go about doing the research?

WERDEGAR: I would go over to the center. It was a part-time project, which was marvelous for me. And I would read the briefs of the attorney general in these cases — it was very interesting — and from that extract what their position was and how they were proposing to interpret concepts of due process in these administrative hearings.

It culminated in a law review article called, "The Solicitor General and Administrative Due Process: A Quarter-Century of Advocacy," which the George Washington University Law School published.⁸ It's been cited in other studies looking at the role of the solicitor general, which you would know, perhaps. It's a dual role. The solicitor general has a client, which is an agency of the government of the United States. But the solicitor general is also charged

⁸ *The Solicitor General and Administrative Due Process: A Quarter-Century of Advocacy*, 36 GEO. WASH. L. REV. 481 (1967-1968).

with preserving our liberties and our constitutional rights. There can be tension between those two roles, and I think some of that tension manifested in the solicitor general's briefs during that twenty-five-year period.

MCCREERY: Since you were examining such a long period of time, you were doubtless looking at several different individuals who served in that role.

WERDEGAR: It was a twenty-five-year period, and there were doubtless — and I can't tell you now who they were — I would be happy to research it, but there were doubtless more than one — two or three solicitors general, at least. You might know the solicitor general is often described as the tenth member of the United States Supreme Court because that individual appears more frequently than any other party, and the court — when the case comes to the United States Supreme Court — expects more of the solicitor general. They do expect a broader perspective and a more trustworthy, broader look at the shaping of the law. But I imagine the tension continues between representing a client and representing the larger view of the Constitution.

MCCREERY: You mentioned that this project culminated in a law review article. In brief, what sorts of results came out of your work?

WERDEGAR: The results, as I've perhaps indicated, came out that there was a tension, and perhaps had the solicitor general's position prevailed in every case we wouldn't be seeing the concept of due process as it has continued to be. It would have been a less favorable concept for an individual who was under scrutiny.

MCCREERY: What knowledge do you have of how the article and these results were received and any work that might have come later?

WERDEGAR: I know that it's been cited. One can Google it — well, maybe not Google it but you can research it. It's been cited as a study. There was an ABA newsletter that my father, who was an attorney, seems to have had possession of. He sent me, soon after it was published, an ABA newsletter just describing what the work had been, and that it was a scholarly work, and that it was something to consider. I haven't spent any time trying to pursue it further. But I do know it's been cited as an early source work on this subject, which other academicians have on occasion pursued. [The ABA review is reproduced on the following two pages.]

ABA JOURNAL, FEBRUARY 1969

REACTIONS TO CURRENT LEGAL LITERATURE*

THE SOLICITOR GENERAL: The influence of the Solicitor General of the United States on the development of the law of procedural due process is examined by Kathryn Mickle Werdegar in “The Solicitor General and Administrative Due Process: A Quarter-Century of Advocacy,” 36 *George Washington Law Review* 481 (1968).

The Solicitor General is viewed as filling a complex and unique role vastly different from that of the private advocate. The “permanency” of the Government’s relation to the Supreme Court, requiring consistency in argument from case to case, and the Solicitor General’s position as representative not only of the particular agency in the case but also of the citizenry as a whole should imbue his advocacy with a measure of judiciousness foreign to the private practitioner. In addition to his obligation to represent the United States in a given case, the Solicitor General bears a responsibility to the Court and to the public to foster the orderly development of the law and to establish justice.

The responsibility of the Solicitor General in formulating the Government’s position is particularly heavy in procedural cases, since the answer is rarely clear-cut and necessarily involves a balancing of competing interests. Therefore, Miss Werdegar utilizes the administrative due process cases to analyze the Solicitor General’s potential influence on the law and the extent to which it has been realized. She points up the nature of his responsibility by broadly characterizing the issue in these cases as a balancing of the interest in effective preservation of our national security and “the interest in the integrity of our concepts of fair play, concepts which form the basis of our ‘scheme of ordered liberty’ and give us reasonable assurance that truth and thus justice will be achieved.” With the issue thus viewed, the Government, as much as the individual, has an immediate and vital interest in abiding by our traditional concepts of fair play.

Analysis of administrative law cases demonstrates that the Solicitor General has failed to press for expansions of procedural rights in cases

* Reprinted by permission of the American Bar Association from 55 *ABA JOURNAL* 189 (February 1969).

in which the executive interest is not clearly established and that he has been willing to justify even the more spurious government claims once the question of national security has been raised. As a result, confusing principles often have emerged. Instead of advancing the public's interest in fair hearings, the Solicitor General has viewed the competing interest narrowly, concentrating on the legal nature of the interest rather than the practical effect of the challenged procedure on the individual. Only when a person possessed a legally recognized substantive interest that could be characterized as more than a mere privilege was he entitled to due process before being deprived of that interest.

When he has recognized that due process is constitutionally required, the Solicitor General has argued that due process is not a rigid concept, but that it varies considerably according to the circumstances of the case and the nature of the conflicting interests involved. Thus, when the informed judgment of the executive concerning the best means of safeguarding the national security has been involved, or when Congress in authorizing a procedure was exercising a "sovereign" power, he has argued that the authorized procedures satisfy the requirements of the Fifth Amendment.

Although the Solicitor General doubtless recognizes that the protection of procedural rights is a positive good for both the Government and the individual and that his position is likely to have a direct influence on the development of procedural law, he is restrained by his role as an advocate in our adversary system, which presupposes that both sides will be heard. Therefore, the interest in procedural fairness often has been submerged unnecessarily in the executive's view of what is required for efficient implementation of agency programs. Since the Solicitor General is called on only after an established procedure has been challenged, his freedom to advance arguments designed to mold a procedural system consistent with his view of a "scheme of ordered liberty" is limited.

Miss Werdegard concludes that the law cannot benefit from the Solicitor General's breadth of view, leaving the ideals of his office unfulfilled, as long as he is not cast in the role of statesman but continues as defender of the judgment of administrators concerned with the achievement of their immediate ends.

MCCREERY: I wonder whether your experiences in Washington played any role in your ability to carry this out. What help was it to have been there yourself, if any?

WERDEGAR: I do remember in the Department of Justice a plaque over the door of either the attorney general himself or the solicitor general, I think the solicitor general, that, “The United States wins its case when justice is done.” So I shared Dean Frank Newman’s — later Justice Frank Newman’s — interest in the subject because I could visualize the office and I had worked in civil rights. It just seemed a natural and a very enjoyable outgrowth of my background.

MCCREERY: What other assignments did Dean Newman have for you?

WERDEGAR: He was most generous in allowing this law review article to be mine alone. A little footnote says it’s part of his larger project. He was a very, very nice man. But when we completed our project, that was the completion of our relationship. He didn’t have anything else for me.

At this time, I think there was another interim project I had. I was employed as a special legislative consultant to the Bureau of Planning at the state Department of Mental Hygiene. I cannot tell you what that involved. It may have been an outgrowth of the connection I had with the individual in doing the laws affecting the mentally retarded.

MCCREERY: Do you remember who you might have worked with on that or any other detail?

WERDEGAR: No. With all apologies to the individual who made that happen for me, I don’t.

I want to say that after going over to see Frank Newman my baby was born, a boy, Maurice, and he was one or two and three years old during these years. After that I didn’t actively seek employment. I was now home in the suburbs with a preschooler. About four-and-a-half years later I had a second baby, another son, Matthew.

But in 1969 Boalt called — perhaps that was an outgrowth of their continuing awareness of me, given my working with Dean Newman — to say that the California College of Trial Judges, which is now CJER, Center for Judicial Education & Research, was planning to write the first statewide benchbook for judicial officers. This benchbook would be on 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.⁹ There had been local Los Angeles superior court benchbooks, but this was published statewide by the College of Trial Judges on misdemeanor procedure.

MCCREERY: You mentioned that L.A. had its own local —

WERDEGAR: I think it probably did.

MCCREERY: What other models did you have to draw from, if any?

WERDEGAR: There were none. I did it in its entirety. The judges' committee — and I remember some of them, Claude Owens and Manny Kugler from Southern California — they were so gracious and nice to me. They would oversee what I was doing, and how much input they had in the format and the topics I really can't tell you. That was so long ago. But that's what I did, and I was very grateful for that opportunity.

As I say, I had a second son at that time. I was working part time. In our community, as far as I knew, I was the only wife and mother working. None of my children's friends' mothers were working. None of the wives we knew were working. The attitude of the times — this is an era thing — was — I may have mentioned one of our social friends, a man, one evening said to me, "It's so nice that David lets you work."

I thought it was, too. David was unusual in that he had encouraged me, first, to go to graduate school and, then, to work. But my work was not to inconvenience anybody, and part-time worked very well in that regard. When his family came to visit I would stop work, and I would entertain them and take care of them. In their view this career was a negative. This was not something to be proud of. Perhaps because of their era or their background the idea was that if the wife was working it was a reflection on the husband's ability to support the wife.

MCCREERY: As you say, the other young mothers in the area where you lived were not working. We're talking about you taking part-time work,

⁹ CALIFORNIA MISDEMEANOR PROCEDURE BENCHBOOK (California College of Trial Judges, California Continuing Education of the Bar, 1971; rev'd ed. 1975).

which sounds like a limited responsibility, and yet what a feat of juggling, really. How did you manage these various pieces of your life at that period?

WERDEGAR: Thank you for that. First of all, as I might have observed in some other interview elsewhere, all I did was work and take care of my family. There was no tennis playing, no lunches out with women, no anything for myself, nothing. No exercise. Nothing. But I didn't question that. That was it, and I was really thrilled to be — I enjoyed the work I was doing. My career had now definitely evolved into research and writing, which in the end was so congenial to me. I loved it.

But that's how it was. I had a babysitter when the children were home, and when I came home she left. When I was home, there was nobody there but me. I did do it all. But I took that in stride. It seemed natural. We were a very conventional marriage and family for the time except that three days a week I went over to Berkeley.

Sometimes I worried that I was perhaps not giving my children all that other children were getting in their home, but I made my peace with that.

MCCREERY: Certainly there were others who would plant those doubts now and then?

WERDEGAR: I can't remember anybody doing it deliberately except, as I say, with my in-laws. For them this was not something to be proud of. This was something to overlook — which was such a different time.

MCCREERY: Given that your responsibilities at Berkeley over these couple of different projects spanned a number of years, what do you think you took away from that experience of doing these independent research projects, essentially, and then presenting the results? How did that develop your ideas about who you were as an attorney?

WERDEGAR: It was congenial to me, although in many ways I wish I had had the experience of working in a law firm. I do think that circumstances took me to a path that was my path. I had aspired to be a judicial clerk. I had hoped to be a law teacher. These were academic pursuits, academic and reflective, and that's the path that came my way. Looking back, I think that's the path that I was meant to have.

You had mentioned that my work was part time and so on. I want to mention a family incident. As I earlier described it, my work was low-key.

I think my boys hardly noticed that I was working. Their father was a big professor of medicine. He had a very demanding career.

One night when my second son was four years old — this was in the seventies — we were sitting around the dinner table. He said to me, “Mommy, can boys grow up to be lawyers, too?” [Laughter]

We were floored. We were floored because it just shows you what environment will do. There were no other women attorneys. He’d never known one. But he thought, I don’t know — and I wasn’t a high-profile practitioner even at that time. So at age four he asked, “Mommy, can boys grow up to be lawyers, too?” I told him yes, they could. Many, many years later — and now he is a lawyer. It was so funny. We thought we should send it in to [columnist] Herb Caen because at the time it would have been hilarious.

MCCREERY: Yes. Thank you. Say a bit more about the California College of Trial Judges as it existed then. What did you learn about that operation and its overall mission?

WERDEGAR: Not much. These judges, two of whose names I remember, were enterprising and concerned about improving the education of the judiciary and the caliber of judges. They were forward-thinking. I’d meet with them once in a while. During that time I might have been working in the facilities, the physical plant, of CEB, which is California Continuing Education of the Bar.

MCCREERY: Which was located where then?

WERDEGAR: That was located in Berkeley. That may be where I used to go to work. When the benchbook was published, as I mentioned earlier, I stopped looking for a job. But projects came to me, and CEB asked me to join them, which again I was happy to do. They had maybe four women attorneys on the staff, which at the time was unusual.

MCCREERY: What was the leadership then, do you recall?

WERDEGAR: Bill Carroll was the director of CEB, and Curt Karplus was one of the assistant directors. He was a family friend from my husband’s college days. He now himself works for CJER. After having retired from CEB, he now edits books for CJER.

What CEB’s charge was — it was affiliated with the University of California and the State Bar of California — was to write practice books for

attorneys and put on programs. There, once again, I would be editing practice books for attorneys. You solicit input from practicing attorneys. On occasion I would write a chapter on my own and have practicing attorneys review it. A lot of what I did was in the criminal law area.

MCCREERY: Did you develop particular interests in certain areas of the law that you were working on?

WERDEGAR: Having worked on the misdemeanor procedure benchbook and having been responsible for some of the CEB criminal law books, I think my expertise began to focus there. But I also wrote a chapter in a discovery book.¹⁰ You were a Jack or Jill of all trades there, and it was practice law so your product was always reviewed and input was given by practicing attorneys.

CEB was, again, a pioneer in the country in practice guides for attorneys. Rutter Group has come along since then. But CEB was the absolute pioneer and always of a very high quality and standard.

MCCREERY: What do you recall about the others on the staff with you at that time?

WERDEGAR: I made some acquaintances that I enjoyed, but mostly the work was solitary. You'd go to your office. You have your things that you have to do, and you do them.

MCCREERY: I'm curious whether you had any role in the review of these projects by practicing attorneys, which you said was so much a feature of it. What exposure did you get to the practicing attorneys?

WERDEGAR: In person probably very little, but certainly I would receive their comments and be grateful for them and adjust the product accordingly. Judges would weigh in as well, so there was definitely a cross-fertilization that way. But I wouldn't be having that many in-person meetings with practicing attorneys.

MCCREERY: In time you took on some greater role in the criminal law division?

¹⁰ [coeditor with Manuel E. Nestle] JAMES R. JENNER, *DISCOVERY* [California Criminal Law Practice Series] (California Continuing Education of the Bar, 1978).

WERDEGAR: They gave me the title of Director of the Criminal Law Division, which may have consisted of myself. [Laughter]

MCCREERY: I hope you weren't too tough on yourself. [Laughter]

WERDEGAR: I should interject here that this was in the early seventies. I was commuting from Marin County to Berkeley. Actually, part of that time we came to the gas crisis. Do you remember that? I would drive to Richmond and take BART from Richmond to Berkeley. It made that much difference about the gas that you were using. In those days, during the gas crisis — it was the Carter administration — your life revolved around how you were going to get gas. You would plan to line up at eight-thirty or at five o'clock at a particular gas station. It's interesting to remember those things.

But the world was changing, outside of my vision, but I think it's worth mentioning that in 1974 in the Doonesbury cartoon, he had his character Joanie Caucus — who I believe was a middle-aged housewife — apply to law school, and she applied to Boalt Hall. I think that's an interesting historical note. Boalt accepted her, and from what I read they kept a file on her. She must have passed her courses because she graduated from Boalt in 1977, and Doonesbury — what's his first name?

MCCREERY: Mike Doonesbury? Or are you talking about Garry Trudeau, the cartoonist?

WERDEGAR: Trudeau. Garry Trudeau was the commencement speaker. This is not part of my history, but it reflects how the world was changing.

Out in the suburbs I knew so many women who were college educated and intelligent and who had not gone on to do different things because of the time. It just wasn't happening. I felt for them because now they were beginning to realize, as Betty Friedan in *The Feminine Mystique* anticipated, that there was life beyond being a perfect hostess and wife and mother and a good cook, which is not to disparage those roles at all. But I think that had to be a little unsettling, and I was always so grateful that I had done something out of time.

MCCREERY: How were you received by your women friends who were not pursuing careers?

WERDEGAR: Women friends. I didn't have that many. I had some college friends, and I still do. They had gone off in the other direction. And

the mothers of my sons' classmates — I would see them on occasion. We had some social life and very nice neighbors, but I didn't have time to get involved in all the things that perhaps they were doing that would form bonds and social relationships with them.

While I was working at CEB — to go back to my theme that I never applied for another job — I had been there about six or seven years, and one day I got a phone call from Paul McCaskill, who was the dean of University of San Francisco Law School. He asked me if I would like to come and interview to teach at USF and to be an associate dean there.

MCCREERY: How do you think he came to telephone you?

WERDEGAR: I don't know what motivated him, but how he came to know me, I subsequently learned, was there was on the faculty a Professor Mike Hone. Actually, Paul and Mike Hone had been the year behind me at Boalt, and they knew me. I did not know them, but they knew me. If you're one of the few women in a law school and you're number one in your class, you are more widely known than you know the others. You're more conspicuous. Why Paul chose to reach out to me I don't know, but that's how he knew me.

I did interview, and I was absolutely thrilled to be offered a position and to leave CEB, which had treated me very well. But I had been there close to seven years, and I was now ready for a change. So I went over to USF and took the position of associate dean for academic and student affairs and also was required or permitted to teach. But I was not on the tenure track.

MCCREERY: That's quite a title. What did Dean McCaskill have in mind for you in that role?

WERDEGAR: It's very interesting that you say that. The dean for academic affairs is the dean that's responsible for maintaining the ABA requirements for accreditation and for maintaining the academic standards of the school. The dean for student affairs, as it was practiced at USF, was responsible for counseling students in academic difficulty, for allowing or disallowing their excuses for — whether it was missing a final or needing to take it over or whatever lapses had occurred in their academic life.

I will say with some conviction, the two jobs were in irreconcilable conflict. On the one hand I would be counseling with empathy and concern

students who were on the verge of flunking out and always wanted to stay — and your heart goes out to them — and on the other hand presiding over the academic standards meeting where these students would petition to stay and the committee had to decide.

USF at that time, which is about 1978 to 1981, was a very divided faculty on the subject of affirmative action and academic standards and assisting minority students and carrying them along and giving them an opportunity and, on the other hand, maintaining academic standards.

Because it was a private school — at that time it made a difference — now the tuition at the so-called public schools — I say this with some feeling — and the private schools is not that different, but then the tuition was considerably different. These students, with loans and grants but also working to pay their way — it was an ethical dilemma whether you allowed them — the committee — it wasn't up to me personally, but — allowed them to continue — and of course another semester of their life, another semester of payment — when the odds of a particular individual succeeding seemed dim.

I can only say, I think having the two positions in one individual was not a good idea, and I hope it hasn't been perpetuated.

Paul McCaskill was a delightful fellow, wonderful to work with and just a marvelous, in my judgment, dean. But there were a lot of faculty politics that I was *completely* unaware of. I was naïve. It was an eye-opener.

I taught criminal procedure, and I taught a seminar on children and the law. I was thrilled. I had always hoped to be a professor, along with some other things I'd always hoped. But as you hear me you see it was mostly in the academic realm.

MCCREERY: I wonder to what extent this job, this associate dean job, had existed in that format before you took it?

WERDEGAR: It had, and the individual who held the job seemed to have no problem with it. It continued after I left, and the individual who had the job seemed to have no problem with it. [Laughter] I don't know. I used to have nightmares about these students, my concern for them and my dilemma as the chair of the academic standards committee and the counselor to the individual.

MCCREERY: You mentioned it being a divided faculty. First of all, how large was the faculty and where did you see the division, as you observed it?

WERDEGAR: I can't remember how large the faculty was. I really don't know. I would be guessing. They had a lot of adjunct faculty, too, which means practitioners who will come in and teach a course. But I don't think they had a role in this internal division. It was just the very liberal, affirmative-action minded, "give a handout," "help people along" side and the more standards-oriented, concerned for the standing of the school —

MCCREERY: These were very much issues of great currency at that time.

WERDEGAR: They absolutely were.

MCCREERY: Affirmative action. I'm thinking *Bakke v. University of California* was decided somewhere around 1973. I'm not sure exactly.¹¹

WERDEGAR: Yes, that's true. And this being a private school, it could do whatever it wanted insofar as how it managed its admissions process. USF, to its great credit, had a lot of academic support systems. To this day it prides itself, I think justifiably, on having a very diverse student body and giving opportunity to students and giving them a chance. But there's always the end of the road where some will make it and will thrive and others won't.

MCCREERY: Who else was in the higher structure of the law school administration besides you and Dean McCaskill?

WERDEGAR: There was another associate dean, and her name was April Cassou. She had been a graduate of USF. So it was Paul McCaskill and then April and myself. April was a godsend. She had graduated first in her class from USF. I had graduated first in my class from whatever law school you want to call it, and Paul was very proud that he brought in these academic stars, thinking that the faculty could not complain about that. April and I and Paul formed the hierarchy. There were other individuals whose names I'd love to give you, but I can't at the moment. I have to look back at that.

MCCREERY: How was Dean McCaskill as a leader in these areas where you struggled?

WERDEGAR: I think Paul was a very moderate individual, and I think that he was under — I didn't know that — he was under some faculty pressure when I came on. He retired or stepped down from the deanship three

¹¹ 18 Cal.3d 34 (1976).

years later. He had served for a long time. I remember when he interviewed me, since I was serving at his sufferance and I wasn't going to be a tenured faculty member, I said, "How long do you think you'll stay?"

He said, "I've been here five years and I've already served longer than most deans of law schools. But my future is open-ended." But actually — well, he did serve a good long time, and he served well. He stepped down and he continued to teach for many, many years. I think he was a much beloved professor.

MCCREERY: Say a bit more about your own teaching, starting with criminal procedure.

WERDEGAR: I had never taught, so you have to put a course together. That's a bit of a challenge. You have a casebook, and you prepare your lectures. Given my personality they were always prepared down to the nth-degree. I remember my first day walking into a classroom, knowing that I had to put one foot in front of the other and get up on that podium, which I did.

I enjoyed it. I was very surprised, having been away from law school for a good fifteen, sixteen, seventeen years, to find that at the end of the term not only did I grade the students, but the students graded the professors. This came as a great surprise to me. [Laughter]

Speaking of my grading the students, I was extremely conscientious about that because I knew that to them, to each individual student, every little grade point could make a big difference. I'm not sure it's still that way. Boalt has gone to top quintile, middle, bottom — high honors, honors, pass. That might be more humane. When I was at Boalt every decimal point counted, and I think it did at USF.

You also had to grade on the curve. You had to have a certain percentage that got A's. You had to. And you had to have a certain percentage that got lower than C. I would make these charts at home, and I would have these piles, and I would go over it. It was very stressful for me in an effort to do right by the students. But then I would get my packet of reviews. The registrar, Judy Miner, would put them together. She was a wonderful woman who later became dean of a two-year college down on the peninsula, Foothill–De Anza. The good ones would be on the top [Laughter], and then you'd go down and they'd be less favorable. That was my experience.

MCCREERY: In the area of criminal procedure how did you approach that, if you remember?

WERDEGAR: There was certain material in the casebook that you chose that would guide you, and then you would make your own lecture notes. I would try to bring real life into it by picking things out of contemporary newspapers or legal papers, things that would make these facts come to life. I got pretty good reviews.

MCCREERY: How did you like teaching that subject matter?

WERDEGAR: Oh, I did. Then I had this seminar on children and the law, which was a smaller group and they had to write papers. The thrust of that seminar was, who decides for a child when it comes to health issues or emancipation? If your parents want you to give your kidney to your ailing sibling, who makes that decision for the child? Or do the parents have autonomy and an absolute right? Should the child be able to speak for herself and at what age? It was very interesting.

MCCREERY: Had USF had such a course before you taught it?

WERDEGAR: I don't think so, no. I modeled it after a Professor Robert Mnookian at Stanford. He had a casebook, I believe.

MCCREERY: Say a bit more about your students, if you would, and what you observed in them.

WERDEGAR: The students ran the gamut. There were some that were struggling, and the top students — Paul McCaskill used to say, and I would agree with him, that the top 5 percent at any law school, in his judgment, were comparable. But at a second-tier school, which I think USF can fairly be described as, the drop-off happens quite a bit. On the other hand, USF has a wonderful history and presence in San Francisco. At one point — I can't speak for today, but — so many of the judges were USF law graduates.

It's a Catholic school. I've never been on a Catholic campus before, and there were statues of the virgin on the main campus. You would call various administrative personnel "Father." That was a first for me, not being of the Catholic faith. But it had a wonderful feeling. There was a warmth, apart from the divisions in the faculty that I'm speaking of. I think at USF generally there was a wonderful, warm feeling and a caring for students.

MCCREERY: How did your own relationships with your fellow faculty members proceed? Is there anything at all? You're indicating you don't want to talk about that?

WERDEGAR: I think it's best not.

MCCREERY: Were there other women teaching?

WERDEGAR: Yes. April and I were a wonderful support for each other. I can only repeat that the faculty was very divided, and part of the faculty was very aggressive in its agenda as to what they thought USF should be doing.

MCCREERY: What comparisons could you make to other comparable law schools, if any? Was there any way to measure your experience against those of others?

WERDEGAR: No, in the sense that I'd never been in a comparable position. Of course, I'd been at two other law schools. They were much bigger. Someone once quoted to me an adage that politics in a faculty — I'm not getting the quote right, but — faculties can be very political. I definitely experienced it, and I definitely had no idea that that's what could be. But that's what was.

MCCREERY: May I ask how you managed what sounds like a very big job vis-à-vis your family life?

WERDEGAR: My family life took a bit of a back seat during that time, but my boys were in junior high and high school. I was there for three years, and they seem to have survived. There are stresses in life as you go through, but with the passage of time they become less memorable.

MCCREERY: You mentioned that Dean McCaskill stepped down in 1981. What effect did that have on you?

WERDEGAR: That brings me forward in my career. Once he announced his stepping down, I anticipated that I would not be retained at USF. I was not on the tenure track. They were searching for a new dean, and I did contemplate, "What next?"

One day I was xeroxing an article out of the legal newspaper for my criminal law class, and on the back of the page was this advertisement of a judicial staff attorney position. I completed xeroxing the article, but I retained the announcement about judicial staff attorney. It was for the First

District Court of Appeal in San Francisco, and I applied to fill the judicial staff attorney position. They took my application. I was applying the last day or something very close to the deadline. I didn't hear for a very long time.

MCCREERY: Pardon me. May I ask what other options you might have considered when you were looking for something new at that time?

WERDEGAR: I was thinking that I should look, and I saw the article at that stage. I was still at USF and not actively looking. The new dean had not been recruited and had not come. I was thinking ahead to what was probably going to happen.

Meanwhile, USF did bring on a new dean. He came from Denver. He interviewed April Cassou and myself and the other administrative people and it seemed clear, although he was not that obvious about it, that he would be bringing in his own people.

But sadly for USF, that dean recruit went down in flames because, after he was selected but hadn't yet assumed the position, he was arrested in Denver for soliciting a homosexual act. Poor USF. Before he came on board but while he was the one they had chosen they had introduced him around. They cut that short. I think they had an acting dean after that. They recovered beautifully. It was actually a near-miss for USF.

Meanwhile, finally Lee Johns, who was the principal attorney on the Court of Appeal, called me for an interview. I was interviewed by a judges' committee at the First District Court of Appeal, and then the wait was very, very long. I mean, weeks stretched on.

MCCREERY: What do you remember about that judges' committee?

WERDEGAR: There was a Justice Rattigan on it, and I can't remember who else was on it. Ultimately the call came, and I was going to be hired to be on the central staff of the First District Court of Appeal.

MCCREERY: What were the pros and cons for you personally of such a step?

WERDEGAR: There were no cons. It was all pros. I was thrilled. I guess I've said that about many of the jobs along the way. I was fortunate that what came my way was so agreeable to me. I'd always wanted to work for a court.

I should mention that, in the interim from when I graduated — when a judicial clerkship was an annual situation and then you'd go on to a law firm

— in California it had become a career position. This was brand new, that you would have a career as a judicial staff attorney, at least in the state court.

I accepted the position and started on the central staff, which is a staff that's not attached to an individual, not attached to any particular judge, but that works for a number of different judges. At that time there was only one woman on the court, and that was Betty Barry Deal. The rest were men.

I was on central staff, but then Justice Ed Panelli was appointed to the First District Court of Appeal and I was assigned to work for him personally.

MCCREERY: That happened right away, more or less?

WERDEGAR: No. I'd say a year or two later he came and I was assigned to him.

MCCREERY: Can I stop you and ask you to talk a little about what you did on central staff?

WERDEGAR: We got miscellaneous projects. We would be assigned random cases. I don't know that there was any particular division between what would be assigned to a personal staff attorney and what would be assigned to a central staff attorney.

MCCREERY: What kinds of cases did you note, realizing there's a whole range coming at you?

WERDEGAR: Oh, yes. Everything. Workers compensation. Civil cases. Criminal cases. You would work with different judges, which was interesting because they were different, of course, as you would expect, in judicial philosophy, political persuasion, and so forth. But at the time I was in the First District, Division Four, and the justices were Thomas Caldecott, Winslow Christian, Marc Poché, and Joseph Rattigan. They were all, in their way, fine justices and a pleasure to work with. Then came Justice Panelli.

MCCREERY: How did you come to be hired onto his own staff?

WERDEGAR: I must have been assigned to him. Lee Johns was the principal attorney. Lee Johns thought very highly of me, and he might have assigned me to Justice Panelli. At that time, I think each justice had one attorney, or perhaps one personal attorney and one from Central Staff.

MCCREERY: What was your introduction to Justice Panelli himself?

WERDEGAR: After he had been sworn in, I saw him walking down the hall. I hadn't met him then. I didn't know him, but I saw him walking down the First District hall. He was so elated. He was *so elated*. That's what I remember about Justice Panelli. [Laughter] Then we were introduced afterwards.

MCCREERY: It was an exciting step in his own career.

WERDEGAR: It was.

MCCREERY: What did you know about him beforehand, if anything?

WERDEGAR: I knew nothing about him, nothing.

MCCREERY: What was he like personally, at those early times?

WERDEGAR: At *any* time he was just such a human being, such a warm, down-to-earth, personable person and a pleasure to work with. I had no trouble working with him. The cases at the Court of Appeal were largely routine. There would always be exceptions, but unlike the cases that come to the Supreme Court that are usually exceptional — so I think the way it went is we would just work up the cases and present it to the judge, talk about it if the judge had any concerns, and move on to the next case.

MCCREERY: What was the composition of his division at that time?

WERDEGAR: That's a good question, and I would have to go back and look in the front pages of our reports.

MCCREERY: We can look it up, but I'm just wondering what you might recall about his immediate colleagues.

WERDEGAR: I should have looked at that. If you or I look it up, then we can talk about them. Right now I can't remember. He was only there for a couple of years when they established a new Court of Appeal division, the Sixth, in San Jose, and that's where he wanted to be.

MCCREERY: Before we go there, may I ask what you might have noted about Justice Panelli's own progression in this job? He was moving up from the superior court and, as you say, was elated to be there. How did you see him go into this job and learn it?

WERDEGAR: He was a very smart man. He was number one in his class, too. I, after all, was the staff attorney so I was not judging how he was

adjusting to his job. I think he came to it beautifully and took it on easily and, as I say, was so happy to be there.

MCCREERY: Describe your working relationship with him, if you could.

WERDEGAR: I could do more of that when it comes to the Supreme Court, where there was more occasion for interaction and so on. Here I would produce the draft opinion, and he would accept it. As I say, the cases were not as challenging, perhaps, or as controversial or as prone to provoking division as on the Supreme Court. I can't remember anything exceptional except that I loved working with him and he liked my work. It was just a very good working relationship.

As far as I can recall his relationship with his colleagues on his division, which we're going to look up, was cordial as well. As I say, he was only there for, I believe, a couple of years before the San Jose court opened up and I was relegated back to central staff.

MCCREERY: Say a bit about your staff attorney colleagues as you got to know them over these several years.

WERDEGAR: They were all bright and enjoyed their work. Lee Johns. I liked him very much. A fine person. Once again, it wasn't a very social experience. You have to remember, I went to work and I went home. But I have very agreeable memories of the people I worked with. We were all cordial, but I didn't interact with them a great deal.

MCCREERY: The job did give you a different angle on the law in California and the judicial branch.

WERDEGAR: It did.

MCCREERY: What were you noticing there that you hadn't known before?

WERDEGAR: At one time when I was working for Division Four, there were some sharp divisions among the justices. I do know that I was perceived as someone who could write something that would not divide them, that could bring them together.

One of the justices was Marc Poché, who had been a year ahead of me at Boalt and was a fine human being, just really a fine human being. But he would occasionally — I might say more than that — be at odds with his colleagues. It just depends who's in a division at a particular time, and this can happen in any court, any division.

Marc Poché liked my work, and he also had been on law review when I was elected to the law review at Boalt before I left. He was one of the ones who fought for me to get the appointment. He suggested that I apply for a judgeship. Yes. I was very surprised, but he admired me and he perhaps anticipated that at this time — now Governor Deukmejian — might be looking for a woman.

I allowed him to persuade me, but I had to be persuaded. Governor Deukmejian, as I say, was the governor, and his philosophy about judges was that they should start at the bottom and work their way up. At that time the bottom meant the municipal court. Then if you proved yourself you might have a chance to be appointed to superior court. If you proved yourself there, you might be a candidate to be elevated to the Court of Appeal. That's what he insisted on.

So I did submit an application to be appointed to the municipal court, not because I thought I would be well suited to the municipal court but because at that time that was where you had to start.

MCCREERY: Which county did you apply in?

WERDEGAR: That's an interesting question because I lived in Marin and I worked in San Francisco, and I was known to neither bar. I think I allowed as how I would be happy to serve in either county. Interestingly, Marvin Baxter was the appointments secretary, and he did interview me in Sacramento.

At the same time there came a vacancy on the California Supreme Court, and Ed Panelli's name was bandied about as a potential candidate for that. I think Otto Kaus had retired. So I had two potentialities. It was clear that, given our past relationship, if Ed Panelli were appointed to the Supreme Court he would ask me to come on board as his staff attorney.

Meanwhile, I don't how it would have gone, but I had been interviewed by Marvin Baxter for the municipal court. I had these two opportunities potentially pending.

MCCREERY: Take me through your own mental process about this.

WERDEGAR: I will. I wanted both. But it came to pass that Justice Panelli was named, and he told me later that after calling his wife — the governor called him, and after calling his wife — he called me. I had a decision to make. Of course, I was deeply flattered and very happy for

him. But was I going to go with Justice Edward Panelli and serve as a staff attorney on the highest court in the state, or was I going to, if the chance came my way, accept a position at a lower trial court and be a judge in my own right?

It was a very difficult decision. I ultimately decided that I would be better suited and probably much happier serving as a staff attorney on the California Supreme Court rather than being on the muni court, which I visited in San Francisco, and handling the kinds of issues and cases that come there.

MCCREERY: Why did you think you were better suited, specifically?

WERDEGAR: For all the reasons that my earlier background would suggest. I'm more of an academician. Research, writing, analyzing issues. That's not what you do on the muni court. You have cases. You have to decide them. They're a whole variety of types of misdemeanors and domestic issues, and so forth. I decided to accept Justice Panelli and felt that in doing so I had put behind me any hope of a judicial career in my own right.

MCCREERY: Who else did you consult about your decision, if anyone?

WERDEGAR: My husband. Oh, and a friend of his. Well, Justice Poché had urged me to do this because he felt that I would be a good judge. I can't say that people naturally thought I would be a terrific muni court judge. I don't know. But I consulted my husband, and we talked about it. I lived with what my feelings were, and I landed where I should have, which was the right thing.

MCCREERY: You say you talked with a friend of his, as well?

WERDEGAR: Yes, who worked in the health department over here (in San Francisco). He said of the muni court, "I don't think so." [Laughter] He was just being friendly.

MCCREERY: What do you remember about the moment when Justice Panelli called you right after calling his wife?

WERDEGAR: I was exhilarated. I was just ecstatic because I had my own doubts about the muni court before that. Having applied and having been interviewed, I felt that were it to come my way I almost was obliged to accept. Now I had a choice.

MCCREERY: Realizing that you had been at the First District Court of Appeal now for several years and located here in the city in proximity, what view and inside information, if you will, did you have about the California Supreme Court? What had you observed about that body?

WERDEGAR: I don't think I paid too much attention.

Rose Bird was chief, and I wasn't too aware of the other justices. They might be surprised, but I'm not surprised now that people aren't all that aware of us. [Laughter] I was looking forward to being in these hallowed halls and becoming, in a remote sort of way, more acquainted with the justices. But as I say, Rose Bird was chief, and it was only about a year later that she was recalled.

I do remember meeting her. She had a reception in her — the building was configured differently — it was before the earthquake of 1989, and judges' offices were together and staff was positioned up on different floors in different corners of the building. But she had a reception for Justice Panelli, and he told me, "Come on along." You know how he would.

So I did, and he introduced me to her, and she said to me, "You dated Pete Wilson."

And I said, "Yes."

It was a very political time. Deukmejian was governor, and I think he had campaigned, and maybe Wilson — I don't know what political office he had at that time — but the Republicans were outspoken about their disagreement with the direction of what would be called the Rose Bird Court.

I was very surprised by that comment, and afterwards I reflected. She was a Boalt graduate, and she did live at International House, as did I my first year. I thought maybe we overlapped. But I checked the dates. We did not overlap.

I could only surmise that she had done research on me, which Rose Bird was known to do. I guess she was so sensitive to political movements against her in some way that maybe she was concerned that Justice Panelli had brought on an attorney who was going to be political. That's all I can surmise. We did not overlap, and it was a strange comment to make to a staff attorney.

MCCREERY: Upon first meeting?

WERDEGAR: On any meeting, since I'd been married for twenty-five years or whatever it was. Yes.

MCCREERY: What other interaction did you ever have with Chief Justice Bird?

WERDEGAR: I didn't, nor would I as a staff attorney necessarily have any interaction with any judge. But Chief Justice Bird at the time was known to keep her door closed and to come up the back stairs and go into her office. I think it's a little different now. I think staff attorneys have more exposure to judges. Then I didn't. It was just Justice Panelli.

MCCREERY: We know Justice Panelli assumed that office in December of 1985. What do you recall about the very beginning of you and he getting started together on this court?

WERDEGAR: At that time Justice Kaus had had two attorneys, Alice Shore and Barbara Spencer. Justice Panelli kept them on. I joined them, and we would work on the cases. He had annuals. The court at that time would have — each justice would have — two annuals, so these bright young people, fresh graduates, would come and serve for a year and then leave and move on, and he would bring on two more. They were always very nice people.

Justice Panelli would assign the cases. The distinctive quality about Justice Panelli as a judge was that the direction definitely came from the top. He had a feel, and it's one of his strong qualities. That's probably why he's a superb mediator. He had a feel for what, in his mind — how a case should go, so he would tell us. This might be an overstatement, but he would say, "This result looks right. Take care of it. Write it for me." He would discuss the merits or which way a case should go.

The staff attorney would come back to him if, as we say in that line of work, it doesn't write: "I understand that this is the result you think might be desirable, but — ." I'll say, parenthetically, nothing is done until you can "write it" with integrity.

But otherwise he had a feeling for how the case should go, and we would know what that feeling was, and we would do it that way. The court at that time wasn't as structured as it is now. Now we have cases assigned to a judge, a draft calendar memo is circulated, other chambers respond in

writing to what they think about that draft calendar memo and whether they agree or disagree. It was more informal then.

MCCREERY: How so?

WERDEGAR: You didn't have this formal preliminary response where everything was in writing. I think maybe the judges talked about it more informally. Not having been a judge at that time I can't be sure, but I think things have become more structured.

MCCREERY: What cause did you have to interact with the other staff attorneys?

WERDEGAR: On Justice Panelli's staff? We did. We did a little bit.

MCCREERY: But you typically would have individual assignments of cases?

WERDEGAR: We would definitely have individual assignment of cases. Having been with Justice Panelli before, I think he trusted me a lot.

MCCREERY: What about the staff attorneys for other justices? How well did you get to know them and work with them?

WERDEGAR: Let me think. I'm trying to think who was here. I don't think there was that much interaction. I think there's a lot more now, a lot more of staff attorney-to-staff attorney, much more than there was at that time.

MCCREERY: But as you say, if there was less a formal process of getting other justices' response to a proposed opinion, how was that done in those days? Was that Justice Panelli working justice-to-justice?

WERDEGAR: I think the justices talked a lot more then. The physical setup of the court really encouraged it. If somebody's right next door, you might actually go into their office and ask what they were thinking about a particular case.

After the earthquake, when the building was — of course, I was on the court after the earthquake — but there was a discussion, "Do you want a cluster of chambers, the judge and the judge's staff, or do you want judges, as before, having proximity?" There are advantages both ways, and the court chose to have clusters. This way, I just cross the hall, and there's my attorney I want to speak to.

Part of it is personality, too. Some judges, even today, will pop into your office and talk to you. Others don't want to talk to you. They want

everything in writing. Others don't want to talk to you anyway. I've known judges who are happy to talk about cases and judges whom you are not welcome to talk about cases with.

MCCREERY: What did you observe about Justice Panelli establishing relationships among his own peers on the court, knowing that you were a staff attorney?

WERDEGAR: It's not for me to say, but I think he did easily. Let's see. Who was on the court? At the time when we first came it was Justices Reynoso, Grodin. They and Chief Justice Bird were the ones that were not retained. Then came Eagleson and Kaufman and Arguelles. Kennard came later.

MCCREERY: You had Justice Broussard.

WERDEGAR: Oh, yes. Justice Broussard. I think he was — these are just a staff attorney's impressions — I think he was a very warm, cordial man, as was Justice Panelli. My expectation would be that he got along with everybody. Whatever his private thoughts were I wouldn't have known. Perhaps you know now that you've done his history. [Laughter]

MCCREERY: Justice Mosk was here as well, and of course your only direct knowledge of him was via his role as state attorney general. What can you say about him as you observed him in this period?

WERDEGAR: Justice Mosk. What was notable during this first period was that this campaign against these judges was happening. Justice Mosk, who was also on the ballot — some of this is hindsight and what's been said — but he was very, very late to declare that he was going to be on the ballot, until the last moment. People, given his age at the time, incorrectly assumed that he maybe wouldn't stand for retention.

Meanwhile, the campaign was building against Chief Justice Bird and Justices Reynoso and Grodin, who were perceived by the individuals who were criticizing them as being, I guess, too liberal. The campaign focused on the death penalty, but we know historically that it was financed by defense attorney groups who felt that the court was leaning too much in favor of plaintiffs, perhaps. I'm not an expert on this.

MCCREERY: What did you think personally, if I may ask?

WERDEGAR: I did not have a personal view. I was here to do what my judge wanted me to do. But when the election came back and they were not

retained, I think everybody in the building was stunned. This had never happened before, and it was really a stunning event. My feeling was, just on the principle of it, that the court should be draped in black because it bespoke a political response to judging which, in my life that far, hadn't been part of the California judiciary. But it was an earthquake then.

I know a lot more about it now than I did at the time, but it was history and California has moved on. Governor Deukmejian appointed people that he thought would be solid judges. They came on, and we continued about our work.

MCCREERY: What do you recall of the transition period when, I gather, Justice Broussard assumed some leading role just in the interim?

WERDEGAR: Laura, I don't know. My perspective was limited to — I don't remember having a large overview. I just did my job. [Laughter]

MCCREERY: As you say, the effects of that election were such that three justices did not retain their jobs. Justice Mosk, as we know, managed to escape that fate. Do you have any further thoughts about how he did that?

WERDEGAR: Justice Mosk, I'm not the first to say, had a lot of charm. His life reflected that. The word I would use — he was very astute, very shrewd. He knew how to move through life and have it work for him. You add that to his charm, and from an outsider's point of view he just moved on and did what he did. I was delighted to know him, especially when I knew him as a colleague later. We'll get to that later.

MCCREERY: As we know, Governor Deukmejian elevated Justice Malcolm Lucas, who was already here.

WERDEGAR: He was already here, yes.

MCCREERY: Into the role of chief justice. What did you think of that news at the time?

WERDEGAR: It wasn't for me to be thinking about what Governor Deukmejian was doing with the court. It would be different if I were a judge on the court. Malcolm Lucas seemed like a very appropriate — and I came to serve with him later, too, which is all lots of fun to think about. It seemed like an obvious choice once the former chief was gone. It seemed like it was injecting a new stability into the court and that he was certainly one well qualified to carry it forward in tumultuous times.

MCCREERY: How well did you know Justice Lucas at that point?

WERDEGAR: At that point not at all. No. The only judge I knew was my brief encounter with the chief justice, former Chief Bird, and Justice Panelli. I would see another justice, like Justice Broussard, at the elevator and had a very warm impression of him. I would draw some impressions of the other judges, but they were just a staff attorney's impressions, nothing profound.

MCCREERY: As you indicated, Governor Deukmejian brought in three new justices in fairly quick order, Justices Arguelles, Eagleson, and Kaufman. How did they change the mix, as you saw it?

WERDEGAR: I think — I'm not sure. Maybe being on the more conservative side, maybe the cases were resolved in a way that was more congenial to the judge I was working for. But I can't say. That would be for him to say. It was a new order. It was a Deukmejian order. We know that politics does that. The appointing authority has the privilege of appointing people that are more, potentially, in line with the thinking of the appointing authority.

MCCREERY: I understand your point that your job was in no way a political one.

WERDEGAR: Not at all.

MCCREERY: But I wonder, knowing of your background and your having worked in the Kennedy administration during this very exciting time of civil rights laws being enacted and so on, what were your own politics at this point?

WERDEGAR: I'm not a strongly political person. I have my private views, but I'm not politically astute with respect to internal politics. I didn't see the job as a political one. Whatever private thoughts I had about what happened were my private thoughts.

The pleasure of being a staff attorney — and I think the pride of any staff attorney in the building — is that you can write an opinion any way. That's your skill. As I say, on occasion if it wouldn't write, for the good of your judge you would go and say, "This doesn't work," and we would talk about it. But staff attorneys are craftspeople, and you have a talent in working with the law. That's the attitude I had.

MCCREERY: How did your writing skills develop as you — ?

WERDEGAR: Justice Panelli always liked them. [Laughter] He did. He liked the way I wrote, and I'm grateful for that. Having been a staff attorney, when it came my turn to have a staff attorney it was a big leap for me to think that I could *delegate* to *anybody* what I had been doing.

But that's for another day, and I think we've come to a close, except I'll mention that Justice Panelli always had a lot of externs. Often, we had to manage. One time there were five externs that would be working up conference memos for the petition conference. That was a lot of work, but it was also a fun diversity of individuals. He always had very agreeable annuals, as I mentioned.

MCCREERY: How good a fit was this job for you at that stage of your career?

WERDEGAR: Perfect. That's the irony of my career, that doors that didn't open — as a consequence of that — it sent me on a path that really was a wonderful path for me. Later, when another governor came into office and I applied to be an appellate court judge, I think my path served me well as the future governor considered what he wanted in a judge. But we're not going to go there today.

MCCREERY: We won't, but thank you so much. Let's stop there.

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