Margaret Grignon: We're here today for the Legacy Project for the Court of Appeal Justices in Oral History from the Court of Appeal justices and I'm here today with retired Court of Appeal Justice Patti Kitching and I am retired Court of Appeal Justice Margaret Grignon. And we're just going to chat for a little bit about Justice Kitching's history and career and high points of her life. Good morning.

Patti Kitching: Good morning.

Margaret Grignon: Why don't we start a little bit about where you came from and your family and how you ended up in college?

Patti Kitching: All right. Well let's start with my family. My mother is Doris. Her name was Doris and she came from Colorado. She was very successful in school, but at that point didn't have the money to go to college. So she came to California and went to work at Safeway stores and then her family followed her to California and it ended up that many of them worked at Safeway stores.

My mother was a woman before her time. She was very qualified and she would have been able to go far in an industry that she chose, but she was limited at that point. But she did her best and was very successful, I think as a mother. And then my father came from Texas and his name was Merrill and he also worked for Safeway and he was a store manager. He died when I was very young, I was 13. So my mother was basically a single mom and she raised me.

When I was very young, I went to a grade school at 97th Street School in Los Angeles which is approximately at Century and Figueroa. And we moved to Whittier when I was in junior high and high school. And high school at California High in Whittier was a good time for me. I had lots of friends, lots of activities and it was a good time. I looked to colleges and decided I would maybe be an English major in college, so I ended up at UCLA.

Margaret Grignon: Did you always know that you were going to go to college? Was that something that you were brought up with and it was expected of you?

Patti Kitching: Yes, it was especially in my family since I would be the first one to go to college, it was important. And interestingly my mother who was a single mom was certain that I would go to college and was very proud that I could be at UCLA and I was in a sorority. At the time, UCLA was very reasonable. The tuition was very reasonable and it was almost free. I think my books were more expensive than the tuition was at that point. But I was in a sorority and the sorority had room and board. I really don't know how my mother managed to pay for my room and board. She was a miracle worker. Anyway I had the terrific

experience of being in a sorority at UCLA and a big, big university. It was very good to have a group of friends.

Margaret Grignon: And how did you decide to go to UCLA and not some other university farther away?

Patti Kitching: Well, that's a good question. I really didn't have enough money to go to a university far away and the back east universities just weren't within anything that I could ever dream of. How would ever pay for airfare to go to New York? So UCLA was perfect because I was close to home, but yet I could live away at the sorority. And at UCLA, I was an English major because, I guess I was good at that. But what I loved about UCLA was that they required you to take other subjects and so I studied geology, and botany and Poli Sci which ended up -- I really, really love Poli Sci. And in particular, I took a class called politics in the Poli Sci department because that was a pretty famous class around UCLA at that point.

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And the professor was Charles Titus and he was known around UCLA, he had been there forever. And he had a system where you took an exam every day. Sometimes the exam was only worth five points, the first day and then 10 and then it proceeded to be worth a 100 points or more points, but you had an exam every day, every day you were in class. So Monday, Wednesday and Friday you had some kind of an exam that you had to write and so you have an assignment and I can't -- well we read Machiavelli. So there are questions about Machiavelli and we read things like The Making of the President and there were questions about that. And so anyway, then you would get your score and they would post them. And so you would know who was at the top of the class because you would now how many points they have.

So I ended up with another woman at the top of the class. And so that meant that we were his teaching assistants for the next year and that meant that we got to grade all those papers every other day. I think we were paid about $40 a month for that, and boy was that time consuming especially when we got into those papers that were worth 100 points but this other woman and I would share and we would take all the papers every other day.

Interesting, a couple of people I now know including someone on the Court of Appeals, Steve Perren was apparently in one of the classes for which I was a teaching assistant.

Margaret Grignon: Oh that's interesting.

Patti Kitching: And he tells me that he got an A and I'm glad.

Margaret Grignon: So there's nothing for him to hold against you yes?

Patti Kitching: No, nothing that he holds against me. And so that was a terrific experience. In fact when Dr. Titus retired, President Kennedy sent him congratulations and we had bit retirement parties and he was very well loved. And so he was a great influence. Even though this wasn't exactly political science, I'm not sure what it was, it's more like Dr. Titus would challenge students if he thought the students were too conservative. He would lecture more on the liberal kind of philosophical side, political side and if he thought the students were too liberal, he would go over to the conservative side and so he was always challenging the students.

You really didn't know where he was, he was just there to kind of challenge and it was just so interesting. But I did develop an interest in politics and political science. So I took more political science cases and I think I probably ended up with a minor in political science. But I was also taking English Lit and Shakespeare and Modern Literature, et cetera, which is wonderful and Writing classes.

Margaret Grignon: So did you just go to school or did you have some fun as well?

Patti Kitching: I had some fun as well, yes I did. I was a president of my sorority and that was a great honor and I was also a song leader at UCLA. This was the time when the basketball team was starting to become very famous and so it was also the first time that UCLA went to the final four in the basketball finals, the NCAA Finals. So we were able to go to Louisville with the team in the Final Four Basketball, and that was great fun. And Johnny Wooden was such a role model to everyone. Actually the football team was also good and we were able to be on the Rose Parade on the UCLA float, and that being a song leader also led to being in a movie and being on a couple of TV shows because they would come to UCLA and interview and want to know who the song leaders were.

Margaret Grignon: What movie were you in?

Patti Kitching: I was in the movie called Son of Flubber with Ed, with Mc Murray.

Margaret Grignon: Yes.

Patti Kitching: Yes, yes.

Margaret Grignon: I can't remember his first name but yeah.

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Patti Kitching: Right, right.

Margaret Grignon: That was the flying car?

Patti Kitching: That was the flying car. I wasn't a very good actress either. And I remember being on the movie set and they put all these make up on you and then they would tell you what to do and I wasn't very good. So I probably didn't have a career in the movies.

Margaret Grignon: So when you graduated from UCLA that was cum laude correct?

Patti Kitching: Yes.

Margaret Grignon: And then you got married?

Patti Kitching: And then I got married. And then I married someone who was going to go to medical school. And so we proceeded to move to Omaha, Nebraska and of course I didn't know anyone in Omaha, Nebraska, didn't know anything about Omaha, Nebraska but it was a nice town and we made friends, made friends in the medical school. We didn't have much money and so I worked. I had various jobs. I was a secretary and I also was a teacher at Head Start and teaching underprivileged children English, and teaching them how to write and vocabulary and things like that.

Gary was working as well, he was doing what they called summaries of people before surgery and things so that he could earn some extra money and I was working and we supported ourselves. And I think you got a couple of scholarships. I do remember the snow in Nebraska. I wasn't used to the snow and I wasn't really happy about driving in the snow. But then came the summer and it was nice and hot. But we survived.

Margaret Grignon: Were you there for his whole four years of medical school?

Patti Kitching: We were there for four years of medical school and then I remember, we drove a cross-country and he took some boards I think in Albuquerque or somewhere. And then we came to California and he began an internship at LA County Hospital and we lived on the premises of LA County Hospital. And at that point I entered a graduate program in Poli Sci at USC and then that was a little too expensive for me, so then I went to a little cheaper place, Cal State LA and had some more units in Poli Sci.

Margaret Grignon: So you were thinking of getting a masters in Poli Sci?

Patti Kitching: I was or eventually a PhD.

Margaret Grignon: Okay.

Margaret Grignon: But I knew I had to wait until Gary Kitching was finished with all of his training and I could be some place where I could

actually go back to school because after this internship Gary went into the navy. There was something called a Barry Program and had he been accepted into the Barry Program, I think it was a lottery. He could have finished his residency before he went into the navy, but he didn't get the lottery so he had to go into the navy right after internship. So they sent him to Twentynine Palms where he worked in the marine hospital and took care of the marines. And so we lived in Twentynine Palms for two years and my son was born, my son Christopher was born in 1969 right when we went to Twentynine Palms. Christopher and I spent our time in Twentynine Palms while dad was at the hospital working.

Margaret Grignon: Were you working on Twentynine Palms or taking care of Christopher?

Patti Kitching: No, I was taking care of Christopher. And then it was time for Gary to do his residency and for us to move back some place where I could probably be go to school. And so I said to Gary "Well?" and he said "Now it's your turn." You've put me through school now I'm going to put you through school. And so I said "Okay, I would like to get a PhD in Political Science." And Gary said "Well why don't you think about that because if you have a PhD in Political Science there won't be that many career opportunities for you. You could be a professor or you could be a consultant or what else could you do? There aren't many opportunities." And he said "Why don't you go to Law school?" and I said "Well, that's an interesting idea."

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I didn't know any lawyers and I had no idea what that would entail.

Margaret Grignon: That was the first time you'd actually ever thought about going to law school?

Patti Kitching: That was the first time I ever thought about going to law school and I have to give Gary credit because he went to medical school and he didn't know any doctors. I didn't know any doctors and he had good dreams and he went after his dreams, and he helped me go after my dream too. He was very encouraging.

So, I applied to law school and I was, at that point, 29 years old, had been out of school eight years and I was accepted to Loyola Law School. I remember that Gary drove into town when I took the LSAT and supported me, and was very encouraging. So, in 1971, I showed up at Loyola Law School. By this time I was six months pregnant with my wonderful daughter, Allison.

Margaret Grignon: What was your reception?

Patti Kitching: Well, I think they were probably surprised because on my application I didn't have to tell them I was pregnant, but they were just fine. At that point, there were about a third of the class consisted of women. So, in that regard, I wasn't surprised. I was the only pregnant woman there.

So, I started law school and I loved it. I loved reading those cases and I remember I would summarize the case in the margins of the case. I love summarizing and I love to take that principle of the case and put it into one sentence, and synthesize it. I would make outlines and study, and loved it. I loved the lectures. I loved everything about it.

I have Gary Kitching a lot of credit. He was very supportive. I've tried to make it as easy as he could for me. At that point, he was in a residency at Harbor General Hospital in Carson and so he was working hard too, but he tried to make it as easy as he could for me. My mother was also a huge help.

Margaret Grignon: Was she still working then or was she retired?

Patti Kitching: She was still working, but she was a huge help. I had two children, a 2-year-old and a newborn.

Margaret Grignon: Let's talk about the newborn. I have this memory that you started at Loyola and you took the first semester and that in between the first semester and the second semester, Allison was born.

Patti Kitching: She was born in December at the end of the first semester. It was interesting because Loyola, at the first year, didn't really have finals. That first semester, they had like midterms. So, Allison was born December 8 and the midterms were a little later than that.

So, I missed those midterms, I can't remember. They must have let me make them up or something, but they weren't the final grade of the course like real property. The final wasn't at the end of December or something.

Margaret Grignon: They were year-long classes, right?

Patti Kitching: In June, right.

Margaret Grignon: Yes.

Patti Kitching: Right. So, that was good and so I only had the equivalent of midterms at that point. So yes, I had -- Allison was born December 8. I think I was in class the day before she was born and so I was out until the next semester began. I went back to school and had a newborn. I worked very hard. I had classes

and I had a 2-year-old and a newborn at home, but there were people in law school who were holding down fulltime jobs.

I didn't feel as though I was working any harder than they were because they were fulltime job plus going to law school and I had a fulltime job and I was going to law school. I felt fine. I was probably tired, but I was young at that time too. So, I could study and of course I had the summers off.

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I wasn't able to work in law offices during the summer because I was home taking care of my children, but that was okay. I just loved law school. It was a pleasure to study and it was a pleasure to talk to the students, and it was a pleasure to do everything about it. I particularly enjoy my tax classes and constitutional law was probably my very favorite class. I think that's probably common for many people in law school. I remember Professor Coskran who taught future interest.

Margaret Grignon: Real property, right?

Patti Kitching: Real property, future interest, right. Boy, was he wonderful. I remember on the Bar exam coming across the Con Law and future interest questions, and saying, "All right! This is good."

Margaret Grignon: I know this.

Patti Kitching: I feel good. The three years went fast and I graduated. I remember at graduation my mother was still living and so my mother could come to my graduation and my two children, and Gary Kitching. They had both been very instrumental in allowing me to go to a law school and to graduate.

Margaret Grignon: Okay, so you have your law degree and you're out to find yourself your first job. How did that go?

Patti Kitching: Well, the question that employers ask of me, they ask me about law school and my background and everything, but they also had many, many questions about my little children, and who was going to take care of my little children, and if they were sick who would take care of my little children. They would tell me that they were quite concerned about whether I could concentrate on being a lawyer when I had those little children at home.

I always thought, "Funny, they never asked Gary Kitching that question when he's interviewed for jobs," but they did ask me that question.

Margaret Grignon: So, even though women were one-third of the law school class, it's still not integrated into the workforce at that time?

Patti Kitching: Yes, that is true. That was in 1975. So, what happened is Gary Kitching took a job in Sacramento and we moved to Sacramento. I interviewed in Sacramento with the Attorney General's office and they wanted to hire me. They said, "We would like to make you a job offer, but we only have a job opening in Los Angeles. We don't have one here in Sacramento."

I said, "Well, that sounds good. I'm from Los Angeles." I said, "Don't you want to ask me about my children?" I was trying to anticipate the problems that everyone else had had and they said, "No, we think you're qualified and we would like to hire you." I said, "Oh my gosh! I found my home."

So, I moved and came back to Los Angeles from Sacramento. Gary Kitching took a fellowship at Loma Linda University in Radiology. We moved the family back to Southern California and we moved to Palos Verdes because the schools were very excellent in Palos Verdes.

Gary commuted on the weekends from Loma Linda. I went to work in the Attorney General's office in the business. At that point, it was called the Tax Section. Later, it became the Business and Tax Section. I represented the tax agencies of California.

Margaret Grignon: So, the franchise tax board in the State of Board Equalization?

Patti Kitching: And the Employment Development Department. Eventually, when the business came in to that section, we represented the Department of Insurance as well. So, I was a brand new attorney in the Attorney General's office. The good thing about that is that you had your own cases right away.

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You didn't have to sit in a room and do depositions for many years. You had your own case and you could handle your own case and that was a wonderful opportunity really. There was a lot of appellant work in that section as well. A lot of cases were appealed they had to do with tax areas.

Margaret Grignon: And you would handle both the trial court and your appellant work?

Patti Kitching: Yes.

Margaret Grignon: Who was the attorney general then?

Patti Kitching: The attorney general is George Deukmejian. I was there through several attorneys general, but George Deukmejian was the attorney general at that time.

Margaret Grignon: Who would come to be a very important person in your life?

Patti Kitching: He would. I'm very appreciative about of what he did.

Margaret Grignon: So what kind of cases did you work on in the attorney general's office?

Patti Kitching: Well, I had a big variety, some were legal issues, some were just straight tax collection issues, didn't have too many of those. Generally, we would have a legal issue, someone wanted to litigate what a statute meant, whether something was taxable or not. We did bankruptcy. We were in State and Federal Court. It was just a big variety. I had good relationship with my clients. I enjoyed working with them in Sacramento, and my main clients were the Board of Equalization and the Franchise Tax Board.

Margaret Grignon: And some of those cases took you to the U.S Supreme Court?

Patti Kitching: Yes! Amazing! That was amazing. The first case was the Franchise Tax Board versus Construction Laborers. What happened is that the Construction laborers collects money for workers who worked in various industries and they collect the vacation money or the welfare kind of money, and some of those workers owed money to the Franchise Tax Board, so I filed the complaint in state court to collect some of that money that they owed. The Construction Laborers people removed me to Federal Court. And I tried to get it remanded back to state court and the Federal Court denied my remand. Eventually, that went to the Ninth Circuit and I lost. And then the U.S. Supreme Court took the case from the Ninth Circuit, and so I now had a case in the United States Supreme Court.

And that was a whole new world because there are many different kinds of rules in the U.S. Supreme Court, the kind of brief you have to have, kind of record you have to have, the kind of training you have to have, and so one interesting thing was that -- lots of different things happen when a case goes to the Supreme Court. One thing is that as far as state agencies go, sometimes the attorney general will take the case away from a deputy attorney general, once the case goes to the U.S. Supreme Court because the attorney general wants to argue it. In California, that didn't happen. The attorney general let the deputies keep their case if that was their case and so I was lucky enough that I was able to keep my case.

Another interesting thing was that there was some concern that the deputy's attorney general in the U.S. Supreme Court needed to be trained before they could argue in the Supreme Court because it is a very different area and a different atmosphere, et cetera and very important. So the solicitor general sent deputy solicitors general to California to train the deputy's attorney general who were going to be arguing cases

in the U.S. Supreme Court. And apparently, they must've come from several states, I don't quite remember right now, but we had a group of deputies that were going to be arguing in the Supreme Court.

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So they came out and they told us this is what happens in the Supreme Court, this is what you should be doing and this is what the justices will do and this is what you can expect. And it was very helpful and they were trying to make sure that they could raise the level of the argument in the Supreme Court, and so that was what a very worthwhile program. I also met people from the solicitor general's office and they were very helpful.

So I prepare all my briefs and it was this case that a professor at Temple University his name was Julian Eule, noticed in the advanced sheets that this case was before the Supreme Court and he found it interesting and he thought it was be interesting for his class to study. So he assigned it to his class and they would read the briefs and then they would discuss it and they would probably make the arguments and all that kind of thing.

So he contacted me and said he was doing this with his class, and that was wonderful because -- then as I was writing my briefs, he could make suggestions, and he was a con law professor and this is great. We wrote all the briefs. I remember taking them to the printer to have it printed, had to be perfect. Oh, my gosh, I proof read it a thousand times. I followed all the rules and prepared everything and finally went to the Supreme Court.

One thing that happened at the beginning of the argument is that Justice Byron White held up my opposing counsel's brief and he said, "Mr. so and so you were lucky," and he was raising his voice at this time, and Byron White was a big man, he'd been a football player. And he was raising his voice and he was saying, "You're lucky, I'm going to read this brief because it doesn't have a summary of argument," and the whole court room froze. And the opposing counsel apologized and it shocked me, it shocked everyone. So when we all settled down, we could make our argument and I prevailed on that case. Justice Brennan wrote the opinion, nine to zero.

Another thing that this association of attorneys general did as well as training deputy attorneys general was that they also set up a moot court for me. So when I went back to Washington D.C., I had a moot court by the former law clerks of the Supreme Court. So they were terrific.

Margaret Grignon: That must've been very helpful.

Patti Kitching: They could ask me all the questions that they thought the justices would ask me. And they had just been working for the justices. And I have to say, I had anticipated their questions. This case involved ERISA, and I had read ERISA from cover to cover, and it was the well pleaded complaint rule. Basically, that's what the thing turned on is that I had filed the State Court action and I was allowed to stay in State Court even if there was going to be a federal question that was going arise, it was going to be preemption as a defense under ERISA, they were going to argue that, but that didn't matter, the well pleaded complaint rule said that they had to leave me in State Court so that I could litigate my tax collection question.

And so they said -- they told me that the law clerks of the Supreme Court loved my issue, the present law clerks, because it was a complicated procedural issue and they said, "Oh the law clerks are going to love your case." And I don't know if the justices were going to love my case but they told me the law clerks were going to love my case. And they were very helpful and very kind and they helped me gained confidence in my case.

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So I remember arguing the case and -- I remember before we argued, Sandra Day O'Connor was on the panel, and my two children Chris and Alison had come with me to the Supreme Court. They had special place to sit and they didn't have to leave after a while which the U.S. Supreme Court has a situation where unless you're a member of the Supreme Court and when the public comes in, they can only sit there for like 20 minutes and then they remove those people and allow other people to come in so that more people can see part of the argument.

So anyway, family members had a place to sit and they didn't have to leave during the argument, and so my children were there. Sandra Day O'Connor would look at me, she will look at my children and she will look at me, she will look at my children. I know she was putting this together. We did the argument and it was lunch time and the argument was going to go over into lunch. So the chief justice said, "It's lunch time, we're breaking," right at noon. We didn't go over like sometimes we did on the Court of Appeals, it was lunch time and we were stopping. So that was good though because that meant that I could go to lunch with Julian Eule. By the way, he was later a professor at UCLA and sadly, he passed away a few years after that.

So Julian Eule and I sat at lunch and we talked about what had happened so far in the case, and he's giving me suggestions and saying, "Well, they said this and --." And he was very helpful of course, being able to confer with him. When I went

back for the rest of my argument, I was getting use to this anyway and I was pretty relaxed for the end of the argument. So that was the Construction Laborers case.

Margaret Grignon: That's fascinating. So that was your first argument in front of the U.S. Supreme Court and then you had another one.

Patti Kitching: Right. It was quite interesting. One year later April of '83 and April of '84, I was in Washington to see the cherry blossoms and to argue before the Supreme Court. This was another Franchise Tax Board and it was against the U.S. Postal Service. And this time, the employees of the Postal Service hadn't paid their taxes and the Franchise Tax Board had assessed and order to withhold to the Postal Service which said, withhold this money, these people owe it in tax. Postal Service said, "Nope, not going to do it." So that year, "You can't sue us. This is not in the judgment," these kinds of things because it was an administrative order.

So we went to the Supreme Court and interestingly --

Margaret Grignon: Let me just stop you for a moment. You lost in the Ninth Circuit again?

Patti Kitching: Sorry. Lost again, lost again in the Ninth Circuit. This time, we had filed it in the Federal Court and we lost in the Ninth Circuit, right. This was also reversed, nine to zero. And there was -- I think a period were maybe 9 or 10 cases of the Ninth Circuit were reversed right in a row and I think I had two of them. So that was kind of interesting.

So this case, it revolved again around somewhat of a procedural tax question. And that's whether this administrative order was the equivalent of a judgment and whether the -- was equivalent of the court judgment. And the Postal Service said, "No, it isn't. So we don't have to honor it." The Supreme Court agreed with us that it was the equivalent of a judgment. And they also followed and articulated the policy that you don't litigate tax liabilities before you pay them and file a claim for refund, because the government needs money to run while you're litigating tax issues.

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So the Supreme Court ended up actually articulating that principle in this case and agreed with the Franchise Tax Board, in fact that said -- the court said that the taxes are the life blood of government, quoted that in the case. So that was helpful in following cases when issues arose as to whether entities had to follow the proceedings or honor this tax levies.

The interesting thing about that whole thing and getting into the procedural and the policy reasons behind these laws was

that the opposing counsel was a deputy solicitor general, and those people are very, very qualified to argue anything in the U.S. Supreme Court, very, very qualified people. But they didn't quite have the expertise in the area of tax law to explain to the court all the policies behind what the Franchise Tax Board wanted to argue to them and wanted the court to understand. So that was kind of interesting.

And I think we've seen that in the Court of Appeals where someone has worked on the case and knows the case, cold, and then someone at a higher level takes the case away from them and doesn't really know the ins and outs of the case.

Margaret Grignon: At time of oral argument.

Patti Kitching: At oral argument, exactly. So it's kind of like who really knows the nitty-gritty about the case and should that person be arguing it or maybe another person even could be better at oral argument but may not know quite as much about the details of the case. It's kind of a tradeoff. So this is a pretty much of a procedural kind of a case like you should honor and you will honor this order to withhold these taxes.

Margaret Grignon: So how long were you ultimately at the attorney general's office?

Patti Kitching: I was there 11 years and it was a great 11 years. I was very happy there.

Margaret Grignon: And why did you decide to leave?

Patti Kitching: Well, I had a friend at Bank of America and he said, "Why don't you come over to the Bank of America." I guess I just decided that something new would be good for my career even though I was very happy at the Attorney General's Office. So I went and I worked there and I monitored outside counsel. And that meant if lots of people sue Banking of America, and so we would hire -- our legal staff only had like I think 12 or 15 people in it in Los Angeles and we couldn't handle all the cases. So we would send them out to outside counsel and so I would monitor outside counsel and all of the many, many cases they were handling for Bank of America.

Margaret Grignon: All kinds of litigation not just tax litigation.

Patti Kitching: Oh, yes, all kinds of litigation. Yes, slip and fall, safety deposit box, things like that.

Margaret Grignon: So you're at Bank of America and what prompts you to apply to the Municipal Court?

Patti Kitching: Well, when I was in the Attorney General's Office, my friends there suggested that I apply to be a judge and that was a good

suggestion. So I put together my application and sent it in and it was -- after I'd left the Attorney General's Office and when I was at the Bank of America that actually appointed to the Municipal Court.

Margaret Grignon: And that was Governor Deukmejian?

Patti Kitching: That was Governor Deukmejian, yes.

Margaret Grignon: And then you were on the Municipal Court for two years.

Patti Kitching: Yes, I was. I did traffic court, downtown traffic court were we did many, many DUIs, and that was a good experience. My presiding judge was Lance Ito, who was a very, very experienced criminal lawyer and judge. And we had a very collegial group and went to lunch with each other all the time. But I wasn't there too long, they sent me out to the San Pedro Municipal Court because I lived in the South Bay and they needed someone out there. And when I was out there, I did UDs, more DUIs, general criminal cases and some civil.

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I remember I kept asking downtown, "If you have overflow, big civil cases, send them out, please. We're here to do them."

Margaret Grignon: Were you the only municipal court judge in San Pedro?

Patti Kitching: No, we had four as I recall. So, we were busy but it was a very nice court. It was small. It was good.

Margaret Grignon: And so from there you applied to the LA Superior Court because at the time there was still a municipal court and a Superior Court, right?

Patti Kitching: That's right. I applied to the Superior Court because I wanted to get into the more complicated cases.

Margaret Grignon: And again, Governor Deukmejian, appoint you?

Patti Kitching: Again, Governor Deukmejian, appointed me and my first assignment on Superior Court was night court and this was to, I guess, handle the overload, have more cases handled. And so I shared a courtroom and there was a judge in there during the day and then I came in during the late afternoon through the evening, thought nine o'clock and did cases at night. That also was to help people who worked and had trouble appearing during the day in court, and so we ran night court. So, I was there, I think for about a year and then I got my wish. They assigned me to complicated civil cases in law and motion.

Margaret Grignon: Were there two law and motion judges at the time for the whole court?

Patti Kitching: There were. There were two and we did all the law and motion for all the judges in Downtown Civil Courthouse and it was a great experience. I worked 24 hours a day. I felt like it. I remember we did, I think, it was 30 motions a day and 5 summary judgments. So, anytime anyone wanted to file a motion, they could. They just had to give 15 days notice. They were put on calendar.

Margaret Grignon: There's no reservation system?

Patti Kitching: No reservation system, except that once we got beyond five summary judgments and they put you on the next day. I remember doing summary judgments on the weekend. I would, "Here's this one." Now, they weren't all large. Some of them were very, very small so it wasn't like they were giant cases, five of them everyday. Some were small but still we handled five of them a day and then all of the rest of the kinds of motions. I loved it because it was cutting-edge cases and issues and meaty, and the briefing was generally pretty good.

Oral argument or argument, I would put out tentatives every night so the parties would know where the court was coming from and then we would talk about it and then I would decide. I have a couple of funny stories about my life at that time. My daughter, I think she was turning 21 at that point and we had a birthday party when -- we were going to a restaurant for dinner, and so every minute of every day I was doing motions. And so I remember taking several motions to the restaurant and I arrived early at the restaurant. I was doing motions while I was waiting for everyone to arrive for my daughter's birthday party.

I also remember the Academy Awards, going to a friend's house to watch the Academy Awards. As we were watching the Academy Awards, I was working on motions out of my Beacon's box. But I loved the job and it was very time-consuming but I enjoyed it and I had a good staff and my staff helped me, and so that was a great experience. From there, I joined you.

Margaret Grignon: That's right, came to the Court of Appeals. This time, it was not Governor Deukmejian, it was Governor Wilson.

Patti Kitching: This time it was Governor Wilson. I remember receiving the phone call and I think I was out for lunch with friends and I said, "Governor, I'll the best job I possibly can." I was assigned to Division Three. Justice Klein was the PJ.

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Ed Hinz and Walter Croskey were also on Division Three. Ed Hinz who retired and Richard Aldrich came on the court. Richard Aldrich, Joan Klein, Walter Croskey and I then sat

together for 20 years and we had, I think, a wonderful and productive 20 years.

Margaret Grignon: I wanted to ask you about that. So, you sat together with the same three other justices for almost your whole Court of Appeals career, not quite but almost, and yet there are some people that talk about -- that they would prefer to be in a system where you switched the people that you were with like the San Diego Court where there's maybe 9 or 10 justices and you could be with any of them. What do you think about that from your perspective?

Patti Kitching: I thought that it was pretty efficient the way we did it because we always had access to each other and we knew each other very well, and I didn't have to go running down to someone to talk with them. I always just could walk 20 feet and I could talk to Walter Croskey or I could talk to Richard Aldrich. So, I thought in that regard, it was very efficient and we were collegial. We knew each other. We respected each other. I thought it was good. I mean, that's all I was used to, but I saw advantages. I think there are advantages to the other system as well and that you have other people coming in with new views and asking you to reconsider maybe some view that you'd held before, so there are probably advantages to both.

Margaret Grignon: So, tell me about Division Three and how you worked together collegially and what was the process for getting your opinions out, and getting consensus.

Patti Kitching: Well, there was a lot discussion about the cases. We would have lunch about every day. We would invite other divisions to come in and have lunch also, so sometimes we would have a conference table full of justices. But the four of us would also confer, all the time really, about our cases. We would work on our cases. Send around tentative opinions and then meet before argument. At which time, we would also have our research attorneys from -- generally all the research attorneys in at our conference and this was unusual about Division Three. Those research attorneys were encouraged to all speak up about the cases because these are very smart people and they know what these cases are about and we wanted to hear from them. We figured the more smart people you have look at an issue, the better it is and I think that was kind of unusual for a division to do that.

Margaret Grignon: I don't know of any other division that had that process.

Patti Kitching: Right. I really liked it. It meant that we trusted and respected, and wanted the input of our research attorneys. So, before argument, we would all get together, talk about the case and say, "These are the questions we're going to ask. These are the problems we have with the case," and we will look into it further at oral argument. Then we would have oral argument

and our division was known as a "hot panel". The attorneys told us that that appeared before us, because we would look forward to oral argument and ask lots and lots of questions of the attorneys. The attorneys generally appreciated that because it showed them where the court was coming from, and so that they could address the issues that were problems.

When I was the author of the case, I would tell them what the tentative of the court was so that they could address and again they would know what their problems was and they could address that problem. We would also send out what they call "focus letters" and say, "This is your problem, be ready to talk about this problem," or, "You have a problem with this case, be ready to talk about this case." And again, I think otherwise, lawyers have a giant record. They have many issues and they don't know which ones the court is focusing on. So, the lawyers told us it was very helpful to them to know what to focus on. Rather than spend all their time on this issue, they could spend more time on this issue.

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So, I enjoyed oral argument because I think sometimes someone writes something in a brief and they don't quite articulate it the same way they can do that orally. And if you give them an opportunity to tell you about it, maybe they can say it better. Now, they ought to be putting it all in their brief and they ought to be doing the best job and make their brief as clear as they can, but sometimes they can just kind of answer a little question you might have or say it in a different way and so we encouraged oral argument.

After oral argument, we would come back, go through all the cases again and come to a conclusion or say we had to do more research in a certain area. We might tweak the tentative opinion and then we would come to some kind of final conclusion. So, it was a very congenial panel and they were very lucky to be together for 20 years. Sadly, we lost Justice Croskey. He was such a good friend to all of us. He's a brilliant, brilliant lawyer and a nice, nice person.

Margaret Grignon: So, if I have this correct, while you were on the Court of Appeals, I think that you wrote about 167 published opinions, is that right?

Patti Kitching: Yes.

Margaret Grignon: And in addition to that, there were 7 concurring opinions published and 12 dissents. So maybe let's talk a little bit about concurring opinions at least in a published context. When did you write concurring opinions?

Patti Kitching: Interesting. There was one that I remember that there was something in the opinion. One of my colleagues had said something about -- it was something about a constitutional provision. It's been a long time, something that we shouldn't let the legislature do something because -- interpreted or something because it was like putting the fox in charge of the hen house. I didn't think that should be in the opinion. I didn't think that was respectful to the legislature, but I agreed with the result of the opinion, so I concurred in the result of the opinion. So that's why I would concur.

Margaret Grignon: Did you actually write out an opinion in that case or did you just say, "I concur" --

Patti Kitching: I just said I concur.

Margaret Grignon: In the result? Was there trouble about that?

Patti Kitching: There was.

Margaret Grignon: Tell me about that if you remember.

Patti Kitching: There was because I needed to write more like why I concurred in order to have two-justice panel decide, two people decide a certain thing. Then, when I would concur, I would go ahead and say, "Why?" It was a little difficult to explain why I didn't like that language in the other case.

Margaret Grignon: For the most part, you didn't concur -- you didn't file concurring opinions. You either signed the majority opinion or you wrote a dissent.

Patti Kitching: That's right.

Margaret Grignon: And most of the time, I assume if there were language problems like that you could work them out with your colleagues?

Patti Kitching: I would try.

Margaret Grignon: Let's talk about dissents now. So again, not a lot of dissents because a very collegial panel but you had dissents in two areas that I noticed and one was punitive damages and the other in the area of duty if someone has a duty for purposes of negligence?

Patti Kitching: Yes. The punitive damages, Justice Croskey and I disagreed about the ratio of punitive damages. The State Farm from the US Supreme Court had said the single digit ratio was probably most appropriate in most cases, and so that's what I was following and Justice Croskey found exceptions more than I did, and so I would dissent in those cases. There was one called

BullockI think Justice Croskey approved a ratio of 16 to 1 and I said, "No. We shouldn't be going beyond the single digit."

Margaret Grignon: That was a tobacco case?

Patti Kitching: That was a tobacco case.

Margaret Grignon: I think maybe there might have been another one, (00:59:51)?

Patti Kitching: Yes and that was -- the trial court had reduced the compensatory significantly and I felt it should have relationship to the punitive damages.

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The Trial court didn't reduce the punitive damages. I felt there should be some relationship between the compensatory and the punitive and so I dissented. So, that was this issue of punitive damages.

Margaret Grignon: What about the duty analysis? In other words, I think it came up in a case Sharon P.?

Patti Kitching: Yes. That was the case -- we called it The Parking Lot Case where someone was attacked in a parking garage and the issue was duty, whether the parking lot owner had a duty to protect all the people in the parking lot, when that owner had no notice that there was any danger in that parking lot. And again, I think Justice Croskey wrote Sharon P. and I dissented in Sharon P. and the Supreme Court reversed and found there was no duty, and so this duty question was something that we frequently considered and argued about and sometimes agreed and sometimes we didn't agree.

Margaret Grignon: In your majority opinions, which of the cases that you wrote did you find to be in retrospect the most significant to you?

Patti Kitching: Well, one kind of recent case I felt pretty strongly about that was significant and the case was called the Hilton case. In that case, I found that the court could no longer impose restitution after a defendant's probation had ended. In that case, the court -- the defendant had caused an automobile accident and the court -- and there were compensatory damages and the court awarded restitution. The defendant was on probation and then probation ended, and the court awarded more restitution. I said, "No, you can't do that because the probation has ended and people should not be afraid of having restitution for the rest of their life even though they're not on probation any longer."

That was interesting because there was a similar case, the California Supreme Court took the similar case, did a grant and hold on the Hilton case which meant it was then de-published

and then they decided the first case but the Hilton case would then remain de-published. It wasn't an important case, this holding and so then the Supreme Court republished the Hilton case so now the Hilton case is out there and that's a good law. I thought that was an important case.

Margaret Grignon: And that's unusual that the Supreme Court republishes cases after a grant and hold.

Patti Kitching: Yes, but it was important. There was a recent case that had to do with the gross premiums tax for insurance companies. Now, that case is just kind of winding its way through and it's just at the beginning stages, but that's an important case. That's called Myers versus State Board of Equalization and that's the gross premium tax under the constitution and whether the defendants are "insurance companies." And again, that's just winding its way through the courts now but that's going to be a very important case.

The Loeffler vs. Target case was very important. That's where someone -- I'll call him an outsider. A customer said that Target should not be collecting sales tax on this hot coffee and the outsider customer thought that they could litigate whether the sales tax was appropriate and the court said, "No, they could not. They did not have the standing to litigate this tax case because they weren't the tax payer or the person who actually paid the tax." So, those were all I thought important and the Lockheed case, I think you were maybe involved in the -- something after that or you know about after that case. That was the one where the trial court was allowed to determine that the expert could not testify, could not use -- some people call it junk science and the -- a new case.

Margaret Grignon: Sargon.

Patti Kitching: Sargon came out and holds basically the same. So, those are all important cases. Those are the ones I can think of right now.

01:05:08

Margaret Grignon: So, at one point towards the end of your career, you had four of your cases pending in the California Supreme Court and in the space of a year maybe, they were firmed?

Patti Kitching: Yes.

Margaret Grignon: I remember one was a red light camera case.

Patti Kitching: The camera case, right. That was kind of interesting. I was joking and saying I was almost of the Supreme Court's calendar that year. Right, that was an interesting time to have all those cases affirmed. But we worked hard on all those cases and

particularly any of our published cases as I -- and I know you've had the same experience. When we publish our cases, we work very hard on them and of course the Supreme Court takes cases that aren't published too, so it doesn't only mean they have to be published.

Margaret Grignon: What's interesting is that I think people have a sense -- lawyers have sense that the Supreme Court takes cases to reverse them. But your example is just a little snapshot but it's an example of the large number of cases the Supreme Court takes and actually affirms. Loeffler was another case, not in that period but that they also affirmed.

Patti Kitching: Right. That is interesting. Sometimes I think they just want to clarify, put their stamp of approval on it because that's important that the Supreme Court has agreed with that, or there could be another case out going the other way and they actually take both of them and then affirm one of them. It's interesting because I think we could tell when we were working on a case, which cases might be of interest to the Supreme Court just because we know it's a new issue or it's an issue that they've kind of talked about and -- or there's a big difference in the Court of Appeal decisions when some are going this way, some are going this way. You can kind of almost guess which ones the Supreme Court might be interested in.

Margaret Grignon: Let's talk about that for a moment. I have a memory that you wrote more than one case where you said expressly that you disagreed with another Court of Appeal decision and maybe talk a little bit about that process on how you come to that decision. I don't have a particular case in mind.

Patti Kitching: Okay. Where we would disagree, we would want to make it clear -- actually I think we're sending somewhat of a message to the Supreme Court that we need some clarity in this area and sometimes we would ask at the end of the opinion, "Yes, it would be nice if the Supreme Court would come in and answer this question because we have now disagreed with another Court of Appeal." So sometimes it's a signal that there's an issue here. It needs to be decided by our Supreme Court. And also, I think it's just to get out the other side if we just think this other case is wrong then I think we have an obligation in our case to say how we think it should be decided. It's not as though we're saying the Supreme Court was wrong, we're saying that this equal court should have decided the case another way. So, I think it's helpful. It develops the law. I think it brings in more view points and it's good. It's helpful.

Margaret Grignon: You retired in October of last year and what have you been doing since then?

Patti Kitching: Well, I've been traveling a lot and I just went to Alaska. And I'm -- let's say I went to Hawaii on a cruise and visited my

daughter for two weeks. I've been just trying to figure out what else I'm going to do, Interested in more book clubs. Joined in an organization that studies and has seminars. I do want to get back into some kind of situation where I'm taking classes and approaching new subjects, learning new things.

Margaret Grignon: You're happy?

Patti Kitching: I'm happy, but I also feel that I was so very privileged that two governors felt that I was capable of being on the court and it was just a privilege for 27 years to be a municipal court, Superior Court and Court of Appeal justice. It was my total privilege.

Margaret Grignon: Thank you.

Patti Kitching: Thank you.

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