Total Duration: 79 minutes

JOAN IRION: Good morning! I am Joan Irion. I'm an associate justice of the Court of Appeal, Fourth District. I'm here with Justice Judith McConnell, Presiding Justice of the Fourth District Court of Appeal, and we're here today for the Legacy Project for the appellate courts.

Judith McConnell, you were born and raised in Lincoln, Nebraska, where your dad was a Pulitzer Prize-winning newspaperman. When you were very young, your dad wrote a book, *Trampled Terraces*, which included a chapter all about you, which he entitled "The Tomboy."

In the book there is this marvelous illustration of this little girl wearing a cowgirl gun holster, and the chapter starts with the phrase attributed to you and I quote, "Put the gun down, Louie. You're not fooling anyone." Did your dad capture your very essence?

JUDITH MCCONNELL: Well, I have no idea if I actually said that. The book was about our growing up in Lincoln and it was called *Trampled Terraces* because we lived on a street that had houses with terraces in the front yard and a big median where we played all the time. And I wanted to be a cowboy or a cowgirl, and I loved wearing my holster and my guns. And yes, I was a tomboy when I was growing up, and I could outrun any boy and beat them up too, if had to, and that all changed in the seventh grade when the boys got stronger and faster.

JOAN IRION: Well, I understand that wasn't just any cowboy holster, it had rhinestones.

JUDITH MCCONNELL: It had rhinestones and I insisted—my grandfather was a Congregational minister in Lincoln, Nebraska—and I insisted on, of course, we had to go to church every Sunday, and I insisted on wearing my holster and both of my guns to church and Mom would put on my pretty little churchgoing dress and then I'd strap on my diamond-studded holster to go to Sunday school.

JOAN IRION: Sounds like your folks sponsored an independent streak.

JUDITH MCCONNELL: Well, they had four kids and I was the third of four. I think it was like herding cats some of the time and it was just easier to give in, I think.

JOAN IRION: How do you become—if you wanted to be a cowgirl, how did you become interested in law?

JUDITH MCCONNELL: I got interested in law when I was in college. I was a political science major, and I really wanted to go into government. I had been an exchange student in high school. I went to Japan and lived with the family of a newspaperman in Tokyo, which was very interesting and appropriate. And so, of course, I wanted to go into international affairs

and become a United States senator. And I found out that all the United States senators at the time were lawyers. So, I said, "Okay. I'm going to have to go to law school." So, I went to law school.

JOAN IRION: Of course, that's very different from today.

JUDITH MCCONNELL: Yes, exactly! There are very few lawyers now in the Legislature and I think it creates a challenge for those of us who are in charge of interpreting and applying the law.

JOAN IRION: You said you went to Berkeley in the early to mid-1960s—that was a tumultuous time on the Berkeley campus, wasn't it?

JUDITH MCCONNELL: Yes. I actually finished my undergraduate degree at Berkeley and went to law school there and they had the Free Speech Movement, of course, and big demonstrations almost all the time I was there, the Free Speech Movement of course, shut down the campus. There were anti-war demonstrations. There were civil rights demonstrations. It was a very lively time to be on campus in Berkeley.

JOAN IRION: When you went to Boalt [Hall] Law School, how many women were in your class?

JUDITH MCCONNELL: So, my first year of class at Berkeley, it had over 200 students, maybe 225 students. And at the very beginning, I think there were 16 of us, and the reason there were so many was they started drafting men. Up until that time, men were deferred if they were going to graduate school or law school, but the military started drafting men. And so that gave more opportunities for women in law school.

JOAN IRION: And you said there were 16 when you started? Were there 16 when you graduated?

JUDITH MCCONNELL: No, some dropped out, some may have transferred. I don't know what happened to them all.

JOAN IRION: Okay. When you were in law school, what was it like being a woman law student?

00:05:05

JUDITH MCCONNELL: Well, it was a challenge. I remember the first day of law school at Boalt, which is what it was called at the time, one of the young men sitting in from of me—and we were all seated in an alphabetical order, A to Z, the first semester and then they reversed the alphabet for the second semester, and we all took the same classes—and one

young man turned to me and said, "What are you doing here taking up a space a boy could take?"

JOAN IRION: How did you respond to that?

JUDITH MCCONNELL: I said, "I'm going to be a lawyer." And so that was the end of that conversation.

JOAN IRION: Were you interested in being a litigator when you were in law school?

JUDITH MCCONNELL: I hadn't really thought about what I wanted to do when I was in law school. It's hard being a law student. The first year was a big challenge, learning how to think like a lawyer. It wasn't really until, probably, well, it wasn't really until I was looking for a job that I thought about what kind of lawyer I wanted to be. And then, what I wanted to be was whoever would hire me. That was what I was going to be.

JOAN IRION: Well, did you ever think you'd have trouble finding a job as a lawyer?

JUDITH MCCONNELL: No. It never occurred to me that I would have trouble finding a job as a lawyer. All my life, I'd been a good student. I worked hard and moved along. And when I started looking for work, and I looked in San Diego because that's where my husband got a job as a professor, the private law firms wrote me, many of them, and said, "We're going to stick with the boys." And some of them did interview me, but the only job I could get was working for government because government was more open to women and minorities in (00:06:52) those days. Some of them were under consent decrees because of the Civil Rights Act.

JOAN IRION: So to get a job as a lawyer in the public sector at that time, did you have to go through a State Personnel Board interview?

JUDITH MCCONNELL: Yes. Actually—I got a job working for the Caltrans legal division. They handled all the litigation for Caltrans in District 14 which is San Diego and Riverside, and of course, Imperial. The head of the office offered me the job and I took it and started working there, but in order to keep the job and to be permanently hired, I had to be interviewed by the State Personnel Board.

So I went up to Los Angeles to the state building downtown. The interview was by four white men, and during the interview, one of the men turned to me and said, "Well, how are you going to choose between being a lawyer and being a wife?" And I said, "Well, when you were interviewed, were you asked how you would choose between being a lawyer and a husband?" And he said, "No, I wasn't." I said, "Then, I refuse to answer the question on the ground it's discriminatory." And he turned brick red, all the way to the top of his head—and I got the highest score in the state.

JOAN IRION: So, you traded your cowboy gun or cowgirl gun holster for miniskirts?

JUDITH MCCONNELL: Oh, yes. We all wore miniskirts in those days.

JOAN IRION: And you were trying jury cases for Caltrans. How many women did you see in the courtrooms in San Diego and Imperial counties at that time?

JUDITH MCCONNELL: Well, I was civil practitioner. I practiced here in Imperial and in Riverside, and I never saw a woman judge. I never appeared in front of a woman judge. I know there was a woman judge in San Diego early on in the municipal court. I did have one trial against a woman lawyer, who wore her big Phi Beta Kappa key to (00:09:04) trial every day, big one.

JOAN IRION: Did you wear yours?

JUDITH MCCONNELL: So, I put mine on—I still can't, to this day, can't find it, but I put my—mine wasn't so big, but I didn't win the case.

JOAN IRION: How did your juries react to you as a woman in the courtroom at that time?

JUDITH MCCONNELL: The juries were fabulous. I have to say, I tried my first jury trial alone, three weeks after I was sworn in as a lawyer, in Indio. It was an imminent domain case involving some property out on the border. I won the case. I mean, I was so nervous that when I stood up I had to lean against the table because my legs were like noodles. I was very nervous, but I won the trial and afterwards, three of the jurors came up to me to talk to me about how I'd done. And they said, "Every time you raised up a map or a chart to put on the bulletin board, we could see what color your underwear was."

00:10:12

So, I started wearing two-piece outfits after that. [Laughter] I changed the way I dressed for trial.

But they were wonderful. I remember once trying a case with Patricia Cowett who—out in Indio, a personal injury case—and afterwards, one of the jurors came up to her and said, "I just want to take you home in my purse, you're so cute, and introduce you to my son." And so, the jurors were very good to us.

JOAN IRION: You said you never appeared in front of a woman judge. What made you think that one day you might want to be a judge?

JUDITH MCCONNELL: Well, first of all, I appeared in the superior court only—I never appeared in the municipal court. I thought our bench was very good at the time. And it looked like an interesting job to me. And Governor Jerry Brown was the governor in those days—that was his first go-round. And he was appointing women to the bench—unlike

many prior governors—and women and people of color were getting jobs as judges and I thought I'd like to do—it looked like a fun job and it actually is.

So, I put my name in and somebody told me, actually, that because I worked for the state I was not likely to get an appointment, that I should go into practice of doing something else. So, I went in as a sole practitioner but working in association with two other women. And I got a lot of interesting and some horrible cases, but mostly, I was doing trial work for public agencies, contract trial work.

JOAN IRION: You know, when you were with Caltrans, you had just had a young child.

JUDITH MCCONNELL: That's right and—

JOAN IRION: And today, young women attorneys, and indeed, really all young attorneys, struggle with work-life balance issues. When Anthony was born, you were a full-time litigator for Caltrans. How did you do it?

JUDITH MCCONNELL: Well, first of all, I don't think there is such a thing as balance. I think it's more like juggling. When Anthony was a new baby, I took him to work. I had him set up in my office because I'm not in the court all the time. And so, until he was—I think when he started eating solid foods and making such an awful mess, I found someone to take care of him while I was at work, but I took him to work with me when I could. Obviously, when I was in trial, I couldn't—I couldn't take him to the office.

But it's a big challenge for parents to handle childrearing and I know you make sacrifices. Sometimes your trial takes 18 hours a day and you have to tend to your children but you have to dedicate yourself to your work when you're in trial.

JOAN IRION: You know, people talk about the importance of a mentor, somebody to teach you how to practice law, how to try jury cases. You were in the courts very shortly after you were hired. Who taught you how to try a case?

JUDITH MCCONNELL: Well, I worked at Caltrans. It was a small law office. I think there were only five or six lawyers and they were all in trial all the time. And the head of the office was Dick Rypinski, who was a very liberal progressive. He hired me, I think, because he thought it was cool to hire a woman. And he had me sitting in second chair even before I had passed the bar, even before I was sworn in as a lawyer. I was, at least, sitting at counsel table.

And he had sent me, actually, to different courts, including up to L.A., to watch good lawyers. He said, "The best lawyer for cross-examination is Lou Welsh." So, he sent me to watch Lou Welsh cross-examine an expert witness. Lou Welsh later became a very distinguished judge here. He said, "The best lawyer for handling opening statement is

somebody in L.A." So, I went up to L.A. to watch opening statement and, of course, Rypinski himself was a great lawyer and I watched him as well.

They really trained me from day one to be a lawyer and helped me do that and critiqued me when that was over.

JOAN IRION: There is a wonderful story, and perhaps you can tell me whether it's true, that one day you went into the office and you were complaining that you were bored.

00:15:01

And that that, indirectly—this is to your mentor—that indirectly may have been responsible for you getting involved in community activities. Is it a true story? What happened?

JUDITH MCCONNELL: Oh, that is a true story. In those days, the way our work went, in those days, there wasn't a lot of discovery or depositions. You were in trial or you were preparing for trial. And then, between trials, it was slow—and I like action.

So, I told Rypinski that I was bored and he slammed his hand down on the desk and said, "There is no excuse for boredom. Go out in the community and do something!" So, he was very active in the Sierra Club, even though he worked for Caltrans—it sounds kind of odd but he was, I think, chair of the Sierra Club, he was mayor of Del Mar.

And so, I joined NOW. I started going to their meetings. I became a spokesperson for NOW, the National Organization for Women, and I spoke up about the Equal Rights Amendment, which was pending at the time.

JOAN IRION: Why did you choose to get involved in issues of gender discrimination?

JUDITH MCCONNELL: Well, I had had a rough time getting a job, as I think I mentioned. It was very hard for women and I remember some public agencies, even though they were under a court order where we'd like them to hire women, or if they hired women, they put them in the back office. They didn't want anyone to know that they'd hired women.

So, there was rampant discrimination. There was also a lot of discrimination against women in the law. Women, for example, who were married had no right to manage and control community property. You couldn't get a credit a card in your own name without your—you could get your father, or your husband had to sign to get a credit card. You couldn't have a stock account at a brokerage. I mean, it's just sort of on, and on, and on and on.

JOAN IRION: When was this?

JUDITH MCCONNELL: This was in the seventies. I mean, so we started working to change all that. And in fact, it was around that time, I think 1972, that a group of us founded Lawyers Club of San Diego, which was a feminist—is still a very active feminist bar association in San Diego.

JOAN IRION: There couldn't have been very many women lawyers.

JUDITH MCCONNELL: There were not. We surveyed all of them—there were 24 of them, women lawyers in town. I had the forms and I recently turned them over to Lawyers Club for their archive. Nineteen of the 24 voted to form a formal organization. They had been having lunch every now and then, women lawyers. So we voted to form Lawyers Club, and one of our goals was to improve the status of women in the law and women in the legal profession, and they're still working on that.

JOAN IRION: You know, those of us who are of a certain age recall not being able to go to the local eating establishments or the local clubs where a lot of business was done, and that was true here in San Diego with the Grant Grill. But you and Lynn Schenk, who, I think you've described as your mentor, had what I call a "lunch-in" at the Grant Grill. Could you tell us about that?

JUDITH MCCONNELL: Yes, that's quite famous. Actually, Lynn Schenk and I became friends early on. She was working for the AG. We were both in the state building—she was on one floor, I was on the other—and a friend, a colleague, introduced us and we clicked immediately. She went on to become a member of congress and she's very active in government—she was chief of staff for Gray Davis.

Anyway, we've been close friends ever since. The Grant Hotel, right downtown, had a very nice eating establishment called the Grant Grill and all the lawyers would go there for lunch. And they wouldn't let us in—they wouldn't let women in. They had a sign that said No Women Allowed Before 3 P.M.

So, Lynn and I and Elaine Alexander, who now heads Appellate Defenders, went over there, and we had had somebody call to make a reservation—I don't think they used our name, or maybe they used initials—and so, we go up to the entryway and the maître d' said, "I'm sorry, you can't come in" and pointed to the sign. And we said, "Well, you have to let us in. We have a reservation."

00:19:57

JUDITH MCCONNELL: And he actually was—I was holding onto the door jamb and he was pushing me physically out the door! And one of us had a copy of some district court opinion from New York state that said that public facilities cannot discriminate against women and people of color. So we waved this opinion around, which probably had no effect at all where we were.

And they let us in. They put us in the back in an area where—near the kitchen door, I think. And people came up to us while we were sitting there—and they served us lunch while we were there—and cursed at us! Of course, men—these were men—this place was full of men. And we kept going back until we got them to take down the sign. Now, they have a plaque honoring us outside the entrance to the Grant Grill!

But that was not the only place. I mean, there were clubs. The Cuyamaca Club didn't allow women in. There was a boat out on the harbor called the Reuben E. Lee and it was on public property leased from the port and they had a men-only place as well. And I took my colleagues from Caltrans over there and they let us in. I said, "Change this practice or I am going to report you to the port authority." And they did. They changed their practice because a government entity isn't allowed to discriminate based on gender or race.

JOAN IRION: What did it matter whether you could go to the Grant Grill or the Rueben Lee? Why did it make any difference?

JUDITH MCCONNELL: It mattered that we were shut out of places, that we were excluded, that our world—the legal world—was a boys' club. It was an important gap in our ability to network with other professionals, and it makes you feel like a second or third class citizen when you can't go to certain places.

JOAN IRION: You were appointed in 1977, a mere seven years after you got out of law school—you were age 33—to the municipal court. And then, two years later, you were elevated to the superior court where you would serve for some 20 years. And then, in 2001, you were appointed to the Court of Appeal where you currently sit and are the presiding justice.

In each of these positions, you served in a management role. Judges are kind of an independent lot and it must have been difficult to try and manage cases and judges and to have done it so very well. How did you do it?

JUDITH MCCONNELL: Well, I was always interested in administration because I figured out—and early on, when I became municipal court judge—that the best way to change things was to work within the system. That's [what] somebody said to me, one or the other, "It's okay to rock the boat but don't rock it so hard you'll fall out."

So, I got on the personnel committee of the municipal court and that was a very good way to affect their hiring policies and they were—establishments like that were not very favorable to women professionals and we started working on changing that. Then, I was elevated shortly after that to the superior court. I went on the personnel committee right away on the superior court. And I also ran for the executive committee, which was an elected position. So my first year on the superior court, I was elected to the executive committee, which was kind of a shock to everybody.

So I got engaged in court administration very early on because I felt that was the way to change the culture of the court, change hiring policies. I remember, once when we were interviewing a judicial secretary—the judges still did all the hiring in those days, now it is done by court executives. And we were interviewing a secretary and one of the judges asked the candidate what kind of birth control she taking or wasn't she planning on having children. I kicked him under the table after the interview. After she left, I said, "That is an illegal question. You can't ask that question of any of these candidates."

That is how you start changing an organization. You educate your colleagues about what is right and what is wrong, what is the better practice, what is not. I gradually moved up into—I was kind of a supervising judge of almost every department: family court, juvenile court, civil law and motion. On the superior court I did civil law and motion for quite a long time and that was a fabulous assignment—hard, hard work but very interesting assignment.

00:25:11

JOAN IRION: Why was it so hard?

JUDITH MCCONNELL: Well, because of the volume of motions. Every day, there were two courts hearing all of the civil pretrial motions—one in the morning, we had a full calendar, and one in the afternoon, the other judge had a full calendar. And we had heavy motions, lots of summary judgment motions, demurrers. There were occasionally light things like change-of-name petitions. But mostly, it was—day in and day out, you had to take work home—they had research attorneys working for us but I felt I had to read everything myself as well, so I did. I took work home with me every night and made sure I could read everything before I took the bench.

JOAN IRION: You are the first woman who was elected by your colleagues to be the presiding judge of the superior court, which was the first time in California history that a major metropolitan court had had a woman as its presiding judge. How was that received?

JUDITH MCCONNELL: Well, I had been a presiding judge of the juvenile court. I was sent out there to stabilize things. Things had been kind of shaken up by my predecessor. I thought—after some time in juvenile court—that I could do more for juvenile court if I became PJ of the whole court. And so when I was PJ of juvenile court I ran for assistant presiding judge. It was a very tricky election because there were three candidates and two of us tied.

Oh no, that's now how it worked. We had three candidates and then there was a runoff between the two. In the runoff we tied. So we had another election and I won. So then I was PJ and then nobody ran against me again for assistant PJ, second term, or for PJ no one ran against me.

My main program change, aside from putting the best judges I knew of in juvenile court, was to change the way civil cases were handled. So I started the independent or direct calendar system at superior court to improve the way civil cases were handled because we had a delay reduction program that people really hated. It was working slowly but surely but people really hated the way delay reduction was implemented.

JOAN IRION: Why was that?

JUDITH MCCONNELL: It was brutal. My predecessor in the court was kind of rough on people. And rules were changing all the time—you could go to the clerk's office and even the clerks didn't know what the rules of court were.

So one of my promises was that we weren't going to have any rule changes without them being publicized and that they would only change, would not change more than once a year. That sounds like an odd agenda to have as a PJ but it was chaos before that!

I changed the way civil cases were handled by setting up a direct calendar. I picked nine judges to do it and we took all of the old cases, some of which were approaching five years, and I divided them up. I had a training program for all the judges. I had separate training programs for the staff because the clerks had to do calendaring, calendar management. It has been a very successful program. It's not as successful now as it was then because the caseload is too high—they cut back the number of judges hearing direct calendar, and they cut back the staff support because of the budget crisis. So it's a very hard assignment. It always was a hard assignment but super interesting.

And after I left PJ—by the way, I also thought trial management was important, and so we had a managing trials program that I mandated for all the judges. We closed down half the courts. Every judge, whether you are handling trials or calendars or whatever, had to attend. And then the other half had to go, and that I think helped shorten our trials dramatically.

JOAN IRION: How was that received by the judges?

JUDITH MCCONNELL: Some of them were furious with me for having them take time away from their courts to learn new skills on how to handle their calendars. But part of what my thinking was [was] that one judge alone couldn't change the way the court did business. You had to get everybody to buy in to the changes because of the peremptory challenges.

00:29:58

If one judge is doing things in a more efficient fashion, they'll get challenged all the time because the lawyers like to run the case and they don't like having the judge run the case.

JOAN IRION: What do you—what do you think made the difference in your managing the judges at that time? You instituted a lot of change. Was it the fact that you are a woman? Was it your education? What was it that—you obviously were successful, you were twice elected.

Judith MCCONNELL: I always had an attitude that you get more done by working with people than by trying to order them around. And it was very difficult. You couldn't order the judges around anyway. And so my style was to be inclusive in the decision-making process, but you know, if there was something I wanted done, we worked to get that done, and I felt that we had a very collegial court. There were some who weren't happy. We were the first court in the state to adopt sunshine in the courts so that settlements of civil cases would not be secret unless there was good cause shown. Files would not be kept secret unless good cause was shown—that's now a state rule, but secret settlements were kind of the norm before we adopted our rule. So, we made a lot of changes that I think were very good changes.

JOAN IRION: You've mentioned a couple of times that you have a love for the juvenile court system and you loved your time in the juvenile court, why was that?

Judith MCCONNELL: Well, people who are in juvenile court—judges who serve in juvenile court—really can make a difference in a person's life, the juvenile's life, their family's lives, and you don't feel that way so often in a criminal court. Now, I know that drug court judges feel that they can make a difference and I'm very happy to hear that because, with adults, so much of the time in criminal cases all they want to know is how many years they're going to serve.

In juvenile court, you really did get children committing crimes, I mean, and they weren't so horrid. So, the feeling was, including with dependency cases, that you could do something to help these people and see good results. I have to say, the first week I was in juvenile court—I know this is not going to sound very judicial—I cried all the time because the cases were so awful. I really had no idea people did such horrible things to their own children or to any children, and those were the dependency cases.

And so it was a hard assignment, and my kids were little at that time, and I felt like I was carrying a social worker on my shoulder all the time as a parent because you second guess your own decisions as a parent when you serve in juvenile court. It's a very hard assignment. The calendars are very heavy but it's very rewarding.

And on Fridays we had an adoption calendar. And the adoption calendar made you feel so good, especially with kids who were considered not adoptable. And I remember one kid who was considered not adoptable and he had been placed with a foster mother who just adored him and took such good care of him and she adopted him. There wasn't a dry eye in the court when that adoption went through. It was very moving and that was a nice way to end a week, to do the adoptions.

JOAN IRION: Sometimes you have to make really tough calls, and you had to make a really tough call in a pretty prominent case in juvenile court, the Batey case—can you tell us about that?

Judith MCCONNELL: Well, the Batey case originally came to me when I was downtown. I wasn't in juvenile court. It was—I had a period of time when I was just a trial judge doing general trials and the PJ sent the case to me for trial on a contempt case.

And the family was just ripped apart. The mother was a Pentecostal, very religious person. And the father—they were divorced, obviously—the father had come out as gay and the mother decided she was not going to have the boy have anything to do with the father.

A prior judge had tried to get visitation implemented and couldn't, so the prior judge changed the custody and gave custody to the father.

00:35:03

On the mother's first visitation, she absconded with the boy and went into hiding for a couple of years, and she was finally found with her son in Colorado and the two of them were brought back to San Diego.

So, I was assigned the trial of the contempt case, so that was a quasi-criminal proceeding, and I was assigned an OSC [order to show cause] for a change of custody.

And, there was another case that was sort of trailing that had juvenile court ties. And so, I tried them. It was a nasty, hard-fought case and I found the mother in contempt—two counts of contempt. I gave her credit for time served. The father wasn't happy with that because he wanted her locked up forever.

And then, I had to figure out what to do with the boy. During the pending proceedings, he had been in a foster home. And so, my custody order in the end was to put him in a different foster home and allow mother and father visitation, but father got to visit first and mother only got as much visitation as the father got. I wanted her to support the father's visits. And that actually worked out really well.

And after a period of time, the boy decided—he was by then 13 or 14 years old—he wanted to live with his father. And so he moved in with his father and his father's partner. Well, I thought that was a happy ending and it was. The boy was very happy. He was in school, he had a girlfriend. The dad died of AIDS. The boy petitioned the court to have his father's partner appointed as guardian so that he could finish his school, and he had a job too.

Interestingly enough, the mother defaulted—it was a separate trial in my court and the mother failed to—didn't appear, didn't file any opposition, attacked me royally in the press. And so, I aborted custody, appointed him guardian. The boy was 17 at that time. So, he was guardian until the boy turned 18.

And, by the way, the boy has turned out very nicely as I understand it. I heard reports later on that he got married and had some kids. He became a police officer in the Midwest.

But I was vilified by the mother and her supporters. And I received death threats. In fact, when I got—I had a drawer full of death threats. I got on all sorts of really ugly mailing lists. And I think that case was a big factor when I was nominated for the district court. I think that was a big factor in the failure of my appointment to go through.

JOAN IRION: Justice Robert Thompson, the California Court of Appeal, wrote an article—he was in Los Angeles—he wrote an article in the legal press calling your decision courageous. And he said that lesser judges would have ducked that case as the judges did in his day. And the fact that you took the case and used your keen intellect and a liberal dose of street smarts to come to a very good ending marked your career. And he said that it defied good sense that that decision derailed your appointment to the federal court. Can you tell us what happened?

Judith MCCONNELL: Well, giving custody of a boy to a gay man was very controversial and the father was gay, living with a very fine man. In those days, it was considered taboo to be gay, still in those days, not that long ago. When was that? That was back in the eighties. And when I came up for federal court nomination, it was still considered taboo.

JOAN IRION: This was 1994, wasn't it?

00:39:54

Judith MCCONNELL: Correct, 1994. But I've always felt that you can't be a good judge if you're always looking over your shoulder at what people are going to say. You have to make your decision based on the evidence and the law. And if you can't do that, you don't belong on the bench.

I felt that very strongly in all kinds of cases, that if I couldn't face the public with my decision then I shouldn't be making those decisions. Somebody else should be doing it because that's what judges have to do. You have to make tough calls sometimes. And, I still feel that very strongly, I think.

And as it turns out, here I am at the Court of Appeal. What a perfect job I have. I'm very lucky to have this job. And so, in the end, it worked out well for me because here I am. I love this job.

JOAN IRION: Over the course of your career as a judge, you've handled a lot of cases. People go to the [Petco] ballpark and although you didn't put the ballpark there, your decision as a CEQA judge is responsible in some measure for the fact that that ballpark is sitting in San Diego today.

JUDITH MCCONNELL: Well, they started working on the ballpark without following CEQA. And so, I had a—actually, an organization filed a lawsuit to enjoin the city from doing infrastructure work to prepare for construction of the ballpark—and I enjoined it. And boy, did I get roasted by the sportscasters. I enjoined the construction.

And the Western Metals building—which everyone loves, it's in the outfield of Petco Park—is there because the parties settled it. The city—they didn't appeal my decision—the city entered into an agreement to preserve historic buildings, one of which is now part of the ballpark, and also to preserve other historic buildings in the neighborhood. So it's just a wonderful feel when you go down to the ballpark. The old warehouses are now commercial ventures or office spaces or part of the ballpark, and that really was because of the CEQA hearing that I had and the parties' negotiations resolved successfully.

One of the things people don't understand is that a lot of cases that are tried in the superior court are not appealed, they are successfully resolved. And I can think of dozens of cases that I had that were not appealed. I have one in mind, where I was hung in effigy, but it turned out that it was resolved and not appealed, and resolved successfully. So there are lots of times when you make a decision that people live with and move on.

JOAN IRION: I'd like to bring you back to when you were first appointed on the bench. The late 1970s, early 1980s, there weren't a lot of women on the bench at that time, were there?

JUDITH MCCONNELL: No. When I became a municipal court judge, Artie Henderson had been appointed by [then-Governor] Reagan to the superior court. And at some point, Brown appointed Elizabeth Zumwalt [Kutzner] to the superior court. So, I was the third woman on the superior court. On a municipal court, Judy Keep, who later became the first female district court judge, was already there, as was Janet Kintner. In fact, Judy Keep was designated my mentor judge when I became a muni court judge, which was wonderful for me because Judy was an old friend. And I had never even appeared in municipal court, much less handled criminal cases. So, I could ask her any dumb question I wanted and she would willingly answer.

And when I had my first trial, which was a traffic ticket, she sat with me on the bench and we heard the testimony, and then she turned to me and said, "Okay, you decide." You have to decide guilty or not guilty at the end of the traffic ticket. And you know, that's not an easy job to do, but you have to do it. That's what you get paid to do.

And so, I'm very lucky when I went on the municipal court that I wasn't the first woman, that I had Judy Keep to help me through that transition.

JOAN IRION: Did it really make any difference whether there were women judges or individuals of color on the bench then? If so, why?

00:45:05

JUDITH MCCONNELL: I feel very strongly that it makes a difference to have diversity on the bench, women and people of color. It affects the way the community perceives the court. I think it affects the decision-making process. I think it's women judges who have been instrumental in changing many of the laws that we work with.

Now in the olden days, the bad old days, in a rape trial, a jury was instructed to view a victim's testimony with doubt—you know, that it's not worthy of belief, not necessarily worthy of belief. And that was just—so, rape cases, they were often not prosecuted at all because it's one person's word against the other, and they didn't have DNA testing in those days, which has been very helpful. It was hard. Women had a tough time as witnesses, as victims. They had a tough time as lawyers coming into a courtroom. Putting women on the bench in family court, I think, made a big difference because women felt they could get a fair shake.

Early on, if you went into family court to get a child support order, the orders were very low. So, one of the things we worked on was getting guidelines set. Some states already had adopted child support guidelines. And California was a little slow in doing it but I remember testifying up in Sacramento before a legislative body that California should adopt child support guidelines. They were adopted. The Judicial Council did adopt them or the Legislature required that they be adopted. It has made a huge difference for families.

And in those days, the judges often thought, and I'm talking men judges, "The guy can't afford it. He'll lose his job if he has to pay child support. It's not fair to the guy. It will be too hard on him." But they never thought about how hard it was on the women and children who were trying to subsist on very small amounts of money. And I think that women judges made a difference there.

The educational programs for judges—we started educational programs to teach people about sex discrimination and how it makes a difference in decision-making, and the judges were kind of resentful at first. They sat there with their arms across their chests. But the first course for judges on sex discrimination and the law and judicial decision-making, does sex make a difference, was taught. We brought it to, actually, the National Association of Women Judges brought it to (00:48:04) CJER and it was a very successful program.

The teachers were—we picked teachers that we knew would help, that had a good style. Marilyn Patel was a muni court judge in Oakland and Mike Belache, I think, I can't

remember if it's muni or superior court, the two of them taught the course with Professor Norma Wikler from UC Santa Cruz, and I don't know if you could call it a success, but it worked. It was replicated several times. It was copied by the national and judicial college, and teaching judges how to avoid bias is the norm now, not the exception.

JOAN IRION: You felt strongly that women made a difference and could make a difference in California courts. And there's a wonderful story about you being at a cocktail party where the governor, I presume Jerry Brown at the time, was attending, and he said, "Well, Judge McConnell, I'd like to appoint women if I could only find qualified women." And that you raced across the ballroom, grabbed Patricia Cowett, and said to her, "Come, you've got to meet the governor." Told her she had to put her application in, that you would sponsor her and mentor her if she was appointed. Well, she was appointed and you did mentor her, and her story is not unique. Did you do that as a routine practice?

JUDITH MCCONNELL: I always have tried to encourage people that I thought would contribute to the diversity on the bench. I encouraged them to apply. And then, to help them be very good judges if I could do that.

00:50:00

I mean it's hard, learning to be a judge. So it's a different job altogether. It looks easy from the outside, but it's a tough job and so you want people that can handle that tough job, but you want diversity on the bench. It's important for the public to see that they will have a fair shake. If they go into the courtroom and if they see people that look like them, I think they'll feel better about going into the courtroom. And so, I've always tried to encourage young women and people of color to apply for the bench and we've seen some pretty significant changes in San Diego since the bad old days.

JOAN IRION: Describe those changes.

JUDITH MCCONNELL: Well, now we have the third woman who is on track to be a presiding judge of the San Diego Superior Court—that's taken a long time. We're still having trouble getting people into the highest management positions of the courts, although L.A. also had a woman, finally, become PJ. It's a slow, hard process, but about a third of the judges now are women, which is a big change from the olden days. There's still not enough Hispanics on the bench. California has a very large Hispanic population and we need to do more to increase the numbers of Hispanics on the bench.

JOAN IRION: Throughout your judicial career you've worked pretty consistently to make systemic improvements to California's judicial system. You twice served on the California Judicial Council, which is the policy-making body for the state. You served as a member of the Blue Ribbon Task Force on Jury System Improvement. You served on the Commission on the Future of the California Courts and the Advisory Commission on

Gender Bias in the Courts and the Commission on Impartial Courts. Other than the fact that you don't sleep, why did you do it all?

JUDITH MCCONNELL: Well, I like tinkering with things to try to make them better. Why are we here, if not to do the job and do it better if we can see an opportunity to make it better? First of all, the gender bias task force didn't start in California. The gender bias task force started in New Jersey by a judge who approached her chief justice and said, "We need to do something about bias in the courts." So they did the first gender bias study in New Jersey, and when they came out with their report, I took it and sent it to [Chief Justice] Rose Bird and said, "We need to do something like this."

JOAN IRION: Rose Bird was our Chief Justice—

JUDITH MCCONNELL: —our Chief Justice, and then I didn't hear from her and then New York did a gender bias task force and came out with a report and I got the report, and I sent it to Rose Bird. I said, "This is great. We need to do something about this." And I didn't hear from her, and then just before she left office, like literally a day or two before the end of her term as chief—after she had failed to get, win a retention election—she established a gender bias task force and she didn't put me on it even though I was the president at the time of the National Association of Women Judges.

[Chief Justice] Malcolm Lucas, to his credit, picked up the gender bias task force, fully supported it, appointed me to it, and supported the implementation of the report's recommendations. So that was very important work to me and I think made a big difference. And I think you can make lots of improvements in the system, and if you want to make them statewide, you need to participate in those kinds of commissions and committees.

JOAN IRION: Why did we need a gender bias task force in California if there had been one in New Jersey and one in New York?

JUDITH MCCONNELL: Exactly.

JOAN IRION: Why did you have to do it again in California?

JUDITH MCCONNELL: That is the question. Why did every state have to do it? Because the judges in California said, "Well, that's New Jersey, we're not anywhere like New Jersey. Or that's New York, we're not anywhere like New York," or in every state that had to go through this same process and say we're different. And the fact of the matter is, every state had a problem and they had to address it. Each state had to address it on their own. They had to persuade their judiciaries that there was a problem that needed to be addressed and that's what the task forces did. And I think in the end, there were over 30 states that had gender bias task forces. I think California was the third and, of course, the changes were impressive that we implemented.

00:55:24

But I also served on the Commission on the Future of the Courts, and part of that was envisioning a good outcome for the future. What's the worst possible thing that can happen? What's the best possible thing that can happen? And if you want the best outcome, what can we do to do that? And one of the things that we recommended—I chaired the civil law committee of the Futures Commission—was we pushed for a state funding of the courts. In those days, the courts were funded by the counties and some courts had very, very little funding. You could not get a courtroom built in some of these counties, they had literally a trailer as their only courtroom, and state funding brought many counties up so that they could have adequate justice systems in their counties.

It brought some of the poorer counties up. The richer counties were already doing very well, so they weren't brought down, but state funding has been very important. When I was PJ, we didn't have what we have, we had block grants. So each judge, we would get a block grant for each judge in addition to the county funding that we had, and it was a pretty lousy system. So I've been happy to see state funding.

JOAN IRION: How has that improved the quality of justice statewide?

JUDITH MCCONNELL: Well, for one thing, the local politicians are not in charge of the budget for the courts, it's the state Judicial Council. The Legislature allocates the money and the Judicial Council—the Legislature budgets the money with the governor—and then the Judicial Council allocates it, and they are working on allocating it fairly among the courts based on workload, and that's a big change that the courts' workload is taken into consideration when money is allocated. It was kind of a shock for some courts to have to deal with that because some courts' workloads did not justify the amount of money that they were previously getting.

JOAN IRION: That kind of a concern is transferred really over to your role as Administrative Presiding Judge of the Fourth District, is that correct?

JUDITH MCCONNELL: That's right. As PJ, Administrative PJ, of the Fourth District, one of my tasks is to equalize the workload among the judges, and in our court, the Fourth Appellate District, we have three divisions, one in San Diego with 10 justices, one in Riverside with 7, although it will soon be 8 justices, and one in Santa Ana with 8 justices.

When I started here, our court here in San Diego was doing a lot of cases from our Santa Ana division because they had gotten way backed up. Now, we're doing a lot of cases from our Riverside division because they have such a heavy criminal caseload, so all of the justices here, sitting here in San Diego, are doing cases from Division Two, Riverside.

JOAN IRION: How has that been received by the bar?

JUDITH MCCONNELL: The bar is happy to get their cases resolved. For a while, we were doing big civil cases as well. The civil bar was very happy to get their cases resolved, but I just decided to do only criminal cases, so that the civil litigants weren't burdened with the cost of having to have their lawyers come down to San Diego, because the criminal bar is headquartered here in San Diego. So it's not really a burden on them to come here.

JOAN IRION: The Fourth District has a caseload second only to the Second, is that correct?

JUDITH MCCONNELL: That's correct.

JOAN IRION: Okay.

JUDITH MCCONNELL: That's correct. The Second has the heaviest caseload and, of course, it's a big court, 32 judges, and ours is now 26 judges.

JOAN IRION: As administrative presiding judge, you meet on a regular basis with the presiding judges of the other appellate court districts and the chief judge, is that correct?

01:00:04

JUDITH MCCONNELL: I meet regularly with the administrative presiding justices of the six districts, meet with the Chief Justice, about quarterly, and we meet with the Judicial Council staff and we go over issues like budget and legislation and issues of importance to the court. And then here in the Fourth District, I meet regularly with the two other presiding justices and their management staff.

One of the things that I've worked very hard [at] is to make the rules of court more uniform throughout the district because it's the same criminal bar that handles every one of our courts. And we've had a measure of success in that regard. We went to electronic filing at more or less the same time with the same procedures implementing electronic filing. The other presiding justices had been very good to work with to improve the consistency of rules and practices.

There's one big practice that's different in our Second Division and that is in Riverside. They have the tentative opinions go out before oral argument is scheduled. We don't do that here in Division One nor do they do it in Division Three. But other than that, we have very consistent rules and procedures.

JOAN IRION: What do you see as some of the most vexing problems facing appellate courts today?

JUDITH MCCONNELL: Well, it's always a problem allocating resources. This is facing presiding justices because when a population shifts, the resources don't always shift with

the population. So that's one of the reasons we transfer cases, quite frankly. Recently we transferred a huge case from our court up to the Fifth District because it was more than our court could handle, frankly, with the heavy caseloads that we have.

All of the courts cooperate with each other, which is the—we're blessed in that regard. So, I think it's in making sure that the resources are adequate when the population changes or the workload changes, and that's—I'm not sure we're there yet, but it's something we're working on.

JOAN IRION: If you could look into a crystal ball, what do you see the issues being for the California courts as we go with the next 50 years?

JUDITH MCCONNELL: Well, I think it's very important that the public understand the role of the courts—and they don't, really. People will tell you when they're summoned for jury duty, they hate it. They say, "Oh! I've got a jury summons, I've got to go do jury duty." That's partly why we changed the whole jury selection process—the one day, one trial—was to make it less burdensome. People who have served on juries respect the court and respect the process, they actually do.

But people don't like the courts. Courts are anti-majoritarian—they make decisions that may not be popular. And I think we need to do a better job of educating the public about what the job of courts is. And when I say the public, I don't just mean the ordinary voters, but I mean our leaders in Sacramento and Washington need to have a better understanding of the important role that courts serve in our democracy. If we lose that, we're going to be in a lot of trouble. That's one of the reasons I'm working on the Chief's civic learning initiative. I'm very worried about the future of the judicial branch.

JOAN IRION: Tell us about what you're doing on the Chief's civic learning process?

JUDITH MCCONNELL: Well, I started working on this as a result of the Commission for Impartial Courts. I chair the Public Information and Education Task Force of that commission. And one of our recommendations was, we found that civic education was not good, that people were going out as adults, having gone through the educational system, not being informed as voters, not understanding how important it was to vote, not understanding the role of the three branches. They didn't understand democracy. They often don't appreciate democracy.

01:05:00

So our recommendation was that the judicial branch take a leadership role in improving civic education in California. So the Judicial Council adopted that recommendation. They set up a leadership group on civic education, but there was no money, it was a bad budget time and there was no money. But then our Chief Justice came into office in 2011 and she had two girls in public school and she wanted to do something

on civic education. And here I was, head of this leadership group, so she asked me to do a summit on civic education and we did. We got [U.S. Supreme Court Justice] Sandra Day O'Connor here. She appointed some really good people to work with me, Frank Damrell, (01:05:50) who was a district court judge at that time, and others—educators, professional educators—and we started working on a summit. And we developed also the Civic Learning Award to reward those schools that were doing a good job of educating their students.

And we worked with the Department of Education. At our summit—I mentioned that Sandra Day O'Connor spoke—but the Chief entered into an agreement with the State Superintendent [of Public Instruction] to establish a California Task Force on K-12 Civic Learning to study what the needs were. And we came out with a report in 2014 that we're now working on implementing, and we have made huge improvements. Civics wasn't really taught much in California. And if they taught civics, which they did do—seniors usually had to have a semester of civics, the second semester, where they've already lost interest in their high school education, they're already moving on—and the books talked only about bad decisions, the government books that they were using.

We have changed that in California. We have now, the Department of Education, the state Board of Education, has adopted a new framework for history, social sciences that includes civics for the first time. Civic learning is a priority. We also got it into English language arts standards so that they can—you can teach civics, have them read the Constitution. You're teaching them how to read sophisticated documents, [so] make them read the Constitution. Make them read some of our founding documents. They'll learn a lot about our government if they do that. We even think you can do it in science and math, but that's going to be a little harder challenge—but for sure, we needed to have civics taught as part of history, social sciences, and it needs to start in kindergarten and go all the way through.

JOAN IRION: Have there been those that have said to you, you're judges, you don't need to be doing education?

JUDITH MCCONNELL: No, actually, no. I think it's part of our job to educate the public. We need to educate the public about the judiciary. We need to educate them about the decision-making process, and the fact in the Court of Appeal all of our decisions are in writing. If they want to know what our decisions are, they can look them up pretty easily. I felt as a trial judge that it was very important that the media know what I was deciding and why, so I often did written decisions and had a stack of them available for reporters on controversial cases. I think that judges have a big role in explaining what they do and why they do it, and the more we do that, the better support we'll get from the public that we serve.

JOAN IRION: You talked a bit about facilitating public understanding of the judiciary's decisions by working with the press. Can you talk a little bit more about that?

JUDITH MCCONNELL: Well, I'm the daughter of a newspaperman. I grew up—my first job was as the first female copyboy at the *Pasadena Star News*. And I have it in my veins. And my dad always told me that, "Now, if the press calls, take their call." We can't talk to the press of course about our cases or our decisions, but we can talk to them about our process. At one point, a few years ago, I actually put on a program here in San Diego for all of the press, TV and print, and we brought [California Supreme Court Justice] Carol Corrigan (01:09:53) down to talk about the Supreme Court. We talked about the Court of Appeals. We had somebody talk about the superior court.

01:10:00

I talked about the Commission on Judicial Performance. It was an educational forum to educate them about the branch, and we gave them a free lunch, and I thought that was a really good thing for the court to do, to provide education to the people who were sending out the news. Now the news has changed so dramatically. It's not just the *L.A. Times* or the *New York Times* or the *Washington Post*. It's all these blogs or it's social media, and so educating the public requires us to use social media and the Judicial Council is doing that. And in fact our Power of Democracy, which is our Civic Learning steering committee, has a Twitter account, a Facebook account. I don't do Facebook, but a lot of people do and so it's important that we use all of the modern tools that are available to educate the public about what we're doing and why we're doing it, making the decisions we make.

JOAN IRION: You talked about telling the press about the Commission on Judicial Performance. You served on the Commission on Judicial Performance from 2005 through 2012 and was the chair of the commission. What is that commission and why is it important to the judiciary and to California?

JUDITH MCCONNELL: The judicial members of the Commission on Judicial Performance are elected by the Supreme Court. I can't remember what the committee was, it was some committee having to do with ethics issues, ethics issues for presiding judges. And so one of our local PJs was chair of that, and I was vice-chair. I think I was already on the Court of Appeal. And we met with the Commission on Judicial Performance to tell them what our complaints were, our grievances. I must say that when I finished that meeting I was soaking wet—I was so nervous about meeting with the Commission on Judicial Performance. And then I got a call from the Chief's principal attorney asking me if I would be willing to take on an appointment to, or election to, the commission and I said, "I need to think about it."

So I called Vance Raye, who's the presiding justice of the Third District—he said, "Oh," he said, "It's a lot of reading, but you won't have a problem doing it in short order." Well, so I accepted the appointment and there are only three—three out of the eleven members of the commission are judges, two are trial and one appellate—and it is a huge amount of work.

The public members do look to the judicial members for guidance on how calendars are handled. And so the judicial members have an especially important role on the CJP. I chaired it for three years—we made some changes in the process. One of the changes was spearheaded by [Judge] Fred Horn, who got the Chief Justice, Ron George, to establish the California Judicial Ethics Advisory Committee to issue formal, written opinions and that committee is now up and running and doing a fantastic job. And my big accomplishment was to get the decisions of the CJP published in the *Official Reports*, because until then they were on a CJP website or they were written up in the newspaper, but it was not any formal publication. And the Chief Justice agreed to that and so now all of the opinions in formal proceedings of the CJP are published in the official records.

But being on the CJP was a huge amount of work. I mean they have like seven meetings a year and about 40 hours of reading for each, it seems for every meeting—oh, I'm exaggerating, but it was a lot of work and I felt I had to read every page because I was the only appellate judge on the commission and I couldn't recommend or vote on something if I didn't know exactly what it was all about, and the judge's career (01:14:48) rests on that. The CJP is important, not just to—it's important to the judges because it gives the public assurance that there's a mechanism for reviewing behavior that may or may not be unethical.

01:15:05

So for judges who are in family court, for example—often they deal with very troubled people—and family court people complain, and the commission has an opportunity to look and say, "Yes there was a problem, or no there wasn't"—and I often felt that it was a big shame that they don't have court reporters anymore in all family law proceedings. But actually the biggest source of complaints on the commission was from criminal defendants, people who had been convicted of crimes and were in prison. They have a lot of time on their hands and so they file a lot of complaints with the commission. Some of them were well-founded.

But the commission had a very important role and we did a lot of education. As commission members, we spoke at all kinds of judicial educational programs at the State Bar to let the bar know what their role was, because there are two State Bar members who are members of the commission as well, and I think it's one of the best institutions in the country. I'm familiar with how some of the other judicial disciplinary bodies operate, and ours is the top and is the model for other states.

JOAN IRION: You have been described—when someone looks back over your career both as a lawyer and as a judge—and someone has said that you improved the treatment of women under the law and in the law, that you were a relentless advocate for the rights of women, a champion for gender equality and diversity in the judiciary, that you were a distinguished judicial leader who was dedicated to achieving fairness and recognition for women attorneys, jurists, victims, and staff in the judicial system, and that you're an ardent

supporter of an independent judiciary. Of all the things that you have done, what are you most proud of?

JUDITH MCCONNELL: Well, I think we have a better court today, now that we are a more diverse court. For one thing, judges aren't working in a vacuum. They work with their colleagues, they learn from their colleagues. If you have people with diverse backgrounds on the bench, they're going to learn from each other—the appellate court especially so, because all of our decisions are group decisions, that was a big shock to me when I went on the Court of Appeal, having been on the trial court for so many years where you just make all the decisions and then you leave it up to the Court of Appeal to straighten up whatever mess you make.

I think we are a much better court today than we were when I started. I thought the judges that I appeared in front of were terrific, but I will tell you, they were all white males. And Earl Gilliam was a judge—I never had the opportunity to appear in front of him—but he was African American, but that was the exception; there were very few and he was treated terribly by his bench. So I think we've made some big improvements in the courts by just—I regret that there is still such a lack of understanding of the importance of a fair and impartial judiciary in our legislatures in general, and in our other civic leaders. I think they really need to understand what a treasure a fair and impartial judicial branch is, because if we don't have that, we're going to end up like some of these dictators that we see in other countries.

JOAN IRION: Justice McConnell, thank you.

JUDITH MCCONNELL: Thank you. I appreciate you doing this, Joan.

01:19:15