Patti Kitching: Justice Patti Kitching, K-I-T-C-H-I-N-G, Associate Justice of the Second District Court of Appeal.

David Knight: Thank you.

Margaret Grignon: Margaret Grignon, Retired Associate Justice of the Second District Court of Appeal.

David Knight: And we are ready to go.

Patti Kitching: Good morning, Justice Grignon.

Margaret Grignon: Good morning.

Patti Kitching: We are here to do an oral history of the Court of Appeal. You were one of the esteemed members of this court from 1991 to 2004, when you retired, serving 14 years on the court. We're going to go through some of your history and your experiences on the Court of Appeal and your experiences after you left the Court of Appeal.

So, Justice Grignon, where were you born?

Margaret Grignon: I was born in Plainfield, New Jersey, in 1950.

Patti Kitching: Did you stay there for your childhood?

Margaret Grignon: No, we stayed there until I was nine months old, and then my family moved to California, and I grew up in the Riverside area.

Patti Kitching: Why did your family move to California?

Margaret Grignon: My father was from California originally, and it was my mother that lived in New Jersey; and so I think they were just returning to my father's home.

Patti Kitching: And Riverside was the place they chose?

Margaret Grignon: They did, and actually I don't have any reason. I don't know why they ended up in Riverside. My dad was born in Taft, and at the time I think my grandfather was living in the Palm Springs area. So maybe that had something to do with it.

Patti Kitching: Did you go to grade school in Riverside?

Margaret Grignon: I did. I went to a Catholic elementary school, Saint Catherine's, and then in ninth grade moved to Matthew Gage Junior High School, and followed that with high school at Riverside Polytechnic.

Patti Kitching: You had brothers and sisters going through all of the schools with you, right?

Margaret Grignon: I did. There were five of us Morrows all together.

Patti Kitching: Were you the oldest?

Margaret Grignon: I was the oldest.

Patti Kitching: Did everyone compare all the rest of the children to Margaret Morrow who had come through the schools?

Margaret Grignon: Unfortunately, my brothers and sisters complained mildly about that. *[laughing]*

Patti Kitching: So then what did you do after you graduated from high school?

Margaret Grignon: Well, I decided that I wanted to go to Stanford University, and so that was the only college that I applied to. Unfortunately, Stanford didn't accept me, so I was left at that point with attending the junior college in our town, Riverside City College, which I attended for a year. Then I transferred to UC Riverside, which I attended for a year, and then transferred to UCLA, where I graduated.

Patti Kitching: And now you're a Bruin?

Margaret Grignon: And now I'm a Bruin.

Patti Kitching: What was your major at UCLA?

Margaret Grignon: I was a political science major.

Patti Kitching: Why were you a political science major?

Margaret Grignon: Well, at the time I thought it would be very interesting to grow up to be an ambassador, and so I thought if I took a political science major that I would be able to do that, not really focusing on the realities of life. *[laughing]*

Patti Kitching: But you did very well. You graduated cum laude from UCLA, is that right?

Margaret Grignon: Yes, in 1972.

Patti Kitching: Then you got married, is that right, in 1972 also?

Margaret Grignon: Yes, I got married in September of 1972, and at that point I had been accepted to UCLA Law School and was to start there. My husband had attempted to be admitted to a California medical school and had not been accepted at the time; the competition to get into the medical school was pretty severe.

So he ended up going to a medical school at the University of Zurich, Switzerland, and we decided to get married and go to Switzerland together and put off my law school career for a little bit.

Patti Kitching: But you actually attended some law school classes at Switzerland, is that right?

Margaret Grignon: Yes, I did. I took law school classes and some international law classes at the University of Zurich, Switzerland.

Patti Kitching: And were those taught in German or English?

Margaret Grignon: They were for the most part taught in German. We had one economics class that had a visiting professor from the University of Chicago and that, fortunately, was taught in English—although the economics class was so hard it might as well have been in Greek. *[laughing]*

But yes, mostly in German. And I had studied, fortunately, German in high school and one year in college, so I had a pretty good familiarity with it, although certainly not fluent; but by the time that we left, I was fairly fluent.

Patti Kitching: Wow. That was quite an accomplishment. And your husband was in med school at the University of Zurich at the same time?

Margaret Grignon: Yes.

Patti Kitching: Did he graduate from the University of Zurich, or did he transfer back to the United States?

(00:05:03)

Margaret Grignon: He completed two years and then he took the medical school exam that all American medical students take at the end of two years. And he scored in the top 10 percent and was accepted in medical schools across the country, and so came back and was accepted at SC Medical School and finished his medical school and graduated from USC Medical School.

Patti Kitching: So then when you came back, you decided that you wanted to go to law school?

Margaret Grignon: I did. We came back in August, and I had not applied to any law schools. And so the first thing I did was go to UCLA and say, "I'm here, can I start?" And they said, "Well, you can start, but you have to wait a year." So I went to Loyola Law School, to whom I had never applied, and said, "I'd like to start now." And they said, "Okay," and so I started at Loyola.

Patti Kitching: And they're lucky enough now to have you as their alum. Why did you then decide to become a lawyer when you decided you were not going to be an ambassador? What about law interested you?

Margaret Grignon: Well, to be honest with you, I'm not sure. I think about that sometimes, and I think it was sort of a default position. I had a political science major. I probably was not going to go into the foreign services, the way things were shaping up. I did not want to be a professor. So I didn't know what else you did with a political science degree other than go to law school.

So I took the LSAT exam and did really well. And it was very fortuitous; it turned out to be something that I was very good at and enjoyed tremendously. But I had no role models. I didn't know any lawyers. I didn't know anyone going to law school, and it was really accidental, I think.

Patti Kitching: You enjoyed law school?

Margaret Grignon: I loved it.

Patti Kitching: What did you like about it?

Margaret Grignon: I guess I just liked the analytical process—the process of taking a whole bunch of unrelated facts and trying to bring some order out of that chaos, and learn the rules, and come up with an answer.

Patti Kitching: What courses did you particularly enjoy, do you remember, or any professors at Loyola?

Margaret Grignon: In general I liked all of my classes, but I became really fascinated with the income-tax class that I took in my second year and decided that that was an area that I wanted to pursue.

Patti Kitching: Do you remember who taught that class?

Margaret Grignon: I remember the professor, but I don't remember his name.

Patti Kitching: How many women were in your law school class?

Margaret Grignon: I'm not positive, but my memory is that my year may have been one of the first years where the advantages of Title VII were coming into play, and so there was a fairly large percentage. It may have been a third, a fairly large percentage of women.

Patti Kitching: Okay. And where did you graduate in your class at Loyola?

Margaret Grignon: I graduated first in my class.

Patti Kitching: You were summa cum laude, is that right?

Margaret Grignon: Yes.

Patti Kitching: And you were on the *Law Review*?

Margaret Grignon: Yes, I was on the *Law Review*, although I was not an editor on the *Law Review;* I decided not to do that.

Patti Kitching: Did you write an article?

Margaret Grignon: I did. I wrote an article having something to do with the expungement of felony convictions. *[laughing]*

Patti Kitching: All right, and you received some awards at graduation? Was that for being in the top of the class?

Margaret Grignon: Yes, I received some awards for being at the top of the class; and then some of the awards you get for individual classes, I received some of those also.

Patti Kitching: So it was your income-tax class that you liked the best. How about con law—did you like that?

Margaret Grignon: I did. I liked con law a lot, and that was . . . you probably remember; was it J. Rex Dibble, R. Rex Dibble, Professor Dibble? and I actually ended up getting the Rex Dibble Award for Constitutional Law in law school.

Patti Kitching: So then after you graduated from law school you came to the Court of Appeal, didn't you?

Margaret Grignon: I did. I was accepted by Justice Robert Thompson as a one-year law clerk. He was one of the last justices to have rotating law clerks at the Court of Appeal, and I worked for him for a year. Not quite a year, actually; it ended up that I became pregnant with my daughter and left probably at the end of 10 months.

Patti Kitching: You worked with someone else who is presently on the Court of Appeal, didn't you?

Margaret Grignon: Actually, I didn't work with her, Miriam Vogel; she was Justice Thompson's law clerk one or two years before me. So we succeeded each other.

(00:10:01)

Patti Kitching: Do you remember how many justices were in Los Angeles at that time?

Margaret Grignon: It would have been the same number now minus four, I think. So we now have 32. It would have been probably about 28.

Patti Kitching: All right, and do you remember how many women were on the court?

Margaret Grignon: I remember Justice Lillie and I remember Justice Klein, Justice Spencer, and Justice Woods. So I would guess four.

Patti Kitching: Four, and did you work with Mildred Lillie?

Margaret Grignon: Yes, she was in the same division as Justice Thompson. She was in Division One at the time. I don't know if you remember, but later when they started—maybe there weren't that many justices—when they started Division Seven, they moved Justice Lillie over to Division Seven to be the presiding justice.

Patti Kitching: So who was in the division while you were there—Justice Lillie, Justice Thompson?

Margaret Grignon: Thax Hanson and Parker Wood.

Patti Kitching: What kind of training did they have for you when you came in as a law clerk?

Margaret Grignon: There was no formal training of any kind. Justice Thompson was a tremendous teacher though. He would have me work on cases and then would come into my office and tell me all the things that I did wrong, and we would move on from there. I really owe whatever writing skills I have to his very thoughtful teaching of me during that period of time. He taught me to write clearly and coherently, and I had taken those skills with me from that point forward.

Patti Kitching: You've probably taught a lot of other people those same skills?

Margaret Grignon: Yes.

Patti Kitching: So you did that for a year, and then you left when you got pregnant, but then you went to work for O'Melveny & Myers; was that from 1978 to 1981?

Margaret Grignon: Yes, I had actually been accepted to work at O'Melveny prior to the clerkship, and so they hired me with the understanding that I would do the one-year clerkship and then come to work at O'Melveny. And interestingly, Justice Thompson, prior to be being appointed to the bench, had been a tax attorney, and so my interest in tax law was sort of buttressed by his enthusiasm for it also.

Patti Kitching: Well, that was a coincidence that you would work with someone who was also interested in tax. Did you do any tax cases for Justice Thompson, going back to the Court of Appeal?

Margaret Grignon: Not that I recall.

Patti Kitching: Was it the same mix of cases, criminal versus civil?

Margaret Grignon: It was, I think; I'm trying to remember. I don't think we had a central staff at that point. We certainly had writs attorneys, but in any event we did both criminal and civil cases in chambers and it was probably about the same mix, I would say.

Patti Kitching: So when you were at O'Melveny & Myers, what kind of work did you do there?

Margaret Grignon: When I first started at O'Melveny, they had a practice of having their new associates work in four different departments over the first year to decide what department you wanted to join.

So when I got there I said, "Well I don't really want to do that," and they said, "Well, everyone does that." And I said, "But I really would just like to go to the tax department, if that's okay with you." And so

they finally said, "Okay," and I started in the tax department and they were happy with me and I was happy with them, and so I stayed.

Patti Kitching: What kind of tax cases did you do?

Margaret Grignon: For the most part corporate tax cases; a lot of corporate reorganization work, some tax-free municipal bond work, and fortunately some ERISA work, and actually a fair amount of state-tax work also. We had a very active state-tax practice.

Patti Kitching: Do you remember how many women were in the firm at that time?

Margaret Grignon: No, I have no memory of that. I would guess that there were very few—a handful, I would say.

Patti Kitching: Excuse me, I need a little water. *[Brief interruption]*

David Knight: All right, we're ready to go.

Patti Kitching: So, you did tax cases at O'Melveny & Myers. And did you remember, there were any women partners at that time?

(00:15:04)

Margaret Grignon: I'm certain there were women partners. In fact, I have a memory of one in the corporate department and I'm certain there were more than that, but they were small in number. The incoming associates, I think, probably reflected the law schools and were at the 25 percent to one-third range, I would guess.

Patti Kitching: So you were entering law at a time when there were big changes going on in the profession with regard to women?

Margaret Grignon: Yes.

Patti Kitching: So then you left O'Melveny and went to work for Gray, Cary. Did you move to do that?

Margaret Grignon: Yes, actually at O'Melveny I first started in the downtown office and then O'Melveny decided to open up a Newport Beach Office. So I and seven other lawyers went to the Newport Beach office to open that office, and worked there for a year and a half.

Then Jim, my husband, was finished with his dermatology residency and was looking for a place to set up his practice; and at the same time one of the O'Melveny associates had been asked to go down to San Diego to start up a tax department, to head up a tax department, and so he had asked me to go with him.

So it worked out that Jim opened his medical practice in San Diego and we moved to San Diego; and I started at Gray, Cary then, in their tax department.

Patti Kitching: Okay, and what kind of tax work did you do there?

Margaret Grignon: It was a lot of the same, corporate-reorganization type work, but they had a very active tax-shelter practice also, so I got to work on windmill farms and other kinds of interesting tax-shelter work.

Patti Kitching: So you were still happy doing tax?

Margaret Grignon: I was still happy doing tax.

Patti Kitching: All right, and then you left Gray, Cary, and then what did you do?

Margaret Grignon: Actually, right before I started at Gray, Cary, I had my second child, Christopher. And so we were in San Diego and I was working at Gray, Cary, and we had the two children and my husband had his practice; and for various reasons that I won't go into, the whole situation wasn't really working. *[laughing]*

So we decided to make a complete change in our lives and moved up to Lancaster in the Antelope Valley, where my husband went into practice with his father, so there was an established practice for him to join. And I practiced by myself out of my home for a while and did some work with one of my friends in Beverly Hills who had a law firm in Beverly Hills.

Patti Kitching: When you were working for yourself, were you just doing anything that, so they say, "comes to the door?"

Margaret Grignon: To some extent, although there was a lot of tax work that I was doing, particularly with my friend in Beverly Hills; a lot of tax consultation kinds of work. But other than that, yes, it was anything that came through the door—starting up a carwash and those kinds of things.

Patti Kitching: Well, that would be good training, to have a very general background like that. So then you did that for about a year, and then what happened?

Margaret Grignon: We were in Lancaster and I received a call from one of my friends saying that they were looking for a third municipal judge in Lancaster and would I be interested. And my initial response was, "No, thank you, I'm not a litigator, I have no idea what they do in municipal court, and there surely must be someone that can do that." And so that was the end of it.

And then six months later I received a second phone call saying that the Governor had been looking and hadn't found anyone that he was happy with, and would I consider putting my application in. And so I thought about it a little more seriously at that point and put my application in, and the Governor appointed me. And that's how my judicial career started.

Patti Kitching: Where was your first assignment?

Margaret Grignon: I sat in Lancaster in a portable building out in the parking lot and heard traffic tickets and misdemeanors and unlawful detainer actions and all those kinds of municipal court cases.

Patti Kitching: How many judges were there?

Margaret Grignon: There were three municipal court judges, and in our courthouse we also had two superior court commissioners.

Patti Kitching: Did you become the presiding judge out there?

Margaret Grignon: Yes; although it was a rotating position, so when it was my turn, I became the presiding judge.

Patti Kitching: What did you like about that assignment?

(00:19:53)

Margaret Grignon: I loved learning how to deal with people. Before, I had been involved in situations where my skill in thinking, analyzing, and dealing with problems on paper were very important; and in this case, although of course you still need to have those skills, it was more important to be able to deal with people and handle huge volumes. And I just developed a whole different set of skills that I had not had before.

Patti Kitching: Did you know that you were going to be able to be a judge and make decisions that affect people's lives?

Margaret Grignon: I guess it never occurred to me that I would not be able to; I just assumed that I could do it. It is of course very challenging, especially as a municipal court judge; but also as a superior court judge, you have to make very important decisions with not as much information as you would like and with not as much time as you would like.

So I worked very hard to expand the hours so that I could get more information and have more time; but even with that you have to learn to just make decisions.

Patti Kitching: So you were sitting on the bench frequently after court hours out in Lancaster, is that right?

Margaret Grignon: Actually, the whole Lancaster courthouse was a very hardworking courthouse. And I took the bench at 8:30 every morning, usually worked through lunch on matters that did not have to be reported, and then stayed on the bench until 6:30 or 7:00 at night.

So there was a tremendous amount of work, and fortunately the other judges worked as hard so that I did not have a revolt of the employees on my hand.

Patti Kitching: How old were your children at this time?

Margaret Grignon: Christopher was two and Ann was five.

Patti Kitching: So then you went home and cooked dinner and took care of children.

Margaret Grignon: Actually, I tried to make dinner in a crock pot in the morning before I left for work; and my children have come to hate the very word of "crock pot."

Patti Kitching: Which Governor appointed you to that court?

Margaret Grignon: Governor Deukmejian appointed me to the municipal court.

Patti Kitching: All right. And so the most challenging thing about that assignment was to get all the work done and be able to handle all those cases?

Margaret Grignon: Huge volume. You remember for municipal court, it would seem sometimes that it was an unending flow of people. You would keep handling cases and your courtroom would have just as many people in it as before. I felt very pressured to get the work done and to try and work with the people of the community to get their cases handled on an expeditious basis.

Patti Kitching: When you work in a small court like that, you do become known throughout the community, is that right?

Margaret Grignon: That's right. I frequently attended local functions, made many speeches, was in parades, and my cases frequently were in the local newspaper every day.

Patti Kitching: How long did you do that?

Margaret Grignon: Three years.

Patti Kitching: What made you decide to put in your application to be a superior court judge?

Margaret Grignon: Well, I always knew that I wanted to do that. Although I'm very grateful that I started out as a municipal court judge, I don't think I would have wanted to be a municipal court judge for my entire career.

So when I had enough time in—I was only a lawyer for seven years when I was appointed to the municipal court bench and you have to be a lawyer or a judge for 10 years to be on a superior court bench—and so when that time was approaching, I put my application in.

The other thing was that they were looking for a superior court judge in the Lancaster court that was homegrown, and so they were really looking for a Lancaster person; and I fit the bill in that regard.

Patti Kitching: Which Governor appointed you to that court?

Margaret Grignon: Again, Governor Deukmejian.

Patti Kitching: All right. And what kind of cases did you do on the superior court?

Margaret Grignon: Well, I was the only superior court judge. There were two commissioners, but I did everything; although, because it has priority, I did more criminal than anything else. But criminal, civil, probate, family law—everything except dependency. We didn't have any dependency in the Antelope Valley courthouse.

Patti Kitching: And that court was just as busy as the municipal court had been?

Margaret Grignon: Yes, it was very busy. We had, I think 1,000 felony filings a year and tried 20 or 30 cases a year in just my court; and that, together with all the other work that was going on, it was very busy.

Patti Kitching: So you were getting a lot of litigation experience?

Margaret Grignon: Yes.

Patti Kitching: You actually handled a death penalty case, did you not?

(00:24:59)

Margaret Grignon: Yes, I handled one death penalty case where the parties waived jury, and so I tried it as a court trial.

Patti Kitching: And that would be unusual in a death penalty case, wouldn't it?

Margaret Grignon: Yes, it was actually, not unprecedented, but there were very few examples of that in California's history. And in fact when the attorneys first came to me and told me that they were going to waive jury, I said, "I'm certain that that is not allowed and that you must have to have a jury"; and did my research and decided that the defendant could waive jury. And so they did, and we proceeded.

Patti Kitching: How long did that trial last?

Margaret Grignon: The trial itself was about two weeks, and then I took the case under submission for a couple of days.

Patti Kitching: What was it like, just being involved in a death penalty case?

Margaret Grignon: The guilt phase was just like any other trial, and the penalty phase, the evidence, is not substantially different than a regular criminal case. The burden of the decision is tremendous, and that was the part that was really different about that decisionmaking process.

Patti Kitching: All right. And what did you like generally about being on the superior court?

Margaret Grignon: Well, I liked the fact that the cases were both criminal and civil, were more serious, so they had more significant issues that were involved, especially the civil work. I loved the law and motion and getting to work on some meaty civil issues which you don't get too much of in municipal court.

Patti Kitching: What was the most challenging thing being on that court?

Margaret Grignon: Once again, I think it was probably volume; just trying to get the work done and keep the case flow going with limited resources, no research attorneys, a little library, and only one judge—that was probably the biggest challenge.

Patti Kitching: At this point, you could go on Westlaw and do research?

Margaret Grignon: No, we also didn't have that. *[laughing]* Initially, I didn't have access to Westlaw, but when I explained to the superior court that I had to have something—a library or Westlaw or something—ultimately they gave me access to Westlaw, and that helped a lot.

Patti Kitching: What kind of library did they have?

Margaret Grignon: I'm trying to remember what kind of library we had. We had some of the Cals and the Cal.Apps; I don't know how far back it went or how extensive it was, but very limited.

Patti Kitching: They gave you a subscription to the *Daily Journal* though?

Margaret Grignon: The *Daily Journal* and the *Met News,* I think—okay, good, so you could keep up—and we got the advance sheets. I got in a habit in those courts of reading the advance sheets. And so I read the advance sheets. They don't come out quite weekly, but on a weekly or semiweekly basis, and that helped a lot in terms of keeping up.

Patti Kitching: Did you have local lawyers? You also had lawyers, I assume, coming in from the big cities like Los Angeles or surrounding areas?

Margaret Grignon: That's right. We called it "down below." We had attorneys coming from down below because the Antelope Valley is in the high desert; and so there were our lawyers, and then there were the lawyers from down below.

Patti Kitching: How did those lawyers act when they came into a smaller court, assuming they had been practicing in a big court of Los Angeles?

Margaret Grignon: For the most part I thought that they acted just like our lawyers. There wasn't any substantial difference.

Patti Kitching: All right. And then what made you decide too that you wanted to be on the Court of Appeal?

Margaret Grignon: I think from my academic background and my prior legal practice that it seemed to me that my skills would be best suited for the appellate court. Although I enjoyed the trial court, I think I'm better suited for the more contemplative judicial world that we live in at the Court of Appeal. And so it was attractive to me, and I put my application in and was fortunate enough to be appointed again by Governor Deukmejian.

Patti Kitching: Did you know any Court of Appeal justices at that time?

(00:30:02)

Margaret Grignon: Well, I knew Justice Armand Arabian, and Paul Turner, who actually was a Lancaster boy—he grew up in Lancaster. I'm trying to think if I knew anyone else. I knew Joan Klein, probably from the Women Lawyers and Judges, and I don't think I knew any other Court of Appeal justices—maybe Bob Devich, and I knew him from the Italian-American Association.

Patti Kitching: So you had come into town to attend some of those meetings?

Margaret Grignon: Yes.

Patti Kitching: Did you also come into town when you were on the superior court for any other courtwide meetings so that you could meet other people on the superior court?

Margaret Grignon: No. I should have, but I never had the time, and I felt that it was more important to do the work where I was. And it's so far away; it's an hour and a half one way to get from Lancaster to downtown. And so I had very few meetings with the other people on the superior court. Some with the San Fernando court, because actually the Lancaster court at that time was part of the San Fernando district, so I had some meetings with the San Fernando judges. But other than that very few people.

Patti Kitching: Did they send any overflow cases from either Los Angeles or San Fernando to you?

Margaret Grignon: No, actually it went the other way. My cases had to be sent to San Fernando and were tried in San Fernando. All of the cases could not be tried in the Antelope Valley.

Patti Kitching: So you were very young all of these times when you are appointed to the municipal court, superior court, and the Court of Appeal. How old were you when you came to the Court of Appeal?

Margaret Grignon: Forty.

Patti Kitching: Forty. Were you the one of the youngest Court of Appeal justices?

Margaret Grignon: Yes, although probably not the youngest. At the time, I was the youngest on the Court of Appeal; and actually, what was really amazing, I remained the youngest for probably 10-plus years while I was here. But ultimately there were people younger than me on the court when I left.

Patti Kitching: We're going to come back to the Court of Appeal, but we're just going to finish the little biography here. You retired from the Court of Appeal in 2004, is that right?

Margaret Grignon: At the end of 2004, yes.

Patti Kitching: Right, and you went to work for Reed Smith?

Margaret Grignon: Yes.

Patti Kitching: And that's where you are now?

Margaret Grignon: Yes, I'm an appellate lawyer at Reed Smith.

Patti Kitching: All right, and are you still doing mediation and arbitration as well?

Margaret Grignon: I do. Through ARC I do mediations, arbitrations, discovery referee, that kind of work.

Patti Kitching: All right. We're going to talk about some of the personal things in your life. You've mentioned you have two children, Ann Marie and Christopher, and are either of them lawyers?

Margaret Grignon: Yes, Anne Marie is a lawyer. She went to Boston College Law School and worked for a period of time at the superior court as a research attorney, and now she's an attorney with a primarily admiralty law firm in Long Beach.

Patti Kitching: She went to Boston College, and they're number two in the football ratings or something?

Margaret Grignon: They are; she's very happy about that. *[laughing]*

Patti Kitching: I root for them because it's Boston College and Anne went there.

Margaret Grignon: Actually, it's been a good week for Boston, the Red Sox; and the Boston College is number two.

Patti Kitching: Christopher, what does he do?

Margaret Grignon: Christopher went to Humboldt State and graduated with a degree in business administration and now is a district manager for an insurance broker company. His district is in the Orange County area, so he and his wife just bought a house in Yorba Linda.

Patti Kitching: Both of your children have inherited your great work ethic?

Margaret Grignon: Yes, they have.

Patti Kitching: What kinds of things do you like to do for fun? What are your hobbies?

Margaret Grignon: Primarily I like to run when I can, although that has been less in the last few years. I still water ski, although not as well or frequently as I used to; and snow skiing on occasion. And mostly I think I love to read.

Patti Kitching: Your husband, Jim, is a big water skier, is he not?

Margaret Grignon: Yes, he is. We have a little cottage on a private water-ski lake in Bakersfield, and he's a very accomplished slalom water skier. He's competed all the way up to the national championship level.

(00:34:59)

Patti Kitching: Tell me about your reading. What kinds of things do you like to read?

Margaret Grignon: I'm a pretty eclectic reader. I read lots of different things, but I think my favorite fiction work is 19th-century British literature: Jane Austen, Anthony Trollope, George Eliot, and those kinds of books.

Patti Kitching: Why is that?

Margaret Grignon: Well, I like that the novels are based on individuals and personalities and people's real lives and issues that real people have to deal with, and I just find that time period to be very interesting.

Patti Kitching: You've also read widely in the area of science fiction, haven't you?

Margaret Grignon: Yes, I have. I'm a pretty avid science-fiction reader. I'm a big fan of Arthur Clarke and Isaac Asimov for classic science-fiction writers. And I also enjoy nonfiction; and you and I share an enjoyment of Thomas Friedman, for example, and his books on the Mid-east and globalization.

Patti Kitching: You have a list, and I think you've purchased—isn't this right?—all the Nobel Prize–winning books?

Margaret Grignon: The Pulitzer Prize–winning books, and I have all of them and have read, oh, probably 80 percent of them.

Patti Kitching: How does that work? Do you just start at the beginning and just go one by one, or do you look at the whole group of them and say, "Oh, that one looks interesting."

Margaret Grignon: I bought them over time, and I got the list so I could see what books there were, and as I found the books, over time I read them. And so there is really no rhyme or reason to my reading; it's just as I got them and they looked interesting.

Patti Kitching: Do you remember which ones have enthralled you?

Margaret Grignon: All of them. No, not all of them; for example, I really don't like Faulkner, and he won the Pulitzer Prize twice. I like Hemingway. I'm trying to remember—who wrote *Hawaii*?

Patti Kitching: Michener.

Margaret Grignon: Michener. And I can't remember the other names.

Patti Kitching: Okay, so we're going to go back to your professional career. And you've had a wide experience, from the municipal court to the superior court

and then the Court of Appeal. When you were on the Court of Appeal, the records show that you wrote 2,212 court opinions and that you published 156 opinions and that you had 18 dissents; and that's quite a large body of work.

Do you think about all of those cases that you were involved with and think, how did I deal with all those issues, all those problems, and all those cases? What does it feel like to have such a big body of work?

Margaret Grignon: I think that's one of the best advantages or the rewards of being a Court of Appeal justice, is to have your work mean something not just to the litigants in your particular case, but to be important to the development of the law in the state of California and have cases out there that have meaning not just now, but to go on for years and years. And I think that's a very important reward of the job, and I'm very grateful to have had that opportunity.

Patti Kitching: Did you realize that you were doing that when you were authoring those opinions?

Margaret Grignon: Yes, I took the responsibility very seriously. And when I published a case I knew that it was important and that it would impact many cases besides just the case I was working on; and so I always had in the back of my mind that it was a tremendous responsibility, to do the best job possible.

Patti Kitching: Were you interested in every single word in the opinion, knowing that people in the future would be looking at that opinion and looking at every single word to try to determine what that meant or what that phrase meant?

Margaret Grignon: In the published cases I was very careful. And actually, I wrote every single one of my published cases myself from scratch and spent a lot of time making sure that it said just what I wanted it to say and no more than I wanted it to say, and to try to think about ramifications outside of the particular case—because the litigants, of course, aren't very interested in those kinds of ramifications.

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So you have to think of them yourself—is there something about this case that might impact some other area of the law?—and try as much as you can to have those things in mind when you're writing it and editing it.

Patti Kitching: So to anticipate unintended consequence of your cases?

Margaret Grignon: Yes, if you can. Sometimes, of course, they have unintended consequences that you didn't think of. *[laughing]*

Patti Kitching: And that none of the attorneys helped you think of. Did you have a judicial philosophy that you could identify?

Margaret Grignon: Yes, my judicial philosophy is what I would call conservative, in that I take very seriously the role of the appellate justice—and that is, to review the cases that come before us, applying the appropriate standard of review and arriving at a decision based on that standard of review and the facts and the record and the law that exists. It's not the job of a Court of Appeal justice to retry the case or to take the place of a trial judge; and similarly it's probably not the job of the Court of Appeal to take the place of the Legislature.

There are some situations where there are gaps in the legislative scheme, and in order to decide your case you have to fill in those gaps; but you should do that only when necessary and in a way that fulfills the intent of the Legislature, if you can discern it.

Patti Kitching: Looking at something like abuse of discretion, is there a difference or . . . let me say, the practicing lawyer, which you are now, probably relies on that standard of review and relies on the Court of Appeal to follow what, really, abuse of discretion might mean and not insert their own view.

Is that true? As a practicing lawyer you depend on the Court of Appeal to follow that rule in particular—I mean, one of many rules, but that one would seem to be important to the practitioner, if you like what the trial court did.

Margaret Grignon: Well, that's right, and I think that because the trial court is there in the situation and has much more information than might show up on the record in the first place; and secondly, the way our judicial system is structured, the discretion is to be exercised by the trial court and not by the Court of Appeal.

So the question is not whether we might have done something different than the trial judge did on the basis of what the record looks like, but whether what the trial judge did is reasonable and therefore should be affirmed, even if we would have done something different.

Patti Kitching: So it's important for the practitioners for the Court of Appeal to follow the rules it's supposed to follow as well, right?

Margaret Grignon: That's right. Otherwise, the law is totally unpredictable. I think one of the worst things that can happen for lawyers, as well as the Court of Appeals, is for lawyers not to know what's going to happen when it comes to the Court of Appeal. So therefore every case has to be appealed, and you hope you get the losing party, and the trial court hopes they get a Court of Appeal panel that thinks that they should substitute their judgment for that of the trial court and arrive at a different decision. And it becomes very unpredictable, and that's not the way the law should be.

Patti Kitching: While you were on the Court of Appeal, do you remember when you first got to the court in 1991, how many women were here?

Margaret Grignon: Miriam Vogel and Vaino Spencer were in Division One; there were no women in Two; Joan Klein was in Three; Arleigh Woods was in Four; I was in Five; no women in Six.

Patti Kitching: So about the same, other than adding Miriam Vogel from when you were here as a law clerk?

Margaret Grignon: That's right, and Mildred was in Seven. I think that's right. You add Miriam Vogel, and that was the only other woman, I think.

Patti Kitching: Not much of a change since the two of you were here as law clerks. When you came as a justice, what division were you appointed to?

(00:45:03)

Margaret Grignon: I was appointed to Division Five.

Patti Kitching: Who were your colleagues on Division Five?

Margaret Grignon: Paul Turner was the presiding justice—he actually became the presiding justice on the same day that I became an associate justice—and then Herb Ashby and Roger Boren.

Patti Kitching: Do you remember your confirmation hearing with the Court of Appeal?

Margaret Grignon: Yes, I do. As I said, Paul was confirmed on the same day, so we had our confirmation hearings on the same day. At my hearing it was very interesting that my criminal procedure professor, Mike Lightfoot, had been the person in charge of my Jenny Commission rating, and so he had very nice things to say about me; that was a very nice report from him. And it was a nice person from my past to come in and speak about me. Joan Klein spoke for me, and I think maybe John Major, who was the presiding judge of the San Fernando district, who would have been my presiding judge.

Patti Kitching: Does that date stand out in your memory as a new day in your career?

Margaret Grignon: It was tremendous; I think it was one of the best days in my life. My parents had moved to Costa Rica by then, and they surprised me and flew up for the hearing. I remember that we took everyone out to a lunch at the Pacific Dining Car. My children were there; it was very nice.

Patti Kitching: Did they have any orientation for a new justice?

Margaret Grignon: I don't remember them having an orientation. I know we had orientations for municipal court and superior court—which I went to, of course—and Judges College before I came to the Court of Appeal. I don't remember any orientation.

Patti Kitching: You just kind of sat down and they started handing you cases? *[laughing]*

Margaret Grignon: *[Laughing]* Well, I walked into my chambers, which had 40 cases sitting on the shelf.

Patti Kitching: Why was that?

Margaret Grignon: I'm not sure. Either there was some backlog or maybe we'd been missing a justice for some period of time. I'm not really sure, but there were certainly 40 cases to start.

Patti Kitching: So then what did you do with 40 cases?

Margaret Grignon: I just started in, and actually I was able to get completely caught up by the end of the first year; so I had those 40 cases and whatever other cases we were assigned that year. And basically after that, for the most part Division Dive stayed pretty current throughout the 14 years I was there. Some years, staying current was writing 180 majority opinions a year per justice, but we did a pretty good job of staying current after Paul and I came onboard.

Patti Kitching: So the caseload of the Court of Appeal ebbs and flows, is that right?

Margaret Grignon: It does. Actually, it looked like it was only going to flow for a while. It started out probably at about 140, and ultimately it was up to 180 for two or three years, and then more towards the end. It ebbed considerably by the 12th, 13th, 14th year.

Patti Kitching: What do you think caused the differences in the caseload?

Margaret Grignon: To some extent it was because we got more judges. Division Eight was added, a new justice was added to Division Seven and maybe Division Six; I'm not sure. And I think the caseload just diminished from the superior court. There are lots of reasons for that, but I'm not fully sure what they might be: fast track, ADR, other reasons why, the expense of litigation, all kinds of reasons why the litigation in the superior court has diminished.

Patti Kitching: Was there any kind of culture on the Court of Appeal when you were first appointed, like this is the way we do things?

Margaret Grignon: Yes. *[laughing]*

Patti Kitching: What was that like?

Margaret Grignon: Well, it's interesting. For example, we had the central staff at that point. So there was a whole bunch of lawyers; I don't remember how many, maybe as many as 12 or more who were supposed to do all of the "routine" criminal cases. And they had this set pattern for how they did the cases, and it was pretty, in my view, unreadable and not very useful.

(00:50:07)

So I worked with some of the other new justices to get that system changed. We were actually able to distribute those attorneys to chambers and the cases were then divided into chambers and the justices were in charge of all the cases and not just the ones that didn't go to central staff.

Patti Kitching: There was a lot of discussion before that change was made. *[laughing]*

Margaret Grignon: Years, I would say, yes, of discussion as to whether that was what we should be doing—wasting our time on routine criminal cases, whether the attorneys could be used better in that way. It seemed to me that you had very experienced people in central staff who were working on the most routine cases, so we were not utilizing their skills as well as we should, and that there was less oversight by the justices than perhaps there should be.

Patti Kitching: So you were heard on those issues?

Margaret Grignon: Yes, and others.

Patti Kitching: And prevailed. How about this idea? Certain issues seem to be in the Court of Appeal for years and years; what about tentative decisions from the Court of Appeal? The Riverside court does that and has done that for a long time; has that been a controversy around this court?

Margaret Grignon: Yes, actually I think it's a controversy in every court except to the Riverside court, and they've adopted the procedure and seem perfectly happy with it. The other justices and the other districts, I think, feel that it would be detrimental in two respects. One, it changes the nature of oral argument substantially so that it becomes more of the attorneys arguing against the tentative as opposed to arguing their case against each other. Secondly, it interposes a substantial delay in the decisionmaking process, because when the case is finished it has to go out to the parties and then with enough time before it is then placed on calendar. And it has to be done in a way that is respectable and complete enough so that you're fairly certain of the answer when you send it out. So I think it does add a month to two months to the decisionmaking time.

Patti Kitching: So the Los Angeles court, Second District, has always decided not to do that, right?

Margaret Grignon: That's right. Attorneys seem to like it though; from this perspective I will say that the attorneys seem to like it. Although I will say that I'm still not a fan of it even as an attorney, because I think it locks the court into a public decision that it may be a little bit harder for the court to back away from if you've somehow miraculously convinced them in oral argument that they've made a mistake.

Patti Kitching: Especially in a high-profile case . . .

Margaret Grignon: Yes.

Patti Kitching: . . . where the press might be present for argument and the press would have a copy. How about memorandum opinions? That has been an issue around the court for a while. Were you instrumental in having that issue discussed around the court?

Margaret Grignon: Yes, one of the projects that I was involved with as a Court of Appeal justice was the Appellate Process Task Force. And this was a task force that the Chief Justice started to look at the appellate process to see if there were some ways we could make better use of our resources.

At the time, we were in the 180 to 200 majority opinions per justice per year, and it looked like that number was only going to go up and that we weren't going to be able to get more justices to help us with the workload. So we were looking for ways to make the process a little more efficient.

And the memorandum opinion is not the kind of memorandum opinion that they use in the federal courts, for example, because the California Constitution requires that our opinions be reasoned opinions.

But it was a very short opinion, one or two pages, where only the relevant facts and the relevant law was set forth in a way that resolved the issues and let the parties know why the case was being decided the certain way without any extensive discussion going back to the Magna Carta or the U.S. Constitution in cases that warranted that kind of treatment.

Patti Kitching: Did you file some of those?

(00:55:00)

Margaret Grignon: Yes, actually I filed many of those kinds of opinions that my colleagues signed. And I never had a case reviewed because the decision was too short or incomplete, and I advocated other justices using that procedure frequently.

Patti Kitching: Generally the problem with judges is that they speak too long. Probably everyone would agree with that. How about this idea—another kind of controversial issue in the courts is to publish or not publish all cases. Your task force dealt with that too, didn't it?

Margaret Grignon: We did, and we recommended against publication of all cases. And I think that is still the policy of the Judicial Council, although the most recent revisions by Justice Werdegar and her committee have indicated that probably more cases should be published. I think about 5 to 7 percent was the standard for publication rates during my 14 years, and I think my numbers probably fit into that.

But if you publish all the cases, then you would have a lot of cases that have nothing of any import in them. They just are routine factual situations applying routine law of no use to anyone other than the litigants, but it would require all the parties in all future cases to be

aware of those cases and have access to them, because it would be part of the law of the state.

You can imagine what the books would look like if we had all of those cases. Most importantly, I don't think the people that are advocating publication of all cases really focus on the difference between a published and unpublished case. You know how much time we take on a published case to make sure that it is concise, well reasoned, and accurate; and in an unpublished case, we're very concerned that we arrive at the right result for the right reason, but we're not as concerned with the particular writing or that the statements may be overbroad or in some other way harmful to the evolution of the law.

Patti Kitching: So people can get all of the opinions online anyway, is that right?

Margaret Grignon: They can; they now can look at all of the unpublished cases online. And that is actually a very useful resource for a practicing lawyer; it lets you know, for example, how a particular panel might decide certain abuse of discretion issues, and then you're able to tailor your arguments in some way because of that.

Sometimes unpublished cases can point you in the direction of a line of authority that maybe you hadn't thought of previously, and occasionally there are unpublished cases that should have been published. And that's going to happen in any system where people have to make choices.

The fact that you have access to them is not quite the same as saying that they are precedential, and I think that is really the difference today. In other words, everything is available. So to that extent it is public or published, but whether it should be precedent or not is really the question.

Patti Kitching: Since you were on the court for 14 years, I'm assuming you saw a lot of changes on the court during your period here. What kind of changes stand out in your mind?

Margaret Grignon: From a legal standpoint, there are some cases that were almost nonexistent and then became very prevalent, and the opposite. For example, dependency cases were few and far between when I first started on the Court of Appeal and then subsequently became a tremendous part of our caseload. I don't know what the percentage is, but it is certainly a substantial percentage.

Other cases . . . I talked to someone yesterday about discretionary dismissal cases or five-year dismissal cases; there were lots of those in the beginning, and now because of fast track there are virtually none of those cases. Class action cases are much more prevalent now than they were 10 years ago. So there is just swings, I think, or ebbs and flows in various kinds of cases.

Patti Kitching: SLAPP cases and anti-SLAPP?

Margaret Grignon: Yes, exactly.

David Knight: We just need to turn the tape. *[Pause in interview]*

(01:00:06)

Patti Kitching: . . . the rewarding thing about being a justice on the Court of Appeal? You mentioned that you had written published cases and they would be affecting the evolution of the law into the future. Are there other things that were rewarding about being on the Court of Appeal?

Margaret Grignon: Yes, I enjoyed being with both the justices and the attorneys who worked with us and being surrounded by people who just wanted to talk about the law. *[laughing]* It's hard to find those people.

That there were so many colleagues and other people that you could walk into their chambers and start talking about insurance coverage issues or criminal issues and people would just be totally thrilled to talk about you with the cases, and knowledgeable, and helpful—it was really a joyful aspect of this work.

Patti Kitching: It's hard to think that actually that could be a job, isn't it?

Margaret Grignon: Yes.

Patti Kitching: That would be something that they pay you for to study, and especially for someone like you, who was so academic.

Margaret Grignon: That's right. It really was a joy; many times you have a case, you've read the briefs, you've read the record, you can't figure out what the answer is, and you just start delving in, researching, talking, and trying to figure it out. And there's just nothing better. *[laughing]*

Patti Kitching: *[Laughing]* It's an exhilarating feeling.

Margaret Grignon: Yes, it is.

Patti Kitching: What about the cooperation of other judges? And this would go to the muni court, the superior court, and the Court of Appeal. What about the helpfulness? I think you've just alluded to it—other judges trying to help each other and teach other. Have you experienced that? I know you have.

Margaret Grignon: Yes, I think in general most judges out there are willing to take their time and share their experience and help you out both . . . On the trial court bench, of course, a lot of what you need to learn is sort of recipes and cookbook kinds of things: What do you with this or what do you do with that?

Judges both in your own court and even strangers are perfectly willing to pick up the phone and talk to you and help you. At the Court of Appeal it's the same—in your own division, in your own district, justices in other districts, it's a very, very collegial atmosphere.

Patti Kitching: That's one of the things that's nice about becoming a judge; you're in its own community, the judicial community, where people all are in kind of the same boat, that they all have to solve all these problems and they realize that they need each other's help to do that.

Margaret Grignon: Yes, and I actually still feel like I'm part of that community. And I speak frequently at educational programs for both trial judges and appellate judges. I feel terrific being back in the environment with my former colleagues.

Patti Kitching: You spoke fairly recently at an appellate conference with Justice Werdegar. And what kind of speeches have you made to the trial courts?

Margaret Grignon: I have spoken with Justice Gilbert on several occasions on writing. We have our show that we take on the road and help trial judges with their writing skills. I have spoken on statement of decisions to the trial judges and just other general kinds of legal programs like that.

Patti Kitching: You're also speaking to lawyers in the community, is that right?

Margaret Grignon: Yes, I make a fair number of MCLE presentations in October. In October I made two presentations on recent cases involving attorney-client privilege, and I've spoken on summary judgment motions; and so I do a lot of that.

Patti Kitching: How do you have time to do all that?

Margaret Grignon: I don't know. *[laughing]*

Patti Kitching: You're very efficient. I know that you've mentioned lots of your experiences on the Court of Appeal. What was the most challenging thing about being a justice on the Court of Appeal?

Margaret Grignon: At some points it was workload. Our division attempted to get all of our cases decided as they were ready, and so you might have 16 to 18 cases a month, just a tremendous workload. At other points we didn't have that kind of workload.

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The other challenges are, you know, sometimes it's very difficult to figure out what the right answer is, and when it's not clear, and so you have to make some choices and arrive at a decision. It's a burden and a responsibility to figure out those answers where it isn't just in the book and you can just pick it out and apply it. So that was certainly challenging; and of course, that's one of the aspects you like about the job, is that it's challenging and tests you.

Patti Kitching: You've had a lot of experience doing it by the time you get to the Court of Appeal, so you've seen many, many situations and perhaps can extrapolate from those situations?

Margaret Grignon: Yes, and I think, when I look back on my 20 years as a judge, I think there is just no substitute for the experience that you get from that. Just the sheer numbers of cases and situations, and factual scenarios, and legal scenarios, you have a tremendous body of knowledge in your brain.

Frequently I'm always surprising people at work. I'll say, "You know, there's something about that. I know that there's some law on that, and we can find it." Or "I haven't had this question before, but there is this other analogous area, and I think that might be useful in trying to figure out what the right answer is." I just think that the 20 years' experience on the bench is just invaluable.

Patti Kitching: Can you compare being on the trial court versus being on the Court of Appeal?

Margaret Grignon: Yes, the trial court is much more immediate. You have people in front of you. You're impacting their lives. You're sending them to prison or jail. You're deciding what's going to happen to their children and their belongings. You're deciding whether they're going to be evicted from their residences. And you have to do all of this quickly. You can't say, "Come back in two weeks and let me think about it," or the rest of your cases won't get done. So in some ways, it's very fulfilling to have this immediate impact on people and be able to handle things where you can see that there's a result.

One of the examples is in the Antelope Valley, for example, we were fairly strict on driving under the influence; and because it was a small community, the word goes out and actually people know. They know that if they drive under the influence in Lancaster or Palmdale, they're going to show up in front of one of the judges and they're going to go to jail. So you can see that you have a much more immediate impact on people.

At the Court of Appeal, you have a more lasting impact on more people. I always say, "You never got to see real people." I mean, our calendars are lawyers and you rarely get to see even actual litigants, and so it's a little bit more distant; but on the other hand, it's more considered, more intellectual, and more satisfying in that regard.

Patti Kitching: And you have more help, is that right?

Margaret Grignon: And you have a lot more help. At the end we had three research attorneys in chambers, and that's a lot of help to . . . You can send off your attorneys to go down this path and research something to the nth degree until you're satisfied you've looked at everything.

Patti Kitching: I guess everyone would have certain expectations about being on the Court of Appeal. Were your expectations the same as the reality of being on the Court of Appeal?

Margaret Grignon: I think that they were, probably because I had been at the court for one year, so I had that year's experience already. In addition, I just . . . And I had actually, as a municipal court judge I had sat for a few months as a justice pro tem with your division, Division Three. So I had a fair amount of experience, and it was pretty much what I thought it would be. I think I probably didn't imagine how much the workload would be over time, but—

Patti Kitching: Do you think you changed as a judge between the years of 1991 when you came to the court and 2004 when you left the court?

Margaret Grignon: Yes, I think that when you become a judge, even at the municipal court level, the job changes you. It changes you and makes you more thoughtful. It gives you more experience. It makes you more aware of the significance of what you're doing.

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In general, it just makes you realize how important and how much trust is being placed on you. So that responsibility is very heavy, and it becomes heavier, and I think it changes you as a person. In addition, you just become more experienced, and so you know a lot more; and the more you know, that also changes you.

Patti Kitching: You wrote 2,212 court opinions and published 156; what were some of the most important cases in that group of cases?

Margaret Grignon: I thought about that, and I'm not certain that I would pick out any particular case. I looked at the notebook that was provided of the cases and I saw a pattern. I tended to write published opinions in procedural areas. I was very interested, I think, in how the system worked, how it was supposed to work, and letting the lawyers and the litigants know what the procedure was so that they could comply with the procedure and not run afoul of waivers or forfeitures that they were unaware of.

So I have a lot of cases in the procedural area. Attorney fee issues seemed to come up a lot in the cases that I worked on. In retrospect, as a lawyer now, I see the cases that I wrote that have the most lasting impact. One of those, for example, is *Myers v. Interface,* which is a case involving an indemnity provision and as to whether that constitutes an attorney fee provision or not.

That case comes up all the time. Some of the attorneys have come to me with my case called *Downs*, which was a case having to do with disability discrimination; so that's another area. Frequently the malicious prosecution issues come up.

Actually, my cases, I think, pushed the Supreme Court in the direction opposite from the one I wanted to take. The very first case that comes to mind is *Crowley v. Katleman,* and in that case it had to do with whether a malicious prosecution cause of action could be brought where one cause of action was brought without probable cause even though four other causes of action may have had probable cause.

In *Crowley v. Katleman* I wrote an opinion that said that I'm constrained by the *Bertero* case to say that one cause of action is sufficient, but if I was writing on a clean slate I would say that that was not the right rule.

So I was very happy that the Supreme Court granted review in that case. I thought, "Oh, good, they're going to do what I want them to do." And they granted review and reaffirmed the *Bertero* decision, and so only put an exclamation point on the rule that we already had.

In another case like that, *Zamos v. Stroud*, I wrote a dissenting opinion where I agreed with Dennis Perluss in one of his cases having to do with another malicious prosecution issue. So I wrote the dissent and the Supreme Court granted review, and once again I'm thinking, "Oh, good, we're on track to get the right rule here," and they ended up adopting the opposite rule that I wanted them to have.

Sometimes your work ends up with a rule that's different than what you anticipated. A couple of cases had some impact at the time. One was *Donahue,* a case involving marital status discrimination and whether an individual who rented property could discriminate on the basis of marital status.

I dissented in the case. And that case ultimately went up to the California Supreme Court and has been seen in the literature, and it's a very significant issue.

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Another case similar to that is a case called *Ehrlich v. Culver City*, I think, which had to do with land development fees and whether they could be imposed or not. And that case actually went all the way to the U.S. Supreme Court, and there has been considerable writing about that case in the literature.

Patti Kitching: It's nice to have the whole history of all the cases you decided in this notebook, isn't it?

Margaret Grignon: That was really a terrific benefit of this interview, and it was very nostalgic. I was reading the cases and some of them you don't remember and others, you know, you think, "How did that turn out?"

For example, the only thing that the notebook does not do, it says, "Review granted," but it doesn't ever say what the Supreme Court did with it. So this morning I was actually looking up some of the Supreme Court cases to see whether I was affirmed or reversed.

One of the other things that has changed is that the Supreme Court used to de-publish cases much more frequently than they do now. So in my early years there were more cases that the Supreme Court de-published; in the later years there's virtually none of those.

Patti Kitching: Now, while you were on the Court of Appeal you were the chairperson of the Rules Committee and you're talking about procedural guidance to lawyers. That was tremendously important to lawyers, to have clear rules from the Court of Appeal as to what procedures they needed to follow to file their grieves and be heard by the Court of Appeal.

Margaret Grignon: Yes, I did the work here, and also I was on the Appellate Advisory Committee of the Judicial Council, and we did a lot of the court rules out of that committee. And for some reason I like doing work with rules, and it's an area where you can impose common sense on a lot of areas where things have just developed sort of helter-skelter.

Patti Kitching: Well, it seems like it would fit in with your idea of "procedure is important when you're dealing with legal issues and you're bringing them to a court." People know what the rules are and they have a better chance to be heard, and maybe the case is in better shape when it gets here and everyone can deal with it in a more efficient way?

Margaret Grignon: Yes, I think you're always better off if the parties and the litigants know what they're supposed to do. And if they clearly know what they're supposed to do and the rules make sense and they're accessible, then when the case comes to the Court of Appeal, all you're interested in is the merits; and that's really what it should be in most cases.

Patti Kitching: Let's talk about opinion writing for a minute. You said that you learned a great deal from Justice Thompson about opinion writing. When you were writing opinions for the court, what were your goals? I think you've touched on them a little bit: clarity, conciseness, accuracy. What were you thinking about when you were writing opinions? Because opinions can have a lot of different uses: they can educate, they can decide the case, they can point to the future; all kinds of things they can do. What were the general things that you were thinking of when you were writing opinions?

Margaret Grignon: Well, in the first place, you write an opinion so that at least one of your colleagues will sign it. *[laughing]* So you write an opinion that is, of course, accurate and not advocacy, but on the other hand is persuasive. You have to have a point of view, and you should demonstrate that point of view in your writing of the opinion throughout the opinion.

In other words, how you start it, in your facts, and in your legal discussion you should have a point of view and try and put forward that point of view. I'm not suggesting that you should prejudge a case or write a case simply to arrive at a certain decision; but once you've done the research, read the record, and you've determined for the most part what the appropriate result is, then your writing should focus on that.

The other thing I think is important for the reader, whoever the reader is—your colleagues, the litigants, or other parties—really need to know what you're talking about. So you need to start off by giving the reader a roadmap of your case. What is this case about? Is it a summary judgment motion, is it a trial, is it a demurrer? What are the facts that

you need to know? Is this is an employment case, is it a dependency case? What procedural posture and what large issues are going to be decided, and what is the result of that?

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Art Gilbert always has a very famous saying about opinions. He said, "An opinion is not a mystery novel. You shouldn't have to wait until the end to figure out who did it." *[laughing]*

So I think if you structure your opinions so that you let the reader know what's going to happen throughout the opinion, then when they read the opinion, they're reading in an informed manner and the facts and the procedure on the law that you tell them have some structure that they can attach this information to.

Patti Kitching: I can see why you're a renowned speaker in this area. A lot of people writing opinions need to keep this in mind. Were you on any other committees of the AOC that we haven't talked about? Do you remember?

Margaret Grignon: No, just the Appellate Process Task . . . Well, yes, I was. I was on some committee that had to do with, I think, all of the codes that were rewritten when the superior court and the municipal courts merged. Then many of the statutes had to be amended; I was on a committee that was involved with that very tedious process.

Then the Appellate Process Task Force and just in general on the Appellate Advisory Committee; I can't think of any others.

Patti Kitching: On the Court of Appeal, you wrote the rules? You were the chairperson of the Rules Committee for many years, is that right?

Margaret Grignon: Yes, and I also was involved with the court reporter committee. At some point, the justices were all very current with their cases, but we weren't able to get the cases briefed because we weren't getting the transcripts from the superior court. And so a committee was set up where we would hold hearings once a month to bring delinquent reporters in who weren't getting their transcripts done, in an effort to encourage them to do so on a timely basis. That was ultimately very successful. Finally, we got the superior court to take charge of the job, and so I don't think we actually even have that committee anymore.

Patti Kitching: Some judges say that in the trial court they get to deal with all the lawyers and the juries and all kinds of people, and then when they come to the Court of Appeal it's very isolating and very lonely. Did you feel that way?

Margaret Grignon: I didn't feel that way, only because I thought that in the trial court, although there are lots of people in front of you, you certainly aren't engaging with them on a social basis. In other words, you're engaging with them in your work.

Of course, we have the ability to engage with people in our work here. Although we only saw lawyers twice a month, we discussed cases amongst ourselves and with our attorneys. I didn't feel that it was an isolating position, but that's probably partly my personality type.

Patti Kitching: Okay, we discussed that you've been very involved in judicial education and legal education. You were doing a new appellate justices orientation; are you still doing that?

Margaret Grignon: I haven't done that since I've left the court.

Patti Kitching: Okay, what was the purpose of that?

Margaret Grignon: You're right, we did have an orientation. *[laughing]* There is an appellate judges institute every year, for the most part when we have money, I think. And in connection with that, there is a separate half-a-day or day session that's put on for the new appellate justices during that period of time—it may have been two days at some point—where we talk about writing opinions, we talk about working with colleagues, we talk about dissents and concurring opinions, we talk about working with your research attorneys, and just all of the things that someone would need to know in order to do the job well, I think.

Patti Kitching: That may have only started recently. I don't know that that was in effect when you came on the court in 1991.

Margaret Grignon: No, I don't remember ever going to it.

Patti Kitching: Right, you and Art Gilbert, did you start it maybe?

Margaret Grignon: Well, I don't know, but maybe. I know that Art and I were involved with it for many years, and sometimes other people—Ken Yegan, Carol Corrigan, different people. But Art and I did it for a number of years.

Patti Kitching: Of course you attended the Judges College when you were on the muni court, and the superior court as well?

Margaret Grignon: No, just once, I think.

Patti Kitching: What did you think of that Judges College?

Margaret Grignon: I loved it. I came from a very small court, and I just loved going to conferences in general so I could see what everybody else was doing. And everyone at my court just dreaded when I went off to conferences, because I would come back and I'd have all these great ideas about things we should try, which they weren't very interested in trying.

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So it was a great chance to talk to people at other courts and get other ideas and see what was happening in other courts. It was a very, very enjoyable experience.

Patti Kitching: You're still involved in legal education, speaking to various lawyer groups; and in the past you've done some work for the CEB, right?

Margaret Grignon: Yes, actually Judy Posner, who was recently a research attorney on the court, has come to work for Reed Smith; and she and I have just written a chapter in a new CEB book on administrative procedure. So I still am active in writing, and I write articles for the *Daily Journal* and other publications also.

Patti Kitching: You have been on both the Court of Appeal and the superior court. And from your experience on both courts, would you have suggestions to the Court of Appeal on how they might help the superior court do a better job, would be one area; and then the other area was how the Court of Appeal would help attorneys do a better job.

So if we start with the trial courts, how could the Court of Appeal help the trial courts to do a better job in what they're trying to do?

Margaret Grignon: Well, I think it partly comes down to clear opinions; if you write an opinion, even in an unpublished case, where you clearly set forth the law and what the trial court did correctly or incorrectly, that is of course helpful to the trial courts. When you remand cases to the trial courts, if you give clear directions to the trial judge as to what he or she is supposed to do with the case from this point forward, that's really helpful.

I also would say to the extent procedural issues can be decided in published opinions, there is a little bit of a lack of that. There are still some areas, surprisingly, that have been around for a long time; but when you go out to do the research, you find that there is little or no case law on the procedure, and so the parties and the trial judges are left wondering if this is the right procedure or if they should be doing something else. And I had many trial judges say to me, "Well, do you have a case that says that?" and many times there isn't a case.

Patti Kitching: How about helping lawyers do a better job? Can the Court of Appeal help lawyers do their job better?

Margaret Grignon: That's a more difficult question. The same rationale with respect to writing clear opinions: if the opinions are clear and the lawyers know what the law is, then the lawyers can advise their clients.

You know, many times clients are perfectly willing to follow the law if you'll just tell them what it is. And lawyers sometimes have to say, "We don't really know what it is," or "We aren't certain how this would be handled." So it's helpful when the Court of Appeal adopts bright lines.

I know that sometimes that's frowned upon, adopting bright lines in Court of Appeal opinions, but it is really a benefit to the legal community and the business community to know what the rules are and allow them to follow them. Whereas if a decision is made on a case-by-case, fact-by-fact basis it becomes more difficult to interpret that to your particular situation, because there's always some

difference between your set of facts and the facts that were in the court decision.

Patti Kitching: That could be said for the Court of Appeal and the Supreme Court as well. If the Supreme Court gives bright lines, it's a lot easier for the Court of Appeal to know what the Supreme Court wants the Court of Appeal to do rather than on a case-by-case, well-we-know-when-we-see-it kind of thing.

One thing that has been important, I think—and that has perhaps been a change from the time you came on the Court of Appeal to the time you left—are judicial elections and how they've become more prominent in the newspapers and how judges are being challenged in your issues of judicial independence. What changes did you see happening in this area, and do you have any thoughts about, is judicial independence being challenged in any way here?

(01:30:06)

Margaret Grignon: I think that what's happening to judges is basically what's happened to all of the professions over time, and that people now are not quite willing to accept that just because we say something, that must be the right answer. It's happened to doctors, to lawyers, and to some extent it has happened to judges also.

So there is a lot more concern with judges' philosophies, biases, relationships, et cetera, than there probably ever was in the past; and that's of course a tremendous challenge. There's also an attempt by interest groups to have judges conform to their notions of what the law should be or how cases should be decided, and that presents a burden for judges who are trying to decide cases on the basis of the facts and the law that are in front of them.

So I think that the situation now is much more difficult for judges. It's much more public; what you're doing is very public. And there's an attempt to have judges decide cases in certain ways that is not bribery or those kinds of things, but just sort of an attempt by interest groups; and I think it affects the way judges do their jobs.

Patti Kitching: We're going to go now to your life after retiring from the Court of Appeal. And you're of counsel to Reed Smith, as we have been discussing. What kind of work are you doing now?

Margaret Grignon: Well, I'm the head of the appellate group in the Los Angeles office, and as the head of the appellate group I do any appellate work that comes into the law firm. It comes in two ways: either it is generated by our trial lawyers and then they come to me for writs or appeals, or more frequently even to help them in the trial court to make sure that we don't have writs and appeals.

Also, we get work from outside the law firm where people come to us because they have some result that they don't like and they want some help on appeal.

Patti Kitching: What do you like most about your present job?

Margaret Grignon: What's really interesting about my present job is that I get to construct the way the case goes to the Court of Appeal. I get to frame the issues, decide what the issues are, and present it in a way that will make it persuasive to the court.

At the Court of Appeal, you sort of have to just take the case the way it comes to you and the issues are usually presented one way or another and there is not as much creativity. I think in my job there is much more creativity. In fact, the hardest adjustment for me to make was people would come to me with a set of facts and I would tell them what the answer was.

That, of course, may not have been the answer that our client was looking for. And so I had to learn—I still go through that process—but I had to learn that you need to look deeper than that, and that you have to then think about if there is some other way to present the facts or the procedure that makes the answer at least arguably different.

Patti Kitching: So you're working, you're the head of the department now, and your firm has another appellate department in San Francisco, right?

Margaret Grignon: We have one appellate group, but we have appellate lawyers in Los Angeles, Oakland, San Francisco, Pittsburgh, and now Chicago. So one of the aspects of my work that is very fascinating is that although I primarily work with the lawyers in the Los Angeles office, the appellate group is really firmwide, and so I work with all the appellate lawyers and all the other offices. And they are terrific. They are very much like my colleagues on the Court of Appeal. They're thrilled about talking about the law, they love to just discuss procedural issues, and they're wonderful to work with.

Patti Kitching: Good. That's a good benefit of your new job. You're also doing some mediation and arbitration, is that right?

Margaret Grignon: Yes.

Patti Kitching: What do you like about being a mediator?

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Margaret Grignon: Well, being a mediator gives you a lot of satisfaction, because when you settle the case, both of the parties then can get on with their life. They may not be ecstatic about the result, but they're satisfied with the result, or else they would not have agreed to the settlement. The litigation is finished from their standpoint.

And the court's standpoint, it does seem like you're doing a good service for your mediation clients. Arbitration, on the other hand, is fulfilling because it lets you be a judge again. *[laughing]* So it's a task

that I'm very well suited to and have done for years and is enjoyable in that respect.

Patti Kitching: Now, you were in private practice before you were appointed to the bench, and you're again in private practice. Can you compare private practice before you became a judge with private practice now?

Margaret Grignon: I can only to a little extent, because of course I was not at the same level in private practice previously as I am now. And so I'm much more aware of business and clients and economics than I probably was when I was at O'Melveny or Gray, Cary. The differences that I see are these: When I started with O'Melveny & Myers and Gray, Cary, people went to one law firm and they stayed there; in many cases they stayed there until they died. So the law firms and the culture was very much like the Court of Appeal. You came and you stayed and you did your job, and these were the people you worked with and people didn't leave and take their business elsewhere.

So that's very much changed. Now people change law firms all the time, more than once in their career. The lawyers move from firm to firm, and firms absorb other firms. Firms are also now much more international than they ever were. When I was at O'Melveny it had 200 lawyers and we had just opened a Washington, DC, office. So firms at that time were even more city-based or state-based, and now national law firms are certainly not unusual, and international law firms are more the rule.

Clients are much more picky. They don't just hire a law firm and you're their law firm for everything. They hire one firm for employment work, another firm for corporate work, another firm for business litigation, where they spread their litigation out amongst 10 or 12 law firms. So it's much more competitive in terms of your client base than it was previously.

Patti Kitching: How about civility? A lot of people talk about civility and lack of civility out in the legal community today or how it has decreased from prior times.

Margaret Grignon: I would say that society is in general less civil over the last 20 years, and therefore the legal system reflects that. One of the things that I'm constantly having to say to my colleagues is, "We could probably tone that down a little bit, don't you think?" and basically not take issue with our opponents or the judges and make things more neutral, although they think I make things too neutral. *[laughing]* So we have that constant tug of war.

But yes, there is this tendency to make things personal, to attack the motives of judges. And I think number one, that that's not appropriate; and even more important, it's not useful.

Patti Kitching: Absolutely. You can tell them what it was like reading the brief from the Court of Appeal when they attack each other, right?

Margaret Grignon: Yes, I've had cases where attorneys have given me drafts of petitions for rehearing with the Court of Appeal and I write back and say, "Why do you think they would grant us petition if you say these horrible things about them?" *[laughing]* It seems self-evident to me, but apparently not.

Patti Kitching: From your view of being on the court and in private practice, do you think lawyers in private practice have any misconceptions about the Court of Appeal, and what would those be?

Margaret Grignon: They have some misconceptions, for example, about oral argument and the utility of oral argument. They don't always pay attention to making sure that your arguments are as complete as possible in the briefs, thinking that they might have a chance to explain things better at oral argument.

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To some extent they probably have a misapprehension about how much time the court has to devote to each particular case.

Patti Kitching: Do they try to retry their case in the Court of Appeal and not follow the abuse of discretion, substantial evidence kinds of things?

Margaret Grignon: Oh, yes. That's such a common mistake that, you know, frequently . . . I do a lot of consulting work with other law firms, and I'll get briefs, and frequently I don't even try to edit them. I just write them a note and say, "This looks like your trial brief; it is not anything close to an appellate brief. And you need to do the following 10 things."

They do have a hard time differentiating between appellate issues and trial issues. And I think one of the things that we never realized is how caught up the trial lawyers get in their cases; and when they win or lose they're still so caught up in that that they want to rehash every important detail. Sometimes, actually, one of the most difficult aspects of my job is to allow the trial lawyers to vent and to listen to them and then quietly deflect them to the issues that are really the important issues on appeal.

Patti Kitching: So you have a unique perspective, having been on the private side, then the judicial side, and now the private side again. You're unusual in that regard, aren't you? I don't know—

Margaret Grignon: There are a few. Justice Lui; and Dan Kolkey is with Gibson, Dunn; and of course Justice Hufstedler with Morrison & Foerster. I think there is a retired Ninth Circuit judge with Akin Gump, but I can't remember his name.

Patti Kitching: Is there anything else that we haven't covered that you wanted to talk about—your experiences at the Court of Appeal or your experiences as a lawyer, or what law has meant to you?

Margaret Grignon: I think we've really covered everything. I would probably end by saying that I entered the law somewhat blindly, but it turned to be a very good profession for me; and I have been extremely challenged and fulfilled in all the years I've been doing it, and I can't imagine doing anything else.

Patti Kitching: Thank you, Justice Grignon.

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