David Knight: Your title when you were last on the bench?

John Trotter: My name is John Trotter, T-R-O-T-T-E-R. I was the Presiding Justice of Division Three of the Fourth Appellate District.

David Knight: Great. And what are you doing now?

John Trotter: Now I'm engaged in alternative dispute resolution, working as a mediator and an arbitrator with an organization called Judicial Arbitration & Mediation Services.

David Knight: Excellent. I'm all ready, Justice O'Leary, whenever you would like to start. And just try to ignore the camera; you don't have to avoid it, but talk to Justice O'Leary.

John Trotter: Good.

Kathleen O'Leary: I'm Kathleen O'Leary, a justice of the Fourth District Court of Appeal, Division Three in Santa Ana, and I have the pleasure this morning of chatting with Justice John K. Trotter, a founding member—in fact, the founding presiding justice—of the Santa Ana Court of Appeal.

Justice Trotter . . . I can call you "Justice Trotter" or I can call you "Jack."

John Trotter: I think "Jack" would be better.

Kathleen O'Leary: Okay. And you can call me "KO," because I think that's how we've always called each other.

John Trotter: Right. I was going to say, that's how we know each other.

Kathleen O'Leary: Right. We're going to start with a little biographical information; and I know about your family, but there are lots of people out there that don't. So can you tell us a little bit about your family?

John Trotter: Well, let me go back before my family and tell you that I was born in Brooklyn, New York. I lived there until I was 14, had started high school there, and then after the Second World War my father got a job in San Diego. And so I was one of five children; so my father, mother, and myself and my four brothers and sisters moved from Flatbush in Brooklyn to a remote little town in San Diego called Lemon Grove.

Kathleen O'Leary: A little cultural adjustment? *[laughing]*

John Trotter: A little cultural adjustment. I thought that there would be wild Indians and bears and lions in the street. What I did notice was there was no concrete.

Kathleen O'Leary: Oh?

John Trotter: There were no sidewalks, no streetlights. There were more people that lived in my building in Brooklyn than lived in the town of Lemon Grove in 1948.

I went to high school there for a year, and then my father got another job up in Los Angeles and I graduated from high school in East . . . from a school in East Los Angeles called Cantwell, now Cantwell Sacred Heart. And even though I don't look like I would be big enough, I went to college on a basketball scholarship. I went to Loyola, now Loyola Marymount.

Kathleen O'Leary: That's where I went.

John Trotter: And I paid more attention to basketball than to studies, and after one year I was out of college. And it was in the middle of the Korean War, and I got scooped up into the Army, ended up in Korea, served my time, came out, and had to start all over again my college experience. And I'll leave it there, and we'll come back to that later.

Kathleen O'Leary: Okay. What about your immediate family now?

John Trotter: I'm married, have been for 48 years. I have 7 children, 17 grandchildren—3 lawyers in the group—and I'm lucky enough to have them, all but one, live in California: 5 of them live in Orange County, 1 in San Francisco, and my oldest daughter is married to kind of a famous military person. He's a colonel in the Army who's now in Baghdad. He wrote a very famous book called *Dereliction of Duty,* and we all are now praying that he gets out of Iraq pretty quickly. *[laughing]*

Kathleen O'Leary: So family gatherings at the Trotter house are rather large.

John Trotter: They are. We just did Easter, and when we're all together there's 32 of us.

Kathleen O'Leary: Large and a little loud?

John Trotter: Large and a lot loud*. [laughing]*

Kathleen O'Leary: In growing up, were there any mentors that brought you into the legal field or when you began in the legal field?

John Trotter: No. You know, I come from that generation where I was the first one in my family to go to college. I didn't have any aunts, uncles, or parents that went to college. My older sister, who is still alive, became a nun. She was a sister at Saint Joseph, and then during the '70s during—or the '60s, maybe even during the upheaval—she came out of the convent; and then she went back to college and she is now a psychologist. But she and I are really the only two of our family that have ever gone to college. All of my kids, of course, have; but we were the first.

Kathleen O'Leary: Now, you came back from the Korean War, you finished college, and then you started law school.

John Trotter: I did. When I came out of the Army, I went to Santa Monica City College, a junior college, for two years. And in those days a lot of the law schools had what they called a two-four plan that you could get into a law school if you were a veteran of the Second World War or the Korean War with two years of college, a certain level of grades, and a certain score on an entrance exam. And so I got into SC law school after two years of junior college—started SC in 1958.

Kathleen O'Leary: What was your family situation when you were starting law school?

John Trotter: Well, I was single. I met my wife at SC. She was a senior when I was a freshman in law school. We got married in 1959. We got married in August of '59, and August 1st of 1960 our first child was born, and December of '61 our second child was born. So when I was studying for the bar exam, I had two little babies. So it was important that I pass the bar exam. My wife taught school for the first year, and then after the babies came she couldn't teach anymore.

Kathleen O'Leary: So I assume you did successfully complete the bar exam. *[laughing]*

John Trotter: I did. I've always teased that I probably had the lowest passing grade in the history of the bar exam *[laughing]*; but it was one of those things you never know what your score was, and I was just thankful to have passed it. And a little interesting story. I don't know if you remember, but all of the rumors that you used to hear about you could tell by the size of the envelope whether you had passed or failed.

Kathleen O'Leary: That rumor was alive and well in 1975 when I took the bar.

(00:06:30)

John Trotter: And I can't remember whether it was the big envelope or the small envelope; but I got one of them, and I thought that that meant I had failed. And I had gone to the post office to pick it up, was so disappointed didn't even open it; put it in the backseat of the car, drove home, was sitting in front of the little house that we were renting, and my wife was in the window holding one of the babies. *[laughing]*

Kathleen O'Leary: Poignant moment. *[laughing*]

John Trotter: I figured, "Well, I have to start over again, so I might as well start." So I opened it up, and all I can remember reading was "We are pleased to inform you."

Kathleen O'Leary: *[Laughing]* I think that that bar-passage moment when you get the envelope is what they call a flashbulb memory; you remember almost what you were wearing the day when you opened the envelope.

John Trotter: Not only that—but for years, I used to, anyway, have a dream that the bar was calling me to tell me it was a mistake.

Kathleen O'Leary: Now, so now you've passed the bar; you're out looking for a job.

John Trotter: That's right, 1961; I graduated in midyear. I had gone to summer school; instead of going four years, I went three and a half, and so I graduated in December of 1961 and took the February 1962 bar exam. And a fellow who had been a year or two ahead of me in law school had gone to work for a firm called Betts, Ely & Loomis, which was engaged primarily in insurance-defense work; and I interviewed there and was accepted as a law clerk. So while I was studying for the bar I worked for that firm as a law clerk, and then in June when I got my results and had passed the bar, I went to work as a lawyer for Betts, Ely & Loomis in downtown Los Angeles.

Kathleen O'Leary: Can you remember anything about the compensation package they offered you? That's what we call it now. *[laughing]*

John Trotter: It wasn't much of a package. *[laughing]* We were paid $500 a month. That's what I was paid as a law clerk . . . no, I was paid $300 a month as a law clerk, and then when I went to work full time it was $500 a month; then after the first six months you got a $50 raise. So by Christmas of 1962, I was making $550 a month.

Kathleen O'Leary: Now, do you remember anything that . . . does anything stand out in your memory about your first days of practice in terms of clients or what the daily routine was or the responsibilities you had or—

John Trotter: Yeah. I was just so overwhelmed and happy to have gotten out of law school and be a lawyer that I was just awestruck by the whole thing. Walter Ely, who was the senior partner in the firm—Red Betts had died—was a famous, famous trial lawyer. He had been president of the LA County Bar Association, was a hero out of the Second World War, had been assistant U.S. attorney in Texas before the war, then came to California. And so I was privileged to see him try several cases, and I always teased that I carried his suitcase for him for a couple of years. And it was one of the most wonderful learning experiences that I ever had.

And in those days, trials were shorter, and I got to try cases right away; I think in my first year I ended up having tried three or four superior court jury cases.

Kathleen O'Leary: You are regarded in Orange County as having been an extraordinary trial lawyer.

John Trotter: Thank you.

Kathleen O'Leary: And you've certainly enjoyed that reputation. And so do you think . . . I mean, was there something about trials that you just . . . because you ended up on the Court of Appeal. I mean, are you a people person? Are you . . . what was it about trials that you thought was interesting?

John Trotter: Yeah, it was just the dynamic, the ability to contest, to be . . . there's a competition there, and there's a chance to make sure that the people made the right decision. And you had the direct responsibility of making that happen, making sure that your client was heard and was believed; and if you believed in your client you had to transfer that to the jury. And it was a real challenge and I loved it.

Kathleen O'Leary: You loved jury trials, too, didn't you?

John Trotter: I loved jury trials, yes.

Kathleen O'Leary: Yeah. Not too many jury waivers on those cases?

John Trotter: No, never tried a case without a jury*. [laughing]*

Kathleen O'Leary: You like chatting with those jurors. Anything else about your career as a lawyer before we move on to your career as a judge?

John Trotter: No, I was very lucky; I had a very satisfying career. I left Betts, Ely & Loomis in 1967 and started my own firm, and I was lucky enough to have very, very competent lawyers with me; and we were successful not all the time, but most of the time, and I thoroughly enjoyed it. I enjoyed the give-and-take with other lawyers, I enjoyed the interaction with the court, I enjoyed trying jury trials. I thought that I was totally fulfilled in doing that.

Kathleen O'Leary: Did the lawyers in your family ever say, "So, Dad, what do think about this argument?" or "Is this a good way to get this information out?" or—

John Trotter: I have a funny story about my son, Michael, who's a lawyer, who started doing the same thing I did. He now has a firm that represents health care, doctors and hospitals, and some . . . It just so happened that he was on a case and he came in front of me here at JAMS as the mediator. And obviously, I told

everybody, and everybody knew that he was my son. And he was here and we were going through the mediation and he was taking a position and the other lawyer said, "Well, you know, Michael, why don't you listen to your dad?" And Michael said, "Well, I haven't for 35 years, why would I start now?" *[laughing]*

Kathleen O'Leary: *[Laughing]* That's quite a tribute to you that the other side thought it was just fine that you would conduct the mediation.

Where did you begin your judicial career?

John Trotter: I was on the Orange County Superior Court; I went on in 1979, February of 1979.

Kathleen O'Leary: And then from the Orange County Superior Court, what was your next stop?

John Trotter: I was elevated to the role of associate justice on the Second District . . . excuse me, the Second Division of the Fourth Appellate District in San Bernardino.

Kathleen O'Leary: And why wouldn't you have been appointed to the Santa Ana court, where you lived?

John Trotter: Well, the Santa Ana Court didn't exist. *[laughing]*

Kathleen O'Leary: Oh, that's right. *[laughing]*

(00:13:04)

John Trotter: It didn't exist. There was no court. There was a big . . . that was in the late '70s and early '80s, when Orange County had had a phenomenal growth spurt during the '60s and '70s; and there was a lot of clamor for a new court, but it hadn't quite happened. And there's a real interesting historical basis for the court and how it started and why it didn't start sooner, but I don't know if you want to get into that.

But when I was in San Bernardino, a bill had been passed in the Legislature that authorized the creation of a new division, Division Three of the Fourth Appellate District.

Kathleen O'Leary: And that was based I think in part on the number of cases that were being generated from the Orange County Superior Court.

John Trotter: Right. The Orange County Superior Court generated more cases than either the San Diego, which is Division One, or San Bernardino, which is Division Two, either one of those counties generated. Orange County had more, but it had no court. And the cases were split between San Diego and San Bernardino; most of them went to San Bernardino. We had a . . . in 1982 a Republican Governor, but a Democratically controlled

Legislature, and a bill had been passed authorizing the creation of a new court; but it wasn't funded. The court was to sit in the old Orange County Courthouse, which had been out of use for 20-plus years, or at least 15, and they would raise private donations to finance the court.

Well, a lawsuit was filed, and it was held to be unconstitutional; you can't use private funds to support a public institution. The case went on appeal, and by a 4-to-3 decision it was reversed. The court was allowed to exist under that statute, and the Legislature immediately passed a funding bill to support it.

So by I think it was November of 1983, the court finally came into existence after a very tortured beginning, and then the Third Division was created and appointments were made to it.

Kathleen O'Leary: My recollection is that when the court was created in Santa Ana, there were certain time constraints; you had to work sort of fast to get the court up and running.

John Trotter: It was. *[laughing]* I would advise the powers that be to never do it this way again.

When we came into existence in December of 1983 I had been an associate justice on the Court of Appeal at San Bernardino for eight months. I was appointed the presiding justice of the new court, and three trial-court judges, Sheila Sonenshine, Ed Wallin and Tom Crosby, were appointed associate justices. They were all young; Sheila was still in her 30s, Tom and Ed were about 40. I was the gray beard at 48 or 47, and between the four of us we had eight months of experience—and that was all mine on the Court of Appeal.

So when we came together, we didn't know what a Court of Appeal was like. The usual situation, as I'm sure you, KO, remember, when you got appointed, you got appointed to a court that by then was established. There were some senior people on the court who had written many opinions and—

Kathleen O'Leary: I had the benefit of Tom Crosby. I mean, I worked with Tom Crosby, and so I really had somebody to show me the ropes.

John Trotter: Yeah. He was terrific, and we'll talk about Tom in a minute. So our court started out with absolutely no supervision, no guiding hand, no senior person other than myself, who had eight months of experience; and in addition to that, we had no courthouse, we had no chambers, we had no staff, and we had a backlog of cases, because when the original bill had been passed before it had been found unconstitutional, San Bernardino and San Diego had returned all of the Orange County–originated cases to this new division. And so when we started, I can't remember the numbers, but we had a full

backlog of cases, and we had nowhere to hear them, no staff to help us organize them—we didn't have a clerk of the court.

And so the first few months were chaotic. We started right away. One of the best memories I have is the first day that we held court, we did it in my breakfast room.

Kathleen O'Leary: We have a picture at the court of the Trotters' kitchen when you first met and you held court in your breakfast room.

John Trotter: That's right, we had . . . our first writ conference was held in my breakfast room, and it was Tom Crosby, Ed Wallin, and I going through some writs that had been filed. Writs were a real downfall on that court, because I think what happened was, there was such a pent-up desire for people to have access by way of writ to the Court of Appeal locally rather than having to drive to San Bernardino that we were inundated with writs.

Kathleen O'Leary: I was one of those lawyers that you dreaded the drive. In criminal if we had to take a writ, you had to drive all the way to San Bernardino and sometimes get in traffic, and the time constraints you were working in, it was . . . well, it just isn't feasible to take a writ.

John Trotter: Yeah. That all changed and we were inundated with writs, and that lasted for a couple of years until that passed and it got down to some normalcy.

But it was a very chaotic beginning, a very rocky beginning. We had no experience in hiring staff, we had no experience in hiring research attorneys, and it took a while for the court to finally get its feet on the ground and get going.

We moved into an office building, which was not really suited for a Court of Appeal, but we did the best we could; and over the years we kind of hit our stride, but it took a couple of years for that to happen.

Kathleen O'Leary: So you would recommend that before they send a caseload to a court they make sure they have a roof over their head and—

John Trotter: *[Laughing]* The other thing I would recommend is that they not . . . it was too hard to take three inexperienced justices and a fourth barely experienced justice and put them all together and say, "Now you're a court, go ahead and do it." I think that the benefit that justices get by going onto an established court and having mentors there, having people there that are experienced in the way of the court, is really the way to do it.

As we were talking earlier, KO, you indicated that after 17 or 18 years on the trial court, you kind of get used to making up your own mind. And the thing you learn on the Court of Appeal is, there's a lot of trading that goes on, a lot of sharing of

opinions and having to maybe shade your opinion a little bit to get that second vote. And none of us other than myself had had that experience. So there was a lot of head bumping in the first little while on our court till we finally figured out our rhythm.

Kathleen O'Leary: I think the collaborative process makes opinions better; but as I said earlier, having made my own decisions for so long, I was a little bit taken aback when one of my colleagues first told me that he thought I got it wrong. *[laughing]* So I do think that it takes a little time to make that transition.

John Trotter: Yes, it does, and to be collaborative is something you learn. I don't think you come from the trial court to the Court of Appeal with that knowledge. If you come to an existing system, that already has that, and where it already exists, it makes it easier; but we had some rough moments getting over that first couple of years. *[laughing]*

Kathleen O'Leary: So you were developing the new culture of the Santa Ana court, finding a roof for this new Santa Ana Court staff. You really began from the very, very beginning.

Anything about particular cases that while you were there that you think is noteworthy, either in terms of how you reached the decision, the impact of the decision, the process of, as you said, trading back and forth, you know, "Do we . . . if you don't cite this case, I'm pretty comfortable with it" or "If you don't publish it, I'll sign it"? *[laughing]*

John Trotter: Yeah, we did some of that. And as time went on and we became grizzled veterans after a couple of years, I think our work product was pretty good. I think that we got it right most of the time. I don't recall any specific case that stands out.

I have one case that I think was interesting only from a personal point of view, and it was a case that involved roadblocks or . . . what do we call them now?

Kathleen O'Leary: DUI stops, I think, checkpoints.

John Trotter: DUI stops, checkpoints.

Kathleen O'Leary: Checkpoints to get people that are driving under . . . identify people who are driving under the influence.

John Trotter: This was when they were first starting, and we had someone who had complained that their due-process rights had been taken away because they'd been stopped. And Tom Crosby, who was a wonderful justice and a very bright guy, wrote the opinion and then wrote a concurring opinion saying that he thought that this was the wave of the future; we should be able to do this by administrative warrants and so forth and so on. And I wrote a concurring opinion saying I think the majority got

this case right; but I really didn't like Justice Crosby's projection into the future of having these stops all over the place, and I analogized the totalitarian countries with searchlights and people standing in line and 95 percent of the people stopped were innocent. And somehow—and I never did find out how—*60 Minutes* picked up part of my concurring opinion, and Andy Rooney, who was on that show and is sort of a curmudgeon, wrote or read part of my concurring opinion on the air. Again, he was of the same opinion I was about roadblocks.

Kathleen O'Leary: I wouldn't call either one of you curmudgeons. *[laughing]*

Now, in terms of jurisprudence and sort of your judicial philosophy, sometimes that arises out of your personal philosophy. Now, I know that you've been involved in establishing certain groups in Orange County and have been involved in different community activities and, I think, that sort of personal philosophy that develops into judicial philosophy. Would you agree that there are some trends that—

John Trotter: Yeah, I think that's probably right. I think that all the judges and justices that I've known have always placed following the law first, and their private beliefs and conscience follow.

You know, when we got appointed . . . and another interesting little tidbit. When I was first appointed to the Court of Appeal in San Bernardino George Deukmejian was the Attorney General, and in those days he was asking prospective nominees what their philosophy was on particular cases. And he sent me a series of questions to answer about what did I think of the death penalty, what did I think of the exclusionary rule, what did I think of this case, what did I think of that case. And at my confirmation hearing, where there was Chief Justice Rose Bird, Attorney General Deukmejian, and then–Senior Presiding Justice of the Fourth Appellate District Gerald Brown—no relation to the Governor . . . And it was a little bit of a contentious hearing, because I told the Attorney General that in my opinion it was none of his business as to what my personal views were; that I would be obligated to take an oath and I would follow the oath and I would follow the law.

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And so he wasn't happy with that. He wanted to know what I thought and we went back and forth; and I told him that since he was the only judge at this hearing, that maybe he didn't understand the importance that judges gave to judicial independence and how they were committed to following the law and whether they believed or didn't believe in the correctness of the law they were duty bound to follow it, and I would act in that manner. And he voted against me. So I was

the first justice I think in the history of the Fourth Appellate District to be confirmed by other than unanimously.

Kathleen O'Leary: And George Deukmejian didn't have any judicial experience, did he?

John Trotter: He did not. He did not.

Kathleen O'Leary: In terms of community involvement—and this bears, I think a little bit, on your at least philosophy of the judicial system—I know you were involved in Amicus Publico, which is now the Public Law Center, which is the pro-bono law firm in Orange County. What was your involvement in the early days with Amicus Publico?

John Trotter: In the early days it was apparent as Orange County grew that there really was a group of citizens who didn't have access to the courts, didn't have access to the same level of justice that everybody else had. And so Sheila Sonenshine and myself and Warren Ferguson—who was then . . . I can't remember if he was then on the Ninth Circuit or was a federal judge or on the district court—got together and decided maybe we should do something about that. And we started a group and which we named Amicus Publico. And I can't remember now exactly where we got our funding, but it was all privately raised. We began the concept that lawyers should give time to those that can't afford to pay for a lawyer—that there should be some basis on which these people could reach competent, good lawyers to represent them, even though they couldn't afford it. And that was the concept of Amicus Publico.

It was a wonderful organization that grew, as you say, into its present form, and I believe your husband now is the head of that organization.

Kathleen O'Leary: Yes. *[laughing]* He thanks you for beginning this organization, because the Public Law Center now does serve thousands of people in Orange County through volunteer lawyers.

John Trotter: It's all volunteer lawyers, and I remember all of us, the three of us—Sheila, Warren, and I—gave many, many talks to legal groups, bar associations, urging lawyers to contribute their time and effort to this. And the lawyers were wonderful; they did. And it was a great success and has grown, I'm sure with your husband's guidance, into the force that it now is.

Kathleen O'Leary: Well, and I think our Chief Justice has taken a real leadership role in encouraging people; so it may have started small, but now we have the Chief Justice addressing new admittees and lawyers every year at the bar convention and encouraging them to do just what you encouraged lawyers to do—is to give back.

John Trotter: We had a set line that we would always close our talks with, and it was that as you get older as a lawyer and you look back, the best time that you will have ever spent is the nonbillable time helping others.

Kathleen O'Leary: Now, there have been some other changes I think in the practice of law that maybe you might not think are as positive in terms of civility. There were probably when you were practicing law some handshake deals and your word is your bond, and it was before fax machines and computers and all that.

John Trotter: And e-mails. *[laughing]*

Kathleen O'Leary: And e-mails; there were no confirming e-mails.

John Trotter: That's right.

Kathleen O'Leary: So what was it you—

John Trotter: Yeah, but the practice was different. And when I came to Orange County in 1964, there were 16 superior court judges, and law and motion for the county was heard on Thursday afternoons.

Kathleen O'Leary: There are 109 judges in superior court now and almost another 50 commissioners.

John Trotter: So the intimacy that we had, I think, really caused or allowed us to be friendlier, to know one another better, because we were going to see each other all the time—and it promoted a bond of camaraderie that I don't think exists.

But I think another reason for the lack of civility is—at least on the civil side—is discovery. Discovery . . . the statute I think was passed in 1956, and as a young . . . It could have been '58, but it was barely in existence when I started practicing, and there weren't as many depositions and interrogatories and those kind of things.

Today most litigation is done in discovery, not in the courtroom; and you have younger lawyers that are usually assigned to discovery issues, and this is their only chance to be the gladiator, to win. They do the discovery and then report back to the senior person on whether they were successful in getting the other side to answer that interrogatory more fully. And so those disputes become full-fledged battles. And that, I think, is one of the causes for the lack of civility, is the intensity of the discovery battles—and it leaves scars and causes lots of problems.

But I think there's been a great deal of attention paid to the lack of civility; and hopefully that is changing, the tide is

swinging. I don't see it because what I do now I don't see those disputes; but I'm hoping that they've mellowed and they're not as acrimonious as they used to be.

Kathleen O'Leary: We are sometimes frustrated at the briefs we receive, because sometimes they're not pounding on the law, they're pounding on their opponent, and there are sometimes remarks that I think should be regrettable about opposing counsel and about a trial judge. Did you see those at all when you were on the bench?

John Trotter: I'm sure we did, but I don't remember any; so if it did exist, it was the exception rather than the rule.

Kathleen O'Leary: Okay. I was going to move on to talk about some of your colleagues on the court, and maybe now would be a good time to ask you a little bit about Justice Thomas Crosby, Tom Crosby, because Tom's no longer with us.

John Trotter: Right.

Kathleen O'Leary: And he was an extraordinary member, I think, of the Santa Ana Court of Appeal. And you worked with him and you probably knew him before you were on the bench.

John Trotter: I did. I did. I've known Tom for most of his career. His office when he was in private practice with Dick Luesebrink was down the hall from my office when I was in private practice. So I knew Tom very well as a lawyer.

When I went on the superior court, Tom tried cases in front of me as a lawyer. In fact, one of the most interesting cases I ever tried on the superior court was an election contest between Judge Orozco, who had been challenged by a lawyer; and there had been confusion as to the vote count and there was a lawsuit, and I got to hear it. Tom represented the sitting judge and did a wonderful job.

(00:32:52)

And then when we went on to the Court of Appeal, Tom was, as you said, one of the original members. Tom was in my opinion probably the perfect Court of Appeal justice. He loved his job. He was smart as all get-out and was a very hard worker. He truly believed in the dignity of what he was doing. He really believed in the fact that every single case was important, and he wrote every one of his own opinions. As we all know on the Court of Appeal, sometimes our research attorneys, although they don't get to sign the opinion, are the main creators of it. That wasn't Tom's way; Tom wrote all his own opinions. He was very generous in sharing his knowledge with others. He was as hard-working as anybody I've ever met on the court. He was

extremely bright, and as we used to say to him, he had a very sharp pen. *[laughing]*

Tom's opinions were fun to read. They were pithy, they were clever, and they were most often absolutely right-on. In fact, we created a book of Tom's opinions and some of his famous sayings that we talked about at his memorial service.

But Tom was one of my favorites. I was sad to see him go. I'm sure he's in cloisters upstairs somewhere writing and grumbling and making pithy remarks.

Kathleen O'Leary: And still has a sharp pen, I'm sure.

John Trotter: And still has a sharp pen. *[laughing]*

Kathleen O'Leary: You came from different backgrounds, though; both very accomplished trial lawyers, but in very different areas of the law, because—

John Trotter: It was interesting. Tom had been a criminal-defense lawyer. He had been a DA first, then a criminal-defense lawyer, and I had never tried a criminal case; I was on the civil side. And so as you know, on the Court of Appeal there's a huge part of your caseload that's criminal. Well, I was absolutely a novice as to criminal, and Tom, though he wouldn't admit it, didn't know quite as much about the civil as I did. *[laughing]* So we got to share our expertise in a very collaborative way that was . . . and he was very generous with me in my lack of knowledge about criminal law.

Kathleen O'Leary: He was, when I first came on the court, very generous with his time. My background was criminal, but at least he seemed extremely competent in the civil area when I got there.

John Trotter: Oh, he was always competent; I'm just teasing.

Kathleen O'Leary: No, but he obviously learned a lot from you, because he certainly helped me in every area of the cases that we cover.

Now, we talked a little bit about in your present capacity you don't see a lack of civility. Well, your present capacity here is at JAMS, and so can you tell us a little bit about why you were attracted to alternative dispute resolution and why you get satisfaction out of this current position?

John Trotter: Yeah, I've always thought . . . even though I tried an awful lot of cases, I always felt that the court system didn't provide ample resources and opportunity for the resolution of cases other than through trial. There was only one way to get to the end of the case, and that was to try it, unless you and the other side could come together on your own and figure out a way, how to dispose of it.

When I started practicing there weren't any settlement conferences—they came in a little bit later—and they became more and more popular; but they still weren't sufficient. And when I was president . . . I was president of the Orange County Bar Association in the late '70s, and we started a program where we got all the superior court judges to virtually shut the courthouse down for a week. And we got each judge paired with lawyers who were experienced lawyers, and we got almost every single active civil case in front of those people for purposes of resolution. And it was an amazing feat. I don't remember the statistics, but a huge number of cases got resolved, a very high percentage. And those were cases where we reached out to the lawyers; they hadn't said to us, "Would you help us settle this case?" We went and, as they say, cold-called on these lawyers and said, "You're going to come in, and you're going to try to resolve your case." And that proved to me that judicial intervention or some intervention in a lawsuit at a certain period of time could actively help get rid of that case at an earlier stage in other than trial.

Kathleen O'Leary: As late as 1998 when I was presiding judge they still talked about settlement weeks and the settlement extravaganza, and they continued that practice . . .

John Trotter: They did.

Kathleen O'Leary: . . . to try and keep the caseloads manageable in civil. So it was a success.

(37:49)

John Trotter: It was a success. And so armed with that, when Warren Knight started JAMS . . . Actually, he started JAMS in my law library, where he sat for a year waiting for his first case. Then after he got off the ground and JAMS, who was a provider of alternative dispute resolution, became viable, I left the bench in August of 1987 and joined my old friend Warren and expanded JAMS. And here we are today some 20 years later.

And the reason I don't see the lack of civility is, I only see cases that consensually agree to come, and so people have already made a compromise in their positions to agree to come and try to resolve the case. We don't have any power to make people come to us; it's all voluntary. I don't do any of what would be called judicial work. I don't do any reference work or anything like that; I do almost entirely mediations, I do an arbitration every now and then, and I've served as a special master in a couple of federal court cases; but primarily I do mediations. And I see lawyers that come together and come to us for help, they want to resolve their cases; and we give them

the time, hopefully some expertise, and the opportunity to get the case resolved. And we have a very high success rate.

Kathleen O'Leary: So you do the equivalent, I suppose, of a trial judge who had the time and the skills . . .

John Trotter: That's right.

Kathleen O'Leary: . . . to conduct a settlement conference . . .

John Trotter: Right.

Kathleen O'Leary: . . . to facilitate an agreement.

John Trotter: Facilitate an agreement. And the court is, as you know, overburdened with cases. They don't have the time to sit for a day with one case and to listen. And, you know, some of these cases the court might not think they're as important as others. They're fighting over money; they're not fighting over principle. But to the parties, to the litigants, this is their judicial experience. This is the only time most of them have ever been in a courtroom, and so it's important that they get satisfaction. And I think we help deliver that satisfaction and help the litigants have a successful experience in the judicial system and in the court system, even though they're in our offices when they conclude the case.

Kathleen O'Leary: You indicated that you didn't know if discovery when . . . Cases are more protracted now because of discovery practices; also, trials are longer.

John Trotter: They're much longer; they're much longer. The average case, I don't know how long it is now, a couple of weeks. And the cost of that is significantly higher than when I was a lawyer trying three- or four-day cases. The cost of discovery, the length of trial, all of those things make the transactional costs of litigation exceedingly high, and it takes a whole segment of the populace out of the ability to afford that.

Kathleen O'Leary: I know that jurors were always looking for the two-day cases when I was presiding judge. I couldn't find too many two-day cases—

John Trotter: No. *[laughing]*

Kathleen O'Leary: And any two-day cases in any area, and certainly not in civil with so many experts being called as well.

Any other changes you've seen in the practice of law or how the courts are operating today, as opposed to when you were either a lawyer or as a judge on the court or a justice on the Court of Appeal?

John Trotter: No, I think the biggest change has been the advent and the adoption by the legal community of alternative dispute resolution. I don't think there are many large cases, and large in terms of length of time, things involved, whether they be money or principle, that go to trial without having gone through some type of an alternative dispute resolution process first.

Kathleen O'Leary: In terms of society's attitudes towards lawyers, judges, the judicial system, do you think that's changed? You say when you first passed the bar, you were just so excited about your first job and so excited about being a lawyer, and do you think lawyers had a different position in society or judges had a different position?

John Trotter: That's an interesting question. You know, I don't know. I think judges are still held in high esteem. I don't think that's changed. I think that judges are called upon now, maybe more than ever, to make very tough decisions. And this word "activism" is really in the eyes of the beholder. People that like the decision don't think it's judicial activism, and people that don't like it think it is judicial activism, and really all it is is a judge doing his or her job. So that gets politicized, depending on your view of the result.

I think lawyers maybe have hurt themselves in society's eyes by some of the things that have happened. I think large fees are not very popular with the populace; class actions have somehow tarnished, at least in some people's eyes, the nobility of the profession. And so lawyers are the scapegoats for a lot of pundits' views of what's wrong with society, the cases that people always talk about: the hot-coffee case at McDonald's, people always make fun of that. But by and large, the role of lawyers and judges in society, I think, is still a noble one, and they do on the whole a very good job.

Kathleen O'Leary: We talked about this before we started the interview, that yesterday I was at Cecil Hicks's funeral, a renowned district attorney here in Orange County and a member of the superior court, retired. And his son said one of the pieces of advice he received from his dad was, "Oh, and call . . ." When he became a new district attorney, "Occasionally call a judge by their first name, it keeps them humble." *[laughing]* And yet I remember Cecil Hicks. I was on the bench a couple of years while he was district attorney. I don't ever remember him calling me by my first name. Do you think that with some judges, they lose the aspect of humility or public service? Do you think being a judge is public service?

John Trotter: Oh, I think it absolutely is. I think judges forgo a lot to be a judge—not just financially, which is certainly a big factor. *[laughing]*

Kathleen O'Leary: I bet it was for you. *[laughing]*

John Trotter: It was, yes, it was. *[laughing]* But they give up a lot of their freedom, their freedom of association, their ability to do things that when they were lawyers they were free to do they can't do when they're judges just to avoid the appearance of conflict. And so it's hard to be a judge. It takes a devoted person. But are there some that allow the robe to go to their head? Probably. But they're in the minority, and they have to put up with their peers, who probably are aware of that tendency. And so the great number and the great majority of our judges are wonderful, caring, hard-working public servants that don't get enough credit.

Kathleen O'Leary: You also I think in the early days were part of the ABOTA?

John Trotter: I was, I was. ABOTA is the American Board of Trial Advocates. I was a member for years, and I was lucky enough to have been elected president one year of that organization. It's still a very viable organization. My son belongs to it. It's an organization of trial lawyers that promote the preservation of the jury trial; but they also promote camaraderie and civility among lawyers, which is a very important thing.

Kathleen O'Leary: And there are some stiff requirements to join that organization.

John Trotter: There are. You have to have tried a certain number of cases to conclusion to be in . . . I think it used to be 20 superior court jury trials to verdict to be a member; and then there are different ranks within the organization, and they're accorded by the number of trials that you've had.

Kathleen O'Leary: And Banyard Inn of Court, you had a hand in that, didn't you?

John Trotter: Yeah, when the Inns of Court started I was on the Court of Appeal, and I was asked if I would help in the formation of an Inns of Court; and I was the founding president for the first two years of the existence of the Inn of Court. And we were thinking what should we call it, what should we name the Inn of Court. And there was a lawyer in Orange County, a longtime civil lawyer and a superior court judge who I always thought was a wonderful lawyer and a wonderful judge, named Robert Banyard—everybody called him Bob—and so we named the first Inn of Court in Orange County the Banyard Inn of Court. And since then I think there are two or three other Inns of Court in Orange County.

Kathleen O'Leary: One after your good friend Judge Ferguson. *[laughing]*

John Trotter: Yes, Judge Ferguson has one, and I think there's one after Judge Gray, Senior Judge Gray.

Kathleen O'Leary: Yes. Yes. You obviously have had a very rewarding career, many accomplishments. Looking back on your career, is there

anything that stands out that? Do you feel fortunate to have had the experiences that you've had?

John Trotter: I do. I feel very fortunate to have the life I've had. You know, life is a lot of luck, and I think it's important that I was lucky to find my wife and—

Kathleen O'Leary: Katherine. *[laughing]*

(47:48)

John Trotter: Katherine, who I've been married to for 48 years; and our children have all, knock wood, turned out to be wonderful human beings; and their children are terrific young kids. And so I've been very, very fortunate in that. I was lucky enough to have some success as a lawyer, to be selected by the Governor to be on the court and then to have a very rewarding experience in my last career of alternative dispute resolution. It's very gratifying, to me anyway, to have people come to resolve a dispute in a civil, humane way—to come and sit and have terrible differences and to be able to figure out a way to resolve that and, at the end of the day, after the case is resolved, for everybody to shake your hand and say, "Thank you," as if I had done something, when they had really done it themselves. But there's a great sense of accomplishment that you had some, however small a part, in getting this group of people to come together in a civilized way to resolve their dispute. It's very, very gratifying.

Kathleen O'Leary: Is there anything that we haven't covered that you want to add, something . . . This is the Legacy Project, so this is a very small piece of your legacy. Obviously, you've made tremendous contributions, and you do have a legacy that will live on many years after you; but is there anything else you'd like to comment on?

John Trotter: I can't think of anything, KO. As I said earlier, I would give advice to the powers that be, the next time you create a court, don't do it out of whole cloth; make sure that there's some infrastructure, make sure that there's some experienced people already on the court to allow the new ones to learn from. That was a very difficult time, and it was . . . I guess we'll look back fondly at those times; but as we were going through them, it was very hard. It was very hard to figure out how to write a decision when you didn't know. There was no schooling, there was no education. You were just . . . all of a sudden you were a justice of the Court of Appeal with three others, and figure out how to make it work. And so let's hope that that doesn't happen again.

Kathleen O'Leary: I think we're doing a little bit better job in terms of appellate education now.

John Trotter: And I think that's very important. I think judicial education . . . I know that this was hotly contested; a lot of the judges didn't want to have mandatory judicial education. I'm a great believer in education, judicial education. You know, at JAMS, I think one of the things that differentiates us from maybe other people that do what we do is that we have mandatory education. All of our people that come here have to go through our mediation training, they have to go through our arbitration training.

Kathleen O'Leary: Now, what if someone comes and says, "But I'm very experienced, Jack; you know me, I was a judge for 20 years, I was on the Court of Appeal for 7, I went to an excellent law school. I mean, what is there for me to learn, Jack?"

John Trotter: "You're the one that needs it the most." *[laughing]* The ones that don't think they need it . . . and there's a great transition from . . . as there would be from going from the trial court to the Court of Appeal, there's a great transition going from the court to be full-time engaged in mediation. You don't have the power to make anything happen. I start all of my mediations by explaining to the people . . . the lawyers have done it before, but the clients who are in the room haven't. I say, "This isn't a courtroom, obviously, and I'm a retired judge. I have no power. I can't make you or the other side do anything you don't want to do. I'm here to help you make a decision. I'm not going to make the decision." And that's a learning process that a former judge has to go through, that they can't make the decision, they can't look at the litigants and say, "This is how this case should be decided," as you would on the court. And so there's a lot of training; there's a lot of attitude adjustment that has to go on.

Kathleen O'Leary: Sort of like that collaborative process we need to learn when we come to the trial court.

John Trotter: Right. *[laughing]* On the Court of Appeal; that's exactly right. And so I'm a real firm believer that, you know, you can't have too much education. It's a very, very important thing. I still go to every single training we have, and I've been doing this for 20 years. I've heard literally thousand of mediations. And I have to tell you, every time I go to one of those trainings, there's something there that I didn't know or I pick up that I had not heard before; so it's very important.

Kathleen O'Leary: I think there's also value to having experienced individuals in training classes—because I not only learn from the faculty, I tend to over a cup of coffee or just chatting during class learn things from my colleagues.

John Trotter: Well, we have . . . At JAMS we call it our learning process—the JAMS Institute—and our motto is "Learning From Each Other." And just to take what you've said a step further, it's really important that you hear from other people how they do it and

what success they've had and not had. And we all face the same challenges. In every case when you're in a mediation, there's a breakpoint where people are going to pick up their suitcases and go home, and you have to get past that position. And it happens in every case; there's an impasse, and you have to get past the impasse to get to a resolution.

Kathleen O'Leary: Well, I want to thank you for spending all this time with us this morning, and we will be wrapping up.

John Trotter: Well, thank you.

Kathleen O'Leary: Thanks.

Duration: 53 minutes
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