

CA Appellate Court Legacy Project—Video Interview Transcript: Justice Patricia Benke, Court of Appeal, Fourth Appellate District

- Judith Haller: Good morning to Justice Benke. How are you?
- Patricia Benke: I'm fine. Thank you.
- Judith Haller: Nice to see you. I'm Justice Haller, and I have the honor and privilege of interviewing my good friend and colleague, Patricia Benke, who retired within the last, what, Pat?
- Patricia Benke: Two months.
- Judith Haller: Two months.
- Patricia Benke: It feels like forever.
- Judith Haller: Okay. Well, you had such a long and distinguished career here. You and I served together since 1994, and you were here before I was. So, I want to take you back, kind of start from the beginning. So, let's talk about where you were born and raised.
- Patricia Benke: Well, I was born in Pennsylvania. And after the big snowstorm, the epic snowstorm, my parents decided they were leaving and came to Pasadena. And I was about five, and that's where I was raised. I went to school there through high school.
- Judith Haller: All right. And I want to talk a little about where you went to junior high and high school because I know you had a teacher—
- Patricia Benke: Yes.
- Judith Haller: Who was very significant.
- Patricia Benke: You know, it's very interesting. I think I empathize with immigrant families and children who are entering the systems, especially the educational system, because it is so important and so influential. And I had several teachers along the way who just took—it seemed—a special interest, and it happened in the fourth grade and then it happened again in the ninth grade where I had a teacher who taught social studies and formed a bar association in his classroom. So, everybody had to take the bar, and then some went on to become judges and prosecutors, and we did it. I prosecuted. I was a prosecutor and I prosecuted somebody for cheating, if you will, on an exam. It was later overturned because I forget to go to the grand jury. But it was wonderful, great experience.
- Judith Haller: All right. And is that when you decided you wanted to become an attorney?
- Patricia Benke: I think it went back further. It was really cultural. My dad and I had a very close, special relationship, and I was the one in the family, out of three children and many cousins, who was going to go to college, and I was going into law. Actually, science was his first choice, but that was not for me.
- Judith Haller: So, Dad's first choice for you was science.

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- Patricia Benke: Was science, yes. I was going right to JPL, and it didn't work out. Numbers were not the thing that excited me. And so, I just fell in love with the law, and that was a lifelong goal.
- Judith Haller: So, I know that upon graduation from high school you went to—
- Patricia Benke: Pasadena City College. I spent two years there trying to figure out exactly what I wanted to do. And, at that time, I met Don, my future husband and current husband, and—
- Judith Haller: And I have to say— what anniversary are you in?
- Patricia Benke: We just had our 50th anniversary.
- Judith Haller: Great.
- Patricia Benke: And so, he was coming to San Diego State. So, I had some decisions to make. He was a telecommunications major and I dabbled in telecom there at Pasadena City College. And so, we both came down to San Diego State, and it was a very exciting place to be.
- Judith Haller: And that would have been about when?
- Patricia Benke: Oh, goodness, 1971.
- Judith Haller: All right. And when you came to San Diego State, you already had your AA degree?
- Patricia Benke: Yes.
- Judith Haller: Okay. And I know that San Diego State has played a large part of your life and Don's life. So, let's talk a little bit about what you did at State and KPBS.
- Patricia Benke: Well, KPBS was a very and still is a very important part of our lives. Don went to work right away. He helped build the studio there as a student. It's the only job he ever had. He was there almost 50 years before retiring, and I started working there. One afternoon, Don and I were driving around and I was reading the *Aztec* newspaper, and a reporter had left KPBS. And I said, "I'm going to go and apply." So, he said, "Okay, let's go over there now." So, we stopped off, got my resume, and we went to the studio. I went in and, fortuitously, the producer—their chief producer—was there. He interviewed me. He said, "Come on in." We talked, and I was hired.
- Judith Haller: Is this Peter Kaye that you're referring to?
- Patricia Benke: Yes.
- Judith Haller: All right. And so, for people who don't know, KPBS is located literally on the campus.

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Patricia Benke: On the campus.

Judith Haller: And he, I know, has played an important part in your life. So, let's talk about—

Patricia Benke: A dear friend. Peter is a dear friend.

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And remained a good friend. After he left KPBS, he went to Washinton, and there was a wonderful group of people there. I've been very fortunate. That group included David Crippens, who went on to be the general manager in Los Angeles of the public TV station there, and Larry Thomas, who was a political icon both in San Diego and in Orange County. And so, we all became a little family.

Judith Haller: And when you were at KPBS, I know—and you were writing as a journalist?

Patricia Benke: Yes.

Judith Haller: Did that tempt you to think maybe you were going to not become a lawyer?

Patricia Benke: Absolutely. I actually decided that I was not going to go into law, and I just fell in love with journalism. And Peter—I recall he brought out a *Newsweek* and he opened the front page and he said, "Find the name of the woman on this list of editors and such." There was one at the very bottom. He said, "It's going to be like that for 15 years. If you don't go to law school, I will fire you." And he would have. So, I stayed for about two years while I was going to law school. I was admitted to USD and was able to interview and be an associate producer—assistant producer—with some wonderful guests, including Jacob Bronowski.

Judith Haller: All right. And who was Jacob Bronowski?

Patricia Benke: Jacob Bronowski is known as the moderator, writer, producer of *The Ascent of Man*, in England, and a renowned scientist. He was one of the first on the scene after the atomic bombs in World War II. And UCSD was entering into an explosive period of attracting very good scientists.

Judith Haller: I was going to say, since both of us have lived in the San Diego area for a long time, UCSD I think opened sometime around '66, '67.

Patricia Benke: Yes.

Judith Haller: And you're right. It was—they became immediately a hub for scientists.

Patricia Benke: Oh, yes. Jacob Bronowski was there and became a fixture—he and his wife—in La Jolla, and a few others. Peter was intuitive enough to know how important these people would be.

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Judith Haller: And, of course, San Diego has certainly developed its science and technology reputation.

Patricia Benke: Absolutely.

Judith Haller: What other kinds of stories did you cover when you were there?

Patricia Benke: The Jacob Bronowski series that KPBS started was one that I was writing on, and helping to write questions, and so forth. And I came in one morning, and Peter said, "We're looking for somebody, preferably a student, to interview him. Would you like to do that?" And so, I did. It's still there. It still—every once in a while, they'll play little snippets of it in historical meetings.

Judith Haller: I did not realize, though, that you worked at KPBS and went to USD at the same time.

Patricia Benke: Just about the same time, there was a little bit of overlap, and Peter left and went to work in Washington, D.C. He worked on a couple of very high-level campaigns, and Larry Thomas went to work for Bechtel. But we all stayed very close friends. And so, there was a little overlap. When he left, I went to work for Gloria Penner, who took his place. And Gloria, of course, is an icon here in San Diego, and she became a lifelong friend, as well.

Judith Haller: Pat, you have been an avid reader and writer forever, yes?

Patricia Benke: Yeah, I think so. I think I was kind of born into that because of my dad. He was a very intelligent, very academic person and an artist, a true artist. And so, yeah, we would argue about things, academic issues, while we were in total agreement with each other. And so, the writing kind of came naturally. He wrote poetry and very much part of the culture, the beautiful Arabic culture and the music and the art. And so, I think the writing aspect of life grabbed me right away. And so, I wrote. I still have journals that I started and finished in high school.

Judith Haller: Okay. Well, let's take you to—I know you were on the law review at USD, correct?

Patricia Benke: Yes.

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Judith Haller: And do you remember what article you wrote?

Patricia Benke: I wrote an article about federal and state relationship preemption and I loved it. I thought that was great. This is where I belong.

Judith Haller: Okay. And of course, you've had the opportunity up here to consider cases on preemption, so.

Patricia Benke: Yes.

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Judith Haller: All right. And I know that you worked on the campaign for Pete Wilson when he ran for mayor of San Diego. What did you do in that capacity?

Patricia Benke: Well, this group—Larry Thomas, Peter Kaye (and I was so fortunate to be part of that), several other individuals in San Diego who were involved in the growth of the city—were together still when Pete Wilson ran for mayor, and I was able to write white papers for him.

Judith Haller: All right. And what is a white paper? Just so everybody knows.

Patricia Benke: It's an academic paper on an issue, not politicizing it, but the facts of a particular issue. And there were, of course, many of them in San Diego, well still are, but there were some significant issues and I had the opportunity to write on them. My chief interest was criminal law, and so I wrote about criminal law and changes, and those were used to prepare the candidate for appearances.

Judith Haller: And debates back then?

Patricia Benke: Yes. It was a very exciting time in every aspect, both personally—the beginnings of profession. And there I was. I found myself in the midst of and working with icons, people who had become icons, and so that was it, he won. It was a campaign run by his two very good friends, Larry Thomas and Peter Kaye, and they ran that campaign. And Larry went on to be his press secretary.

Judith Haller: I remember that.

Patricia Benke: And so, people stayed together, and always a telephone call away and deep friendships.

Judith Haller: And Pat, let me ask a question about your dad. Was your dad formally educated, or he was just a smart guy?

Patricia Benke: No. He was just a smart guy. He was an artist. He and my mom—you know, when I look back (and I see it in my teaching now), there is so much talent that goes unused. My father was not just smart, I believe he was a brilliant man, and I never properly thanked him specifically for lifting our family from Pennsylvania and moving us to Pasadena with no ties, really, to that area other than a distant uncle. And so, that's what I would say about that, yeah.

Judith Haller: Yeah, very interesting. Okay. So, after the campaign is over and was successful, you then—as I understand it—you were offered the opportunity to say, "Gee, I'd like to serve on a board or two."

Patricia Benke: Here I was, you know.

Judith Haller: You're still very young.

Patricia Benke: I was very, very young. And the campaign had gone very well and everybody was in place, and it was a time to sort out who was going where. And I remember that Larry took me out to dinner, and Peter was

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there, as well. But when Peter left, Larry said, "Okay, Pat. I know you worked very hard. We appreciate the work, and what would you like to do?" And it was, "Well, I don't know. What should I do?" And he said, "Oh, the Park and Recreation Board." So, I said fine and I was placed on the Park and Recreation Board.

Judith Haller: And it turned out that there were some significant things that happened in Balboa Park, were there not?

Patricia Benke: Very significant.

Judith Haller: Let's talk about that.

Patricia Benke: The Air & Space Museum, burned, arson. The Old Globe shortly after that burned, arson. So, I was there at the time those museums were being rebuilt, and I knew what had been lost. There were some beautiful, just totally unique items that, of course, could never be replaced, but the recruiting of the airplanes and the building of the new Globe was a very interesting and exciting time to be there.

Judith Haller: At any time—I'm just trying to—you were just finishing law school when you were on these boards?

Patricia Benke: Yes. There were several things going on all at the same time. I had been, of course, in law school and at the same time doing work on the mayoral campaign, and then people kind of split up.

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I went on to law school, Peter went back to Washington, Larry went to Bechtel. I think that's where he went first. Oh, no, he went to—he went to be the press secretary for Pete Wilson.

Judith Haller: I was going to say now, when was your first son, Michael, born? In and about the same time?

Patricia Benke: About the same time. Michael was born in 1982.

Judith Haller: All right. Okay. Well, I'm going to take you now. You graduate from law school, you've been on law review, you did very well. You were a wonderful writer and had all these other activities going on. So, you went to work for the Attorney General's Office?

Patricia Benke: Yes, yes. Again, one of those strange moments. I say "strange" because it just unfolded. I was in my senior year and on the law review. Mike Weaver was the editor-in-chief.

Judith Haller: And for people's benefit, Mike Weaver is one of the preeminent attorneys.

Patricia Benke: Attorneys in San Diego. And he was one of those people who never bought a book. He just sat in class, listened, and he graduated first in our class. And he said, "Pat, you missed the interviews for the Attorney

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General's Office." And I was sort of wandering about professionally, trying to figure out what I was going to do. I'd gone to a few interviews that were interesting, and it was a time women were not totally welcomed.

Judith Haller: Yeah, I was going to say, how many women were in your law school class?

Patricia Benke: Very few.

Judith Haller: Maybe 10?

Patricia Benke: Fifteen, I think.

Judith Haller: Okay.

Patricia Benke: Fifteen. And, of course, now, it's like 51 percent. It's huge.

Judith Haller: Yes, very different.

Patricia Benke: But I missed the interviews. So, he said, "Why don't you call and tell them you'd like to be interviewed?" So, I called and I got Michael Wellington on the phone. (Michael became, of course, a wonderful superior court judge here in San Diego.) And he said, "Why don't you come in?" And so, I came in, and I talked to him, and then he took me to talk to [REDACTED] Kremer, who was then the chief here in San Diego in the Criminal Division.

Judith Haller: And ultimately becomes the PJ at our court.

Patricia Benke: And so, he and I chatted. I went through the little civil service exam that there is, and I was hired there, and I was—it was a wonderful place because it was writing, and it was exactly what I wanted to do and I just sort of walked into it.

Judith Haller: And there, I take it, there were not very many women in the office. How big was the office, and how many women were there?

Patricia Benke: It was growing, it was growing. It was newly established. They hired four women out of seven. So, it was a big expansion.

Judith Haller: Okay. That was quite impressive for those time periods.

Patricia Benke: It certainly was. I remember apologizing that I had a son, and the response was, "Don't ever apologize for having a family; bring Michael in." And so, that lasted about a day.

Judith Haller: I love that because, I mean, many of our generation recall those kinds of events.

Patricia Benke: It was a real passage for women. It was really very, very nice. And so, it was—

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- Judith Haller: And juggling.
- Patricia Benke: Juggling home and children, and I was still writing, and it was the most productive time of my life. It was like I had time for everything.
- Judith Haller: And, also, from various conversations we've had, I know you received—you had the opportunity to sort of immediately have cases of your own?
- Patricia Benke: Yes.
- Judith Haller: Let's talk a little bit about the philosophy at the office, at the AG's office. I think you were there about nine years.
- Patricia Benke: I was there nine years and immediately the philosophy of the office was a standout for me because if you had a case, you ran with it. If it went to the California Supreme Court, you went with it. If it went to the U.S. Supreme Court, you went with it, probably with the mentor going with you. And I had the opportunity within a year to argue before the California Supreme Court, and that was within a year—less than a year.
- Judith Haller: Okay, so we're about 1975ish, that time period?
- Patricia Benke: Yes, it was *People v. Jaramillo*, which is still one of the cases cited for being able to prosecute someone for both theft of a vehicle and receiving stolen property.
- Judith Haller: That's so funny, because I can remember, when I first arrived, that was the big issue, and I don't think it was until recently that I really clicked in on the fact that was your case.
- Patricia Benke: Yeah, Jaramillo was my case and it was a very interesting experience in the California Supreme Court because of this philosophy that if you developed an issue—and I spent a lot of time developing the issue—
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- then it wasn't taken from you. You took it where it needed to go.
- Judith Haller: And I know Evelle Younger was the AG when you were in the office.
- Patricia Benke: He was.
- Judith Haller: And Rose Bird was on the Supreme Court at that time, yes?
- Patricia Benke: Yes.
- Judith Haller: Okay. Do you remember anything about that argument? Were you terrified?
- Patricia Benke: No, I'm not sure. I believe Rose Bird was. I don't know. I'd have to think about that for just a moment. The only thing I remember about the argument was that in the middle of the argument before mine (everybody was listening intently and I was scribbling madly), one of

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the justices, I will not say who, got up and left in the middle of the argument.

Judith Haller: That's interesting.

Patricia Benke: Came back. But it was like, I had this habit of having a pen in my hand all the time. So, by the time I was through that morning, I had ink all over me. But it was exhilarating, and I was there with other cases soon after that, and I know had I gone another path, I certainly would not have been so active in the court system so quickly.

Judith Haller: Absolutely. I think one of the major complaints of young attorneys now, if they go to a large office or they go to—whether it's public or private, they do not get the kind of experience they want.

Patricia Benke: So fast.

Judith Haller: So fast. The idea that you within the first year went to the California Supreme Court and argued is pretty impressive.

Patricia Benke: Yes. Well, thank you, and it wasn't just me. There were others. Everybody was—within that office—was moving through, and it was a small, very collegial group because we would go down— this was in the state building. We would go downstairs to the cafeteria and pull the tables up and we would all have coffee in the morning, the criminal *and* civil divisions. And so, it was a good time. The law was changing.


Judith Haller: Yes. You and I have talked about this because I was in the DA's office from about '76 to '79.

Patricia Benke: Same time.

Judith Haller: Okay. So, Fourth Amendment issues were developing rapidly and changing rapidly.

Patricia Benke: Yes. A lot of forced changing, and I had the chance to work on several cases, including trunk search cases, which were—and container cases, which were of course brand new then.

Judith Haller: Yes, they were.

Patricia Benke: And the 's case. I didn't argue any part of it but I participated in the team effort to do the briefing in *Hera's*.

Judith Haller: In *Hera's* for—

Patricia Benke: That's capital punishment.

Judith Haller: Yes. A very tragic case.

Patricia Benke: Yes. Very tragic.

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- Judith Haller: Well, we're at about 1983 and then a big event occurs in your life. What happened?
- Patricia Benke: Well, actually, about that time, several things happened. Our second son, Peter, was born; and the court was continuing to change. Eventually, of course, George Deukmejian was elected the Governor and he began taking and pulling middle management and others within the Attorney General's Office out and putting us on the bench. And I was in the first group of appointments that he made. It was here in San Diego.
- Judith Haller: And that would have been to the Municipal Court, correct?
- Patricia Benke: Yes. Then the Municipal Court.
- Judith Haller: Right. And that was about 1983?
- Patricia Benke: Yes.
- Judith Haller: And you very quickly were appointed to the Superior Court?
- Patricia Benke: Two years in Municipal Court, two years in Superior Court.
- Judith Haller: Again, by Deukmejian?
- Patricia Benke: By George Deukmejian. That's right.
- Judith Haller: And, Pat, I know you don't remember this, but I do, because I was arguing civil law and motion matters.
- Patricia Benke: I was there.
- Judith Haller: Yes, you were.
- Patricia Benke: Not for long.
- Judith Haller: I understand. But I remember arguing a demurrer in front of you in a law and motion, in the old-fashioned law and motion, where you'd have 12 or 15 motions every day.
- Patricia Benke: I'll bet I was madly looking through those files because it was all new.
- Judith Haller: No. As always, you handled yourself wonderfully. But, let me sort of put this in perspective just a little bit because—so, at this point in time, you've got the two boys. Don, your husband is working at KPBS. You are progressing wonderfully through your professional career, and you're also writing books, correct?
- Patricia Benke: Yes. I was writing. That was an interesting story because my name surfaced. It was all because one thing, like, caused something else to happen directly. And I was—I'd been writing, I had an idea for a book, and my name surfaced for the first Supreme Court appointments that George Deukmejian was making, and I was 37. I was just 37.

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And I was still on Superior Court, and I got a call, and I don't think—all the people who are involved in this are gone, and so, I think I have a little more freedom to speak. But I wasn't going to get it. They really wanted to appoint me to the Court of Appeal here. But that opening came up and they floated my name. Not floated. I actually was one of the six who was being looked at.

Again, a very tumultuous time at the Supreme Court level, and it was exciting. We had our boys. They were—we were between San Diego and Santa Barbara a lot of the time because Don's parents lived there. And it was very clear to me that I was not going to get it, and I got a phone call essentially saying, "Enjoy yourself. This isn't the one for you." And somebody else was appointed to the Supreme Court. But the press in San Diego and California were just nearly apoplectic that a 37-year-old woman was going to be potentially on the Supreme Court. Now, of course, that has since happened.

Judith Haller: Yes.

Patricia Benke: Yes.

Judith Haller: But back then it was unheard of.

Patricia Benke: Back then it was unheard of. And so, one of the things that happened was we went up to Santa Barbara and I remember the press calling, saying, "Can we meet you there? Would you mind if we take some photos of you and the kids on the beach?" And that's fine. So, they followed us up there and, of course, I knew all along it was not going to happen, but it was so much fun. Um, one of the headlines—and I've got all of these articles—Deukmejian selects six possible Supreme Court appointees. Includes woman, 37. So, that didn't happen and it was disappointing, but I knew from the beginning it wasn't going to happen. It was almost scary. I was so young and I'd gone through the system so quickly. But it was an event.

Judith Haller: Yes.

Patricia Benke: It was an event, start to finish.

Judith Haller: Yeah. Little did we know that social media would make these kinds of things pale in comparison.

Patricia Benke: Right. It was much more exciting than tracking things online. And so, what happened after that was, they said, "You're not going to get it." That came from a very high level. Okay, that's fine. "But there's a Court of Appeal appointment coming up and we would like to consider you for that." And there had just been an appointment; Ted Todd was appointed. And the second appointment came up—Jerry Lewis retired—and they called and said, "You can have the appointment," which is probably where they wanted me anyway.

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Judith Haller: So, this was again Deukmejian and a lot of the people you had worked with starting back with Pete Wilson and that campaign, et cetera?

Patricia Benke: Yes. It was travelling along, and it happened a second time two years later.

Judith Haller: So, what's interesting though, is you continue this theme of, you know, paths take you certain ways and you just kind of go there. But I think it's a testament to just how good you were at what you were doing.

Patricia Benke: Who knows? Thank you. But you don't—you know, I say this, and I mean it, because it's one of my favorite movies, the Forrest Gump movie where he's sitting there at the bench at the end and there's that little feather floating along, and he says, "You know, I'm trying to figure out, is it a feather or is it destiny?" He said, "It's probably both. You sort of float along to get where you're supposed to be." And I began to feel that things were happening that I did not necessarily set in motion. I happened to be in the stream of what was happening at the time.

Judith Haller: Um-hum. Well, I'm going to take you in a moment to—let me finish sort of with when you were on the Superior Court. So, you were in law and motion?

Patricia Benke: Yes.

Judith Haller: And did you also have a criminal assignment?

Patricia Benke: Yes, I did. I can remember going into court one morning and all this press, cameras, everybody was in there and they were all set up, and I think that this must be a really big murder case, something really significant. It was about mistreatment of a turtle. It's Rocky. Rocky the Turtle.

Judith Haller: Oh, my goodness. how, interesting.

Patricia Benke: They had taken Rocky away from his owner because somebody complained he was being cruel. And I think he eventually got Rocky back. And I remember, it went all the way up to appeal and it was—I think it was reversed up here. Rocky was not given to his owner, but we gave the owner back his turtle. And I remember a footnote because Don Work wrote the opinion, and he said, "Let's hope we don't have a Rocky II."

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And I remember that and nothing super significant. I had a chance to go out to Imperial County and try some cases for the district attorney. The district attorney there was disqualified completely; the Attorney General came in. That was a new experience.

Judith Haller: Yes. And we continue to do work for Imperial County here.

Patricia Benke: That's right.

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Judith Haller: All right. So, now you're appointed to the 4th District Court of Appeal, Division One, and that was 1987.

Patricia Benke: 1987, it was right after—right, it was 1987. That's true.

Judith Haller: And set the stage. It's Pat Benke and how many other—

Patricia Benke: Oh, my goodness. I was the first woman appointed to this court. I was just barely 38, and it was a new experience because I was so young. Two children, a group of wonderful justices who were a generation before me. When they talked about their children, they were talking about their grandchildren. So, the art on my walls was very different than the art on theirs.

Judith Haller: So, we had both a gender gap and an age gap.

Patricia Benke: And an age gap.

Judith Haller: But you start in on cases right away, and your skills as a writer are recognized right away.

Patricia Benke: Yes, I think so. I like to think so.

Judith Haller: And I know because I've watched your decisionmaking. Let's talk a little bit about your philosophy of decisionmaking, how you grapple with and come to a conclusion or a decision on a difficult issue, especially when the law kind of hasn't been put together. Talk about this, Pat. You're so good at this.

Patricia Benke: Well, thank you, but every justice establishes their own way of working with their staff. I work with my staff here quietly, and I give them *carte blanche* to tell me what they have found on an issue. I very rarely will read a case and the briefs and say, this is what I want. I have them read. Then they tell me what they are seeing, and I respect that fully. And so, I'll work through it. If at the end of it, I feel uncomfortable, then something's wrong. That's when I say, you know, "Stop. Let's look at this again. It's not registering with me."

And that philosophy, I think, has led me to several cases that—through several cases that I recall very favorably. I recall one small, if you will, short habeas corpus that came in and the petitioner was arguing or actually was asking for damages from the Governor for being improperly imprisoned. And he also filed a civil action. I said, well, you don't get that. That's not how this works. But there was just something about it—and I'm a big believer in intuition—that was not right. And my senior attorney came, Jack Harney, and said, there's something that's not right about this. So, I said, why don't you go take a look at it? It was a Michigan case. It was the third strike, and he came back two days later and said it couldn't be a third strike in California. We had imprisoned him based on what we thought was a righteous third strike. And it was not. So, then the question came up.

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Judith Haller: What do we do?

Patricia Benke: What do we do? What do we do? So, we denied the civil aspects and I instructed the clerk's office to call Appellate Defenders and tell them this man needs some help, and we didn't have to do that. So, it's just following intuition on cases and doing, doing what your—what you're feeling is about the case—doing where that leads you. The second case Don Work came in and said, you know, Pat, I'm looking at your response here in this habeas case. The last thing he's asking for is a DNA. Let's just give him the DNA. It was a voice of experience. I said, okay, tested him, came back, he couldn't have done the crime. He'd been in jail for—he'd been in prison for 10 years.

Judith Haller: Okay. And this was separate and distinct from the fellow on the third strike.

Patricia Benke: Right. So, that's my philosophy. And of course, over time, as a justice, you become neutral.

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You're not conservative. I don't consider myself starting out in any case to be conservative or reaching a conclusion. It is synthesize, read, see where it takes you. And that's a very strong philosophy, I think, in my approach to cases. One of the most memorable ones, one of them, is the Soledad Cross case.

Judith Haller: Yes, I wanted to ask you. You've had many significant cases, but give a little background on the Soledad Mountain Cross case.

Patricia Benke: It was a case, of course, involving a cross on a mountaintop and should it be? Was it improper government action? And several people on the court disqualified themselves. "I don't want to handle it." And so, they literally put the names of the remaining justices in a box. And one of the externs here reached in, drew a name, and it was me. So, I was the lead on it and Dick Huffman and Gil Nares. So, there we were, the three of us. I began going through it, of course, with my staff. Immediately, one of my staff members, my research attorney, disqualified himself because he was involved in a case, I think, with the city.

So, okay, he was out. The other attorney, we were famous for arguing for days, while we were in total agreement, about general approach. And so finally, I said, you're off the case. And I could hearken back to all of that experience at the Attorney General's Office dealing with transcripts and records and writing from scratch. And so that's what I did. I used one of my attorneys to do memos for me, hoping that wasn't insulting to him. I just had memos.

Judith Haller: And you drafted it from scratch.

Patricia Benke: I drafted it.

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- Judith Haller: For anybody who lived in San Diego, that was—you could probably put that on the list of 10 to 20 cases that anyone in the legal field would know. There was lots of activity.
- Patricia Benke: It was a headline case and there were little snippets, being an ex-journalist, being able to phrase things so that you know that's what's going to be picked up. We all acquire that skill in writing. And so, it was a great case to work on because it was constitutional law. It was bedrock law. And so I was able—I don't know that I've done anything quite like that since the Soledad case.
- Judith Haller: You've been here for, let me, before you reach it. So, you were here 34 years?
- Patricia Benke: Yes.
- Judith Haller: Okay. How would you? You've seen many changes. What are some of the biggest changes you've seen in, first, our court, and then I'm going to talk a little bit about the law in general.
- Patricia Benke: The addition of women to our court at the very top. I came here young. I was the only woman, and that brought its own challenges. And I believe you were the second woman to be appointed this court. Things began to change very quickly. Then Judy McConnell. Now we've got, I'm not sure what our latest number is.
- Judith Haller: I was going to say there are nine of us right now, and there are six women and three men.
- Patricia Benke: That's about right. It was not only just a change in gender. I think and I believe very strongly that—and I don't want to sound sexist in this—woman decide things differently. They have a different agreement-disagreement pattern and method. I've been a very strong writer at times, and usually, like everybody else, I use my attorneys to say, hey, you'd better tamp that down. So, and that's happened, but my colleagues. I remember one very well where I had written a very terse missive in a concurring or dissenting opinion. And she came down and said, "Pat, do you really want to write that?" And I said, "No."
- Judith Haller: Because you needed to get it off your chest.
- Patricia Benke: Yes. It was a writing exercise. And it was—and so that continued, and it shaped, I think, our court to a very friendly and very cooperative court.
- Judith Haller: We have been blessed with great collegiality for a long time.
- Patricia Benke: Yes.
- Judith Haller: Let's talk a little bit about your philosophy on dissents and the role they play and why they're important.
- Patricia Benke: Dissents are very important. To me, a dissent is the way sometimes the law changes. That's what it—

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There's nothing bad about disagreeing. We disagree. That's what we do. We agree and disagree and, you know, I think of the U.S. Supreme Court and Justices Scalia and Ginsburg. How different they were, how different their philosophies were and sometimes to the point of being strident in opinions and yet they were the best of friends.

Judith Haller: Yes, and people are always surprised to learn that—

Patricia Benke: Why? I'm not surprised at all. They have the same values, they have the same values in decisionmaking and writing, and so they share that and their disagreements are to build on the law, not to tear it apart. And that's what dissents are to me.

Judith Haller: And it's not that you've written a lot of dissents, but you have certainly written some that are important and speak your mind on an issue.

Patricia Benke: Yeah, as have others.

Judith Haller: Yes.

Patricia Benke: And I can recall, I think I had a case that I wrote that the majority disagreed in, kind of, the approach, and so I said, "Well, I'll write a dissent," and I remember the majority, the new majority writer, who was you, said, "Fine. Do you want to publish?" So, we published it and it went on to change law, even though that case in itself was not huge. My dissent and/or concurring opinion wasn't gigantic, but they began being cited up and down the state. I would come in and Jack would say, "It's like at 59 now."

Patricia Benke: Knowing Jack, that was before computers kept track of those kinds of things.

Patricia Benke: Oh yes, absolutely.

Judith Haller: Yes, let me talk a little bit about your—you've had a teaching career, and I want to go back to your, also, your "hobby" as a novelist and writer. So let's, let's take the writing first and talk about some of the books you've written because you've written four books—five. Yes. The four were—

Patricia Benke: The four were a series.

Judith Haller: Okay.

Patricia Benke: The fifth one was very different.

Judith Haller: Yes. So, let's talk about that, and when in the world did you find time to write those.

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Patricia Benke: Well, I stay up very late. I don't sleep very much, but what happened was when I did not get the Supreme Court appointment, I started teaching and a journalist called from one of the newspapers and said, "We'd like to come in, take a photo, and talk about what you're doing now," and I said, "That's fine." I, you know, "Come on in." So, they seated me in my chambers and did some wonderful portraits, and the portrait appeared in the newspaper with just a caption underneath. There wasn't even a story. "Justice Benke also writes novels that have been rejected."

It was like, oh gosh, how humiliating. I remember leaving on vacation and my judicial assistant was typing and I was just so miserable, but I said, you know, "This could be a big moment for me." And sure enough, while I was gone, an agent—well, it was a lady who was beginning an agency here, starting an agency in San Diego with her husband, and she called and said, "Would you like to write a novel?" And I said, "Sure, why not?" And I started writing, and I knew what I wanted to write. So, she worked with me—and her husband—for a year. They edited, they told me what was needed. It was done. They took me to lunch, presented the novel to me, and said, "It's ready, but we're going out of business."

Judith Haller: This was *Guilty by Choice*?

Patricia Benke: Yes, *Guilty by Choice*. It was about capital punishment. And so, she said, "I've got an agent up in Fullerton. I'll send it up to her." She took it, and in a month, it had been sold to Avon, and so that led to a contract with them, a contract for two more after that, and then another one. So, I had four. I had an idea of what I wanted. I wanted to show the dynamic nature of the law and how what may seem like somebody who is not a very good lawyer really turns out to be a wonderful lawyer in the next book.

Judith Haller: So, all four books were interrelated in—

Patricia Benke: They were.

Judith Haller: Yes.

Patricia Benke: Same. It was about a district attorney, deputy district attorney, a woman. And I set each of them in a different area of culture. The first one was the death penalty. The second was tagging and writing on walls. The third one was fields—people working in the fields—and I fell in love with writing and I fell in love with the Oaxacan culture, because it was about that culture. And so, I remember coming home or coming to pick Peter up—

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Patricia Benke: from school.

Judith Haller: Peter's your younger one.

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Patricia Benke: Yes. And I said, "Peter, Mommy sold a book." And he looked up at me. This was after the California Supreme Court nomination. "Now I'm proud of you, Mom."

Judith Haller: Leave it to your kids, right?

Patricia Benke: Yes, he told me the truth. I guess maybe in some respects it was very important. So, by that time I was done with the characters, and I said, "I'm going to write the great Arabic woman novel of the century." So, I started writing. Peter Kaye. Oh, he said—he still was reading everything and we were still very good friends and he would rip apart what I was writing. And so, I presented him with a 600-page novel and he said (it was so awful). He said, "Start over again and write it in the first person." And I did and that was—the short story book published in 2016 was the result.

Judith Haller: Well, and I will say that my judicial assistant was telling me that she read your, that she said of all your books, that's the favorite one. And she loved the way, she said, particularly because it picked up on a lot of personalities in the San Diego area that, if you'd been here for a while, you could kind of figure out who people were.

Patricia Benke: Yeah, but that last one on the short stories, Qudeen is a horse. And it was a story that my father told me when I was very little that this horse—the war horses in Syria and in Middle East were so important. If you ever saw the movie, *Ben Hur*, and you saw those four horses come in and they were pampered and babied. That's how they were treated. And so, they would take these young ponies to the water (and they were trained), and they would sound the war horn, and the horses that stopped drinking (they were very thirsty but they stopped and went back), those were the ones they bred. And so, every short story deals with East, deals with Newcastle, Wilksberry, and a young Syrian girl—girls. They are not the same one. And the horse appears in some form or other in each of those stories. And one of them, a young boy (I read it in a little blurb in the San Francisco airport) hung himself by (and it was a mystery as to why)—and the mule in that story that comes to the rescue with somebody on him too late is the horse. So, it's all the way through. He's a carousel horse in the depression, and I want to go back to it eventually, but it's not my top priority.

Judith Haller: Well, that leads me into—I want to talk about teaching because those seem to sort of interrelate to you in terms of writing and teaching, and tell us a little bit about where you've taught and what you've taught and why you love it so much.

Patricia Benke: Yes, I've taught at the law schools in San Diego and I loved it. Law students are finding their way. I started teaching at National University to students who, maybe they hadn't had the chance when they were younger. They're back in school and young people who are looking for what they want to do and not so sure. And this goes, I think quite far back in my childhood and looking at my mom. My mom, especially, was a beautiful, intelligent woman. Had she gone to law school in 1980, she

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would have been marvelous as an attorney and the loss of that talent that happened to our parents, many of us, our parents who were immigrants or—. And so, I identify with that very strongly and identify with students who are in that position. And I see them. They just, their eyes light up, and I caught one of them. I've got one. I've had students who started out sitting in the back of the classroom and throughout the month they start moving forward.

Judith Haller: That's always a good sign.

Patricia Benke: Good sign. I've had students who I have grabbed—like the big, they talk about the big claw of fortune—and brought them to my chambers, even though they're young, they're not trained, they don't fit in a program here. This is what you can have if you work hard or something similar. You can have what you want. And I remember one young man in particular. I brought him in and he wasn't the A student in my class but he was there and he was, his eyes were all over the chambers.

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And almost to the point where he wasn't listening to what I was saying to him. So I left the chambers and closed the door and I told Lauren, my judicial assistant, just leave him in there for about five minutes. I'll be back, which we never do. We don't usually bring a stranger in and leave him. I figured he was safe. And so, when I came back in, he was on the cell phone talking to his mom in one of the southern states, saying "I'm here. I'm in chambers." And he actually sent me a short note about five years later. He'd gone to law school in Arkansas and he was about to graduate. I get goosebumps. Because, you know, that was turning somebody—that was changing someone's life very quickly in one month.

Judith Haller: A little like you're junior high school teacher.

Patricia Benke: Yes. I believe in that. I believe that there is so much talent. Like I said, I've said this several times that, and because I firmly believe that the job of the professor for me is to find that talent and to teach it. And I can recall one student coming up and saying, "I'm not going to do well in this class." (It was a prelaw class.) And I said, "Well, what do you do?" She was an older lady, and she said, "I assemble records for doctors." See, good for you. You know how to synthesize. She graduated number one in the class.

Judith Haller: Oh, Pat, you have so many good stories.

Patricia Benke: Well, I enjoy them. I love people, and to teach is a mission, it really for me is—I love it now. I've been teaching for 15 years the same way.

Judith Haller: I always wonder where you find all the time, and I think now I know you don't sleep very much.

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Patricia Benke: I don't sleep, and it's amazing. Sometimes, the more you do, the more organized you are.

Judith Haller: Well, that old saying, find a busy person to get something done.

Patricia Benke: Yes. Done, yeah.

Judith Haller: Why and what are you doing in retirement. You've only been retired, I know, for two months.

Patricia Benke: I know. I know. I'm resetting. I try to substitute it when I talk about. I'm not *retired*, I'm *resetting* because I have more energy than I know what to do with it. I'm driving everybody at home crazy. And I'm hoping that I can continue in one of the programs that we now, we have for retired justices.

Judith Haller: Yes, where you can go and assist others—

Patricia Benke: The Assigned Judge's Program.

Judith Haller: Which is one of those programs you think, well, why haven't we had that forever.

Patricia Benke: I know. I know. There's such a need for it, and again, if you have what you consider to be a lot of experience, you may end up retiring but you want to keep doing the nature of what you're doing, then it's perfect and it's an assist to the judicial system, but I have to wait. You know you have these periods of time you have to wait.

Judith Haller: Well, you're still writing.

Patricia Benke: Yes.

Judith Haller: And you're still reading all the time.

Patricia Benke: Yes.

Judith Haller: And I know you have this love of your—I won't say love of your life, but you certainly have Noodles.

Patricia Benke: Noodles was my horse. I say *my* because along with everything else I began doing about five years ago, I got involved with horses. Now, I never had a horse. My family didn't have horses. I laugh. I say, "Yes, I remember when I was that big, I was pretending I was a horse, you know, running around in the sprinklers." But it was a time when several hurricanes hit, and one of them, Sandy, one of the animal rescue organizations, the Helen Woodward, here in San Diego, brought 60 of the cats and dogs, and they were on the news saying, "We don't need money, although we'll take money, but what we need is food, blankets, things that we can use immediately to take care of them."

So my husband, Don, and I—we went through every closet. We emptied everything out. Don went out and bought big bags of dog food, and then

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we went up, and he was moving it around with the people who were there to help, and I looked out over a stable, and there was a horse. The horses were there. And I said, "What's this?" So they explained it is for children, essentially children, and it's a therapy program, and there was Noodles. He was standing at the end of the barn, and I said, "Whose horse is that?" And they said, "Well, you can have him if you can help us with him." So I did, for four years. And Noodles was a thoroughbred. He came from Venezuela. No, Argentina, I'm sorry. He was a racehorse in Argentina, and they promised me that he'd won one race, but he was taken to Florida as a polo pony and then to Helen Woodward to be a therapy pony, and he was so gentle and he was much older then.

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So I sponsored him. He would get out. Nobody could quite figure out why. They kept adding locks, but they found him wandering up at Rancho Santa Fe looking through a deli window. They got ahold of him. I just fell in love with him. And we bonded, and he was really a very, very good horse. He was so gentle, but if you would take him and he'd hear the click of the halter, he was off kicking, running, jumping like a thoroughbred. So I fell in love with him, and I stayed on when he retired. I had another horse they gave me, Aleph, and he was in one of the Mummy movies. And so, he was a gift to Helen Woodward. Beautiful white horse. And he was incorrigible. He did not like work. So eventually, somebody readopted him, but every one of them had their own personality, and horse people know that, you know.

Judith Haller: Yes. Sort of like dog people know that the dogs are [overlapping]

Patricia Benke: I watched a lot of Mummy movies.

Judith Haller: Well, Pat, as you look back, where do you think our legal community, our legal profession, is now versus when you and I started so many years ago?

Patricia Benke: Oh, well, of course, the mix now of women, more women in law schools. Very—I can't think of the right word for it—but out front in everything and training, serving as mentors, serving the community. We're a large enough group now to do that very effectively. Pro pers, trying to find some way to help people out of the costs of litigation.

Judith Haller: Yes. That has certainly been something we've all worried about.

Patricia Benke: It's worrisome because you know as do all of us that we're on the bench and there are litigants who come in pro per, representing themselves, and they really sometimes don't know what they've done. So we do—we go out of our way to help them through the process, without becoming part of their case. Sometimes all they want is just to talk.

Judith Haller: Yes. Sure.

Patricia Benke: They want their position known, and so, that's what I also enjoy is giving people the opportunity to access our justice system, but at the same

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time educating them on what actually they're going to get from it, realistically speaking.

Judith Haller: Yes, because over the time we've been here, statistically, we've gone to maybe 5 or 6 percent of self-represented litigants to, in civil now, maybe as high as 21, 22 percent.

Patricia Benke: Oh, my goodness.

Judith Haller: And, you know, we've all been on cases where we wish that the person in front of us had had the ability to provide us with a good record.

Patricia Benke: Which costs money. And there—so it's a two-edged sword.

Judith Haller: Yes, it is.

Patricia Benke: It's a two-edged sword. We welcome, and at the same time, we try to find ways to make the individuals—

Judith Haller: At least understand.

Patricia Benke: Understand the system by explaining that you know. We've listened to you. We don't have a record from you. I hope you understand. This is what's going to happen. And I would say 99.9 percent of the time, the litigant will say, "Thank you for listening to me," and leave understanding maybe why they don't get exactly what they are asking for.

Judith Haller: Well, is there anything you'd like to say? Oh, I forgot the fact you also love roses and you do a lot of gardening, which is therapeutic.

Patricia Benke: Yes. I've been gardening. I've been gardening up a storm as I've been home.

Judith Haller: I bet you're your yard is in perfect condition.

Patricia Benke: I don't know, but I'm using them. I'm using a lot of skills cutting roses.

Judith Haller: Okay. But anything else that you'd like to say or any thoughts that you want to leave us with?

Patricia Benke: I've been so fortunate. I truly have. I mean, from the moment we left Pennsylvania and to now, this moment, I have had opportunities given to me, foisted on me, fallen on me, and through much of that, I have felt I was meant to be here. I hope I can continue to do work for the Court of Appeal.

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It's the love of my professional life. But the way I got here I do wonder about sometimes, as others do. You know, I didn't have a straight course. I kind of—every time I changed course, it was for something

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better. It was for something fun, and I've had lots of fun and enjoyment in my career.

Judith Haller: And by *fun*, I know you mean just the sheer joy—

Patricia Benke: Oh, yes.

Judith Haller: Intellectual curiosity and subject matters that are different.

Patricia Benke: Absolutely. Absolutely. I mean that little period of time when I was on the Balboa Park Committee for Park and Recreation Board was such an important time in the history of San Diego, and I was there. I was able to watch it. Maybe even participate in it a little bit. And to be here at the Court of Appeal with the amazing group that we have here and be part of it and share friendships that I can move on to the next point, wherever I'm going to end up, and say I am blessed to have been here.

Judith Haller: Well, we miss you.

Patricia Benke: I miss everybody else, too, and I do hope I can continue to contribute.

Judith Haller: We do, too. Well, Patricia Benke, thank you.

Patricia Benke: Thank you, and thank you for doing these things, you know, to make our history alive, and I want to thank you. It was a great interview. I think I covered everything.

Judith Haller: Good.

Patricia Benke: Thank you.

Judith Haller: Say hi to the family.

Patricia Benke: I will. You, too.

Justice Haller: Great, all right.

Patricia Benke: All right.

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