Justice J. Haller: Well, good morning Justice McIntyre! I, as you well know, I am your friend and colleague from 23, 25 years, Judy Haller with the 4th District Court of Appeal, to conduct your legacy interview. You may recall that we started this project about 10 years ago after the 100th anniversary celebration of the Courts of Appeal because we wanted to interview the Justices on the Court of Appeal to have this available for the public and also for educational purposes, and to let everyone know a little bit about the men and women who have served on the Courts of Appeal.

So with that, it's no surprise, I'm going to ask you, tell me a little bit about your early days. Where were you born and raised?

Justice J. McIntyre: Good morning! I was born and raised in Chicago, Illinois about two miles from Wrigley Field. I grew up on the North Side, moved out to suburbs to go to junior high school and high school, and then I went off to college.

Justice J. Haller: Well, let me stop you because you are a huge Cub fan, correct?

Justice J. McIntyre: I am.

Justice J. Haller: And?

Justice J. McIntyre: We had successes after 108 years.

Justice J. Haller: Well, I thought of you. I mean you've been gone from our court since June of this year and when we are all watching that game, I thought about you. I knew you were ecstatic.

Justice J. McIntyre: Well, thank you. I'm glad someone still remembers me. Yeah, I was excited about that. I had been in the hospital for Game 7, but I still got to watch every minute of it.

Justice J. Haller: Perfect! Okay, but I know that when you moved out to the suburbs, tell me a little bit about your junior high and high school because you were still very devoted to your high school.

Justice J. McIntyre: I am. Probably I think because I moved and started junior high school, I detested it. My best friend and I both detested it. So, when I moved on to high school, I went to New Trier High School in Winnetka. I thought I died and gone to heaven. It was so much better than junior high school, partly because I was older and established in the community. But I think it was one of the best high schools, and still it's one of the best public high schools in the country.

Justice J. Haller: When you were there, what kind of activities were you involved in?

Justice J. McIntyre: Oh, I played football for a while and I was in all the music groups, I was a singer.

Justice J. Haller: You know what I don't think I ever knew that. Tell us about that.

Justice J. McIntyre: Well, we got to find something, you can do that -- I'll come back to that thought. So, I was in all the singing groups, I really enjoyed that. I'm trying to think, well that's hard to remember what else I did, not putty windows. I know you're going to ask me about that.

Justice J. Haller: Well, we should probably get that other way. One of our most favorite stories about Justice McIntyre when we are at court, we'd go to lunch very frequently together and one of our best stories about Justice McIntyre is the difficulty he had in shop class.

Justice J. McIntyre: Shop class.

Justice J. Haller: Why don't you give the short version of that?

Justice J. McIntyre: Yeah. Well, there was a series of different things you did. The first one was to putty a window. Now, they didn't want you to have to putty a window that was already up. So, they put on the desk a pane with a few windows in it and then you were supposed to putty around the four sides of it until the instructor were satisfied that you could do that. Then, you move on to electrocuting people and things like that.

Everybody else had moved on and I was still trying to putty this window. I was not very successful at it. I'm the worst repair person you can imagine. I'll come back to that thought when we get to why I did what I did as a lawyer.

Justice J. Haller: Now, your dad had a lumber business, correct?

Justice J. McIntyre: He did.

Justice J. Haller: Did you ever work in the business with him?

Justice J. McIntyre: Oh, yes several summers. He had two lumber yards, one down right by Wrigley Field and one out in Skokie. I worked at both of them in the summers, yeah.

Justice J. Haller: Was your dad hoping you'd take over the family business?

Justice J. McIntyre: Probably, but he never said that. My dad was much too careful not to say anything like that. I really had no interest in doing that.

Justice J. Haller: Well, I know you successfully graduated from high school and then went off to college.

Justice J. McIntyre: I did.

Justice J. Haller: How did you select Brown?

Justice J. McIntyre: Well, this was, of course, a different era for the most part now, and it wasn't nearly as hard to get in, so I just applied to three Colleges: Brown, Stanford and Cornell. I didn't visit any of them and I got into all of them fortunately. So, I don't know why. I've never been there. I've never been to any of them. So, I just picked Brown and I went there.

Justice J. Haller: By the time you went to Brown, were you already thinking about a career in the law?

Justice J. McIntyre: I did. I told you I was going to come back to this.

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I am good at about three or four things out of everything in life. So, you have to watch what you're doing when you go into your profession. I had a couple of skills that I thought would be, I don't know if I consciously thought of it but I am quick. I have whatever response I have to something almost immediately. So, cross-examination was really good for me and repairs were bad. So, there were many careers I couldn't do. So, I always wanted to be a trial lawyer from high school.

Justice J. Haller: Did you do anything in high school like debate or anything of that sort?

Justice J. McIntyre: I took public speaking. It was like everyone else, you get up to speak your little pitch and you're petrified, but I did it. I always wanted to do that, before I ever went to college.

Justice J. Haller: Right. I know you said that one of the reasons you thought you might be good at as a trial attorney was you were quick.

Justice J. McIntyre: Yes, you can't teach that. From my perspective, I don't think it's teachable. If you can't react quickly, you can't.

Justice J. Haller: Well, and I think there's something else we all thought about you was your ability to simplify issues.

Justice J. McIntyre: Well, that's one of the few other things I'm good at.

Justice J. Haller: Tell us a little bit about that because you're remarkable at that.

Justice J. McIntyre: Well, I am pretty good at it, but the other thing is I think it's really important in practicing law to simplify things rather than

as many lawyers do, complicate them. Instead of making it simpler for whoever they're speaking to, they make it more complicated. I try to break it down and make it simpler because I did a lot of jury trials, and you have to simplify things. These people can't be expected to understand some of the details or some medical procedure, or whatever the subject matter is, so you have to be able to simplify it for them. I concentrated on that.

I also think it's a hallmark of a good lawyer. I'm not speaking of myself but just generally that you are able to do that, and even when I was on the bench, even here on appellate court. I try to tell the lawyers, "Simplify this. Don't present eight theories to the jury. Because if you have a good case, you don't need eight theories, and if you have a bad case, they won't save you." So, I try to get them to simplify. It was very little success.

Justice J. Haller: Well, I'm going to come back to that but I don't want to forget to ask you this one question. Do you think you had that ability that was instinctive with you, or is that something that you were taught when you went to the McInnis firm when you started practicing?

Justice J. McIntyre: Probably both.

Justice J. Haller: Okay.

Justice J. McIntyre: Yeah. I mean I went to law school --

Justice J. Haller: Well, let me get you back to Brown for a minute. Tell me some of the things you did at Brown.

Justice J. McIntyre: I was in the music groups.

Justice J. Haller: Singing or?

Justice J. McIntyre: Singing, yeah. I'm trying to remember what else I did do. I had a lot of fun. College wasn't the stressful thing that it is now. I had a lot of fun. I was in a fraternity. I got to be the president of the fraternity. I enjoyed all that. I just went on and got through.

Justice J. Haller: You sounded like a few of your very well-known partners in San Diego highly regarded would say 90% of doing the job is showing up for it.

Justice J. McIntyre: Right.

Justice J. Haller: All right! So anyway, when it came time to think about going after graduation, did you want to go to Stanford or other schools you applied to? How did you end up with Stanford?

Justice J. McIntyre: I remember I applied to Cornell, again I applied to UVA. This was many years ago. That was a safety school. I applied to Stanford.

Justice J. Haller: UVA was a safety school back then?

Justice J. McIntyre: Not just for me but for everybody. I applied to Stanford and I thought well, I went to the east coast for college, and I'm from the middle, maybe I should try the west coast for law school. So, I decided to go to Stanford. Again, I didn't see it before I drove there.

Justice J. Haller: And there was no internet, what did you know about Stanford before you went off there?

Justice J. McIntyre: Not much.

Justice J. Haller: Not much?

Justice J. McIntyre: I know it was a good school and it was in California. So, I thought I should try it.

Justice J. Haller: We'll put some perspective on this time-wise. You graduated from Brown in 1960 and so you started in the fall of 1960 at Stanford. Tell me a little bit about that experience. Your law schoolmates, kind of classes you took, what it was like.

Justice J. McIntyre: Yeah. This was in the year literally, you know, on the first day or two, you're sitting there with all your classmates and the dean says, "Well, after one year, we expect out of the three of you, the one next to you on each side, one of you will be gone." I'm thinking, "Wow, this class isn't that big." It was only 150 people.

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They were absolutely right. By the end of the first year, they'd lost 50 and they never replaced them. So now, we were a hundred. So, that's a pretty small class. We kind of had somewhat of a union philosophy. We don't want to be pushed too hard here collectively and there were about five people who took it all, you know, as if they had -- it was really important. It was important but we still had kind of that post-college feeling that we're kind of all in this together and that's how we should go through it. That's how we did it.

Justice J. Haller: I would imagine as we'd known now, there are core classes that you have to take but you also have the opportunity to take a lot of electives. I take it that back between 1960 and 1963, Stanford was pretty regulated in the classes that you had to take.

Justice J. McIntyre: Yeah. I went through on a special program. I decided that I would go through nine straight quarters rather than three quarters then summer off and then three -- so I actually went through in a little over two years. That was a great experience because in those days, Stanford brought in visiting professors, they're from Harvard or Penn or whatever, good law schools to teach in the summer so you got a wider variety of faculty I thought. So, I enjoyed that.

Justice J. Haller: Did you do moot court or?

Justice J. McIntyre: I did moot court, yes.

Justice J. Haller: Okay.

Justice J. McIntyre: Yeah, I did do that. I like that. You know many years later, I got a call on the phone from this woman who said, "You don't know me but my son was at Stanford when you were there." I don't know whether it's the medical school or something. "You had him in a mock trial. Now, I want your opinion on where he should go to law school." I don't think remember this at all. So I gave her some general information but it was kind of interesting. It's something not long ago. It was like she called me like 30 years later and she wanted me to give advice.

Justice J. Haller: I'm trying to imagine. So, if this is a young son, do you think he was a witness?

Justice J. McIntyre: I don't remember exactly what he needed advice on, maybe it's the grandson. I'm not sure. But I was so shocked that this person called me because I didn't know them. You'd probably get a lot of calls like that but I don't.

Justice J. Haller: It's funny how some of those stay with you. You were in moot court but did you travel around in various competitions?

Justice J. McIntyre: No, we didn't travel around. We just did it there at the school. And of course the law school, at Stanford, it's not where it was then. They built a separate campus. It used to be right in the front of the campus. When you went down, there was the Memorial Drive and the big parking thing there.

Justice J. Haller: That's at where that beautiful, all the palm trees are?

Justice J. McIntyre: Yes. You walk up, that's where the law school was. The business school was right next to it. So, it was pretty convenient to drive to school, very nice.

Justice J. Haller: I know, remind me, you lived in an area -- not Woodside.

Justice J. McIntyre: Woodside. Yeah, I did live, third year.

Justice J. Haller: In your last year.

Justice J. McIntyre: Yeah. About six of us rented a house up in Woodside. We had a pool and a sauna. It was pretty nice. I think we used $50 each a month, maybe it was $100, I don't know. But it was relatively cheap and it was a great, it had nice view and all these things. It was really nice.

Justice J. Haller: Right. So, you graduated from Stanford, take the bar and passed the bar.

Justice J. McIntyre: Right, passed the bar.

Justice J. Haller: Okay. Now, please tell me, you picked -- how did you end with McInnis and I'm going to tell everybody now. You were at McInnis for 30 years.

Justice J. McIntyre: Right.

Justice J. Haller: McInnis, Fitzgerald which eventually became McInnis, Fitzgerald, Rees, Sharkey & McIntyre.

Justice J. McIntyre: Right.

Justice J. Haller: So, how did you end up in San Diego?

Justice J. McIntyre: You know I'm going to say this because it's true, but I don't want you to be offended. I know you're from L.A. I was willing to work in most places in California but not L.A. So, I did not interview in L.A. though I don't want you to be offended.

Justice J. Haller: No, I know but we've always had this friendly rivalry about especially the athletic teams in L.A., okay.

Justice J. McIntyre: But I interviewed in San Francisco, Palo Alto, San Jose, Carmel, Monterey and San Diego. Those are the places. I skipped the Central Valley and all that. I got a couple offers including one from McInnis. I actually wanted to go with the D.A.'s Office. The man doing the hiring was the number two guy, his name was Bill Low. Do you recognize him?

Justice J. Haller: Yes.

Justice J. McIntyre: He subsequently went on the bench and his son eventually came to work for me.

Justice J. Haller: Now, why don't we talk a little bit about that? So, Bill Low was a very well-respected superior court judge in San Diego and then his son, Bill, came to work for you?

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Justice J. McIntyre: Yeah, years later. But anyway, we hit it off, the senior Bill Low and I. I was in the service briefly and I had a back problem. He said, "You know, we can't hire you without a medical exam."

Justice J. Haller: This was for the D.A.'s Office?

Justice J. McIntyre: Yeah, for the D.A.'s Office. I said, "I'd like to do that." He says, "How long were you here?" I said, "Two days or three days." I was living in Palo Alto. So I said, "Well, sure. I'm available whenever you want to do it." The problem wasn't getting the medical exam. It took like six weeks to get the thing through the Civil Service and all that that I was okay. Well, I needed a job. In the meantime, McInnis firm made me an offer. And so I thought, "Well, I should take this."

Justice J. Haller: All right, let's talk --

Justice J. McIntyre: So, I did and just to follow-up. About a month later, after I started at McInnis, they called. Bill Low called and said, "You've passed. We got you through. We'll hire you." I said, "I can't. I can't leave this job. I just started here. I appreciate your offer but I just can't do it. I don't think that would be right, so I'm going to stay here."

Justice J. Haller: It's funny how certain things take you down on a path.

Justice J. McIntyre: Take you down at a certain path, exactly.

Justice J. Haller: The McInnis firm, let's talk a little bit about the culture, the San Diego legal communities and where it's in 1963, how big was McInnis?

Justice J. McIntyre: It was six or seven.

Justice J. Haller: Okay.

Justice J. McIntyre: The big firms were like 20 or 22. You know it's funny in those days, I remember that the salaries were all about the same including the D.A. It was about the same as Luce, Forward or Gray Cary or Higgs or McInnis. They were all about the same. You see where we are now, we've widened this thing so the salaries of the big firms are way, way higher than say the D.A. And then, down at the bottom, people who went out and hang up their own shingle or work in juvenile, they -- hardly anything for working. So, it's hugely expanded whereas on those days, it was all pretty close.

Justice J. Haller: In those days, there were the big three firms: Higgs, Luce, Forward and Gray Cary and then there were a lot your size, McInnis, Procopio.

Justice J. McIntyre: Right. Yeah, our firm was a trial firm, all the people tried cases. We would in case take something else but we were all trial lawyers. I started out doing insurance defense work. You know rear-enders and slip and falls and all those. I was going to say that the good news is that you don't spend your time in the library or sorting through documents, but you get a chance to go to court right away. The first year, you get to go to court. First week, you get to go take depositions. As you know, that's a big difference particularly from big firms who have you sorting documents and so forth.

Justice J. Haller: All right. I take it that there was not mentoring, they just threw you in to the --

Justice J. McIntyre: They did but I wouldn't say there was no mentoring. They did throw you in but you could always ask somebody what to do. I wondered today how good the mentoring system is. I don't think it's as good as it was for me because as you know, law school doesn't teach you anything about how to try cases or how to practice law, really nothing. So, you're kind of stuck with who you're sitting near or who you can go ask.

Justice J. Haller: And I take it the discovery process was very different back then.

Justice J. McIntyre: Oh, it's hugely different.

Justice J. Haller: Okay. Let's assume that you had an automobile case that actually went to trial and it was one of some moment. Let's say that there were serious injuries and liability was a serious question. Did you go through lots of production of documents and interrogatories?

Justice J. McIntyre: No. You went through some depositions and interrogatories and medical records, but the main difference was the bar was cooperative of it instead of at each other's throats, so you didn't have to fight over every detail of things. I remember one of the lawyers in the firm would indicate in the file that they were going to take depositions by writing in the corner of a yellow page in a file, depos of plaintiff and defendant, their office, our reporter. That was it. There was no notice of deposition. There was this -- sometimes even a letter as I say, I just wrote it in the corner. I think how far, that would never happen today. No one would ever agree to that.

Justice J. Haller: The cooperation was both between the defendants and the plaintiffs bar and the defense bar?

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Justice J. McIntyre: Yes. It was much less segregated that you're a plaintiff's lawyer or you're a defense lawyer, there were lawyers. Some

firms did mostly plaintiffs, some did mostly defense but I was trying to have -- even though I was primarily a defense lawyer when I started, I always try to have a plaintiff's case here or there. It keeps you sharp I think and it's different.

Justice J. Haller: How did you segue from auto cases into medical malpractice cases?

Justice J. McIntyre: You know, one of the partners here at McInnis, that's all he did was medical malpractice defense. So, he was kind of the go-to guy for the doctors and the hospitals. So, we had a lot of cases. So, he'd give one to you that maybe was a simple one when you started and then if it went to trial, you could try it. So, we had a lot of med mal there.

Justice J. Haller: I remember this because I joined Higgs in 1979 and our firm did some medical mal, I never did. But there was always this philosophy among the defense attorneys defending it. Why don't you talk about it?

Justice J. McIntyre: Yeah. The general philosophy was don't shoot at the other defendants, just defend your own self. Don't be shooting sideways.

Justice J. Haller: Was that successful?

Justice J. McIntyre: Yes, it was. I tried one case later on with a couple of very well-known lawyers. And the other defense lawyer said to me before we started, he said, "I'm dead but I'm going to try to bring you down, too." He said, "I just want to tell you before we start." He did. It's exactly what he did. So, I had both the plaintiff's lawyer and the defense lawyer after me.

Justice J. Haller: And the result? I don't think I've heard this story.

Justice J. McIntyre: They found the nurses were negligent but no proximate causation. The anesthesiologist who was the with me, they put the tube down the wrong hole and they had a little hole already under the throat but the anesthesiologist put it down the throat and didn't use the pre-existing hole, and so the woman darn near died. She was in for hip surgery. She had brain damage. She was pretty much out of it.

Justice J. Haller: One of those really horrible ones.

Justice J. McIntyre: Yes. But yeah, I did win it. It's one of the last cases I tried.

Justice J. Haller: You may know this exactly but give us a sense of you joined the McInnis in 1963 and left in 1993, 30 years. How many cases do you think you tried in that timeframe?

Justice J. McIntyre: I tried something about 115 jury trials. I don't know. Non-juries, I didn't keep track of it, and arbitrations, I didn't keep track of that. But that's about how many jury trials I had.

Justice J. Haller: Okay. Now, you mentioned that you did plaintiffs' cases every now and then, let's talk about your huge success and who the parties were. What kind of case was it?

Justice J. McIntyre: Well, it was a bad faith case arising out of a truck auto accident in which my client, the plaintiff, who was in the car hit this truck that was stopped on the freeway in the middle of the night and had a lot of brain damage. His wife found me through a lawyers' directory where if you don't have a lawyer, you call --

Justice J. Haller: The Bar Association?

Justice J. McIntyre: The Bar Association one. His wife picked me.

Justice J. Haller: This was before websites and all those kind of thing?

Justice J. McIntyre: Yeah, way before that. This is late '80s, early '80s. So, I went over to Balboa Naval Hospital and met with him, he was really out of it. The brain damage was substantial. He couldn't talk right. He couldn't walk right. He had major injuries. So, I started out suing the trucking company. But they didn't have enough money or enough insurance. So, then I made a deal and then I sued the insurance company claiming the coverages were more than they were saying and I won that case. That came up to this court on appeal and the court ruled in my favor. So, then that was a bad faith case for them having delayed all -- so then I tried a bad faith case.

Justice J. Haller: Who was the law firm on the other side?

Justice J. McIntyre: Well, it was your old firm, Higgs.

Justice J. Haller: It was.

Justice J. McIntyre: Yeah. That's the only instance in which -- you know, we all pretty well got along and I got along with that lawyer in that firm, but he took some things that happened in that trial. He felt like the judge favored me and that he didn't get any rulings and I got all the rulings.

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He really meant it. He tried --

Justice J. Haller: But it was a very successful verdict for you?

Justice J. McIntyre: Oh yeah. It was the biggest verdict anyone had ever got.

Justice J. Haller: In San Diego.

Justice J. McIntyre: In San Diego. Yeah, it was $17.2 million. I do recall that.

Justice J. Haller: If my recollection is correct, it didn't stay at $17 --

Justice J. McIntyre: Oh, no.

Justice J. Haller: So, what happened after that?

Justice J. McIntyre: Well, it came to this court and they partly affirmed it and partly reversed it. It went to the Supreme Court. I don't think they got into it. But then along came and I can't remember the name of this case, it didn't have anything to do with San Diego, which changed the rule for bad faith cases. But it was and they said it's not retroactive, so it didn't apply to my case. So my case then was coming back -- it came back for a new trial and I settled it. I settled it in parts. But I got quite a bit -- the firm got quite a bit of money out of this.

Justice J. Haller: Yes, you did.

Justice J. McIntyre: It was a very successful case.

Justice J. Haller: That was kind of the heyday of bad faith cases and that was --

Justice J. McIntyre: Moradi-Shalal I think was the case if I can remember it right.

Justice J. Haller: Yes, which was not retroactive.

Justice J. McIntyre: Right.

Justice J. Haller: Right, 150 jury trials is a lot.

Justice J. McIntyre: Fifteen.

Justice J. Haller: 115, sorry. It's 115 and you were a member of ABOTA and also American College.

Justice J. McIntyre: I am.

Justice J. Haller: Many people don't know much about -- a lot of people know about ABOTA, American Board of Trial Advocates, and you have to have a certain number of jury trials, et cetera, but let's talk about just how elite American College is.

Justice J. McIntyre: Well, let me say something about ABOTA.

Justice J. Haller: Okay.

Justice J. McIntyre: Back in those days, it wasn't that hard to get trials. You have to have 20 trials to get in to ABOTA. I got in 1971. So, that was after seven or eight years of practice. So, that's how many cases we were able to try. Now, they weren't big cases. They were just routine cases. No one was afraid to go to trial on either side. So, it wasn't that hard to build them up.

Now, with your question about the American College, yeah, there's only about, let's say, maybe 30 lawyers in town in American College, it's a chapter here. It's supposed to be up for 1% but it's actually much smaller than that. It's the usual thing. If you have to be approved by large numbers of people, they can ding you for any reason they want. So people who should be -- they're not. So, I'd say maybe there are 30 lawyers. So yeah, it is fairly -- you've managed to avoid defending anyone terribly.

Justice J. Haller: All right, any thoughts about the bar in San Diego? You were there for 30 years, what kind of changes occurred in those 30 years?

Justice J. McIntyre: Well, the big firms came in and they started doing more discovery, more experts, more of everything which kind of slowed down the cases. No one takes anyone else's word for anything. Everything has to be in writing. Even then, people just dispute what was agreed to. And so the whole process kind of got clogged. It's like someone put some kind of bad oil running in the system, it just doesn't run very smoothly. And you can't put the fault at any one person. It's just kind of a general slowdown in the system.

I always believe, as I was saying earlier, simplify, simplify, simplify. I don't know why other people don't see it that way. I really have always been puzzled. Part of it, I think, is they're afraid to leave any stone unturned and any theory unlooked at and part of it is they're afraid of getting sued for malpractice if they don't bring up every theory that could possibly apply. I never believed that. I thought my job as a lawyer was decide which were the theories that were best for this case and present those, and because something could have been brought up, I didn't want to do that. I just didn't want to do it whether it involves suing the other lawyer. I didn't want to do that. I want to get to the best result I can.

Justice J. Haller: And obviously, when you started at McInnis and for many years, there were no women who were lawyers in your firm.

Justice J. McIntyre: Oh, Carol Ronquillo.

Justice J. Haller: Well, I was going to say let's go to Carol Ronquillo because she joined the firm in probably mid '70s or early '80s.

Justice J. McIntyre: Yeah.

Justice J. Haller: She was your associate, correct?

Justice J. McIntyre: Yes. We originally hired her as a paralegal because we had volumes of medical records that needed to be summarized, and she was a medical tech before she was a lawyer. Even when she was in law school, we hired her and had her do records reviews and summaries.

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So then when she graduated, we hired her. Yeah, she worked for me. She was very good.

Justice J. Haller: And then she became a partner, did she not?

Justice J. McIntyre: She did become a partner.

Justice J. Haller: Okay. So, you have this very successful career, you're well-regarded within the community and then you decide 30 years, what?

Justice J. McIntyre: Was enough.

Justice J. Haller: And what thinking went into that?

Justice J. McIntyre: You know it's not a matter of thinking. I'm one of those people to whom this applies. You're going along and you kind of hit a wall. Not that you can't go on but you don't really want to. I always wanted to be a trial lawyer and I was one. But after 30 years, I thought that's enough. I don't need to do this anymore. I don't want to.

So, then I looked into the bench and I knew Governor Wilson somewhat. He wasn't a close friend or anything but I knew him. So, I eventually got on to superior court.

Justice J. Haller: That was 1993.

Justice J. McIntyre: Yeah. And I was fairly old. I was like 53 or 54 when I went on the bench. I thought, "This is pretty old."

Justice J. Haller: I was going to say that he's really young.

Justice J. McIntyre: Again, I was lucky to practice at the time that I did. I was lucky to go on the bench when I did. You were there.

Justice J. Haller: Well, I was there just a smidge before you.

Justice J. McIntyre: Yeah. But you didn't get as good deal as I did. You went to some not so good place to start, didn't you?

Justice J. Haller: Well, I was out in El Cajon. And then I did criminal for a while and then --

Justice J. McIntyre: But why didn't you have a basket, a shopping basket?

Justice J. Haller: I did.

Justice J. McIntyre: To go from courtroom to courtroom?

Justice J. Haller: See, I'd repressed that. Let's explain that. There was a problem. We did not have enough courtrooms for the number of judges. Some of us were given shopping carts to go from court to court. Then I actually ended up in the San Diego Hotel until the roof collapsed.

Justice J. McIntyre: I remember a colleague of ours who had been put on the bench and I hadn't seen him in a couple of months. He was walking down the hall and this guy is coming down the hall with his shopping cart. I said, "Harrison, what are you doing with a shopping cart?" He said, "Well, I don't have a courtroom so I have to take my stuff with me wherever I go." Oh, my god. It did make me think I want to go on to the bench that I would be running around with a shopping cart, but I did.

Justice J. Haller: As you said, things got better.

Justice J. McIntyre: They got better.

Justice J. Haller: Yes, by 1993.

Justice J. McIntyre: I started the civil overflow and I didn't think that was a huge transition at all because I did Pro-Tem a couple of times as a judge when I was a lawyer and you know, I didn't think that was a huge --

Justice J. Haller: Those were the cases that had been assigned to independent calendar judge and then that judge may have been engaged in something else, so it came to an overflow person, which was you?

Justice J. McIntyre: Right, which was me, which was pretty easy because there's no law in motion. All that's done, I got to just try the case. Well, that's not that hard. If you were a trial lawyer for 30 years, I mean to say that that was a big difference, it wasn't. They put me as I did later in criminal, that's a whole different matter.

Justice J. Haller: I was trying to remember, were you assigned specifically to a criminal trial department for a while?

Justice J. McIntyre: Yes, a few months, six months maybe, a year.

Justice J. Haller: Okay. You'd never done any criminal at all.

Justice J. McIntyre: Not since the first year of practice.

Justice J. Haller: All right, so what about the learning curve there?

Justice J. McIntyre: Well, there's a huge learning curve. I won't use the name of that judge but they sent me this case where the defendant was claiming it was double jeopardy to retry him. So, I didn't know it. I haven't seen double jeopardy since law school.

Justice J. Haller: Right. You hadn't seen the subtleties of it, right?

Justice J. McIntyre: So, I called the presiding criminal judge and I said, "You know, I got this issue here and I don't know anything about it. Do you have a research attorney that can help me for a little bit?" "No, I don't." He said, "Jim, they appointed you to the bench. Make the decisions." I said, "You know…" I'll use his name, John. I said, "I'll do that. It looks to me like it's a good motion. I'll just release him." He said, "Whoa! Wait a minute." This man was younger than me so I don't know why he was talking to me like that. But anyway, he did send down a research attorney who did help me and we did get through it.

Justice J. Haller: Yes, so you learned quickly the subtleties and the double jeopardy.

Justice J. McIntyre: Right. I thought why is he not going to help me? You mean there's no one here that can help me?

Justice J. Haller: All right! Then I know you went into independent calendar.

Justice J. McIntyre: I did.

Justice J. Haller: Describe the independent calendar departments. What did you do there?

Justice J. McIntyre: I don't remember. There were 12 or 14 judges then in independent calendar. All the new civil cases, when they came in, they were assigned randomly in rotation to each of these 12 or 14 judges.

00:35:05

At that time, this was when muni court was still in existence, so we didn't have muni cases. I think there are around 600 cases. You were in it, too. Isn't that right, about 600 or 700 cases that you were carrying?

Justice J. Haller: Yes.

Justice J. McIntyre: And you're responsible for doing it from beginning to end, all the law in motion, everything. Then they would send out statistics every month to show you where you rank with the other judges, how old were your cases, were you getting them done in a year and all that kind of stuff. So, there was some degree of completion there. So, I had all these cases. I guess you did. And you try cases four days a week and one day a week, you do calendar matters, law in motion, status conferences and so forth.

So, if I had an old case, I had them all ranked how old they were. "My goodness, this case is old. Why is this case old?" Well, they'd give you some explanation. I said, "We certainly don't want to continue. We certainly need to move this to the top of the list and get this case done." Well, they don't know how else to do that. Sometimes they did but sometimes they didn't. But I was one to try to push on the older cases.

Justice J. Haller: And then they remarkably would settle, 3%.

Justice J. McIntyre: A lot of them, yeah. But not all of them, but let's resolve them one way or the other.

Justice J. Haller: I know that you had a very fine research attorney working for you helping on the law in motion matters.

Justice J. McIntyre: I did. I had Kim Stewart who is now here at the Court of Appeal as the managing attorney, and I had her part-time. I won't go on all the reasons for it, but the other person that had the other half -- I got reversed on some kind of a denial of a summary judgment. So, I went to the head of the attorney and I said, "I don't have confidence in that. I would like to get Kim full-time." Well, I had to get the approval of the presiding judge to do that and fortunately, the presiding judge was a friend of mine and a former law partner. So, that greased the skids probably for that, so he said, "Sure, you can have her." So, I brought her here and when I came to the Court of Appeal.

Justice J. Haller: Any cases from your independent calendar days that stand out? That was an active department.

Justice J. McIntyre: Right, but you know, you were doing it, too. Yeah, it's not as hard as a full practice is.

Justice J. Haller: Why do you think that's true?

Justice J. McIntyre: Because you don't have to make the presentation every time. You make the decision about it. I think it's easier. I'm sure you didn't either. Once I made the decision, we're done with that. We don't need to worry about it. We move on to the next thing because there are lots of next things.

Justice J. Haller: I always thought it was a lot like that old show from Lucy and Ethel trying to put the candy into the little --

Justice J. McIntyre: From the assembly line.

Justice J. Haller: Yes, that if you don't make the decisions and move on, you're dead.

Justice J. McIntyre: Yeah.

Justice J. Haller: Well, you were there for three years and then did you apply to the Court of Appeal or did they ask you to apply?

Justice J. McIntyre: They asked me.

Justice J. Haller: That was my recollection.

Justice J. McIntyre: Yeah, they asked me.

Justice J. Haller: Was it Governor Wilson again?

Justice J. McIntyre: Yes, it was. The way he did it at least so far as I know, you would have some input on this as well, they would select somebody in their mind and they would talk to the person and see if they're interested and then have them apply. And if something went wrong, that might derail a thing, but if everything went well, that's when they're appointed. So, there wasn't approval of 10 people. I think that was probably true for you.

Justice J. Haller: And then of course, you had to go through the process on both of them, for both Superior Court and for the Court of Appeal.

Justice J. McIntyre: Right.

Justice J. Haller: All right! So, you came up here in 1996.

Justice J. McIntyre: I did.

Justice J. Haller: All right, what did you find to be the biggest difference between trial court and appellate court?

Justice J. McIntyre: You're not under the gun to make a decision so quickly. That's the biggest difference. With trial judges, I always thought, this is a little bit off the point but there are two kinds of trial judges. There were the kinds that have common sense and there are the ones that don't. And so when a trial judge, they all will come up with having to decide something now without the opportunity to research it, and the ones with common sense will almost always make the right decision in my experience. The ones who don't, the few that don't have it will also make the wrong one. That's what they're forced to.

00:40:00

We're not forced to do that here. We have time to look in the matters and do everything that we need to do draft an opinion and get it right.

Justice J. Haller: On the trial court, you were the only person responsible for the decision. Once you get up here, the three of you --

Justice J. McIntyre: Yeah. So, there's a political element to it where you have to get at least one of the other people, hopefully both of them to agree with your opinion, your draft opinion that you get ready right before oral argument, and you hope they will issue it. So, there's a little bit more of a political aspect to it.

Justice J. Haller: The reality is there almost always are three people signing off on cases but it is a different scenario that at least you have to think through, you have to at least convince one person which is a different mentality.

Justice J. McIntyre: It is. So, you try to put something in there, and maybe that will appeal to them. But I think we don't do that too much. But you may know not to say something that they will balk at, but we're pretty collegial and I'd say the sense are not that common.

Justice J. Haller: Since I know you so well, I know that from the time you arrived until the day you left, you were stressing shorter opinions.

Justice J. McIntyre: Yes.

Justice J. Haller: Let's talk a little bit about that.

Justice J. McIntyre: I believe that appellate opinions are too long, not all of them but most of them. Sometimes they have too many facts and they need to be shortened, but I realized that different judges have different standards of how many facts you need in there. But my real problem is not with the facts, it's with extended discussions that are beyond the scope of the issues at hand. I believe you should decide the issues and be done with it, not write an essay on contract law or whatever the subject matter is.

You're absolutely right. I said from the day I got here until the day I left, when I would read the book of opinions for oral argument from my colleagues, I would always say, "These opinions are too long, shorten them." No one ever did. I wrote substantially shorter than the others.

Justice J. Haller: Yes, you did. Again, it was part of get to the point, your attitude is simplification.

Justice J. McIntyre: Right.

Justice J. Haller: All right.

Justice J. McIntyre: Furthermore I think you get into trouble when you start writing an essay on something that is beyond the scope of the issue.

Justice J. Haller: You have literally either authored or participated on a panel either on an opinion or a writ thousands of cases.

Justice J. McIntyre: Right.

Justice J. Haller: A couple must stand out.

Justice J. McIntyre: Well, you know I looked through the list. I have a list there in the folder. I was trying to think of one or two. One just came down this week after several months after I retired. I wrote an opinion about a year ago maybe saying that --

Justice J. Haller: It came out of a writ.

Justice J. McIntyre: It came out of a writ by a prisoner. When he got a word that the case was filed, he wrote and asked the clerk if to whom it had been assigned, what judge. No answer. He writes again.

Justice J. Haller: So, this was habeas.

Justice J. McIntyre: Yeah, habeas. He writes again and the clerk doesn't answer him. A few days later, a trial judge denies habeas. So, he then brings it to us and says, "What a minute. I have a right to a challenge under the peremptory challenge law even before an OSC is issued." And the AG said, "Oh, you don't have that right." So, we wrote an opinion and said, "Yes, he does."

Justice J. Haller: And if I recall correctly, this was a pro per defendant. He was a prisoner who brought forth that concept and then an attorney was appointed to help to represent him?

Justice J. McIntyre: Yes. But I, I had already made up my mind by that time, but I thought he was right. Conceptually, well why shouldn't he have a challenge?

Justice J. Haller: Okay.

Justice J. McIntyre: So, we wrote an opinion saying that he did. It was published. But the AG never went to the Supreme Court to try to get them to take it. Well, lo and behold, they took it on their own motion. They took it.

Justice J. Haller: Right. I don't think any of us had ever --

Justice J. McIntyre: I've never had that.

Justice J. Haller: No. It was one of those new things we learned when they took your case.

Justice J. McIntyre: Yeah, exactly. And so just the other day --

Justice J. Haller: Wait, I'll have to ask questions. So, when they took it, they reached down to take it, what was your thought?

Justice J. McIntyre: I thought they're going to -- watch this, they're going to slam me for this one. Why would they bother with this if they weren't going to reverse it?

00:45:10

Lo and behold the other day, they issued a unanimous opinion affirming it. I'm thinking why did they take it? I guess they wanted to be the author of it instead of me because it says the same thing. Obviously, in a longer opinion.

Justice J. Haller: How long was your opinion?

Justice J. McIntyre: I don't remember, probably 10 pages.

Justice J. Haller: Short.

Justice J. McIntyre: Yeah. I wrote a lot of 10 or less-page opinions.

Justice J. Haller: I know.

Justice J. McIntyre: They never do.

Justice J. Haller: We all saw that and I think our presiding judge emailed you to tell you about it.

Justice J. McIntyre: Yeah, she did. She sent it to me a day before yesterday.

Justice J. Haller: Yeah, okay. All right, how about some of the other cases?

Justice J. McIntyre: Other cases? Let me think. Let me look at something.

Justice J. Haller: I was thinking you had that one involving whether or not the state was -- the gambling case was proper.

Justice J. McIntyre: Oh, the gambling case. We had a case from a whistleblower who said that the California Gaming Commission was supposed to be regulating tribes isn't doing their jobs. So, we looked into it. They didn't do anything. As far as I could tell, and I put it in the opinion, all they did was go over to where the tribes had the money and see if their multiplication and addition was correct and that's it. They didn't do anything else.

Justice J. Haller: Because there was supposed to be -- this had to do with the --

Justice J. McIntyre: Gambling revenues.

Justice J. Haller: Right, and a certain share was supposed to come to the state and a certain share based on a formula.

Justice J. McIntyre: Yes. This gaming commission was supposed to be regulating, so I put it there that they're not doing any regulating. So, something needs to be done here. I said the only regulating they're doing is checking the addition and subtraction and multiplication. That isn't regulating anybody. I thought that was interesting. It went on and on for years, too. Let's see.

Justice J. Haller: Didn't you do some settlement conferences while you're up here too?

Justice J. McIntyre: Sure. But I don't know that any of them was worth talking about really. I wrote an opinion that said that in personnel actions, the co-employees of the plaintiff are not liable. The employer may be liable or the supervisor may be liable but the co-employees can't be sued. I did another one.

One of the superior court judges held an incident report which is prepared by hospital employees every time there's a mishap of some sort was discoverable, and having done that kind of work for years, I thought, "Wait, what is this? It's not discoverable. It's privileged." So, I came up on a writ and so I wrote an opinion saying, "No, no, no. This is not right." It never has been a word since and that was 10 years ago. The world is quiet.

Justice J. Haller: That's that issue of sometimes we make decisions that you do have some practical experience and then some you don't, correct?

Justice J. McIntyre: Right. And when you don't, you risk writing an opinion that may have no -- the practical effects may be completely different than what you expect.

Justice J. Haller: Well, I think you had experience with that and then oral argument one day.

Justice J. McIntyre: I did, a workers' compensation case. The lawyer for the state, all he did was workers comp. I said, "Well, suppose we ruled A, B and C, what will be the effect of that?" He looks at me and says, "I have no idea." Well, if you don't know, who are we going to ask? That was one of the worst answers I ever heard in oral arguments. My tone had probably reflected that.

I did an interesting case about marathon runners as to whether the assumption of risk doctrine applied in a certain case, and I held that it did not. I heard later that they settled it for a million dollars.

Justice J. Haller: Yeah, that was the fellow who -- there weren't sufficient water stations.

Justice J. McIntyre: Yeah, right. They said, "Well, it's partly -- by assumption of risk." I said, "I don't think so." So, that was one. Let's see. I wrote a case on the standards for allowing people, the plaintiffs to look at the defendants' financial condition for the purpose of punitive damages, and there was really nothing out there. So, I brought that, I put down what I thought the standard should be and it was never challenged. Supposed there are some of the more interesting ones I think I had.

00:50:02

Justice J. Haller: Well, much to our chagrin, after you had been here about let's see, 22 years --

Justice J. McIntyre: Twenty.

Justice J. Haller: Twenty years, you're right. You suddenly said perhaps it's time to move on. How did that come about?

Justice J. McIntyre: The same way I stopped trying cases. I don't want to say it felt like you hit a wall, but I felt like I'd done it long enough and I should be winding down and retire. I don't want to do it anymore. I don't mean it in any negative way. Just like being a trial lawyer, I loved it but the time has come. Same here, I did love it but I'm done. I don't want to do it anymore.

Justice J. Haller: Well, let me have you reflect back on advice you'd give to people.

Justice J. McIntyre: Like young lawyers, you mean?

Justice J. Haller: Yes.

Justice J. McIntyre: I did a little piece on that once and I read it some years later and I felt exactly the same way. Yeah, simplify is one. Get a mentor. That's important. You don't know it yourself. You need to ask somebody. I think it's good to have a young mentor, someone a little more experienced than you and then a more senior person because there are different kinds of problems that you run into.

We had a great deal at McInnis about that. You could always ask anybody about anything. I won't tell my file story but --

Justice J. Haller: Well, actually I think you should because it's reflective of how different the practice of law was when you started.

Justice J. McIntyre: All right, I'll tell it quickly. I was new, brand new and my secretary was fairly new. I got a case wherein I was in charge of this case from an insurance company and I wrote a letter back acknowledging getting the case, giving them the answer, and telling them my preliminary thoughts about it.

Justice J. Haller: So, all your work product.

Justice J. McIntyre: Of course. He acknowledged it and I wrote file on the top of this letter.

Justice J. Haller: In handwriting to the secretary.

Justice J. McIntyre: In handwriting, just file. A few days later, this claims manager from an insurance company calls me and said, "My letter to you and your response are in the court file." I said, "What?" "Yes, they're in the court file. I was down checking files and I found this in the file. How did this happen?" I said, "I have no idea. I'll fix it." So I didn't get any advice from anyone, I picked myself. When I walked down at the court and in those days, you could get the file from the clerk. I got the file, I didn't call the other side and I waited for extra time and I went in to the presiding judge, who of course was 40 years older than me. I went in and I said, "Judge, I got a problem here. I'll show you in this file." I explained it to him and I showed him the file. This was a long time ago. He reached in the file, unclipped this thing, gave me the letters and closed the file up.

See how things used to be handled then? I didn't ask anybody. I don't think they would have told me to do that but --

Justice J. Haller: Well, I think it's just reflective of how different it would be in terms of requirements to give notice to the other side, whether the court would be willing to do that, a lot of things occurred informally.

Justice J. McIntyre: Right. He handed me the file and off I went, very grateful. Of course the other side never saw it.

Justice J. Haller: Well, anything else you'd like to reflect upon?

Justice J. McIntyre: All I would like to say is and what I say to my friends and colleagues as well, I feel -- that I practiced, went to school, practiced law, and was on the bench all at a very favorable time. I think none of those things are as easy now as they were then. It's much easier to get into college, to law school, easier to get a job, you could get immediate experience you weren't buried in a library somewhere. So, I feel very fortunate. And I mentioned this to the other retired judges the

other day, and all of the judges there said that they felt the same way, that we practiced at a good time.

Justice J. Haller: Well, thank you.

Justice J. McIntyre: Well, thank you for doing this. I appreciate it.

Justice J. Haller: We miss you.

Justice J. McIntyre: Well, I do miss the people.

00:54:35