David Knight: So Justice Morrison, if you would be so kind.

Fred Morrison: My name is Fred Morrison. I'm a retired associate justice from the Court of Appeal for the Third District.

David Knight: Justice Butz.

Kathleen Butz: And I am Kathleen Butz, an associate justice with the Third District Court of Appeal here in Sacramento.

David Knight: All right. Well, I am pretty much ready, so Justice Butz, if you have any kind of an introduction, now is the time.

Kathleen Butz: All right. We are here today for an oral history interview of retired Justice Fred Morrison, formerly an associate justice on the Court of Appeal for the Third Appellate District. This interview is part of the Appellate Court Legacy Project, and it will be archived at the California Judicial Center Library. I'm Kathleen Butz, an associate justice at the Third Appellate District, and I'm honored to participate in this interview. So, Fred, I'd like to start at the beginning.

Fred Morrison: I should say I am honored to have you interview me.

Kathleen Butz: Well, thank you. I'd like to start with where and when were you born?

Fred Morrison: I was born in Honolulu in the territory of Hawaii on the 22nd of June, 1941.

Kathleen Butz: And were you raised in Hawaii?

Fred Morrison: No. My father was a naval officer and he was on a destroyer based in Hawaii, so I was living there with my Mom. And in December, December 7th, was the Japanese attack on Pearl Harbor. Fortunately my Dad was at sea, so he was okay, and we were living in Honolulu, and I am told some shrapnel hit the house and so forth. But in any event, about February when they got around to it, they were able to evacuate the military dependents from Hawaii. And so I flew back to California with my Mom in what I'm told was an old cargo plane with bullet holes in the wing. She was sitting on a box in the back of the plane – no seat belts of course – holding her baby. Anyway, we returned to the town of Hamilton, Ohio, a small mill town north of Cincinnati where she was from and where her sisters lived, and spent the duration of the war in Hamilton.

Kathleen Butz: So in Hamilton, did your mother live, actually, with other family members?

Fred Morrison: No, we had – as I understand; it is all hearsay of course – we had, I think, a rented house there. Her sister – her 2:45

younger sister – had a son virtually my own age and they were inseparable, as were . . . as was I from my cousin Mark during those years. His father was also in the war; he was in the Army Air Corps and flying supplies from India over to China over the Himalayas. So they had a lot . . . they had a common situation.

Kathleen Butz: So did you have any siblings?

Fred Morrison: I did not have any siblings until I was 20 years old, at which time . . . . My mother had passed away when I was 16, and my Dad remarried, and they adopted a 10-year-old girl and a 6-month-old baby. So at the age of 20 I all of a sudden had a sister and a brother, and it . . . the relationship was more of an uncle kind of a relationship.

Kathleen Butz: Can you tell me a little bit about your family – about your father and your mother, their backgrounds.

Fred Morrison: My Dad was from Chicago. His father had come to Chicago from Canada, and his father in turn had immigrated from Kirkintilloch, Scotland, to Hamilton, Ontario. My Dad was . . . had two brothers and a sister, grew up in Chicago. It was Depression time and so he got into the Naval Academy and graduated from there in 1935. My mother was one of four sisters and a brother from this small town of Hamilton, Ohio, and my Dad's sister lived near Hamilton with her husband, and after his mother had died, he lived with them. Well, anyway, he returned from a leave in the navy, in . . . it would have been about 1938; that's when he met my mother, and then they got married.

Kathleen Butz: And then at some point ended up in Honolulu.

Fred Morrison: In Honolulu. My mother, by the way, had graduated from the University of Miami, in Ohio, at Oxford, Ohio.

Kathleen Butz: Okay. Did you know your grandparents?

Fred Morrison: I did not, except for my Dad's father, my paternal grandfather; I knew him. The others had all passed away. I was named after my maternal grandmother, whose name was Freda, and she had died just shortly before I was born. And of course there was great disappointment at that, and so they named me Fred, for Freda; that's why it is Fred, and not Frederick. The grandfather that I did know, I didn't know very well. He was kind of a distant, always-dressed-up figure, and we were not close, but he did live with us for a while when he was very old and he had broken his arm or something like that. And he died when I was about 13.

Kathleen Butz: Speaking of the origin, then, of your name, what about your middle name? Where . . . from whence does that come? 5:43

Fred Morrison: It was Freda Kennedy and she married a Barton Carr Stevenson. So, Freda Kennedy Stevenson. And my mother was Sara Stevenson. And so that's the source of the Kennedy name.

Kathleen Butz: Okay. All right. Do you have any early childhood memories that you believe influenced your educational or your personal choices and decisions?

Fred Morrison: We moved around a lot. I would say that the early childhood memories that were most influential were probably the closeness of my mother's family. They were a very close group, particularly the sisters, and the kind of the unconditional love that they generated and I was an object of that. That, and then of course we moved around with great frequency and I have those memories, but those would be the primary ones, I think.

Kathleen Butz: When you say you moved around with great frequency, can you give me an example, or describe that?

Fred Morrison: Well, we . . . . Like I said, by the time I got out of high school, I had . . . . In the 12th grade, I had gone to 12 different schools. When my Dad returned from the war, we moved to Annapolis, Maryland, where he taught at the Naval Academy. Well, while there we lived in three different homes. However, I was just starting school, so there were two schools there. And then we moved to Boston for a year, and then outside of Chicago for a year, and Norfolk, Virginia – two more schools – and then back to Great Lakes Naval Base. So one thing led to another and then the last move was out here to California, to Concord, where my Dad commanded a ship out of Port Chicago, the naval weapons station. And that was where my mom passed away. And so I then moved back to Ohio to live with my cousin and aunt – the same ones that we had been so close to during the war – and graduated from high school there.

Kathleen Butz: Now, your mother passed away suddenly?

Fred Morrison: Yes, she had a cerebral hemorrhage. One day I was in high school, and fortunately my Dad's ship was in port, and fortunately he came home before I did. I was in track or something then. And so he was the one who discovered it and I did not get confronted with that, but of course I was 16.

Kathleen Butz: It must have been devastating.

Fred Morrison: Well, of course, yeah. 8:21

Kathleen Butz: Did you have an approach that you used when you made all these different moves in terms of how to get to know new children, new neighbors, new teachers?

Fred Morrison: Yeah, I would get a book and I would read books. As my Mom would say, I would bury my face in a book and I would just ignore everything else.

Kathleen Butz: That was your way of adjusting.

Fred Morrison: That was my method of adjustment, yeah. Very effective. Kind of like working on the Court of Appeal.

Kathleen Butz: Did you have any mentors or role models growing up?

Fred Morrison: Well, my Dad was an obvious role model and I'm sure led to my later interest and acceptance of the military. I had one interesting role model that was a great influence, although very . . . . Well, I'll explain. We had a . . . . About 6th grade, we were moving to Norfolk, Virginia, but my Dad had to go to antisubmarine warfare school in Key West, Florida. So we lived there for a month. We lived in a motel with a swimming pool – a big swimming pool – and there was a lifeguard there who was obviously a weightlifter of some kind and, you know, very well built and in great shape, and a nice fellow. And he kind of took me under his wing and helped me swim. Took me fishing one time on . . . with great patience untied the knots in my fishing line. But that got me interested in the whole idea of exercising, which became a . . . almost a defining influence for the rest of my life. I never saw him again after that. And I can't remember his full name, except his first name was Bill, which happened to be my Dad's first name also.

Kathleen Butz: So he was another role model, although he . . . .

Fred Morrison: He was a role model, although I doubt if he even knew it.

Kathleen Butz: That's great. When you were growing up, at any time in your adolescent years did you envision a particular career?

Fred Morrison: I wanted to be an Indian – like an American Indian who lived in the woods and hunted animals and all that. That was an early desire of mine. Then I realized that was not going to be possible because you had to start out that way and I hadn't done that. Other than that, there were probably the usual things. I wanted to be, of course, a major league baseball player or a national league football player, and those things did not come to pass either. I did not, as a young child, have any interest in being a lawyer. That came later. 10:59

Kathleen Butz: Okay. What about in high school? What interests did you have in high school and what activities actually occupied your time?

Fred Morrison: For the first three years of high school I was pretty much just a jock. I did football, wrestling, and track. I was a mediocre student and that was the way it was. Now, after my wife – excuse me, my mother – passed away, I moved back to Ohio where my cousin was, and my cousin was kind of the opposite of that. He was a very social guy, had all kinds . . . had a great circle of friends. Well, I moved back there and I just fell into that, and except for a couple of mercy dates I had never had a date. You know, mercy date being take your parents' friends' daughter to her junior prom, that kind of thing. So . . . . But all of a sudden I was in a, you know, a social group. I was accepted. I started dating girls and having a great time. I abandoned all sports aspirations for the moment and adjusted quite well. It was actually a very fortunate year. It was tragically caused, but I don't know, I would have been ill prepared for college, probably, without that senior year of high school.

Kathleen Butz: So where did you actually graduate from high school?

Fred Morrison: I graduated from Hamilton High School in Hamilton, Ohio, in 1959.

Kathleen Butz: And at the time you graduated . . . .

Fred Morrison: Oh, and I should add one other thing. I had a girlfriend there who was a very smart girl, and she got me motivated to be a better student, and it worked, and I was.

Kathleen Butz: So by the time you graduated, did you know you were going on to college? I mean, did you . . . .

Fred Morrison: Yes. In the group of friends that I had and in our family, going to college was not something you chose to do, it was what you did and so there was never any question about that.

Kathleen Butz: So, before you started college had you ever had a job? Had you worked as a high school . . . .

Fred Morrison: Yes, I had. I did not work in high school because we tended to move every . . . almost every summer. But after high school I worked in a paper mill where . . . . Hamilton, Ohio, is on the Miami River, the great Miami River, and it is a paper mill town; there were several paper mills there. Well, I got a job in a paper mill where I had an uncle who was a . . . like the treasurer of the company or something and I was a maintenance guy. And so I would make cement by throwing sand and cement into a cement maker and then I would put it in my wheelbarrow and wheel it around the paper mill to 13:50

take it to the right places. And the union guys after a while got after me because they thought I was moving too rapidly and I should slow down. I was doing it half for exercise.

Kathleen Butz: So after your paper mill job that summer, where and when did you go to college?

Fred Morrison: So, I went to Purdue. Now, the reason I went to Purdue is that I wanted to work outside so I thought I should be a civil engineer. That seemed like a very good career plan. I went to Purdue because my Dad had come back from being at sea in March of my senior year and retired from the navy and bought a farm in Indiana, just over the border from Ohio. And so because of that we could get in-state tuition at Purdue, so he encouraged that. Purdue is a very good . . . still is a very good engineering school, so that's where I went.

Kathleen Butz: And you would have started at Purdue, then, in what – 1959?

Fred Morrison: 1959, in the fall of '59.

Kathleen Butz: And did you have a major when you started?

Fred Morrison: Engineering. And I was an engineering student for one semester.

Kathleen Butz: What happened, pray tell?

Fred Morrison: Well, the slide rule is what happened. I was never able to master the fine adjustments of the slide rule, and drafting was not my forte either, so I quickly realized that I didn't have the aptitude for engineering. And I then switched to a business major with a psychology "option," it was called. And I forget when it happened, but somewhere along the line I decided that psychology was more interesting that the business part and I ended up graduating with a degree in psychology.

Kathleen Butz: And with a degree in psychology, what did you envision yourself doing?

Fred Morrison: I envisioned myself wearing a tweed jacket and smoking a pipe and teaching at some kind of a prep school in the east. That was my . . . . And my immediate plan was that after I left the army I would get a Ph.D. in psychology.

Kathleen Butz: So, you've brought up the army. You were doing something beside studying psychology and envisioning yourself in a tweed suit – tweed jacket.

Fred Morrison: I had . . . . Well, one thing I did when I got to Purdue, there was a guy who had graduated from my high school the year before me who was a member of the Delta Upsilon Fraternity. I didn't even know him, but he knew that I was coming 16:18

there, so I got invited to go there for rush, before I even made arrangements for a place to live. And I liked it and we got along, so I joined the fraternity that fall and moved right in. So I never lived, for the four years, anywhere else other than the Delta Upsilon Fraternity house. But I also rode on the crew at Purdue and was in the ROTC and was the president of the Purdue Psychological Society, which was a very small group that did almost nothing.

Kathleen Butz: Now, when you rode on crew, is that something you did all four years as well?

Fred Morrison: I did it for three years, and I should have done it for four. Every spring we would go to Florida to row, on spring break, and we'd work very hard but still had a good time. By the time I reached my senior year I was now more into psychology, and I told myself that I really didn't have time to row; I should work. And I got a job at a mental institution not far away and that was mildly interesting. But I think my real motivation was I wanted more time for my social life. And we did go to Florida the senior year as college kids typically do to go down there and drink beer, chase girls, and everything. And in retrospect, I really had a better time with crew than I did on my traditional spring break.

Kathleen Butz: Tell me a little bit about this job that you had at the mental facility.

Fred Morrison: Oh, that was . . . . Actually, what I would do would be show movies to alcoholics. These are serious alcoholics, and these were movies made to make people see the error of their way about the evils of drink and so forth. And even after that, after I graduated, before I went into the army I did work in a psychology ward of a general hospital where I did deal with some serious alcoholics. I was mostly doing menial labor, but it was . . . it was quite eye-opening. And I had had some experience with people I knew who were alcoholics and I learned a lot about that.

Kathleen Butz: Now, you finished Purdue what year?

Fred Morrison: 1963.

Kathleen Butz: And that point, you got a degree, a bachelor's of science.

Fred Morrison: I had a bachelor's of science in psychology.

Kathleen Butz: And what about the ROTC?

Fred Morrison: And I had a . . . . At Purdue when I went there, because it was a land grant school, ROTC was mandatory for all the boys, all the males. And so after two . . . . That was for two years, and then after the two years then you could elect to stay in 19:10

advanced ROTC, and I did. I was very familiar and comfortable around the navy. I always imagined that I would join some branch of the military and do my obligated service. I was well aware of the advantages of being an officer, and so that was a "no brainer" for me. I went into advanced ROTC and then graduated in '63 and was commissioned. And I had elected to be in the transportation corps because of 1) my vision wasn't good enough for the combat branches or for the navy, and it looked like it would be . . . have more application to civilian life, so that's why I chose the transportation corps.

Kathleen Butz: So what did you do then upon graduation?

Fred Morrison: I finished at Purdue in the spring of '63 but I needed a couple of more credits. And so I first went to Miami of Ohio that summer and studied German and lifesaving, got my credits, got my degree in September, was commissioned in September, and then in November I came into the army. I went to Fort Eustis, Virginia, which is near Newport News and near Williamsburg. And, after the initial training – Officer Basic School – I went to Korea.

Kathleen Butz: And what . . . .

Fred Morrison: Korea was a wonderful experience. The reason I went to Korea was my hope had been that, in my two years in the army, I would go to Germany. I had studied German at Purdue – in fact that summer I had studied some more; I was taking a conversational German course; I was all set on two years in the army in Germany. Well, they assigned me to Fort Leonard Wood, in Missouri. And I asked somebody about that, and they said that's known as "Little Korea" 'cause it's all hilly and cold and bleak. And so I called up the people at the army, and I said, "Well, rather than go to Little Korea, why don't you send me to Big Korea?" And they said, "If you want to go to Korea, you can go to Korea," and that's how I got assigned there.

Kathleen Butz: So, when did you actually leave the U.S. for Korea?

Fred Morrison: I believe it was February of 1964. It was really exciting to get on a plane in San Francisco – fly to San Francisco, get on a plane there and take off, and land in Japan. I mean, it was a whole different world for a 22-year-old kid. And after a night in Japan, we flew to Korea, and there were people hauling ox carts along the roads and it was totally bleak and snowy and cold, and it was really exotic – it was great. And they put me in a little small plane at the Seoul Kimpo Airport and we flew north and east up near the DMZ to a place called Camp Page in Chunchon, Korea, and that's where I spent the year. It was the 4th Missile Command and I was in the . . . what they called the transportation company that serviced the artillery unit that was there…..the Honest John missile. 22:31

Kathleen Butz: So, what were your daily activities in this camp?

Fred Morrison: Well, I was . . . started out as a platoon leader, where my job was to make sure that my soldiers did their job, and then I became the company executive officer. It was a lot of administration, a lot of army routine, but I did develop a program on my own for taking the soldiers on forced road marches, 'cause that just was a lot of fun. And so they would go out in two units and I would take them out both times, and we would climb this mountain that was right in the middle of Chunchon – where, by the way, I returned in 1994 with Bob Puglia and we took a train up to Chunchon, and I was going to take Bob up my mountain, but it's all fenced off, some big radio company has got it now and you can't walk up the . . . . It's more of a big hill than a mountain.

Kathleen Butz: It must have been a wonderful experience to go back.

Fred Morrison: It was, it was great, because I mean, I taught English to the Koreans and so I got to know a lot of Korean people and go to their homes to have dinner and so forth. And you know, there was no war going on – this was a peacetime army. We had a lot of free time, and when we had a chance, some of the lieutenants and I would go into Seoul, the big city, and, you know, sample the pleasures of the big city. And we got . . . . I got to travel to Hong Kong and several times to Japan, sometimes on leave, sometimes on business. And then when I left Korea, I managed to get orders that would let me fly around the world. So, I left and flew to Japan, the Philippines, Vietnam – I was in Da Nang when they launched the first air strikes in '65 – and then on to Saudi . . . India, Saudi Arabia. And in Spain I got off the military flights and took a train up to Paris and over to Germany, and came home on a troop ship. And, the reason I came back on a troop ship instead of flying home – it cost me eight days of my leave – was that I wanted to sail into New York City and see the Statue of Liberty. I thought that would be a great experience. And when we sailed into New York City, it was so foggy you couldn't see anything, except the bridge overhead.

Kathleen Butz: This would have been, then, sometime in . . . .

Fred Morrison: This was '65. This would have been in March '65. It was a 13-month tour, and then I had a couple weeks on my trip around the world.

Kathleen Butz: And at this point are you still thinking that you will stay in the army just two years?

Fred Morrison: Yeah. Two years was the . . . . When I went in I had a choice of six months or two years, and I thought, well, I want to 25:20

have the real experience here. I don't want to do just six months, which would be just training and that's it, and of course I had planned to go to Germany. So my two years was going to be up the next fall, and that was my plan when I got to Ford Ord. Oh, and I had been accepted for an assistantship at the University of Iowa to study psychology and, you know, be a teacher, a professor's assistant, and so forth. So that would have provided me with some financial support.

Kathleen Butz: So, you come back and you are stationed at Fort Ord.

Fred Morrison: At Fort Ord. Right. And that was my . . . . When you were in Korea then, you could pretty much choose where you wanted to go 'cause they considered that a hardship. I had asked for Fort Lewis, Washington, and then Fort Ord and they gave me Fort Ord.

Kathleen Butz: So, what were . . . What was your task at Fort Ord? What were you doing there?

Fred Morrison: At Fort Ord I started out . . . . I was the Chief of WVMC, which was a wheeled vehicle mechanic's course. Now, if you know my mechanical aptitude, you'd realize how funny that is, that I would be in charge of teaching wheeled vehicle mechanics. But, I had the sergeants to do that; my job was basically like the principal of a very small trade school. And I did that, and then I took over the light vehicle driver's school, and then finally I was a commander of a company of training people in advanced basic training. The linemen would have to learn to climb up these telephone poles, and our biggest issue would be that some of the guys were afraid to do that and they would have to be examined by a psychologist. And if the fear was based on acrophobia – I think that's the right word – then they would be excused, but if they were just cowardly, then they would get court marshaled for it. So those were the issues we had to deal with.

Kathleen Butz: I see. Now, it's my understanding that you found the assignment at Fort Ord to your liking.

Fred Morrison: I liked the army. I enjoyed almost everything about the army. I had a lot of military tradition in me, I found it very comfortable, I found I was . . . . I thought I was good at it, I liked working with my soldiers. So I was enjoying myself in the army and I was learning a great deal every day.

Kathleen Butz: Now, something happened to change your mind about your assistantship in Iowa and your two years in the army.

Fred Morrison: Well, I met Betsy. Now, Betsy is my wife, and we've been married almost 44 years, and when I met her she had two little boys, age 5 and 7. And we met sometime in early August and we got married in late September. And at that point, 28:05

when I was about two days from getting out of the army, I decided that 1) there was no way I could afford to go to graduate school with a wife and two children, and 2) I was enjoying the army. And so I signed up for an indefinite stay. And I was a reserve officer, as you are out of ROTC. But at that point I decided that, well, there was a very good chance I would make the army my career. And so I applied to what they call integrate, which is to join the regular army, and I was accepted for that. And then I became a regular army officer, and I was a 1st lieutenant by this time.

Kathleen Butz: Okay. Tell me a little bit about your family at this point. You married Betsy, she had her two boys, and then what occurred?

Fred Morrison: She had two boys: Bill who was 7 and John who was 5. By the following year we had our first son, Dan, and so at that point we had a brand-new baby and two little boys. And we were living by then in quarters at Fort Ord. And it was a very enjoyable place to be.

Kathleen Butz: Now, when you . . . .

Fred Morrison: But there was a war on.

Kathleen Butz: There was a war on, yes, yes.

Fred Morrison: There was a war on.

Kathleen Butz: Because we are now at 1966?

Fred Morrison: This is ’66 now.

Kathleen Butz: Yes. Now you’ve received your commission.

Fred Morrison: Mm hmm.

Kathleen Butz: And where were you next assigned after Fort Ord?

Fred Morrison: Well, I mean, the war was on and it was obviously a big deal. And if you were in the army and you were a regular army officer, you needed to get into action. And so, while it was inevitable, I volunteered to go to Vietnam, and – surprise – my request was immediately granted. Had I not volunteered, I would have gone probably two months later. But anyway, so we were at Fort Ord and I got my orders to Vietnam, and it did really quite a remarkable thing. I told my wife that it would be good if she would move back to Ohio and live around my family with her two children, and amazingly she agreed and she did it, which is really a lot to ask. I mean, she did have family in California. But she thought it was a good idea, too, and that’s what she did. And I took her back to Ohio. And she had met some of my relatives. She knew my Dad and my stepmother by then, and met all these aunts that I mentioned 30:50 –

these sisters that were so close – and they took her under their wing. But, there she was, a wife of somebody in Vietnam in a small town in the Midwest, and there was nobody else there who had a clue what she was going through. Finally, she met one other woman whose husband was a sergeant in Vietnam, and they did have a friendship through their work at a hospital, and they had that in common. But she was in a, really, kind of an awkward place with her three kids living in the Midwest. She was a complete California girl, not used to the idea that it would rain in the summer or snow in the winter and all the many other cultural differences that exist.

Meanwhile, I went to Vietnam, and by this time I was almost ready to be a Captain. In fact, after a month there I was promoted to Captain and I was a company commander of an amphibious transportation company. And, what we did, we had a vehicle called a BARC – Barge Amphibious Resupply Cargo – which was a huge thing, where the wheels were 10 feet tall, had four General Motors engines over . . . one over each wheel, and it was big enough to hold a tank. And our job was to offload the many ships in the Qui Nhon Harbor, which is about halfway up the coast of Vietnam, and take the food supplies directly into the depots where you could transfer it to the refrigerated vans and take ammunition ashore. And so we were not all over the country, we basically were in Qui Nhon. We lived in tents there and we worked very hard, but we were basically very secure also.

Kathleen Butz: How many men did you have under you at that point?

Fred Morrison: About 120 men under me at that point.

Kathleen Butz: And a number of these amphibious vehicles.

Fred Morrison: And we had originally 12 amphibious . . . 12 BARCs, and by the end we had 16. We had 4 platoons of 4 each.

Kathleen Butz: Any memorable times in Vietnam, or was it . . . .

Fred Morrison: Well there was one . . . . Like I say, we were living in Qui Nhon. We had the Korean army protecting our perimeter, so we were not attacked or anything. But one time I did have some of my BARCs go on a special mission, two of them, up the Quang Ngai River to deliver the components to a sugar mill, and they were the only kind of vehicle that could carry something that big – a civic action project. And they got bottomed out in the muddy river, and I got a radio call that they were stuck and they couldn't get out of there and it was unsecure or hostile territory. So I flew up on a helicopter and joined them and we started working on getting out of there. And we had, we were told, a Vietnamese army unit out in our perimeter keep protecting us and we started working on this. We had also Vietnamese army personnel carriers, which are like 34:04

It's not a tank, but they are reinforced armored vehicles for carrying troops. And they were trying to hook up ropes and chains and pull our BARCs off the bottom of the river, all to no avail. Well, that night, night came, and then they sent up a C-47 called Puff the Magic Dragon, is what we called them, and they had Gatling guns on board and they would circle around us and fire into the perimeter, to keep a . . . whoever was out there – supposedly the Viet Cong – at bay. And so we had one flying overhead all night. We were very . . . we became very fond of this airplane, but then he ran out of ammunition and so we had a couple of hours of when he wasn't there and those were tense, but nothing happened. He returned and continued to spray the surrounding area with machine gun fire, and then the next day we worked feverishly at it and were able to free the BARCs from the mud. And by this time, then, we realized we weren't going to be able to get up the river, so we went back out to sea and I rode with the BARCs. I had not rode up there with them, of course, and once we were at sea we felt secure and we returned to Qui Nhon. That was the end of our adventure.

Kathleen Butz: That's one of your mechanical success stories?

Fred Morrison: That's one of my mechanical success stories. Now, there was a marine captain who came by to see how we were doing; he was with a small outpost of advisors. We chatted for a while. I subsequently learned that he and his advisors were all killed by the Viet Cong.

Kathleen Butz: Well, we're happy that you did not encounter that . . . .

Fred Morrison: I'm happy about that.

Kathleen Butz: Yes. Now, once you completed your tour of duty – I assume you were there for one year?

Fred Morrison: For one year, right.

Kathleen Butz: And, upon your return, then, are you back at Fort Ord, or where do you go next?

Fred Morrison: Well, now I am a captain, a regular army officer, and it's time to go to what they then called the Advanced Course. This would be training for people at my level – captains and majors – for the next assignments that you'll get in the military. The military has a wonderful program of training through the various stages of a career. And this is the first serious training you get after your . . . in my case, your officer basic training. And this was at Fort Eustis, Virginia, where I had started out near Williamsburg. And it was a course that lasted for nine months, basically the academic year of '67–'68. Actually, no, it was a little bit shorter than that because we didn't start until late in the year. But anyway, I completed that program 36:47

and we learned all about convoy techniques, and loading airplanes and shipping things, and containerized shipping.

But I wasn't real sure that this was the most fascinating field of endeavor for me, and I was looking around for what my options would be, assuming that I would stay in the army. And one was, they had an attractive program to study computer science, which was in its infancy then, and of course remain in the Transportation Corps but become a computer expert. And they would pay you when you did that; you'd be on active duty. The other choice was to go to law school. They had a program called excess leave where if you were accepted to a law school and accepted into this program by the Judge Advocate General's Corps, then you could go to law school but you would not get your army pay and you would not get any help going to school – no tuition help. But by this time I had had several experiences that convinced me I wanted to be a lawyer and that was the option that I chose. And I went to William and Mary.

Kathleen Butz: What were the experiences that affected your decision or your recognition that you wanted to be a lawyer? Did you have mentors in your family? Were there other lawyers in the family?

Fred Morrison: No, my family was completely devoid of lawyers. When I ultimately told my dad that I wanted to go to law school, he was like shocked. He didn't know what to make of that. And here I was – by this time we had the three kids and there was another one on the way. But in the course of being in the army, I had been assigned duties, as you were back then, to defend soldiers at courts martial and to prosecute soldiers. I was not a lawyer, I didn't really know what I was doing, and I actually sat on courts martial. But, on . . . in the course of doing that, I became intrigued by it, and I felt I was actually pretty good at it and it was a lot of fun. I enjoyed it.

And then I had another experience that kind of solidified my interest in becoming a lawyer. I had been coming home on a train, after my first training in the army, for Christmastime and I struck up a conversation on the train with a young professor from William and Mary – not a law school professor. We went into the bar car to have a beer on the train, and it was very crowded and we sat next to an elderly couple and the man stated he was a retired colonel. He was a very large, fat man and his wife was there and we were drinking beers with them and having a good time. I was in uniform and the conductor came back and said we had to leave the bar car; they were going to close it down. And so, not wanting to disgrace the uniform, I got up and said fine and went back to my seat. I never saw the professor or the colonel or his wife again. When I was in Korea, and actually I was on a firing range on a very cold day, and I got a . . . somebody came out and gave 39:59

me some mail. It was a summons to appear at a deposition. Well, I couldn't do it from Korea.

Well, when I returned home, I had corresponded with a lawyer, and he said when you come home we will do your deposition. Well, it turned out that the colonel and his wife and the professor refused to leave the bar car and got rowdy, and the train stopped in the mountains of West Virginia – Charleston, I think it was – and they threw the colonel and his wife and the professor in jail, and the colonel died. And this was the lawsuit. And so when I returned, I was back on leave in Ohio and I went down to the small town courthouse – it sits at the square in the middle of town – and I went down to the basement there where they had a room where I was deposed. And I stated what I just said, and the lawyers asked me questions, and I thought this whole procedure was just fascinating. By the way, that's one of only two depositions I've ever participated in; the other one was as a lawyer. And, of course, I wanted to know what happened and ultimately I learned from the lawyer that they settled the case. Well, that was fascinating, but probably more importantly was the court martial work.

And, one other thing, in Vietnam I had a sergeant punch out one of my lieutenants and so I brought him up on charges. They had a preliminary hearing and this JAG officer from Texas came over and made it very clear through his questioning that it was really the lieutenant's fault and the charges were dismissed. I was very impressed with that and with his skill and his ability to accomplish that. And all those influences made me convinced that I wanted to be a lawyer.

Kathleen Butz: So you start law school, even though the army is not going to pay for this?

Fred Morrison: Correct.

Kathleen Butz: How are you going to take care of your family of now four children?

Fred Morrison: No, not yet, still 3-1/2.

Kathleen Butz: Still 3-1/2.

Fred Morrison: Well, I had several . . . . 1) I was eligible and received the GI bill. 2) I was still in the army even though not getting paid, so we qualified for medical care, commissary privileges, PX privileges, which is a big help. Most importantly, every time I had a break of more than a weekend I could return to Fort Eustis, work in the JAG office, and I did, and get paid. So, every summer I would make three, three and a half months' worth of pay. And the job I had was tremendous. I would be a prosecutor at special courts martial, which were the lower level, prosecuting people who were represented by lawyers. 42:36

And it was a fantastic experience for a law student to be actually trying cases in the summertime. And I also had a job in the law school library working for $1 an hour sitting on the desk, and believe it or not, sitting on the library desk at night smoking a cigar, and nobody thought a thing of that.

Kathleen Butz: A different time. Tell me about your admittance to the College of William and Mary Law School.

Fred Morrison: This was very important. I had applied to William and Mary because it was close by, and it was a school that I was familiar with. In fact, my stepmother had actually gone there, and it was a very ancient school. And I was in the process of applying to other schools, and I had taken the LSAT score, and I had done well on that. So they called me up to William and Mary for an interview with the Dean. And I hadn't sent in my college transcripts yet, which were not all that good. But in my conversation with the Dean, he said, "Fine, you're admitted." And I said, "But don't you want my college transcripts and all that?" And he said, "No," he says, "You know, you are just back from Vietnam and there's a war going on and if we don't let guys like you into law school, we're going to have nothing but women in this class." And as it turned out, we had five women in the class of '70, and I think the Dean at the time thought that we were really pushing it.

Kathleen Butz: Well, thank goodness that you got into law school. I can't imagine what would have happened had you not – what track your life would have taken. But tell us about memorable professors or mentors in law school. Was it a good experience?

Fred Morrison: It was a great experience. I loved law school. It was like a whole new world opened up. First thing I learned was this cool system they had of having numbered books where you'd have a case, then you'd know the volume it was in, then you'd know the page it was in. I was fascinated by that. But no, law school was like, is like, wow, I found what I want to do in life, and want I'm made to do in life. And a lot of people don't like law school. I loved it. It was an intellectual adventure. It was just great. It was a lot of work, but I was . . . . You know, by this time I was, when I started law school, I was 28 years old, I had been in the army, so I was . . . . I was pretty disciplined. And we had kids at home, but we were able to work that out just fine.

One of my professors was Robert Scott, who was younger than we were, had gone to William and Mary, and then had gone to Michigan and had got an advanced degree. He was just . . . . Well, like after the end of one class, I had a classmate who happened to be a retired navy commander and he looked at me after this guy's class and says, "Teaching is an art form," and it really was. And he was so good. He went on to become the Dean for Virginia, and really one of the great deans in 45:40

the country and has continued. A professor now at Columbia, I believe.

I had another professor who taught actually three of the first-year courses: Charles Torcia. He, after he had left William and Mary, took over becoming the editor of *Wharton on Criminal Law.* And it's now *Wharton and Torcia,* or his name is featured prominently. And he was also a magnificent professor in the common law tradition, in the case method. And I was on the *Law Review* there. And interesting enough, in law school there were two other army officers in my position, both West Point graduates, class of '63, and so we were a study group together, along with a couple of other students. But one of them became the president of the *Law Review* and the number one student, and I was right behind him, and the third guy was really . . . would have been happier if he had stayed in the artillery, but his wife wanted him to go to law school, and now he's a very successful private practitioner in North Carolina.

Kathleen Butz: Excellent. Were there . . . . Besides *Law Review*, did you have an opportunity to do any kind of what we would now call an internship or externships where you work for a firm, or was that an option?

Fred Morrison: Well, when I worked, there was no way I could get the kind of money I got for being in the army, so I did that every summer. But I did have kind of an externship with a local judge. The Dean had set it up for me and he thought it would be good for me and he thought the judge would be happy with that. And so we . . . I kind of followed him around for several months, and he rode circuit. And in Virginia at that time he was like the superior court judge. He lived in a very nice house right on DoG Street – Duke of Gloucester – the one that goes into old Williamsburg. And he would wear a dark suit but no robe, and we would go to the outlying communities and he would sit on cases and I would sit there and observe and then we'd go in and talk to the lawyers and I would watch. I don't know that I helped him all that much, but he liked having me around. Then we would go out to a restaurant for lunch, and the proprietor of the restaurant would give him free bread and hot bread, and things like that, and I thought, this is . . . . He would let me take some home. It was quite interesting the way it worked.

Kathleen Butz: Now, you graduated magna cum laude from William and Mary. And did you have specific plans upon graduation, or were those plans basically dictated by the army?

Fred Morrison: My plans were already made for me by the army. The deal was that if I was able to participate in the program, I would have a four-year obligation in the army Judge Advocate General's Corps. Which . . . . At the time I was kind of irritated by that because some of my friends were going off to these big law firms in New York City and that just seemed like the 48:42

thing to do for a legal career, but I didn't have that option, and I'm now quite thankful about that. And so I went into the army for four years as a . . . . That was my obligation, anyway, with the idea that I would probably be staying for much longer than that as a judge advocate.

Kathleen Butz: Tell me a little bit about the judge advocate work. What precisely did they have you doing?

Fred Morrison: Well, the first year I went to . . . . Remember I had gone to the Advanced Course in the Transportation Corps? Well, the JAG Corps has a similar one. And it is at the . . . . The JAG School is at the University of Virginia in Charlottesville, so it wasn't that far away, and it is an excellent school. It is co-located with the law school; they have a fine faculty there. So I spent the first year as a student again, and I was getting tired of being a student by now, but I had to do this. And so I did it and graduated and I learned a great deal. And then we were assigned to Fort Lewis, Washington, which is up by Seattle, right . . . with a view of Mount Rainier right there. And there I started out defending soldiers charged with crimes and then ultimately became . . . . I did legal assistance, I became a prosecutor, I did administrative law. Finally they made me, after the first year, what they called the Chief of Military Justice, 'cause by now I was a major and I was then the supervisor of both the prosecutors and the defense counsel. And we had a huge caseload. This was during the Vietnam war and there were a lot of people charged with being absent without leave, deserting, so on and so forth. So it was a challenging job and it was very interesting.

Kathleen Butz: At some point, did you get some training as a military judge?

Fred Morrison: Yeah, I had . . . . Going back to my time at Fort Eustis as a law student, I decided that being a military judge, being a judge, was a desirable thing. It looked like the place I would really enjoy working. But I also enjoyed being . . . prosecuting and defending. But . . . . So I applied and was sent back to Charlottesville for three weeks while we were in Fort Lewis, Washington, to attend the military judges school. And when I returned to Fort Lewis, I anticipated perhaps spending another year there as a military judge. They had two judges there: the senior judge, a colonel, did the general courts martial, which are like felony trials, and the junior judge did the special courts, which are more like misdemeanor cases. But rather than . . . . That is what I wanted to do and what we wanted to do. Our kids were doing well in school in Tacoma, in the area. But the army told me that I should go back to Washington, D.C., in the Pentagon and become . . . work in the Office of Legislative Liaison for the General Counsel. But we thought about that and we have four kids now. Our fourth son was born during law school; in fact, he was actually born on the weekend that you had to write your paper for the *Law Review*. 51:48

Kathleen Butz: Great timing.

Fred Morrison: Good timing. He's the one of the four who became a lawyer; there must have been something about that. But, anyway, we did not think we could thrive in Washington, D.C., with the expense of housing and so forth, and I had been teaching at Fort Lewis. They had a program for teaching soldiers who were going to transition from the army and wanted to be police officers. So I had developed a course, a day-long course in criminal procedure and criminal law, and I really enjoyed that. So I asked to go to West Point and they said, "If you want to go to West Point, you can go there," and I was assigned to be on the faculty in the law department at the military academy.

Kathleen Butz: Now, as a faculty member, did they train you in teaching methodology?

Fred Morrison: Not really. There was some counseling, and you . . . . Of course, there were other people. The law department had about 20 JAG officers in it. It's a very ambitious program. It's a required course for the junior year in constitutional law, military criminal law, and international law, which is an excellent idea for these people who are going to go out and become army officers, and many of them leaders in the army. One of the cadets, I don't . . . . We were teaching the junior class, which was the class of 1976. General Odierno, who is now the four-star general in command in Iraq, graduated in 1976. Now, I don't remember any large bald-headed cadets, but he had to be in . . . . He was in that class. Whether he was in my class, I don't remember. But every class had 15 cadets, no more, and they were graduated by ability. So if you had section #1, you had the best students. If you had section #14, the word was, that was the section that was on ice skates. That was the hockey team, which apparently was considered not to be as intelligent as some of the others.

Kathleen Butz: So you . . . . With really no methodology training, you go off and you are expected to teach these cadets.

Fred Morrison: Right. Now, they did monitor these classes carefully. And the people who were there were quite an impressive group. And you, of course, had the . . . you got to observe classes and things like that, but it was . . . you were pretty much on your own. There . . . . We all . . . . The professors – the instructors is what we were – there would be like four of us in a room. That was our office, we'd have a desk in there, so there was a lot of interchange. But, as I mentioned earlier, the cadets were . . . they were very good and they knew the system well, and I had not gone to West Point, of course. One day the Colonel comes in to check on my class to see if I am doing a good job, and the conversation had been kind of slow. The teaching . . . . The cadets were . . . didn't seem all that interested that 54:50

day, but as soon as the Colonel sat down they pepped up and started asking intelligent questions and we had a great back-and-forth about the constitutional cases we were studying, and then he left. And then one of them turns to me and said, "How'd we do, Sir?" They knew the system very well; they knew it much better than I did. And I was appreciative of their efforts.

Kathleen Butz: What size class would you teach? How many cadets?

Fred Morrison: 15. No more than 15 – that was the rule. And . . . .

Kathleen Butz: That's a nice class size.

Fred Morrison: It's a good size, and of course you could have participation by every cadet, and that's . . . . I believe that still to this day, that's the practice.

Kathleen Butz: Now at this point, to back up a little bit, had you already taken a bar exam after law school?

Fred Morrison: Yes, yes, when I got out of law school I took the Virginia bar exam. Stayed there that summer. And the bar course we had – since William and Mary was a fairly small school – was all audio tapes. We had a few professors come in. And then I . . . we traveled to Roanoke, Virginia, that summer and took the bar exam. In the meantime, after taking the bar exam, I went on active duty with the army and I was already in Charlottesville going to school, so it was no problem that I hadn't passed it yet. And, I learned in September that I had passed the bar and was sworn in in front of the Supreme Court of Virginia.

Kathleen Butz: Now, when you finished your four-year JAG commitment, you completed that while you were at West Point, then.

Fred Morrison: I was at West Point; I had been there one year. And it is a three-year . . . . Normally it is a three-year tour and they kind of count on that, but my obligation was over. Just on a lark . . . . Now, I really liked teaching, and the Association of American Law Schools has a meeting every year, usually in Chicago, where all the schools come and everybody that wants to be a law professor goes there, so it's very efficient. This year it happened to be in Washington, D.C. And I forget how I learned about that, but anyway I could take a train there very easily, and I did. And I interviewed numerous law schools and I had an offer from McGeorge in Sacramento, University of the Pacific, to be a law professor. And my wife and I gave that long and hard thought. Our two older boys were not thriving with all the moving around. I really liked teaching, it seemed like a good idea to accept it, and we did. And so I went in to see the Colonel and told him that I would be leaving now that my obligation was over, and he was not pleased about that. But that's the way it was. And so I resigned my regular 57:40

commission (this would have been the summer of '75) and we came out to Sacramento, bought a home – actually, the home we bought belonged to Ed Meese, the future Attorney General, who was just leaving, having served Ronald Reagan in the Governor's Office – and became a professor at McGeorge. And, having spent 12 years in the army I was not about . . . and having enjoyed virtually all of it, I was not about to throw it away, so I looked for a position in either the Army Reserve or the National Guard and found a spot in the California Army National Guard.

Kathleen Butz: So, 1975 you are back in California.

Fred Morrison: Back in California.

Kathleen Butz: And family in tow.

Fred Morrison: Family in tow. Brand-new law professor.

Kathleen Butz: Betsy's glad to be back in California.

Fred Morrison: She's delighted to be in California; that was not an insignificant factor. And I remember driving over 80 with all the kids in our station wagon, and we crossed the state line and broke out into "California, Here I Come." And . . . . Now, we had never been to Sacramento before. Betsy, I'm sure, had only driven through on the way to Lake Tahoe like so many people do. And we came in, and I think it was the 13th of June, and it was 108 degrees.

Kathleen Butz: Ohh. Welcome to California.

Fred Morrison: Right.

Kathleen Butz: The Central Valley.

David Knight: I'm going to stop you right here . . .

Kathleen Butz: Sure.

David Knight: . . . to change my tape.

Kathleen Butz: Okay. Fred, when you were hired by McGeorge, did you know what classes you were expected to teach?

Fred Morrison: Yes. My experience had been primarily doing criminal law work in the army, so I was hired to teach criminal law and criminal procedure. And that's what I did – basic first-year courses, which I really enjoyed; they were a great deal of fun. And that summer – the following summer – I was going to teach summer school because I needed the pay, basically, and so I assumed I'd be teaching criminal procedure. And then sometime in the spring I got my assignment, and I was 59:52

to teach community property. Fortunately I'd taken the bar exam in California that February, and I had at least read the bar materials on community property. That was all I knew. But I have found that sometimes the students appreciate a professor who is only slightly ahead of them because he doesn't go off on tangents and minuscule points that happen to be of intellectual interest and just lays out the material.

Kathleen Butz: And how did it go?

Fred Morrison: It went okay; I'm told that it was fine and the students learned community property. And so did I – a great deal.

Kathleen Butz: And at some point you started teaching evidence.

Fred Morrison: Yes, I did. It was a couple of years into it that I started teaching evidence, which I really came to enjoy immensely. And so then my basic subjects were crim law, crim procedure, evidence. And I did develop my own course and my own materials in white collar crime, just as a matter of interest.

Kathleen Butz: Now, how many years did you teach at McGeorge?

Fred Morrison: I taught full-time for six years, and I went from being an assistant professor to . . . by the time I left McGeorge I was a tenured full professor.

Kathleen Butz: And during that time you taught most of the attorneys in northern California.

Fred Morrison: It seems that way, doesn't it?

Kathleen Butz: It certainly does.

Fred Morrison: It frequently occurs that we run into students, some . . . many judges, and so forth now who were former students, and that's very satisfying and enjoyable.

Kathleen Butz: Your class size was a little different at McGeorge from your years at West Point.

Fred Morrison: After leaving West Point – and my last class had 15 cadets – I walked into my first class at McGeorge, I think it was criminal law, and there were 140 students in an auditorium classroom. It was much different.

Kathleen Butz: But you enjoyed the teaching.

Fred Morrison: I did; I liked it very much. I got . . . I studied and worked on the Socratic method and found it very effective and enjoyable and I had a great time teaching. I've often said it's probably the second best job there is. 1:02:02

Kathleen Butz: Now, you had indicated earlier that you had in mind that you wanted to pursue a position on the bench. Was that still in mind during those years that you were teaching?

Fred Morrison: Well, I had wanted to be . . . while in the military I wanted to be a military judge. Now I was a law professor. And I didn't know whether I wanted to be a law professor forever. I thought about maybe . . . at some point maybe I'd like to join a local law firm. Obviously money would be a factor. But I can't say that when I was a teacher that I was really . . . that being a judge was on the front burner or anything. It wasn't 'til later that I got interested in that, then – re-interested in it.

Kathleen Butz: Now, what caused you to leave as a full-time teacher, then, at McGeorge?

Fred Morrison: Okay. At one point after Reagan was elected, I had been asked to apply to be the United States Attorney for the Eastern District. A year had gone by and nobody had been appointed, and they were looking for some fresh candidates. And I did, and I did the normal things you do to compete for a position like that. And the job actually went to Donald Ayer, and I was told that I was like the second choice. Anyway, Don called me up and asked me to have lunch, and we got along well; I was very impressed with him. And he offered me a job to come to the U.S. Attorney's Office and prosecute all of their fraud cases, because after all I was supposedly an expert in white collar crime 'cause I was teaching it.

When I first left, I did not actually cut my strings with McGeorge. I went on a leave of absence, so I was still a professor. I had an 18-month leave of absence – the idea being that I would get this wonderful experience and when I returned I would be all that much better and more knowledgeable. 'Cause after all, I was teaching about the grand jury and I had never been in one. Then after I actually went to a grand jury and presented cases to them, I felt, well, I wasn't too far off the mark in my teaching.

So I went to the U.S. Attorney's Office and I started . . . everybody gave me all their fraud cases. There's a stack about four feet high, and some of them were good cases and some were lousy cases. But ultimately we started working through them – working with the FBI and the IRS and the Postal Service Inspectors and everything. And after my 18 months came up, I realized that . . . . Now, by this time, I realized I did want to be a judge. I saw that as my career goal and I knew that I would . . . could better accomplish that by staying where I was. And I was enjoying being an Assistant U.S. Attorney, which is also a great job. And so I . . . . In fact, before the year and a half was up, I made this decision, I think, about a year into it. I called up the . . . . I went to see the dean – Dean Schaber – 1:05:02 and I told him that I was going to stay there, so that

he could then hire another full-time professor, and they did that.

Kathleen Butz: Was there a particular judge or some judges that you were appearing in front of on the federal bench who were good role models, who were . . . who gave you the idea that this was definitely worth pursuing?

Fred Morrison: Yeah. I think the judge that I most admired – I *know* the judge I most admired – was Milton Schwartz, who was I thought a great judge. He had a bit of a temper, and one time I had . . . interestingly, I had dictated my jury instructions and they were transcribed by a woman in our office who I didn't realize at the time had a hearing problem. And to my discredit I did not proofread them before giving them to Judge Schwartz, and they were full of little errors. And as he read them, he crumpled them up into little balls and threw them at me in the well of the courtroom in front of the jury. He . . . . Judge Schwartz, who I say was a magnificent judge, he called this process "venting," and of course he would vent and then 20 minutes later he was fine: "How you doing? Good to see ya." Well, those of us who received the vents, it took us a little longer to recover from them, but we did. And I learned a valuable lesson.

Kathleen Butz: Very valuable lesson. Getting back to those years that you served as an Assistant U.S. Attorney, did you have any particular cases that you remember or recall?

Fred Morrison: I tried 10 cases while I was there and we had more, of course, but those were the 10 I tried. And one of them that actually didn't go to trial was called The Golden Plan, which was a big investment scheme. And I think the reason it got to our attention is that one of the victims was Kathryn Crosby – Bing Crosby's widow – who happened to be on friendly terms with William Prince Smith, who was the Attorney General, so we got a lot of attention on high for that case. But probably the most interesting case was the case against the Bonanno sons. They were the sons of Joe Bonanno, the mafia chieftan from New York who had retired to Arizona. And they had a little scam going involving the fraudulent sale of a poster that illustrated all the presidents of the United States – the kind of thing that would be in an 8th grade classroom. They could have sold it quite well legitimately but they had to use fraudulent methods. And it was a fascinating case because the two sons, Salvatore and Joe, were interesting in their own right, and the lawyers – Charles Garry and others – were these kind of legends out of San Francisco. And we had many hearings in front of Judge Ramirez, went back and forth. It went to the 9th Circuit Court of Appeals, and as we were nearing trial, I got a call from Marv Baxter, who was Governor Deukmejian's appointments secretary, telling me that I had been selected for appointment to the municipal court. And of course, this was my 1:08:18

career goal, and I accepted. And I remember that day I had to go back into court for a matter on the Bonanno case and Bill Bonanno – Salvatore Bonanno – he was the first guy to congratulate me.

Kathleen Butz: On your appointment?

Fred Morrison: These guys knew what was going on. He said, "Congratulations!" And of course I had to leave the case then. Ultimately it was tried by Nancy Simpson, a very capable Assistant U.S. Attorney. Joe was convicted of some crimes and Bill was acquitted.

Kathleen Butz: How . . . . So you had 10 . . . . You said 10 jury trials in that time.

Fred Morrison: Ten jury trials, yeah, in four years, which is the way it works in the U.S. Attorney's Office, where you have enormous resources to call on in the form of the FBI, the IRS, and every case could be prepared extremely well and they take care of all the witnesses. It is so much different than the life of a deputy D.A.

Kathleen Butz: What was your success rate with your 10 jury trials?

Fred Morrison: I had 10 convictions.

Kathleen Butz: Well, congratulations.

Fred Morrison: That probably means that I should have tried 12 cases. One case that was also of interest was the assault on an IRS agent. It wasn't really white collar crime, but it arose in an IRS office and I had the hardest time convincing people that this was a crime. But the jury did convict.

Kathleen Butz: Well, but you left abruptly to take this position . . . .

Fred Morrison: Then I got the call. I got the call on I think it was about the 5th of December or something. And because I was working in a government office, unlike in private practice I was able to quickly hand off my cases and I got sworn in on the 20th of December of 1985.

Kathleen Butz: And had you had your application in for some time, or was this a relatively quick . . . .

Fred Morrison: About, almost – I'm sorry I stepped on your lines – just about two years. I'd put it in I believe in the fall of '83 and nothing happened and then I remember that summer of '84 a friend of mine who was well connected told me he didn't think it was going anywhere and I said "fine." You know, continue with your work. And then in the . . . in December of '85 I got the call and I was very pleased. 1:10:35

Kathleen Butz: How many positions were there on the municipal court here in Sacramento at that time?

Fred Morrison: You know, I'm not sure; it seems to me probably around 15 to 20, I'm thinking. I replaced Rodney Davis, who had been elevated to the superior court, so I took his position.

Kathleen Butz: It's a familiar name.

Fred Morrison: Yes, a very familiar name.

Kathleen Butz: So you transitioned relatively quickly to the municipal court.

Fred Morrison: Relatively quickly. And my mentor on the muni court . . . . Actually there were two. Probably more than that, but there was Barry Loncke, who was the presiding judge, a wonderful judge, and John Lewis, who had also been a professor at McGeorge when I was there and he along with Charles Luther had been kind of my . . . They had taken me under their wing, they taught me about the politics of law school, and so on and so forth. And George . . . John Lewis was now a municipal court judge as well. So I adapted to that. I had to switch from . . . . In the federal system everything seems to go by a case name, and in the California system, at least on the municipal level, criminal cases all seem to go by a penal code number. And so I had to switch from case names to numbers of 1538.5 motions and so forth.

Kathleen Butz: Were there any particular challenges in the municipal court? Did you find yourself stretched in any way?

Fred Morrison: Well, being on the . . . . It was great. I mean, I enjoyed it and I felt comfortable with it from day one. The challenges on the muni court, which I think are great for any judge, are learning to deal with the people . . . the people who are charged with crimes, who are there for small claims. I mean, you really do . . . . They . . . . we used to call it "The People's Court," and indeed it was. And of course this same function still goes on in superior court now. But you had to learn how to handle people in a dignified way, treat them with respect and yet still get the job done, and it was great training for that. In fact, I was assigned to one court which was considered the ultimate horrible assignment, which was in-custody misdemeanor arraignments all day long, and the only saving grace to that assignment, you did it until the next new guy came along and then you could move on. But the young deputy DA I had was Tani Cantil and she did a fine job, and so we worked these cases day after day and got through it. And she is now, of course, a justice on this court.

Kathleen Butz: So you were on the municipal court for how long? 1:13:16

Fred Morrison: For just over three years. I got elevated to the superior court in March of '89, so about three years and four months.

Kathleen Butz: And I'm assuming that not too long after you started on the municipal court, you realized that you wanted to move on to the superior court.

Fred Morrison: Oh, I knew that before I got there. I mean, I knew that I wanted . . . . In fact, my career goal was to be a superior court judge. And I wanted to get there and I felt that I would. I thought the muni court was a great court to have . . . . It gets people an opportunity to be a judge, and you know, if a judge is not perhaps capable of handling bigger cases, then they can remain there. The problem with the muni court system was that some very able judges would get isolated because of the politics involved. And, you know, they would simply be out of favor because of the change of administrations. But I always wanted to be on the superior court, and when I was first appointed I was not even eligible; I had not been a California lawyer for 10 years yet. And I also thought that probably my opportunity to get on the muni court, even if that had not been the case, would have been a lot better than to go on the superior court because I was not a particularly well known lawyer in Sacramento.

Kathleen Butz: So when you were appointed to the superior court, what was your first assignment on that court?

Fred Morrison: I started out with felony criminal trials, and that was good. I had done a few of those before, because we had a program where muni court judges could sit on felony cases, and so I was very comfortable with that and that's what I started out doing. And then ultimately I went into the criminal law-and-motion court, which was busy all day, taking pleas, hearing motions and so forth, and then back to trials again. And my final assignment, which I'd started about eight months before I came to the Court of Appeal, was in the civil law-and-motion department. One of the good things I liked about the trial court was the ability to change assignments every few years and do something new and different, and I thought any judge should do that because the more assignments you have, the more you learn, the more valuable you are as a judge to the court, because you can serve in so many different capacities.

Kathleen Butz: Did you continue any teaching while you were on the trial court bench?

Fred Morrison: Yeah, I continued teaching at McGeorge at the law school all the way up 'til through 1989 . . . so . . . as an adjunct teaching at night, usually either evidence or advanced criminal procedure, which was another course I had put together. And I had done some teaching for CJER – some judicial teaching as well – 'cause I enjoyed teaching. 1:16:16

Kathleen Butz: What made you decide to apply for the appellate bench? I haven't heard anything so far to this point that indicates to me that you ever were contemplating an appellate position.

Fred Morrison: Well, of course I knew it was there, and I knew the Supreme Court was there, and in the judicial hierarchy those are the higher courts. My time as a law professor had really . . . . You know, you're working with basically appellate decisions, and I had done appellate work in the U.S Attorney's Office; you handle your own appeal to the 9th Circuit. So I was familiar with appellate work, and when the vacancies came open, there were two, actually. Frances Carr had passed away suddenly and Fred Marler had retired, and those vacancies were open a long time. But I had had a call from Bob Puglia, and he said to me, "*Carpe diem,*" as he was wont to do. "What's that mean, Bob?" "Seize the day." And I know my thought was, well, you know, I would think I would ideally prefer to be a trial judge for 12 years and then become a Court of Appeal judge. And he says, "Fred, it doesn't work that way. If you have an opportunity, you've got to go for it." And he recommended I do it, and the prospect was exciting. I was enjoying the trial court, but . . . . And like I said, being a superior court judge was my career goal, and I thought, if I'm there, great. I've . . . . that's a great career and I'm very happy with that. But when the opportunity came up, the idea of being on the Court of Appeal, of course, had great appeal. I mean, it's important work and it just was . . . . And I felt that I would be suited for it. And so I applied, and that process took a long time, too, then. Those vacancies ultimately I think were open for about two and a half years.

Kathleen Butz: So, two and a half years you're waiting to see whether or not . . . .

Fred Morrison: I wasn't . . . . I hadn't applied that early on. I think my application was probably pending about 18 months in there.

Kathleen Butz: And you mentioned that Bob Puglia had encouraged you to do this.

Fred Morrison: He had encouraged me to do it, yeah.

Kathleen Butz: How did you know Bob at that point?

Fred Morrison: I knew Bob . . . . Actually, Bob being one of the most remarkable men I have ever known, I met him first of all on the Jesuit running track years before when I was a law professor. And he lived near there and I would go down there and run and we'd strike up a conversation, kind of a casual acquaintance. And then in the . . . When the Inn of Court was formed . . . . I was one of the founding members of the Anthony M. Kennedy Inn of Court, and after the first year in realizing what it 1:19:16

was all about, I thought Bob would be a wonderful addition to the court. And so I called him up, asked him to go to lunch, and told him about the Inn. And he joined the Inn and the next year he became the president of the Inn. So I knew Bob a lot there, and we had things in common; we were both judges and so we knew each other that way as well. But at one point we were . . . we had been to an Inn of Court breakfast and we were talking about – and Bob could talk about anything in the world, with incredible knowledge – we were talking about Korea, where he had been as a soldier during the Korean War and I had been there 11 years after the war. But we both had an interest in and affection for Korea and we decided we were probably the only two people in northern California who had any interest in going to Korea.

So in the spring of 1994, which was the year I ultimately got appointed to the Court of Appeal, we took two weeks, the two of us, and went to Korea and then we really got to know each other very well. I mean, just the two of us, sightseeing. We had some contacts with the army there that I had, and they showed us around and we . . . . One day we went up to the DMZ. The army set this up with the Korean army and they had Bob brief them on . . . because this is where he had been during the Korean War when they were facing the Chinese Communist Army. And he briefed the Koreans on all this. It was a great adventure. And we spent a lot of time at the end of the day having a couple of beers, and having dinner, and just talking about our philosophies and so forth. And I think Bob went from becoming a supporter to becoming a zealous advocate after that. And it was that summer, then, that I got the call from Chuck Poochigian, then appointments secretary, asking me if I still wanted to be on the Court of Appeal. And I had just finished a long hard day in law and motion and I said, "You bet!" And . . . .

Kathleen Butz: So you were sworn in to the Court of Appeal in August of 1994.

Fred Morrison: Right. The 8th of August, 1994.

Kathleen Butz: And started up . . . .

Fred Morrison: Along with Carol Corrigan and Paul Haerle, same day, same judicial appointments commission.

Kathleen Butz: Interesting. And the position that you filled was actually that of Frances Carr?

Fred Morrison: Frances Carr, right.

Kathleen Butz: Okay. So tell me about your experience on the Court of Appeal.

Fred Morrison: It's a great place to work. It's such a finely tuned operation and they take such good care of the justices and give them 1:21:59

such magnificent support. Now, when I got there, of course I had done some appellate work and been a law professor; I was well comfortable with the process. And the first thing I did, of course, was to interview for my chambers lawyers that I would work with. And ultimately I settled on Levin and Elizabeth Merrill, who served me extremely well for the entire time. But one of the people I had interviewed was Martha Schwartzmann, and interestingly enough she had written a case for me, did a fine job. That was my first published case that Martha wrote. And . . . . 'cause it was a publishable case on an issue that needed to be published. But I started out on the second floor in a very . . . well, a relatively small office for a Court of Appeal justice. And I was up there and joined very shortly by Janice Rogers Brown, now of the D.C. Circuit Court of Appeals. And we had a fine time up there.

It was not a hard job to adapt to. There was an awful lot to learn, but you had such good help in doing it – unlike a trial judge where if you are on the bench and you say something stupid, well, there it is for the world to see. I could do something stupid and my lawyers would say, "Well, judge, I think you ought to reconsider that." I'd think about it and I would reconsider it and then the world would never know that I even thought about going this way when I ultimately went that way. So it was not difficult, and the . . . and I really enjoyed the oral arguments and the whole process of working with the lawyers and coming to an opinion and your colleagues. And it's a very different lifestyle from a trial judge, as you well know. Trial judges are pretty much tied to their courtroom for the whole day, and in the Court of Appeal we have enormous personal flexibility. On balance, I think there's more work to do on the Court of Appeal, but you do it more on your own terms, kind of where and when it suits your life, and that's a great luxury to have that. And like I say, we have tremendous support in accomplishing the job.

Kathleen Butz: Did you . . . . I mean, at this point, many years down the road, do you recall having any difficulties in the transition, or were there things that you missed initially when you came to the Court of Appeal?

Fred Morrison: Missed? In the sense of missing the things that . . . . ? Yeah, well, what you miss, of course, are people, because you become totally insulated in the Court of Appeal. There are days when you only see maybe one of your lawyers and your judicial assistant, and so some people would go nuts in a job like that. I found that solitude got to be quite comfortable; it didn't bother me at all. And of course you have lunch with your colleagues and see them at the writ conferences and so forth, and you go to the occasional social event, but working in your chambers pretty much by yourself interspersed with conversations with your lawyers, which is fine. And it is a very appropriate way, I think, for a Court of Appeal Justice 1:25:28

to decide cases because you need that kind of time to read cases, read the materials as appropriate, read the briefs, read the statutes. It gives you the time to be contemplative.

Kathleen Butz: Did you feel you had a good idea of what to expect before you arrived at the court?

Fred Morrison: I did. I had had some conversations with Art Scotland, who was already here, and he'd . . . . When I was in the application process, he'd been very thorough in explaining what the Court of Appeal does about RDAs – routine disposition appeals – about chambers cases, about the writ process. So I knew what I was getting into. And so there really were not any surprises for me. It was pretty much what I expected.

Kathleen Butz: When you arrived, did you already know your colleagues here at the court?

Fred Morrison: Yes, in one form or another – some better than others. I knew Bob very well, I knew Art well. I knew Rod Davis not quite as well; we were . . . I was on the muni court when he was on the superior court. Cole Blease I had known just from a few conversations here and there in a bookstore or something. So I had met them all in one form or another before I came on the court.

Kathleen Butz: As a justice, how did you approach a case?

Fred Morrison: You would get the briefs in on the cases that were assigned to your chambers. And I toyed with various ways of assigning my cases among the two lawyers that worked with me. But putting that aside for now, ultimately you've assigned it to one of your lawyers and you read the briefs and at some point, particularly early on, you have a conversation with a lawyer. And I like to have that conversation without committing myself in advance, and we talk about it and how they think it ought to come out, and there's a little questioning going back and forth, both ways. And almost inevitably we would reach the same conclusion. And then you might mention that, you know, this ought to be discussed, that ought to be discussed, and you need to answer this argument, and you know, I think I remember a case about this or that, and then the lawyer would draft the opinion – in my case, either Elizabeth or Levin. And then it comes back and you read it, basically at this point, unless – and it could happen, and this happened on a few occasions – a lawyer would come back in and say, "You know, I don't think that's right, what we talked about," and then you might have to start over again. And usually when they did that, they were correct. Then you get the draft in and you edit it, make a few changes perhaps, sometimes none at all, sometimes quite a few. And then you circulate it to your colleagues and in most cases they sign off on it, set it for oral argument or you don't, and you have your opinion. Now and then you find a disagreement and a 1:28:51

flurry of memos will go back and forth. And I find most of the case communication would be by memo, and once in a while you might mention something in conversation at lunch, but when you do that you put the other judge at a disadvantage because they're not up on the facts, they're thinking about 12 other cases, and so it's . . . I think it would be poor form to ask one of your colleagues to commit themselves – and they wouldn't do it anyway – without giving them the chance to study it and think about it.

Kathleen Butz: How . . . . What was your approach to making a determination of whether or not a case should be set for oral argument?

Fred Morrison: Well, a lot of that is up to the parties. My default would be: get a waiver of oral argument. But if there was a case that you had questions about . . . . I mean, that's the ideal case when you say, "You know, I'd like to hear more about this issue; I am not certain; I think we'll do it this way," and we would go into court, of course, with a signed opinion. But there you have some serious questions about it and you want a chance to talk to the lawyers about it. And that's why I think it's so important for the lawyers to know at oral argument this is their chance; presumably it's been set for oral argument – assuming they didn't request it – because a judge wants to talk about the case and the opportunity to talk to the judge about the case and have a kind of conversation is a tremendous opportunity to be an advocate. And I think lawyers need to really think about that and recognize it. So there would be those cases we would set. Most of the cases would be set by the parties because they felt oral argument would be in their best interest.

Kathleen Butz: How about the decision to publish a case? What was your analysis or your approach to that issue?

Fred Morrison: In the beginning it was more like real men didn't publish cases. And that applied across the board. It was like, you know, you should try and publish less, not more. And there was a big brouhaha about that and a controversy which continues to this day. And of course, as a new judge, you are eager to publish 'cause you want to get those first few cases out there and be immortalized in the law books and so forth, and there's kind of a kick out of that. But ultimately I was appointed to the Supreme Court committee to study the issue of publishing cases. And we read all the materials presented by the people that thought we should publish every case and that we shouldn't, and so forth. And we basically kind of tried to change the default so that, unless there's a reason not to publish it, it should be published. And I think what we did do, at least from my observation, is we made it okay to publish a case. Now it still . . . . You shouldn't publish a case that adds nothing to the law – that is a routine, for example, guilty plea where the appeal is only being done because it doesn't cost the defendant anything. But I think we are publishing a 1:31:58

slightly increased percentage now, and I think that's good. I think that's a better place to have it than where it was, and there is nothing wrong with publishing a case.

Kathleen Butz: When you became a justice, did you have a judicial plan, or a vision or a philosophy for yourself?

Fred Morrison: The only philosophy I had – and I would say it is still my philosophy – is that a judge needs to know his or her place in the government: that it's not a judge's job to remake the world in . . . according to his or her vision of how the world should be. That it's a judge's job to – particularly on an intermediate court of appeal – to take the facts of the case, apply the relevant law, and decide it regardless of the outcome, and certainly not in accordance to your own whims but to what the law requires. Now there's always room there, sometimes, for a particular viewpoint when there's, you know, a gap in the law of some kind. But those are fairly unusual, and usually you were simply applying the law – the statutory law, the Constitution, and the case law that's out there. And I think the important thing is that a judge should be skeptical of his power in restraining the exercise of it.

Kathleen Butz: What do you consider . . . .

Fred Morrison: Let me add this.

Kathleen Butz: Sure.

Fred Morrison Because we do live in a democracy.

Kathleen Butz: What do you consider to be your strengths as a justice?

Fred Morrison: I think my strength as a justice is that I am not tied to a particular outcome. Looking at the whole thing, of all the things a justice needs, I mean, it's good to be smart, to know the law, and so forth. For me, I think my greatest strength was the ability to treat people fairly and decide the case without regard to the outcome, based on the law. That's what I see my strength to be.

Kathleen Butz: In your many years as a justice, have you identified any weaknesses?

Fred Morrison: Sure. I'd like to know more law. I'd like to be a better writer. I'd like to be smarter. You know, we can never have enough of all of that. And all of my colleagues, we all have different degrees of all those qualities, and certainly I think some of them have more of some of those qualities than I do, and that's great, it makes a good mix. But, as far as a glaring weakness that handicapped me as a judge, I don't think I had any of those. Probably the other thing that related – and it's an individual thing – is the ability to prepare in great 1:35:12

detail. Now you have to . . . . It's like so many jobs. You could be a Court of Appeal justice 24 hours a day, 7 days a week, and not get your job done. But obviously that's not going to work. So we all have to draw the balance of how much time we can spend on our cases, and I think I drew it pretty well. I mean, you work hard, but there are times when you stop and you have to say okay, that is as prepared as I am going to be.

Kathleen Butz: What was your greatest challenge as an associate justice?

Fred Morrison: The greatest challenge is probably, simply the . . . . I didn't have a hard time, most . . . . I would say I didn't have a hard time putting aside my personal views about things. Like, for example, when I was at the Commission on Judicial Performance, they asked me how I could improve the judicial system. I said, "Get rid of the exclusionary rule." And I still feel that that may not be – although I've mellowed over the years – may not be the best solution to illegal police activity. On the other hand, I've never had any problem applying the exclusionary rule when the law required it. But . . . . So that's always been a . . . . That's a challenge for any judge, though, to, you know, keep your little predilections out of a case. I think the other great challenge I've had is writing a coherent opinion. Now we have so much help that . . . . But when I'm sitting down to write my own stuff in a dissent, it is hard work and it's a challenge, but I think it is true for almost everybody.

Kathleen Butz: You . . . . You . . . .

Fred Morrison: Except for Bob Puglia, who could seem to write a publishable opinion off the . . . .

Kathleen Butz: The top of his head.

Fred Morrison: As he sat there on his yellow pad, yeah.

Kathleen Butz: A moment ago – I just want to see if this needs to be clarified – you mentioned that your opinion about the . . . your personal opinion about the exclusionary rule, and you mentioned this before the Commission on Judicial Performance, were you talking about the JNE Commission?

Fred Morrison: Oh, yes, I'm sorry I misspoke. Now, I wasn't talking about the JNE Commission, either, I was talking about the Commission on Judicial Appointments.

Kathleen Butz: Okay. All right.

Fred Morrison: When you appear before the Chief Justice, the Attorney General, and the . . . .

Kathleen Butz: And the Presiding Justice. 1:37:43

Fred Morrison: And the Presiding Judge of your court. The . . . . I think it was Attorney General Lungren threw that at me, and so I tossed that one out. And as a professor I had been frequently critical, which is an unusual position for a law professor to take.

Kathleen Butz: Did you write many dissents in your 14 years at the court?

Fred Morrison: I wouldn't say I wrote many, although as we sit here now I have four pending cases, two of which are dissents. But I did write dissents, but I wouldn't say that I was an active dissenter. But they do occur; I probably . . . a couple, three a year maybe.

Kathleen Butz: What did you do, if anything, to persuade your colleagues to your way of thinking before you wrote a dissent?

Fred Morrison: I'd try and buy them a nice lunch to see if they would . . . . No, what you do is you simply write a memo and try and write it in a way that would be persuasive. And it's not persuasive to say, "Well, how could you be so stupid as to think this?" But you know, to try and marshal the facts and the law and persuade them otherwise. And sometimes that's been successful and sometimes not.

Kathleen Butz: As an associate justice, did you feel any sense of obligation or a civil commitment to being involved or present . . . active in the legal community?

Fred Morrison: Yeah. I think a judge . . . . I think there is an obligation to be out there, not excessively, but it's good to be a part of the bar, to go to events. Not . . . . If you try to go to every event, you would eat up your life, and one of the joys of the job is some of the opportunities you have not to do things like that. But I think you need to . . . like with work, you need to draw a balance and participate, and then the lawyers appreciate it.

Kathleen Butz: Was this position of associate justice one that you felt tapped the best of your legal talents?

Fred Morrison: Yes, very definitely. The only thing I think that you . . . that it didn't tap into and stretch you was on my oral and people skills. Those are skills . . . . Well, you do have the people thing, but some of the skills that I thought perhaps I was particularly good at as a trial judge involved more speaking and things like that and as an advocate, and those are not used in the Court of Appeal. It's much more cerebral, so it involves thinking, research, and writing, and like I say you have great help in doing those things.

Kathleen Butz: I'd like to give you the opportunity to talk about a couple of cases that might stand out, that you worked on, where you wrote the majority opinion. Do you . . . . You had shared with me, before this interview, a couple of them and the 1:40:40

reasons why they were memorable, and one of them was *People v. Fitch,* which I think is a 1997 case dealing with Evidence Code section 1108.

Fred Morrison: Yeah, 1108 had . . which is the one that allows evidence of prior sexual offenses to be admitted, to prove character, to prove that somebody would be predisposed to commit the crime they are charged with. And so that was a real break with the common law, using prior bad acts. And as an evidence professor, I was really tuned into that. But I liked it. I mean, that's what the Legislature passed. And then the real question was, well, if you change a fundamental principle of the common law like that, well, that must be a violation of due process. How can you do that? So I thought it was a good example of the kind of restraint that I think a judge should exercise. This was the legislative decision by the elected representatives. The opinion analyzed the statute and determined that, you know, this was a change but it was not a violation of due process. The jury would be instructed properly. They would have the chance for argument, and the statute provides for the check of 403, whether undue prejudice substantially outweighs the . . . .

Kathleen Butz: 352? 352?

Fred Morrison: The probative value. 352. I'm sorry; I was slipping back into the federal number there. 352, right. And so I thought it was a good example of applying a new statute, analyzing it from the point of view of the Constitution, its effect on the Evidence Code, and determining that it was perfectly constitutional. And ultimately . . . . That was, I think, the first opinion to hold that. Ultimately in *People v. Falsetta,* the Supreme Court reached the same conclusion.

Kathleen Butz: Agreed with your wisdom.

Fred Morrison: And that of others; other courts had done the same thing. And there was another case that followed on that, that I also found particularly worthwhile. It was *People v. Harris*. So often when a judge does the evaluation under 352 and they say, "Well, I've considered the probative value and I don't feel the probative value is substantially outweighed by the risk of undue prejudice," and that's usually the case. And we had a case in *Harris*, where we actually, I concluded it did. The prejudice was so great. And this involved a prior, involving a very unexplained violent sex crime, when the current sex crime – and this was 23 years ago in a basically unblemished record – the current sex crime was more of a violation of trust. And given all the facts, it's . . . it seemed it was indeed a violation of the principles of 352. I thought it was important to write it up and illustrate the facts. And it kind of went back to being a law professor, where when you're talking to the students you use hypotheticals and you say, "Well, now, this would clearly be a violation, and this would not, and so let's reason 1:43:56

back to where we are." And this gives a benchmark where people can say, "Well, that was a violation, so if our present case is not that bad, well, it still could be, but at least we know that. Or if it's worse, then we have good authority that that would be a violation of 352."

And then, well, the big case – probably the biggest case I decided – was the *Paterno* case. There were two of them involving the floods of 1986 and devastating losses to thousands of homeowners. In the first case that we decided, the jury had decided in favor of the plaintiff, and I wrote the opinion that reversed that. And then in the second case the judge had decided in favor of the defendant, and we reversed that, too. And that was the final case, the one that led to the settlement for all these people, and it was really . . . . The law of inverse condemnation in California is difficult and confusing, and I think that opinion laid it out and made it a little more certain.

Kathleen Butz: And the conclusion in that case was that the state could be liable for inverse . . . .

Fred Morrison: Yeah, the state could be liable for, you know, deliberate acts that resulted basically in the taking of property.

Kathleen Butz: Right.

Fred Morrison: But not for mere negligence.

Kathleen Butz: The final case I wanted to ask you about, Fred, is *People v. Morgan,* which was a 2005 case. And I think the way you described it to me is, "It was an evidence professor's case."

Fred Morrison: Completely. It was a hearsay case.

Kathleen Butz: Tell us about that.

Fred Morrison: So the police are searching a house for drugs with a warrant, and the phone rings. And the cop answers the phone, says hello, and the guy says, "I'm bogeying and I need a half-teener." Well, what does that mean? Well, that means, apparently, according to the drug lingo, that, you know, "I'm hurtin' for a lack of drugs and I need some drugs," and a half-teener is an amount of drugs. And the sheriff went on to say – or the police officer – "Well, how soon can you be here and what are you drivin'?" And the guy described his car and said he would be there in about five minutes, and sure enough he showed up. And the question is, is that admissible or is it hearsay? And several cases had said, well, it's not hearsay, 'cause it's not offered for the truth of the matter, 'cause he was just saying he's . . . he needs drugs. But . . . . And then this is also supported by case law, and I think it is correct, and Jefferson's treatise says the same thing. This is really 1:46:44

only relevant for the fact that the caller believes there are drugs in the house, and that's the implied assertion there. So in *Morgan* we found that it *was* hearsay; it *was* offered for the truth of the implied assertion. However, because of the manner in which it was given, it did have indicia of reliability and it could fall into the residual exception for reliable hearsay. And so in the end we came out to the same place that the other cases have had, but I just thought it was a more astute analysis and of great interest to people who teach hearsay law.

Kathleen Butz: And we thank you for it. I'd like to ask you if you had any judge heroes over the years.

Fred Morrison: Well, before I became a judge, my heroes in . . . kind of in history would probably have been Oliver Wendell Holmes – I had read a biography of him before I went to law school that was inspirational; Learned Hand, who I had read his biography while on the trial court while pending coming to the Court of Appeal; and Robert Jackson is another one whose opinions I have always admired. And then when I was in the U.S. Attorney's Office I became, as I indicated, very . . . in great admiration of Milton Schwartz. And of course my ultimate judicial hero was Bob Puglia, who I thought was just a magnificent judge in every respect, and just . . . it was a great pleasure and honor to work with him.

Kathleen Butz: What are the qualities that you consider to be essential to being a Court of Appeal justice?

Fred Morrison: I think he's got to be – he or she's got to be – faithful to the law. They've got to have an open mind – got to be thorough in their analysis. They've got to be collegial, which I found the members of this court to be to a person, totally collegial, and willing to listen to their colleagues and consider. Of course, treat each other civilly. They need to be intelligent and to a degree scholarly, or at least have interest in scholarly matters. And self-motivated because you could be a Court of Appeal judge . . . . I mentioned you could work as a Court of Appeal judge 24 hours a day and not get the work done, but you could also come in once a week for an hour and sign your name and probably get away with that. And so it takes a certain amount of discipline to do the job correctly.

Kathleen Butz: At this point in your career, having just recently left the Court of Appeal, what are the greatest challenges that you feel the judiciary faces?

Fred Morrison: Well, besides the obvious budgetary challenges that we have, I think the challenges are two. One is the selection of good judges, which is up to the Governor, of course, and his staff, and that's critical to having a good judiciary. And I must say, in my 23 years on the California courts, by and large I have been very pleased with that, and I think the process is 1:50:12

a good one and it works. Obviously, not every judge is perfect. I think our system of removing judges in California is an effective one that does the job, and I believe it's . . . . I participated in one Judicial Commission on Performance hearing as a special master and I think it is a thorough and fair process – extremely painful to the judge, but that's inevitable.

I think the *greatest* challenge to a judge is to remain independent. I think on the Court of Appeal it is far, far less of a problem than it is on the trial court. On the trial court, the – and very few people seem to want to admit this – but I think the, you know, the alligator in the bathtub, so to speak, is the district attorney. The district attorney in every county wields great power and is perceived to wield even more, and I think it is tempting for a judge to go along with that. And, after all, they are representing the people, and you would hope that in most of the time they are right, or they shouldn't be bringing cases. So all that comes together and I think you've got to be very much aware of that influence. It doesn't mean you disregard them at all, but you've got to be aware of the power they have and not to be influenced by it, and not to be worried about "Oh my gosh, they are going to run a deputy against me if I make this ruling," or anything like that. I think that's out there, and for trial judges the difficulty is they have six-year terms and they can be challenged. I can't think of any concrete examples of judges I know giving in to that, but it does . . . there is an atmosphere that needs to be thought about and resisted.

Kathleen Butz: Now, how many retention elections did you actually have to go through here on the Court of Appeal?

Fred Morrison: I went through two. One was four months after I was appointed, and that was the year that it said "Should So-and-So be retained for a term of 12 years?" which resulted, apparently, in some very low percentages. I think I had a 56 percent approval rating, so after four months almost half the people thought I was a bad judge. And I remember then that Coleman Blease was at 51 percent and, you know, that seems wrong to me, for example; he is an outstanding judge.

The second retention election I had 74 percent, so I guess I'd improved a lot. But, 1) the ballot now says "Appointed for the term prescribed by law," and we actually did make some – and you were on the ballot then – some efforts to go out and meet with editorial boards and tell them about how the Court of Appeal judges were selected, and so on and so forth. And I think the default position for a voter is 1) okay, fine, you don't know any of these people, you could not vote. Or understand the selection process, and unless you have a reason to vote no, you should vote yes. And so now the retention elections seem to be by a much more comfortable margin. 1:53:30

Kathleen Butz: But now you don't have to go through any more retention elections.

Fred Morrison: That's right. But I was good 'till the year 2018 anyway, so . . . .

Kathleen Butz: Well, on a personal note, when and why did you decide to leave the Court of Appeal?

Fred Morrison: Well, I was eligible to retire in 2005; I had my 20 years in. But I didn't feel I was quite ready. And then there was the judicial . . . what, extended . . . how's it called? The Extended Service Incentive Plan, which I think is a very effective tool where they take a percentage of your salary and put it in the . . . . Well, the state just keeps track of it for you, and when you retire they give it to you. So that was a motivating factor, and you had to serve three years for that, and I did. And I could have gone to five or beyond as some of my colleagues have done, but for me the real issue was I knew I'd want to retire while Governor Schwarzenegger was governor, and I know that I want to have an active career after I retire, so I figured it was better to do it sooner rather than later, because I'm 67 and I want to have some interesting work-years ahead and so it's better to get started on it.

And so I did, and it was a tough decision, and I can't say that . . . . I certainly don't regret the decision, but there are moments when you say, "Gee, you know, life was good on the Court of Appeal." Life is good while retired and it is very different, and that's part of the charm of it. But it is a tough decision to leave what I, over the years, described as the best job around.

Kathleen Butz: And what is the new career?

Fred Morrison: I'm now an arbitrator and mediator with JAMS, and I'm working at this point out of building up my business, my practice, and I've had a few mediations and they've been very challenging and interesting and enjoyable and hard work. And so, for the first time for me, I'm actually out there in the private sector. Not even when I was a professor at McGeorge . . . . That's a private school, but it's that, and I'm always . . . I was in the National Guard so I was always . . . always had a public job of some kind or another, and . . . 'til now.

Kathleen Butz: Until now.

Fred Morrison: Right. But I must say to be in this economy, it's very nice to have the security of a Court of Appeal retirement.

Kathleen Butz: Kind of cushions the blow.

Fred Morrison: It cushions the blows. Right. Right. 1:56:14

Kathleen Butz: In retrospect, having made this decision now to leave the Court of Appeal after 14 years, and looking back over your career, are there any points in time where you think you might have . . . given the opportunity, would you have done it differently?

Fred Morrison: Before I answer that, let me finish with the other question. The other reason to retire, of course, was to have more free time to travel more.

Kathleen Butz: Oh, that, too.

Fred Morrison: And we have six grandchildren and hopefully to see more of them, so that's the other benefit. And one of my goals in retirement in my new job is not to become, as some people have, so . . . have so many . . . so much business that now they have less time than they had when they were working. So I'd like to draw the balance there carefully.

Now the next question, was . . . oh, any times I would have done things differently. I don't think so. Yes, one thing I think I would have done differently. I think in retrospect I should have gone to a high-quality small liberal arts college. Now, I had a good time at Purdue and I got a decent education, but I think going to a place like Bowdoin up in Maine or some other good liberal arts school would have been a great experience. So that's one thing I might have changed. On the other hand, like any other life decision, so many things that flow from everything that you do, that it is hard to say I'd go back. If I'd changed that, I might have had an entirely different life.

Kathleen Butz: Now, are there some things that you will continue to do, though? I throw out, as an example, some of your athletic endeavors: your backpacking, your mountain climbing, your swimming. Are you continuing to pursue those interests?

Fred Morrison: Oh, certainly, certainly. Like I say, those were defining activities for me and very important, and I'm totally addicted to exercise and have been since I was 13 years old. And I think it's been, for me, a great benefit. And it provides great satisfaction, you feel good, and it's great, and I continue to . . . I plan to continue doing those things as long as I can. We're still backpacking with Justice Sims and Judge Frank Francis from Nevada County and, you know, working out every day. It's just really a part of life that I am not about to give up. In fact, I should have more opportunities to do that now.

Kathleen Butz: If you are judicious with your allotment of time towards JAMS and keeping enough time for the other fun stuff.

Fred Morrison: Yeah. I've found over the years that the exercise portion has always managed to get done. I hate to say it comes first, but in many ways it does. 1:59:20

Kathleen Butz: One final note with regard to JAMS. Was there a particular reason that you felt going into alternative dispute resolution would be the way to go for you versus perhaps going back into a private practice or being of counsel to a prestigious firm?

Fred Morrison: Or for me, more centrally was the idea of going back to be a law professor again. As I said, I often thought it was the second best job. But the trouble with all of those things are the amount which they tie you down. And the nice thing I found about dispute resolution, particularly with JAMS, is that you have flexibility. I can tell them I will be available on these days. Now, you don't want to block out too much time or you wouldn't have any room to have business and have cases, but it gives me the ability, and my wife and I, to travel and do things. And when you're teaching, for example, which probably would have been my first choice, while professors have a lot of free time they're also totally tied down during classes. I mean, for that 15 weeks in the fall and spring you've got to be there, and we really didn't want to be quite that tied down. And JAMS has the . . . alternative dispute resolution has the potential to be very lucrative and yet provide you with a lot of free time.

David Knight: I'm going to stop you right here because I need to change the tape again.

Kathleen Butz: And I've got about one . . . . One of the things that you had indicated you did when you first came to California after leaving the army was to start with the National Guard, and I would like to hear where that took you – what that particular commitment involved, and how long you were involved with the National Guard.

Fred Morrison: Well, I joined, of course, 'cause I initially . . . . Well, first of all, I had enjoyed the military and was very comfortable with it, thought it was very worthwhile. But mostly I didn't want to throw away 12 years. If you join the reserve, including the National Guard, and you stay for at least 20 years total, you earn a pension. It is a reduced pension – you don't get it until you are 60 – but you've earned a retirement. And I didn't want to just throw away those 12 years. So I joined the California Army National Guard. I was a major at the time. I was made the Staff Judge Advocate – which is like the general counsel – of a unit in Roseville, California, a kind of brigade-size unit commanded by a colonel. And I was basically the colonel's lawyer and had a staff of other lawyers, about two or three that worked on legal issues, provided legal assistance for the soldiers. And that was good work. I enjoyed that, and it basically involved two weeks in the summer and one weekend a month when you'd go in for your drills. That's the way the Guard and the reserve was in those days. It's not that way now. But after about three years, I was asked by General Willard Shank – who was the deputy commander of the Guard and a lawyer and a former chief of the civil division in 2:02:41

the Attorney General's Office and a mentor to hundreds of people, including several in our court – if I wouldn't become the State Staff Judge Advocate, which is the lawyer for the state, and I did. And I did that job for 12 years and I had some magnificent people working with me, and it was actually a lot of fun, very satisfying, and, I must say, very helpful for me politically. I mean, my legal section at one time consisted of the Chief Deputy Attorney General of the state, Michael Franchetti; a couple of other lawyers; and Tom Heres, a good friend of mine who was very instrumental in my first appointment to the muni court – he was a very influential, well connected, very able lawyer. And those things were all extremely beneficial, not to mention that I thought we were doing good work and enjoyed it.

And unlike the Army Reserve, which reports directly to the United States, the Guard is part of California. It's both federal and state, and so you felt like you were an integral part of state government. We would have emergencies – fires, floods, and so forth – and we would be participating. The troops would be out there helping, we'd be back doing the legal issues and so forth, so it was very rewarding. And then, at some point, we would . . . . There's an association of judge advocates of the National Guard, there's a hierarchy in the National Guard Bureau in Washington, and they . . . every three years they select one of the colonels who's in . . . who's the counsel for the different states, to be a brigadier general and to be the senior guy for the National Guard judge advocates to advise the Judge Advocate General of the Army about the Guard and to advise the Chief of the Guard Bureau about legal matters. And I got selected for that in 1990 and was promoted to brigadier general.

And for three years while a superior court judge, two or sometimes three weekends a month, I would leave on Friday and travel all over Washington, D.C., and other places and attend meetings with judge advocates or go back to the Pentagon and have meetings and consultations. And sometimes you'd be gone for a week, and it was . . . I think it was . . . My colleagues in the superior court were very supportive of it because I had to be gone, and you had to take your own vacation and you had a military leave, which the government gives you, so I was able to accommodate it. And it was very satisfying work, and for somebody who had been in the army for as long as I was, to be a brigadier general was more than I anticipated achieving, and it was very satisfying. And then ultimately I reached my 30 years, my three-year tour was over, and I retired at age 60. You start to get a partial pension. And I should say this: I remember when I got appointed to be brigadier general, the guy who was in charge of the National Guard Bureau legal staff said, "You know, one of the things in your favor is that you're a judge and we think that means that you'll know how to behave and you won't 2:05:58

get into trouble with all the things people in government can get in trouble with." And I said, "Well, I appreciate that, and that is certainly my intent." And I know when I was being considered for the Court of Appeal, the fact that I was a general was a big plus, you know, that's an achievement, and so that was to my credit. So I almost felt like the Guard and the judiciary were going back and forth and helping me out, and that was great.

And now to be in the National Guard or the Army Reserve is a much different experience, as people know. During the Iraq war, they are getting mobilized for a year at a time, they are going into combat zones, they are coming home, and they're going back in another year or two. And that would be very difficult to sustain a responsible civilian career and have to do that, and they make a huge sacrifice and they're doing wonderful work but when I was doing it, we simply did not have those kinds of pressures or responsibilities.

Kathleen Butz: So, what year was it that you left the Army National Guard?

Fred Morrison: I left the Army National Guard . . . retired in July of '93.

Kathleen Butz: And what took its place?

Fred Morrison: Well, it's amazing how quickly those weekends filled up. And like so many jobs, and like leaving this job, the thing you miss are the people you worked with because they became good friends. And you try and maintain the contacts, and so forth, and that's what I'm experiencing here as well. But it was amazing how quickly . . . . You know, you'd be . . . for one weekend a month you'd basically . . . you'd work 12 days in a row: five days at work, two days at the Guard, five more days before you'd have time off. But it was such a change of pace that it didn't really feel like that big a burden, and once I retired, very quickly, my wife and I went on a cruise to the Mediterranean. That kind of made the break, and then I adapted very quickly to having my weekends.

Kathleen Butz: Well, Fred, you've been a man of many successful careers and I have no doubt the career next in line, JAMS, will be equally successful. And I want to say it's been a pleasure for me to interview you, and I would leave it to you for the last word if you have something you'd like to say to conclude this interview.

Fred Morrison: Well, all I think I'd like to say is: Being a California judge, particularly being on the Third District Court of Appeal, has been an enormous honor and privilege, and I will always treasure the experience and the personal growth I achieved out of it. And I will always treasure my colleagues. Thank you.

Duration: 128 minutes
April 14, 2009