COURT OF APPEAL

FOURTH APPELLATE DISTRICT

DIVISION ONE

SPECIAL SESSION IN MEMORY OF

ASSOCIATE JUSTICE ALEX C. McDONALD

October 3, 2016

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OFFICER JEFFERSON: The special session of the Court of Appeal of the State of California, Fourth Appellate District, Division One, honoring the late Associate Justice Alex C. McDonald, is now in session.

(The justices enter the courtroom.)

OFFICER JEFFERSON: Please be seated.

PRESIDING JUSTICE MCCONNELL: Good afternoon.

I'm Presiding Justice Judith McConnell, and with me on the bench to my far left are Justice Joan Irion, Justice Judith Haller, Justice Richard Huffman, Justice Patricia Benke, Justice Gilbert Nares, and Justice Terry O'Rourke.

And we are in special session today in honor of Associate Justice Alex C. McDonald.

Before I begin my remarks, which will be brief, I wanted to introduce a few people who are here who are very important to our court.

Retired Justice Howard Wiener is here, Chief Judge Barry Ted Moskowitz of the U.S. District Court is here, Judge Sammartino of the U.S. District Court is here.

Is Justice McIntyre here? Oh, Justice McIntyre, how soon we forget.

Let's see. We've got Judge Prager is here. He's been sitting on assignment.

Did I introduce Judge Bedsworth yet? Judge

Bedsworth is here from the Court of Appeal, Fourth Appellate District, Division Three, in Santa Ana.

I don't know if Judge Barton is here. Judge Barton, Presiding Judge of the San Diego Superior Court, is here.

And from Justice McDonald's chambers are Joan Mara, his judicial assistant; Steve Joplin and Greg Miller, two of his attorneys.

Carolyn Huffman is also here, spouse of our justice. And Buzz Kinnaird, our former managing attorney, is here, as well as Kim Stewart, our current managing attorney, all of whom worked very closely with Justice McDonald.

And if anyone has been forgotten, please forgive me. This is a big day for all of us, and we don't want to forget anybody, but I will be introducing the speakers in a couple of minutes.

On September 8th, 2016, we lost our dear friend and colleague, Alex McDonald, at the age of 79.

Alex was born in Butte, Montana, the son of a mining engineer, and knew from a very early age that he wanted to be an engineer.

From his high school days in Utah he developed a love for skiing, which he enjoyed with his family all his life.

According to an interview in the Daily Journal, Alex discovered when he was an undergraduate at Stanford that, and I quote, "I probably didn't have what

it takes to be a good engineer, but I did have the aptitude to be a lawyer."

He learned that by taking several Graduate Record Exams and the LSAT, and he got a very high score on the LSAT, so he decided to go to law school.

I think that's a good way to make that decision.

With his bachelor's degree in hand in the field of industrial engineering from Stanford, he enrolled at Boalt-Hall School of Law, a preeminent law school in California, which I also attended, Governor also attended. He received his law degree in 1961 with high honors, both as Order of the Coif and editor of the ***Law Review***. He didn't tell us about all of this every day.

By the way, 40 years after that he got a Master's of Laws Degree from the University of Virginia in a special program designed for appellate court justices.

After law school Alex and Judy left for India for a year on a Ford Foundation Fellowship, and when they returned with their baby Katie in tow -- she was born in India, so she can't be president. Sorry about that, Katie.

He clerked for a year for Justice Raymond Peters of the California Supreme Court.

He and Judy picked San Diego as their next home because they thought it would be a nice place to live. And there's a pretty long story about how they picked San Diego, and maybe we can learn about that later

on.

He was the founding partner of the law firm formerly known as McDonald, Hecht & Solberg, where he became an expert in real property law and played an active role in the establishment of some of San Diego's most noted real property developments.

And I'm sure you'll hear more about his law practice from his former colleagues at the firm.

He and Judy were married for 56 years and raised four amazing daughters, whom you will meet today, if you haven't met them already. They are beautiful, just as Judy and Alex are.

Just as Judy was engaged in service to disadvantaged individuals -- and frankly, I knew Judy before I knew Alex, and it wasn't until I met -- came to the Court of Appeal that I realized that he was Mr. Judy McDonald. We've known each other for years.

But he was also very engaged in service to disadvantaged individuals. He was active in community service, and especially engaged in the Lions Club, where he served in many positions, including as president. He was a founding board member of the Lions Community Service Corporation, and was a key participant in the creation of the Lions Community Manor, which provides housing for low income, elderly, and disabled citizens.

The manor opened in 1981, and has provided housing and shelter for many in need, and currently has a four-year waiting list. That's how popular it is.

Both Alex and Judy have spent many hours enjoying San Diego's music and theater, and often at lunch Alex would be approached by people who worked at the symphony and came to know him well.

Alex was appointed to the Court of Appeal in 1995 by Governor Pete Wilson, who will speak to all of us in a few minutes.

Here at the court he was known as a quick learner and a careful student of the law. We knew when we handled a case with him that he would be deeply familiar with the facts of the case and ready to discuss the applicable law and the key issues. We relied on him for his deep knowledge of real property law, but because he was so interested in learning new areas of the law, we counted on Alex for his keen perception and understanding of the problems before us.

He was also known for his red pen, but he used it to help us get the case right or, from time to time, to write his dissent.

He filed in his tenure here 2,524 opinions, of those, 195 were originally published. Occasionally they get depublished when the California Supreme Court grants review or orders the case depublished, so he had 195 originally published and 2,390 unpublished.

He filed 68 dissents. And if you ever went into his chambers, which most of you probably did not, there was a big plaque on the wall with his picture saying, "The Great Dissenter." He particularly enjoyed

that.

We all miss Alex. We miss his hard work, his attention to detail, but above all we will miss his keen sense of humor and ready smile.

Now it is my great honor to introduce his friend, Governor Pete Wilson.

Governor.

GOVERNOR WILSON: Thank you, your Honor.

Don't worry, it's a small bottle. It's almost empty. It's when someone comes to the podium with a full bottle.

Your Honor, you have, I think, very succinctly summarized many of the achievements of Alex McDonald.

When -- well, I'll start this way. I have reason to be indebted for many things to my late friend John Davies. One of the most beneficial things that John ever did for me was to introduce me to Alex McDonald.

John and I were classmates, along with Jim Milch, at Boalt, and Alex was a year ahead. He was a class ahead of us.

When I first met him, I simply thought he was a pleasant -- very pleasant fellow, good humor. Not long thereafter, I learned that he had considerable gifts, so much so that in fact before that year was out, he had been named editor of the ***Law Review***, and as you have pointed out, was Order of the Coif.

The thing that I always found interesting

is that not only was he, as they say in New England, wicked smart, but wicked funny, which is always a good thing, provided that the person in possession of those gifts is indeed good-humored, because in the wrong hands, they could be cruel. Alex never was. To the contrary, he really was a good man, a nice man, but it is true that in contrast to many, he did not take himself too seriously. He took the law seriously, he took his responsibilities seriously.

Now, fast forward from that day in 1959, it pains me to state, to about 1995, and John and I were in very different circumstances than we would ever have guessed back in 1959, in which we would have enjoyed the concurrence of our instructors. But the fact of the matter is, that one day about 1995, John came in serving, as he had when I was in the senate, as a volunteer judicial appointment secretary. And he did an extraordinary job. He worked at it and was meticulous and thorough. And this morning he came in and he said, "I have interesting news." And I said, "Yes." And he said, "There is a vacancy on the Fourth District Court of Appeals."

And I won't tell you exactly what I said, but it was something in the nature of an exclamation.

In any case, shortly thereafter he said, "Now, of course, there are a number of excellent candidates, and you, of course, need to consider them all very carefully."

And I said, "That's right. And I want you to do your usual thorough, careful job of preparation, John, so that we cannot have any criticism when we pick Alex McDonald."

As it happened, he did do a thorough and careful job, one that I think immunized us against the suggestion that some sort of cronyism for people who had known each other for over 40 years might possess and that might have somehow influenced the decision.

He really didn't. And I have never felt more comfortable in the appointment. He, Alex McDonald, was, I think, everything that we expected of him. What I knew from living in this city and knowing lots of lawyers, was that he was regarded by most, in fact I couldn't find anyone who would have disagreed that he was a superb real estate lawyer. He had been involved in putting together some of the most important and really transformational transactions in the city, whether we were talking about the Meridian downtown, whether we're talking about the several buildings and what became known as the Golden Triangle, and in the development of Rancho Bernardo. These were some of the things that he had been heavily involved in.

As you pointed out, your Honor, he was a man who had a quick wit and a very quick mind, and as it happened, he also -- he was -- I will say that Alex didn't have a serious side, he had a responsible side, and there's a difference. He would be serious, not for very

long at one stretch, because he really didn't think that necessary. And he was right, by and large. I think he charmed people with the fact that he was straightforward, he knew the law, and was a very practical man. But it did happen, as you say, that he found occasion for 68 dissents, of which we suspect he was more proud of than some of his decisions.

In any event, he did a superb job and I think was a happy man. I think he had found his calling, and he was able to perform it admirably. And I really never heard criticism of him, something that is unusual in my experience, although most of it was directed at me.

But the thing that I think is most admirable is that this was an honest man. He achieved, I think, an enviable reputation with other judges, with the Bar. He achieved, deservedly, a reputation as someone who was thorough, who knew the law, who, by the way, was very interested in learning new areas of the law.

You mentioned that after leaving Boalt he went with Judy to India, to the University of Bombay, where he studied Indian constitutional law. And, of course, he never stopped learning, as good judges don't.

And when some 40 years later, I guess, after leaving Boalt, he went to the University of Virginia, or how they did this in this day, I'm not quite sure, but in any case, he did receive a Master of Laws. I was not surprised. I was surprised he had the time to do it, but knowing him, the only thing that people didn't

like about him in law school was not just that he was smart, but that he made it look easy. That could be obnoxious.

But no one thought Alex was obnoxious. He was a genuine scholar, and people enjoyed being around him, because he could talk to you about anything.

And should I have brought a long bottle?

Anyway, I will just say this: I read an obituary, which I think is one of the best I've ever read. I'm not really sure who produced it, but it came about as near to capturing his personality as any effort of that kind I'd seen, so to the authors, they have my admiration and my thanks.

I would just say this: You mentioned his efforts as the president of the Lions Club and as the founding member of their service corporation, which built the Lions Community Manor. He was someone who did have a well-developed sense of the difference in circumstances, and thought that there were obligations on some of the more fortunate to help the others, and so he did that in a number of ways. And he also, I think, thought it was an obligation for him as a teacher to perhaps teach those nearest to him that they had an obligation.

I can remember my own father telling my older brother and me, he said, "You really have an obligation." He said, "After all, you've been born with reasonably good minds."

He sort of hesitated on that, but --

"And in good health and in a free country, where if you do work hard at something that you enjoy and get good at it, you can probably be very successful. Long before that occurs, you ought to think about giving time and effort to what you can do, again hopefully picking something that you enjoy, to improve life in the community in which you live, in the state, and in the nation." He said, "There are all kinds of ways that you can do it."

I think that with the four extraordinary daughters that he and Judy produced, they heard something like that.

I saw the phrase in the obituary that I so admire, that he had an infectious love of learning. That's true. One of the more interesting people I have ever met, capable of, I think, talking about almost any subject. But what he clearly felt was that the world is getting more complicated, that there is need for better understanding rather than wishful thinking, practical thinking, and that he hoped that his children and grandchildren, of whom I think there are now seven, would take to heart the sessions that they had, I assume dinner sessions -- that's where it happened to me -- and that they would follow his footsteps, his and Judy's, with the right impulses and with the right results.

So I would simply say this: I think that 40 years after he left Boalt and received a Master of Laws, I think it would be more accurate to say that Alex McDonald was a master of life. He had an extraordinary

life, a full one. I wish it had lasted a lot longer. But he was a man who I think was happy in his own situation, but really genuinely possessed of the obligation to help others, and he found a way to do that I think very effectively in court and out.

Bless him and I feel blessed to have known him. I will miss him.

I will leave you with one thing. As an act of kindness, he bestowed on me, a little too late, some learning that would have come in very handy.

His neighbor, Jim Milch, in Kensington, and Alex used to celebrate the New Year by having a party in which was served Bloody Marys, that was supposed to be Jim's contribution, and then Alex would shuck a basket full of oysters. So they invited me one day and Milch said, "Your job is to help Alex with the oysters."

I don't know if you've ever shucked oysters. If not, don't begin now.

After a while the shells -- well, the shells don't get any softer, and if you don't know how to do it, you will wind up, as I did, losing quite a bit of blood. And it was Alex looking at this who finally said, "Let me show you how to do this." And once again, deft, quick, and productive, he had a half a basket full before I had succeeded in escaping the need for a transfusion.

Anyway, he was a kind man, and I hope that he was as happy as I think he was and made others happy.

Thank you.

PRESIDING JUSTICE MCCONNELL: Thank you, Governor. Thank you very much, Governor. That was very kind.

It's now my pleasure -- by the way, there's some people standing in the back, and we do have some chairs up front. There's no need for you to stand. Please come on up. There's some here in front by the judges, if you're not too shy and/or afraid. Please come up. There's some over on the pew right there with the court staff.

And by the way, we reserved a large section of this courtroom for court staff because, as Judy said, Alex loved the court staff and he would have wanted as many of them here as possible, and so we have many of them here, and they miss him greatly.

It is now my honor to introduce Jerry Goldberg of Hecht, Solberg, Robinson, Goldberg & Bagley. And he'll tell us about his experience with Alex.

MR. GOLDBERG: Thank you very much, your Honor.

First I would like to comment on something that Governor Wilson said.

I don't know if this is apocryphal or it's true, but I had always heard that in regard to the nearest party where oysters and Bloody Marys were served, that the division of labor was Alex, being true to his Scotch heritage, didn't really want to pay for the oysters, so Jim Milch paid for them and Alex got to shuck them. Maybe Jim can verify that.

Though we all already miss him terribly, Alex leaves behind many legacies, a wonderful family, a legion of friends, many good works in the community, and of course the jurisprudence he created as an associate justice of this court.

But I would like to share just a few thoughts about another aspect of his legacy, one that has actually been a cornerstone for several other lives, including my own.

Before Alex McDonald became Justice McDonald, his name was the first in the law firm that when he departed for the bench in 1995 was known as McDonald, Hecht & Solberg. And in his 23 years with the firm, he created a legacy which to me is as permanent and as great as the legacy reflected in the many published opinions that bear his name.

As my partners and I wrote in our farewell letter to him in June of 1995, the day that he was sworn in as a justice, quote, "Our firm is and will remain the one that Alex McDonald built," unquote. And so it was, and so 21 years later it still is.

Although on reflection I don't think the word "built" is really the right word, because that word expresses an intentionality that those of you who knew Alex knew was not Alex's way. For one thing, he never set out to build anything, and he certainly never entertained a grandiose vision of a multi-generational law firm.

For example, when he offered to hire me in

1975, I told him that upon leaving my current position in Washington, D.C., I wanted to take several months off before starting the new job to travel and camp across the United States for several months with my wife Linda.

In response over the phone there was a very long pause, and when he finally responded, as my heart was beating rapidly, I expected him to say something like, well, I'm really busy. I have a lot of work. I need somebody sooner rather than later, so if you can't join us sooner, we may have to find somebody else. But to my absolute surprise, what he actually said, and this is pretty close to an exact quote, was the following: "Well, if you can't show up until September, I'm afraid that by the time you arrive the firm won't be here any longer. And that would make me feel very bad."

Well, I decided to take my chances, fortunately, and I accepted the offer, notwithstanding his reservations, and when I reported for duty on the agreed date the following September, the firm was indeed still there, and today, more than 41 years later, it's still there. And it's one of San Diego's oldest intact law firms. But the legacy was not just one of longevity, but also of the qualities and shared vision that made our firm what it is. Alex accomplished this through his quiet leadership, which we would all call indirect.

As our unquestioned and unelected managing partner, he managed not by directive, but essentially by example. He never promulgated written policies or

procedures; in fact, he hated them. The only one I can remember is a memo that said, "Should we close early on Thanksgiving? If anybody objects, let me know."

During his stewardship there were no such directives, rather, Alex taught us by his own exemplary actions as a lawyer and as a human being; how he consistently addressed the needs of our clients, even those we didn't care for too much, and not just as a lawyer, but as a trusted advisor, which he was; how he treated everyone, from the partners, to the staff, to the custodians, with respect; how he held the good of our group above the individual self-interest, including his own.

We used to say when Alex was our leader, "In our firm there are no rules unless you break the rules." Those were Alex's rules.

After he left the firm we decided maybe we should write some of those rules down, which we did in what we today still call our Statement of Values. And all these values are a lot like Alex. Integrity and ethical behavior, highest quality work, financial responsibility -- that was a big one with Alex -- mutual respect, long-term relationships, giving back to the community, and a sense of perspective.

And the latter he brought off even though he was one of the hardest working lawyers that I ever encountered, and was pretty much there Saturdays. The kind of guy that would say, "It's Friday. Just two

working days until Monday." But yet Alex always was able to maintain a sense of perspective and had many other activities and relationships and loves in his life that inspired us all.

And of course Alex brought to his interpersonal relationships, this has been mentioned, his characteristic sharp wit that was at once light, but also purposeful. Some of his best humor was self-deprecating. For example, I remember in 1984 he was tapped to carry the Olympic torch on part of its final journey through San Diego to the L.A. games. He quipped that at the end of his leg he could use the Olympic torch to light a cigarette.

Shortly after Governor Wilson appointed him to the bench, and I think a lot of you probably heard this story before, but it bears repeating, he read that a secretary for retiring Justice Charles Froehlich, whom Alex was replacing, had told the press, quote, "Justice Froehlich was the most intelligent man I ever worked for," unquote.

Well, the same secretary had previously worked for Alex at our law firm, so he sent her a note that said, "How quickly they forget." And she sent a response, almost as quickly, which said, "I didn't forget."

Well, those of us who worked with him and for him didn't forget. As the years on the court became evident, Alex's intellect was deep, his work ethic was

legendary, and his appreciation of the law was contagious.

If it was hard for us to say good-bye to Alex 21 years ago when he turned over the reigns of the firm to those of us he mentored and nurtured, it is impossible to find the right words now for a final farewell, so the best I can do is to repeat the closing words of the 1995 farewell letter I mentioned, which remains in our conference room on the wall, and remains as true today as they were on the day that "McDonald" was removed from the name of our firm as the first name in our name, and that last line read, quote, "Alex, you will always be first with us."

Thank you.

PRESIDING JUSTICE MCCONNELL: Thank you very much for those heartfelt comments.

It is now my pleasure to introduce the Honorable Judge Charles Gill, whom Alex replaced from time to time when you went on vacation.

HONORABLE JUDGE GILL: Yes, he did. Thank you.

May it please the Court. Good afternoon. This is going to be hard. I will try.

Just as Alex McDonald was my boss, mentor, with the passage of time he became my partner, but most importantly we were friends.

When I was hired by McDonald, Hecht & Solberg my office was on the 11th floor of 600 B Street, coincidentally directly across 7th Avenue from the building we are in today. My office was on the east side

of the building and had a tremendous view of the open pit that became Symphony Towers.

Alex was inquisitive and interested in many things, including construction, probably because of his engineering background. Virtually every day Alex came to my office, cigarette in hand -- it was a different era -- walked past my desk and stood at the window to watch the construction. As the newest employee of the firm, I was very anxious having the founding partner stand behind me every day and look out the window.

Initially there was little conversation, other than pleasantries such as good morning; however, with the time we began to talk about the construction, then other topics, but seldom about work. In the 30 years that I knew Alex it was very apparent that my introduction to Alex was not unique. Alex could frequently be found talking to clerks, secretaries, custodians, security guards, receptionists, and delivery people. Alex generally enjoyed informal interaction with everyday people.

Alex enjoyed smoking. I'm convinced one of the reasons he loved smoking was the interaction with individuals trying to bum a cigarette. He frequently shared with me the most creative, but rarely successful, approaches.

When we went skiing together I always tried to get a room with a balcony so Alex could enjoy his cigarette without having to leave the room. The memory of

Alex standing on a balcony in his PJs, smoking his last cigarette of the day, with the wind howling and the snow falling, will always be with me.

Alex loved wine. The firm had an annual barbecue before a Padres game every summer. As the newest employee I was responsible for the beverages. I was repeatedly told by some of Alex's partners to be sure that there was wine. I love barbecue, and it was incomprehensible to me that someone could drink wine with short ribs and beans, so I got screw top jugs of cheap wine, several different colors, to augment the more appropriate beer, soda, and water. Alex accompanied his ribs with some of the wine and then pronounced that, "Charlie is never again to be responsible for beverages."

Our conversations about law evolved through the years, from the intricacies of real property transactions, environmental law, community associations, and development agreements, to the ambiguities of the Penal Code. Alex reveled in the challenge of learning a completely new area of law that was outside of his practical experience.

Alex voluntarily sat as a superior court judge on several different occasions, working with my staff. Everyone, including attorneys, staff, and defendants, loved working with Alex, even though he was always anxious because of his unfounded fear that he would be unable to make the appropriate decisions in the trial court setting.

Alex was one of those rare people you never wanted to disappoint because of his compassion and interest in you.

One time Alex covered a plea bargain court as I sat in the audience, and after taking a defendant's guilty plea, the experienced defense attorney asked that his client be released on his own recognizance pending sentencing four weeks later on the drug charge. Alex granted the request and released the defendant when the sentencing date was set.

Alex had arranged his schedule so he would do the sentencing of each of the defendants that had pleaded guilty. I suggested to Alex after the hearing that the defendant was unlikely to appear for sentencing, and that I would not have granted the request.

A couple of weeks later the defense attorney told me he had tasked an investigator to find the defendant. When the defendant was still missing the weekend before the sentencing, the defense attorney personally canvassed downtown San Diego and found his client and made sure he was present for the sentencing.

Alex, unaware of these extraordinary efforts, was very pleased that his compassion was rewarded rather than his pessimistic friend.

Alex always said after these times on the bench how much he enjoyed it because of the interaction with all the different people involved and the variety of challenges that arose each day. Whenever we talked about

these events, he used a phrase that was synonymous with Alex, "I did the best I could." Of course, the reality is that Alex's best, whether we are talking about the law, skiing or parenting, was extraordinarily exemplary.

We forged our friendship on the ski slopes. Alex's passion for skiing was built on the simple fact that skiing involved very little ambiguity. It is either right or wrong, and only the skier is responsible for the results.

Alex graduated from high school in Salt Lake City and had skied at Alta, Utah, but was generally prohibited from skiing by his high school basketball coach. On one trip we drove past his former family's home in Salt Lake City, and Alex was surprised and disappointed when he saw his abandoned and derelict high school.

We had dinner with a couple of Alex's school friends that had driven several hundred miles just for the chance to spend a couple of hours with him. The fact that Alex's friendships extended over decades, and consequently significant changes, is evidence of his loyalty, interest in others, and recognition by his friends that he was an exceptional man.

We shared a common passion for skiing at Taos, New Mexico by taking a week trip every February. Initially it was just the two of us, but a couple more friends joined us after a few years, then Alex invited a son-in-law to join us. I'm not pointing fingers. In

addition to the son-in-law -- the addition of the son-in-law ultimately led to the week turning into a McDonald clan reunion, with the addition of his wife Judy, their daughters, their husbands, and the grandkids.

Even though the last clan reunion was several years ago, due to the conflicting schedules of kids in college and very successful careers, people in Taos still talk about Alex and the clan.

Alex's intellect, wit, and curiosity manifested itself in a number of ways. Alex frequently read books about physics, strength theory, quantum mechanics, and the warping of spacetime. A recurring conversation we had was how difficult it was to understand Steven Hawking's *A Brief History of Time* and why was it a best seller.

Alex received some comfort when several years ago an article was published that concluded that *A Brief History of Time* might be the most unfinished book of all times, even though we had each read it at least twice.

When anyone asked how he raised such wonderful and successful daughters, Alex always said he didn't know how Judy did it.

We occasionally talked about retirement. Alex could never envision his life without the challenge and contentment of work, in his words, of being useful.

Through the years our conversations evolved, and over the last year he talked proudly about his grandchildren. He even learned to text so he could

receive and respond to his grandkids and his daughters.

Alex thought out every answer he ever gave before he spoke in the way it was always worth it. Alex saw the potential in every person he interacted with. He made me a better person, and I believe many others have similar feelings about their interactions with Alex.

Alex was my friend, and I miss him terribly, but I know that our collective memories of him will keep him always present in our lives.

Thank you for giving me the opportunity to talk about Justice McDonald.

PRESIDING JUSTICE MCCONNELL: Thank you very much.

It is now my pleasure to introduce Ann Mooney, Alex's daughter.

MS. MOONEY: Thank you very much.

Well, I asked Charlie when I saw I was speaking after him, I said, "Well, I hope you're going to have them laughing." And so, Charlie, that's really hard to go after. Thanks for your lovely words, but really.

The last time I spoke about my father in a courtroom setting was 21 years ago. Many of us have that number etched in our minds. And I remember it vividly, because my daughter Hannah, my oldest daughter, who happens to be my mom and dad's first grandchild, was not -- was maybe about four weeks old. And it was a stage where my husband Brian and I, we're not far from her ever, so of course she had to come to the swearing in ceremony,

where I was asked to speak on behalf of my mom and my three sisters. So we brought her to the ceremony and my husband Brian stood in the far back corner of the courtroom so that if by chance she woke up and started squawking, he could quickly scoot her out of the courtroom.

I also recall John Davies, whose name has been mentioned several times, was not particularly happy about the fact that Brian and I brought four-week-old Hannah to the ceremony, but my dad had no objection to her being there. And I'm happy to say she did not squawk and she lasted through the entire ceremony.

So the purpose of my words 21 years ago was to speak on behalf of my mom Judy and my three sisters Katie and Margie and Liz, and to talk about the attributes of our father that we thought recommended him to become a justice on the Court of Appeal. He hadn't been sworn in yet, and as Governor Wilson and I were just reminiscing before this ceremony began, there was some actual real conversation at that hearing. There was some real questions about whether he was prepared and ready, as happens at those kinds of ceremonies.

So I was speaking, after huddling with my family, about what were the qualities of my father that we thought would make him really a great justice. And I thought today it would be helpful to be reminded of what some of those attributes were, I know I had some in my mind, but I thought it would be helpful if I could just

see the transcript of that hearing, I could be reminded of those words, so I enlisted Joan, my father's wonderful and beloved judicial assistant, to try and help me get the transcript. And turns out there was no transcript from the hearing, but Joan said, "We're lucky, because they videotaped the entire ceremony." And I said, "Fantastic." She said, "Yes, but that was 21 years ago so it's in a VHS tape in the library somewhere, but I found somebody who found it and they're going to convert it to a DVD for us, and hopefully we'll be able to take a look at it."

Well, Joan has been working so hard and she just e-mailed me and left me a voicemail this morning, it is here, but I haven't had a chance to look at it, so I am going to have to go from memory, but thank you, Joan, for all of your efforts.

So a few of the attributes I do recall talking about briefly at that ceremony was the fact that he was fair, ethical, and honest, words that you've heard from everyone who has spoken here today. He had opinions, and strong ones. And he was not afraid to make a decision. And when we think about it, that's your job, you have to have opinions, you have to make decisions and write opinions, and that was something that he was very good at.

He's an independent thinker. He was not afraid to dissent. I remember that I said that, and I think, wow, that was pression, as Justice McConnell said. And I agree with Governor Wilson, that he probably was as

proud of some of his dissents as he was of the opinions that he led the panel on.

And Justice McConnell referenced this wonderful piece that was hanging in my dad's chambers that said, "The Great Dissenters" at the top, and then there were three very distinguished pictures of jurists. There was Oliver Wendell Holmes and Stanley Mosk and Alex McDonald. And he was so -- he was -- he just loved that. And I believe the court staff actually gave him that piece, and it was wonderful and it was hanging prominently in his chambers.

Another attribute that I think has also been mentioned several times was that he was incredibly hard working. I mean, growing up, I think, Jerry, you mentioned that he worked Saturdays. I recall when we were really young, he worked six days a week, all day Saturday and then half a day Sunday, but he'd make sure that he was home for Sunday night dinner, but he was always working, and he worked hard at the court as well.

He was a firm believer that if there were -- anybody was needed to be there, if anybody of the staff at the court needed to be here working, that it was important that he be here as well.

And then finally I recall saying that he was humble. He was confident in his intelligence and in his judgment, but he never viewed himself to be above or more important than anyone else.

So that's what I recall about my words 21

years ago, and I'm here today, not to recommend him, because he's already given us wonderful service, but rather to help in the celebration of him.

And, Justice McConnell, thank you so much for including our extended family. We've got at least four rows of extended family members here. And you also encouraged us to invite some of our closest friends and colleagues. And obviously this room is absolutely full, and we are so, so appreciative of all of you being here.

But I also understand, as you noted, Justice McConnell, that part of this celebration was really for the court staff, who worked so hard with my dad. You all spent more of your -- of his non sleeping hours with him in the last 21 years than any of us did, and I think you were very lucky in that, as he was gracious, he was humane, people have consistently said he was funny. He was all of those wonderful things.

But I also just want to share with you that he wasn't an easy man to work with all the time. I know that, being one of his daughters, but also I had the pleasure of actually working for what was then McDonald, Hecht & Solberg. I had a couple summer jobs there, and I also spent the whole year working in that office between my college -- I graduated from college and when I went off to law school. And it was a wonderful year for me and I learned an incredible amount.

Luckily for me I was not assigned to work with my dad. I only had to do that intermittently. I

think I spent three weeks, actually, Jerry, working as your secretary, and I remember that fondly. But I know what it's like to work with him.

And I'll tell you a few things, and one that Justice McConnell already mentioned, and that is he had a really aggressive red pen, he really did. Steve and Greg and Joan and Marsha, I know you know this as well, writing opinions for him. He -- you know, he really worked relentlessly to communicate clearly and particularly to communicate precisely in his writing. And so for those who had to write for him, that could be challenging at times, or people who provided their own writing, who were revising his writing, saw that red pen frequently.

He was also really a word person, and kind of a grammar fanatic. I brought one of his favorite books. This may be -- I'll call it his bible, because he wasn't a particularly religious man. And the book is called ***Woe is I: The Grammarphobe's Guide to Better English in Plain English***.

When we visited his chambers a week or so ago, we wandered in and this book was sitting right on top of an open dictionary, which was right on top, I think, of his large copy of the California Codes, and right in front of -- right in front of his chair. And he was just a person who really cared a lot about how people used their language, and he was sort of demanding in those who communicated with him.

He also -- he was a man who I think one of his favorite books was *Elements of Style*, which he sort of thought of as a good novel, which I think is kind of funny when you think about the fact that it's actually a grammar book.

He did have a large dictionary on his desk, but if you have been to 5289 in Kensington, there is also a hardback dictionary sitting right on the wine bar, underneath the cabinet of wine glasses, that are often used at that house, and that book remains there today, so he was never without a dictionary.

He was a perfectionist, I think. He certainly expected that in his own work, and he strove, I think, to have other people who were working with him have sort of really the same level of quality of work.

And he was not, and this is one thing that made it not so easy sometimes, is that he was not unwilling to share his disappointment if in fact you weren't quite striving to the level that he thought you might achieve.

I do remember being very anxious about actually revising his work or typing up a letter for him and then walking into his office and placing it on his desk, because there was a really good chance he would -- at some point during the day you would find it right back on your own desk, having sort of made a mistake, and whether it was a typo or whether you didn't understand his writing or whether you didn't understand what you were

doing, not really clear which was worse in his mind, because you needed to be really, really careful about what you were doing.

I also have one memory of an experience while I was working for McDonald Hecht that I think I wouldn't describe his reaction as disappointment, I think it was anger, actually, and you'll understand when I tell you why.

I was actually working in the mailroom one day, and I'm not sure, somebody was -- somebody was missing and unable to do some of my dad's work, so he brought in two packages, two sets of documents that he asked me to mail to two different clients of the firm. And I thought, well, I graduated from college, I think I can do this, and so I bundled them up and sent them off.

And I think it was two days later that my dad marched to my desk with really not -- greater than disappointment on his face, when he said he had just gotten a call from one of the clients who thanked him for sending and advising about another developer client's development plans, because I had managed to put the documents in the wrong envelopes and sent them off to the wrong clients.

Now in my role at the firm, I see some of my partners here and some of my good friends at the firm, they know my current role at the firm is a risk management role, and I counsel the lawyers at the firm who make mistakes and I help people work through these things, so I

do understand now that what I did probably constituted a breach of the firm's duty of confidentiality and also maybe waiver of the attorney/client privilege, I'm not sure, but certainly it was embarrassing and did not make my dad happy.

But his dedication to excellent client service when he was practicing, and his commitment to making the right decisions and to writing precisely, you know, made him a great lawyer and a great judge. And he was a wonderful mentor for those who had the opportunity to work with him. And he was also so much about the team. It was his close team in chambers, the lawyers who worked with him, and Joan, for so many years, but it was really everyone at the court staff, everybody who made the workings of the court happen. He so valued all of the contributions of everyone who worked at the court.

So I feel incredibly lucky to be one of his daughters, and certainly also to have had the opportunity to work with him at the law firm. I learned a lot from him, and I'm sure, and I've heard this also echoed in the other words of folks here, people were happy to have had the opportunity to really spend time with him and to learn from him.

So thank you, all of you, so much from the entire extended McDonald family for allowing us to participate in this special session. It means so very much to us. And thanks for 21 years of being so supportive of him here.

And I did want to just mention for those of you who don't know, we will, the family, my mom Judy McDonald, and the rest of us will be hosting a reception after the service today downstairs, actually very convenient, in the building, and it's going to be in the lower level of the San Diego Symphony lobby. It's starting at 5:30. I think we will wander when we're over, when we're finished here, and we would welcome any and all of you to join us in continuing the celebration.

So thank you very much.

PRESIDING JUSTICE MCCONNELL: Thank you very much.

We miss him every day. When you walk out the building, you expect to see Alex on the sidewalk. And it's a big loss for our court.

And I'm glad all of you could be here today to celebrate Alex and to perpetuate his memory. Thank you all very much.

The Court is in recess.

OFFICER JEFFERSON: All rise.

(Whereupon, at 5:00 p.m. the special session adjourned.)