Betty Richli: Hi. It is my pleasure this afternoon to introduce to you Justice F. Douglas McDaniel, a friend and colleague who served in this division for 24 years.

Good afternoon, Doug.

F. Douglas McDaniel: Good afternoon, Betty.

Betty Richli: Justice McDaniel was appointed directly from private practice to Division Two of the Fourth District Court of Appeal in 1974 by then–Governor Ronald Reagan, and Justice McDaniel has indicated to me that, correctly so, he was nominated, confirmed to that position.

F. Douglas McDaniel: Correct.

Betty Richli: He was confirmed eight years after the creation of a division in 1966. During his tenure on this court, Justice McDaniel has served with all but three of the justices who have ever served in this division. He thus has much to tell us about himself, his colleagues, the work of the appellate court during his tenure, and the changing legal landscape.

Doug, you hail from the Midwest. You hold an undergraduate degree from Purdue University. You became a Marine pilot in the Second World War, serving in the Pacific theater, and you then followed all this by attending and graduating from Stanford Law School. Tell me about the enrollment procedure for Stanford Law School when you enrolled in 19—. When was it?

F. Douglas McDaniel: I enrolled in 1945, a month or so before I started. By then the GI Bill had been adopted, and I had resolved some months before that to take advantage of it and to go to law school. So in December of 1945 I went into the law school's office, such as it was in those days. And I just thought of the lady's name, Marian McHenry, who was the secretary of the law school and secretary to the dean, Marion Rice Kirkwood. And I told Ms. McHenry I wanted to enroll in law school—what could I do? She asked me, "Do you have your undergraduate transcript?" I had the good sense to bring that and I passed it across the counter. She said, "Wait here."

In 15 minutes, she came back with some papers. She said, "Sign here." She says, "You're in." It took 15 minutes to enroll in the law school. *[laughing]*

Betty Richli: Well, times have changed. *[laughing]*

F. Douglas McDaniel: That's the understatement of the week, for sure.

Betty Richli: When did you graduate?

F. Douglas McDaniel: From law school?

Betty Richli: Yes.

F. Douglas McDaniel: In June of 1948.

Betty Richli: And had it always been your goal to become a lawyer?

F. Douglas McDaniel: No. The decision was made in February as I sat out in Guam in the quarters with nine other of my pilot colleagues, and the news had just come over the radio that—we had access to news out there in the Pacific—that the Congress had passed the GI Bill. Immediately my colleagues began going around the room: "Oh, I can become a pharmacist now." "I can finish my engineering degree." As I sat there I hadn't the faintest idea of what I was going to do, but it seemed to me if there was going to be this government-financed education, I really ought to take advantage of it. So I am sort of perverse by nature in that respect; and I can remember some years back the thought came unbidden that I was going with my fraternity brothers visiting down at Bloomington at Indiana University. They got to talking about which group of students seemed to be the most burdened and the most drudges around the campus, and everybody agreed it was the law students.

So seriously, in my perversity I thought, "Well, if I'm going to get this free education, I should choose the most difficult there is." Believe it or not, that's the ridiculous story about how I came to study at law school. I hadn't the faintest idea what lawyers did, anything; I just figured if it's going to be free, I should make it tough on myself.

Betty Richli: And the rest, as we say, is history. *[laughing]*

F. Douglas McDaniel: Yeah, I guess.

Betty Richli: You were a successful attorney in a private civil practice in the Imperial Valley for a long period of time. That was before your direct appointment to the appellate court bench. The majority of appellate court justices are appointed from the trial court bench—they have trial experience as judges—and you were not. How, if at all, do you think your never having served on the trial court bench affected your appellate court work?

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F. Douglas McDaniel: Not in the slightest. There was a big push made back in March of 1974 to convince Reagan that a person, unless he or she had served on the trial court, was not qualified. A person named John Vukasin, who was on the Public Utilities Commission, had been nominated by Governor Reagan for a seat in District One. And since Seth Hufstedler and Justice Tobriner appeared at the

confirmation hearing—which up to those days was complete pro forma—and they raised a big ruckus about the fact that John Vukasin had never been a trial lawyer, so the commission took the issue under submission. And Reagan, being a fellow who gave people the benefit of the doubt, decided, "Well, if that's the rule, I won't nominate anybody for the appellate court unless he or she has been a trial judge."

Betty Richli: You had the great good luck and privilege to have as one of your colleagues retired Supreme Court Justice Marcus Kaufman. Tell us a little bit about that association and friendship.

F. Douglas McDaniel: Well, he was one of the most unusual and one of the closest friendships I ever had. Marcus, because of his overweight situation, had all kinds of health problems, and he kept very odd hours. He'd show up sometime at 11:00 in the morning and stay until 9:00 at night. And as I got better acquainted with him and became absolutely amazed at his legal acumen, we became greater friends.

And often . . . he lived in San Bernardino up on 38th Street in those days. When I was going to be down the hill—I lived up in the mountains, of course, up in Lake Arrowhead—I was going to be down overnight, I would stay at the Kaufmans'. I sort of became a member of the family.

To give you an example of what he was like, my bedroom was up in the front of the house, and I'd come in at night late and they were asleep, and here on my bedside would be sliced apple and some cheese that he'd leave for me.

I don't know whether you want me go further; but we developed a working relationship, which I think was unique among members of the Court of Appeal. Marcus could think faster than he could write and speak. On the other hand, I had a certain facility in writing. So we collaborated on dozens of opinions, whether he was the leading justice or I was. We would talk them over, and as he would come up with the ideas. I would work out the language and we collaborated to say it—in a way which was a great deal of pleasure and sort of a feeling that this is the way it ought to work.

Betty Richli: He, like yourself, was also a direct appointment to the appellate court bench from a private civil practice. Do you think that that created any kind of a kinship between the two of you and affected the bond between you two?

F. Douglas McDaniel: No, we never discussed that. We were not reflective; we were always concerned with what we were doing and what was ahead of us.

Betty Richli: If you could sum up Justice Kaufman's contribution to the body of appellate court work, what would you say that would be?

F. Douglas McDaniel: Well, I can't think of the justice up in the Third District who was such a renowned scholar; but as far as I'm concerned, Justice Kaufman's contribution to the jurisprudence in the form of appellate opinions is probably the best the state's ever enjoyed.

Betty Richli: How many years did you serve with him, was he your colleague on that court?

F. Douglas McDaniel: I think it was 13, if I had to give you a word between when I got there and when he went on to the Supreme Court. Let's see. He went, I think, in 1987.

Betty Richli: That would be 13 years. That's a long time.

F. Douglas McDaniel: Yeah.

Betty Richli: And even after he went to the Supreme Court, you maintained that friendship with him.

F. Douglas McDaniel: Oh, absolutely. Yeah, we used to go up to San Francisco to visit them, and I succeeded in sort of putting him in the hands of a very urbane lawyer up there that could protect, because Marcus was sort of naive in the non-legal area, and I was worried that people might try to take advantage of him in some sort of scheme. So there was a remarkable friend of mine named Burton Goldstein, who was the most urbane person I've ever known and was in practice in San Francisco. So I actually asked him if he would sort of take charge of Marcus, and he readily agreed and they became great friends, and it served exactly the purpose that I had in mind.

(00:10:15)

Betty Richli: Terrific. Now, you also served with Justice Bob Gardner, probably one of the most unique, respected, and colorful justices of the Court of Appeal. Tell us a little bit about your observation of his work habits and a little bit about his judicial philosophy and his writing abilities.

F. Douglas McDaniel: Well, I think the most immediate or significant aspect about Justice Gardner were his work habits. He only came into the court one day a week. A lot of the time when he lived out in Corona del Mar, he'd be out swimming. Each day when he left the court on Monday night, which is the day he was there, he'd have this big, canvas bag with records on appeal. He assigned all the so-called cream-puff criminal cases to himself, but he knew all of the citations almost off the top of his head.

So he would be down there on the beach with this sack of records on appeal. He'd swim, come out, make notes, read the records, and then he'd get back on Monday morning, he'd dictate for ten hours to Marian Anderson, his secretary; it'd

take her all week to transcribe what he dictated. So I'd say what he did, I'd say he relegated or assigned himself the simpler criminal cases, which he saw because they were cream-puff cases, so that he could get rid of huge volumes of stuff that wouldn't be of much interest to the rest of the people on the court. I never heard it confirmed, but it seems that probably he could do as many as 300 cases a month. I can't imagine it, but he did a great number and left . . . or relieved the rest of the court from this burden.

Betty Richli: In addition to his being prolific, he also had a great sense of humor, I hear.

F. Douglas McDaniel: Oh, yes. He was a fellow that was sort of caught in a nominal situation. He really loved being a trial judge. As a matter of fact, my understanding was when Moran named him to the superior court in Orange County, he was the youngest person ever been named to the superior court in California. But when along came the nomination for the Court of Appeal, you can't really shrug it off and say, "Yeah, I'd rather not"; but it was apparent in talking with anyone being around him that he really had enjoyed a lot more in the trial court.

You say his sense of humor. There was an attorney named Foster on the Attorney General's office in San Diego that was a frequent person who came up to represent the Attorney General's office on criminal appeals; and it was always just a kick to be on the panel with Justice Gardner when Foster was there, because they would get into this repartee back and forth which just had everybody in stitches. I don't know how they worked it out, but it was very entertaining.

Betty Richli: Now, you also served with a particular favorite of mine, someone I consider a mentor: Justice Margaret Morris. She was the first woman appointed to this bench, the only female presiding justice in the Fourth District up until the fairly recent appointment of Justice Judy McConnell, who is the administrative presiding justice of the Fourth District. What are your memories of her?

F. Douglas McDaniel: Well, it's kind of hard to say which is the most important thing. What I think most I remember first is these gorgeous St. John knits that she wore all the time, just impeccably dressed all the time. As I recall, she sort of prescribed a dress code for the ladies who were the attorneys on the court, which I don't think was very popular; but she insisted on maximum sort of decorum.

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But in terms of you might say her behavior, she was the ultimate in class in terms of the way a person should behave: this courtesy, but firmness, and the . . . but I thoroughly

enjoyed her leadership, and I tell you, I have an interesting story to tell about. *[laughing]*

She finally said to me one day, when she'd be on the panel and I was the author, she said, "If you'd just take the adverbs out, I'll sign it." *[laughing]*

Betty Richli: I assume you did. *[laughing]*

F. Douglas McDaniel: Oh, yes, indeed; no problem.

Betty Richli: During your years on the bench there were obviously a number of justices who may not have shared your particular philosophy, and yet in the two large volumes of your published cases—and I know they're large volumes, I've seen them—I noted only one dissent, and that was from Justice Gardner in a criminal case called *People v. Morales*. I also noted that most of your published opinions are from the civil arena. They deal with complex issues: bad-faith litigation, insurance-coverage issues, real-estate issues, public law. And I am amazed, given that very large body of published work—and of course, we are not even here discussing the unpublished opinions, which would be a much larger body of work—how did you manage one lone dissent? It amazes me. Do you think that it had anything to do with the concept of collegiality?

F. Douglas McDaniel: The thought never crossed my mind. The matter of whether or not there is going to be a dissent, I really never thought about. I went ahead and composed the opinion in a way which I thought disposed of the case properly, and if there was a dissent, there was a dissent. But you say there weren't any, I can't even . . . this is news to me. I never kept any sort of tabulation.

As far as the *Morales*, I was encouraged by Justice Kerrigan. He says, "That's no murder case. Stick in there." *[laughing]*

Betty Richli: Did you file many dissents over the years that you recall?

F. Douglas McDaniel: The one I recall in particular involved a case from Orange County involving the Edison High School in the Huntington Beach School District involving a—

[Off-the-record discussion]

Betty Richli: Have you filed many dissents over the years?

F. Douglas McDaniel: I really didn't give any thought to tabulating them, but I do remember one in particular, which I took a great deal of pride in writing because of the issue involving the so-called separation of church and state, which I might say as an aside here I think is a ridiculous judicial aberration. The First Amendment says, "Congress shall make no law respecting the

establishment of religion or the free exercise thereof." Now, there is nothing in there that suggests a separation of church and state.

But getting on from there, what happened down at Edison High School, there was this group of young people who wanted to sit around during the lunch hour with Bibles and talk about their reaction to biblical passages. Now, I guess in this school district or maybe in all of Orange County there was a policy that required extracurricular activities that were conducted on school premises to be certified or have permission of some sort from the county counsel's office and a faculty member assigned to be in charge, I suppose just to turn out the lights when they left the room.

So somebody in the county counsel's office got wind of this activity and insisted that they apply. Well, they applied and they were turned down. And I don't know by what procedure the case came up to us, but the panel was Justice Gardner, Justice Tamura, and I. And I think Gardner wrote the opinion, which affirmed the decision that they were not entitled to certification, and I of course was quite alarmed because it involved this position which I thought had no legal basis. So I wrote this side of impassioned dissent, which attacked on three theories: that there was . . . under existing authorities, they were entitled to do this. It was not sponsorship; it was sufferance of the religious activity. The second was a reevaluation of the whole concept of church and state, and then the third involved my interest in character education, which I pointed out that the present rule discouraged the advent of that sort of concept in the schools. And the almost laughable, but tragic, aspect of it was that despite what I thought was this brilliant dissent, the attorney for the plaintiff didn't get the petition to the Supreme Court filed in time, so I never really got a chance to have any impact on the case.

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Betty Richli: But you certainly have remembered it. *[laughing]*

F. Douglas McDaniel: Oh, yes, indeed.

Betty Richli: In your years on the appellate bench, what type of relationship did you have to the trial court bench?

F. Douglas McDaniel: Well, initially not much at all; but in the nature of the structure of the system, there is not really any occasion in terms of the way it functions for people on the appellate court to have anything do with the trial court judges. All you do is see their names in the record. But I forget how I got involved with Justice Campbell when he was on the trial court. He used to preside at luncheons. Over at Harris's, there was a café up there on the second floor, and there are usually 8 or 10 lawyers

who reveled in the experience. So I got to attending those, and then later on—I don't know how the habit got started—but out here at the country club, maybe 8 or 10 trial judges would get together for lunch every Friday, and I got invited there to join. I frequently over the years went to those luncheons and got very well acquainted with several of them.

Betty Richli: I know that you will remember Justice Gardner—his interesting perspective on the administration of justice in the state as being conducted by the four levels or classes of the court. Could you tell us about that?

F. Douglas McDaniel: Oh, yes. I remember the scene very carefully. You know, he was on the Nimitz intelligence staff during World War II, and I was involved, too; and so I recognized that we sort of had certain military experience in common. So early in January after my confirmation, I came up for my first day on the job. I went in and I walked into his office and said, "Reporting for duty, sir!" just like I was in the service. He said, "At ease!" [*laughing]*; he carried it off. But then after explaining to me in terms of the words necessary of how the cases were signed and how the system worked in all aspects, he said, "Now, there's one thing I need you to keep in mind—it's perspective." He said, "Now, there are four levels of courts in the state." This is before the consolidation of the superior and the municipal court. He said, "The first and most important level is the superior court, because it has the most expansive plenary jurisdiction that affects in the most serious way the citizens who come under its jurisdiction. The next most important," he said, "is the municipal court, because more people are involved in utilizing its services. The third most important is the Supreme Court, because somebody has to make the rules." He says, "For us, we just sort of sweep up." Those were his exact words. *[laughing]*

Betty Richli: He sounds like he was rather unpretentious. *[laughing]*

F. Douglas McDaniel: Oh, "pretentious" was the farthest word that described Bob Gardner.

Betty Richli: You've seen a number of justices come and go on the appellate bench throughout the state. What to you are the qualities of a good appellate court jurist?

F. Douglas McDaniel: I have very strong views on this. Contrary to a lot of people, it's not some sort of massive legal acumen like Justice Kaufman had. By and large, the kinds of cases that the appellate court has to deal with, in terms of my experience, don't require a great deal of legal acumen. What is called for is facility with the English language to write an opinion which a nonlawyer can understand. Matter of fact, I had a practice, I wrote the first paragraph like a sort of a paragraph in a *Wall Street Journal* article that told all about the case, and any nonlawyer should

be able to read that and know what the case was about. If it did not succeed in that way, then I was not a success. So I think facility with the language in terms of writing it is the key ingredient for successful—or useful, let's say—appellate justice.

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Betty Richli: Do you believe that that concept of facility with the language, making the opinions readable by the layperson, has been adopted readily in this state?

F. Douglas McDaniel: *[Laughing]* Hardly. There are some judges or justices who are famous for their prolix and surplus prose. And so I don't know that anybody's ever given any thought to trying to prescribe some sort of standard—with one exception, Bernie Witkin, who is of course an icon that's known to most people yet living around the state. And he used to be a frequent panelist, let's say, at these annual meetings of appellate court justices; and he would pick an occasional this judge and that judge for some opinion which he thought was susceptible of numerous criticism, and he took me on several times. But he was quite serious in pointing out that the way to write an opinion is in longhand on the yellow foolscap. He says, "You get that Dictaphone microphone in your hand and," he says, "you just run off at the mouth unnecessarily; but if you have to write it down, you'll be a little bit economic in your prose, and that's what I suggest." And that's what I did.

Betty Richli: And I remember walking into your chambers and seeing your long, legal yellow pads, and you're writing the opinions in longhand. Now, I know that you have since started using computers. You still write; you're working on your memoirs. You still write in longhand, or have you adapted to the computer?

F. Douglas McDaniel: No, I'm not writing memoirs; I'm writing a book, but it's quite different from the ordinary memoirs. You know, I'm using the word "processor" because I've learned to compose that way, and it puts it in a form that's going to make it much more . . . I don't have to get anybody to transcribe it to get it ready for what's called the vanity publisher that it'll eventually go to.

Betty Richli: So you have moved from the longhand to the use of modern technology.

F. Douglas McDaniel: Word processing, yeah.

Betty Richli: How do you think your judicial philosophy evolved over the years? And I think you have an interesting point of view on judicial philosophy. Tell us.

F. Douglas McDaniel: I'm not aware that I have any. *[laughing]*

Betty Richli: That's what I thought. *[laughing]*

F. Douglas McDaniel: I have certain biases that I had to deal with. I had only been in law school a week before I came to the conclusion that most personal injury plaintiffs were malingerers, and I haven't changed that opinion over the years; but of course, I couldn't let that impact the handling of any given PI case. But in terms of philosophy, I can't see where that has any impact or any role in our job. Here's the record on appeal; read it and decide it. What's "philosophy"? I don't even know what "judicial philosophy" means.

Betty Richli: Do you remember, sort of along those lines, I guess, the best advice you ever received as a justice?

F. Douglas McDaniel: Well, I guess the best advice I got was this initial meeting with Justice Gardner. He said, "Just keep your perspective around here; we just sweep up." What he was saying is, don't get a big head about being here; this is no big deal being up here.

Betty Richli: And did you take that to heart?

F. Douglas McDaniel: Yes, indeed. It fit right in with the way I think about things generally. I really have no use for pretentious people.

Betty Richli: Initially when you became a justice . . . and for many years the appellate courts and the California Supreme Court used what were called elbow clerks as their research staff. And the Courts of Appeal, as well as the Supreme Court, have now replaced that concept with the idea of permanent legal-research staff. And that's been attributed, as you know, largely to the increasing workload, caseload; the efficiency of not having to reinvent the wheel by having new attorneys coming into the chambers every year or two. Do you believe that has been a positive change in the appellate court culture?

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F. Douglas McDaniel: Well, it's hard for me to formulate an opinion on that question. I can remember with considerable satisfaction the young people, and all things being equal, I always hired women instead of men as the research attorneys. I hate the word "clerk"—they're research attorneys, entitled to respect and deference. I think the word "clerk" is demeaning.

Anyway, I enjoyed the coming and going of these delightful young people, and in that respect I think my attitude is different from a lot of people who serve as appellate justices. I thought that the most lasting and satisfying aspect of this job was the friendships I made with these young people who worked in succession for me.

You talked about seeing these two volumes of my published opinions. If you open the cover, you'll see that there's a sheet there which 15 of them have signed appropriately. Nancy used to hire—gave her her first job out of a law school 25 years ago. Her name was Nancy Butterfield; she's Nancy Smoke now and works for Justice Ramirez at this division. She went to the trouble of mailing this sheet around to all these 15 people to get this signature to affix inside the cover.

But the transition from elbow to regular really didn't bother me. I might say, backing up to the matter of the elbow clerk, I kept going back to Stanford to try to hire somebody to come down there. I never could get anybody to come down. Most Stanford graduates in those days had five offers with big law firms. Why come out to the boondocks in San Bernardino against the . . .

Getting back to the first part of your question, one of the sort of frustrating parts of my experience was, I kept going back to Stanford, trying to get a graduate to come down to work for me as a research attorney. I never could get anybody to come down. It turns out that some of them had the maximum score you could get on the LSAT, and they'd come to the interview sort of curious: what does somebody from San Bernardino look like? *[laughing]* Some Indian savage or something?

But anyway, the transition to the permanent research attorney didn't present any problem at all for me, and it turned out I developed again some lasting friendships. Barbara Goldberg was with me for nine years. She now lives in La Jolla, and before I became this partial invalid my wife and I enjoyed going down to spend weekends with them, go to the Globe Theatre.

Then there's Donna Davis. I used to kid her about she grew up in Shaker Heights in Cleveland, and I couldn't figure out how anybody could live in Shaker Heights and wasn't a Cleveland Indians fan. But she's on the staff down at the division in Santa Ana now, and I talk to her occasionally.

Then there's Sarah Waldstein, who is also on the staff in Los Angeles, and I met her parents back in Boston.

So I succeeded, and what I'm trying to get around to say, is that the change from annual to regular permanent staff didn't interrupt my satisfaction in getting to be good friends with these wonderful young ladies.

Betty Richli: Well, you're very close to your research attorneys and maintained these close relationships with them for years, and have done so. When you initially hired them, what did you look for? What were you looking for?

F. Douglas McDaniel: I did not have a list in my mind that I thought I could determine just in an interview. Of course, I had their resumes

in front of me. But I just talked about anything, wherever the conversation would go, until I reached a sort of a . . . the light came on: "This is somebody I can enjoy working with." And that was about as explicit as I can be in answer to your question.

Betty Richli: And over the years, did you feel that you most of the time were successful in choosing research attorneys, in selecting them?

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F. Douglas McDaniel: There was one failure early on; but after that, everything turned out to either meet or exceed my expectations for the pleasure it was to have this young person on board.

Betty Richli: I remember when I had the privilege of being your colleague, I would wander down to your office quite frequently, and you would always be surrounded by lots of files; but what amazed me was the number of books—hardbound, hard-copy covered books—that were in your chambers. And they were fiction, nonfiction; they covered every topic imaginable. You had history books, art books, biographies, philosophy, poetry, books about how you write. I was just amazed at the depth and breadth of your reading interests. It seemed to me that you were always learning; you were always educating yourself. How did this, if it did, affect your opinion writing?

F. Douglas McDaniel: Well, my reading habits is quite a long story in itself. When I grew up, there were never any books on the shelves; my folks read magazines. So I finally, at about age 9 or 10, I visited my grandfather's house down in a little town called Middleport on the Ohio River, and here was this living room with these books on the shelf. And I picked the thickest one—it was H. G. Wells' *The Outline of History*—and I started leafing through it, and I found the section on the Mongols. And I was so fascinated with that, every time I went back for a visit, I would read that.

Well, fast-forward to when I'm in college. The only book that I remember having to read during high school was Walter Scott's *Ivanhoe*. Well, at the fraternity where I was in college, occasionally you'd come home at noon and some kind of salesman would have a big exhibit out there: clothing, jewelry, stationery, note cards. Here for the first time was a fellow with books. Well, I picked one up and stuck with it, and I still remember the name of this book, called *The Sun is My Undoing*, by Marguerite Steen, S-T-E-E-N, part of which was written during the London Blitz. I was actually fascinated by the dust cover, and I bought the book. It was the first book I had ever bought for my own reading pleasure. And then since then, I belonged to the Book of the Month Club starting as soon as I started in law practice. I bought thousands and thousands of books, so now I'm giving them away. *[laughing]* But I read mostly for the pleasure it brings; but in terms of the relevance

to your question, the way you gain proficiency in the use of the language is by reading. So I'm sure all the reading . . . one of the great things about being on the Court of Appeal was that I could read in the evening. Now, when I was in law practice, a lot of time I had to go back after . . . when you practice in a small town, it's a long day and there's not much time for reading. But in the case of the flexibility or, you might say, being able to walk away from the job with the court at 5:00, for years and years and years I spent three or four hours reading every night, and I never ceased to enjoy it.

Betty Richli: Over the years as you did all of this reading—and of course, that encompassed a number of authors with different writing styles—did you ever find that it changed your writing style in terms of how you wrote opinions?

F. Douglas McDaniel: I can't really understand or attach meaning to writing style. I'm not conscious of a style. I have certain rules that I try to follow in composing: never use the same noun or same verb in one paragraph; never use the same preposition in the same sentence; always mix infinities and gerunds, so that it does not get boring. But as far as style goes, I don't know. But I've noticed that my preference for authors has evolved. I originally was really fascinated with Michener, but then he had this big staff to do all his research. I remember how he used to write how he loved Hawaii, and *The Source* and *Centennial*. Then he wrote this book, it was called *Poland*. Three pages were devoted to how to cure ham. I swear, I never read another Michener.

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And then I got interested in all the Ludlum books, and then those got to be stylized. So I have really reached a point where I think David Halberstam is the most accomplished. He can write about anything. He traveled for a year with the Portland Trail Blazers when they won the NBA. He has written about comparing the Japanese and the American auto industries. He wrote a book that had the biography of Time, Incorporated; CBS; the *Washington Post*; and the *LA Times*. He's just outstanding.

Betty Richli: So his writing style is such that he can take any topic and he's comfortable in writing about it, and he's an excellent author.

F. Douglas McDaniel: I have this one further comment about writing in terms of the objective of the author. You've had the experience, I'm sure: you're reading this engrossing story and going along, and all of a sudden you reach a point where some ambiguity or awkward diction distracts you from the story. Now, that's what the author should attempt to avoid so that there's never any interruption of this smooth flow of the story by inept

composition; and that's where Halberstam is such a superior writer.

Betty Richli: So from the reading of good writers, you obviously picked up traits, editorial skills, and those must have translated into how you worked on your opinions.

F. Douglas McDaniel: Well, not consciously. In terms of, I might say, the approach to a given opinion, I would never read the briefs till I went through the record on appeal. I'd go through the record on appeal backwards. I'd take the judgment, the findings, anything like this, and go through the record until then I would formulate what I thought were the issues. And then I'd pick up the briefs, and sometimes it was quite a shock to realize that the lawyers really didn't know what the case was about; but that's the way I went about trying to approach the drafting an opinion.

Betty Richli: You have been a lawyer and a judge for half of the 20th century. You graduated, as you told us, from Stanford Law School in 1948. You became a deputy DA in Imperial County. You were in private civil practice for over 15 years, I believe, in Imperial County. You were very active in the bar association. You were president of the county bar association, delegate to the California State Bar Conference of Delegates, chair of that organization. You sat on the board of trustees for the Rural California Legal Assistance program, you sat on the State Bar's disciplinary board, and you've been on the Court of Appeal for 24 years. Given that breadth of professional associationship with the bar and, of course, with your colleagues on the bench, what to you has been the most significant change that you've seen in the practice of law over those years?

F. Douglas McDaniel: Well, I don't know how to answer that without being too somber. But I did not notice much of a change in the practice of law during the years I was an attorney. But coming to the Court of Appeal provided a kind of perspective of the quality of the lawyering as it appeared in the form of briefs and oral arguments, and it's difficult or hard to say. But the quality, the professional quality of lawyering, has diminished right before my eyes over the period of time I've been on the Court of Appeal. There is less stability. The records on appeal are full of all this squabbling over sanctions and that sort of thing. The writing skills are not nearly what they used to be. Some of the briefs are just disgraceful. That's a strong word—but in terms of the quality of the writing. So I think that the quality of the lawyering has definitely diminished.

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Betty Richli: Have you from your vantage point seen any change in the attitude of the public toward the bench and the bar over the years?

F. Douglas McDaniel: Oh, yes; I mean, you don't have to go much more than *The O'Reilly Factor* every night, where the lawyers and the judges are under extreme attack and expressions of disapproval by huge numbers of the public. Being a lawyer now is sort of a title of disrespect.

Betty Richli: Did you enjoy the practice of law?

F. Douglas McDaniel: Well, how can I put it this way? Kaufman was what I'd call a wild-blue-yonder lawyer. I mean, he really reveled in the formulation of issues. I found the practice actually sort of boring. Remember my story about how I got in to go to law school? And the people down there at the Indiana University saying that the law school students were the drudges? It was true: law school was three of the most boring years I ever spent. The only thing that saved me was Stanford had this magnificent golf course which I was able to play regularly, so that's what kept me there.

And so when I got into practice, it was not too much different. So the great part of my opportunity to practice law in Imperial Valley was my getting involved in politics; and by politics, I mean not running for office, but being a volunteer manager of a political campaign. In those days, in the days of cross-filing, before the Democrats woke up later on in the '50s and '60s, most state and federal officeholders were elected in the primaries in California. So I had a series of those that I represented, starting with Earl Warren, William Noland, Goodwin Knight. When I say getting to the trial thing, I got to be such good friends with Goodwin Knight, he called me up one day on the phone after he succeeded the Governor when Warren went to Washington to be a Supreme Court justice. He said, "Right now, there're vacancies on the trial court in Los Angeles. Would you like to be a judge?" I said, "Not on your life. I think being a trial judge is the worst job in the world." *[laughing]* So anyway, then after that I had Thomas Kuchel, George Murphy, and then the blessing of coming to be a friend of Ronald Reagan's. But that was the chief advantage of practicing in a small town: that I could get engaged in this political activity and still sort of conduct the law practice on the side.

Betty Richli: It seems that during your legal and judicial career, you've had the vantage point of, one, serving. You were a pilot during the Second World War; you've watched this country since then and experienced a number of wars. You've seen great social upheaval, changing cultural mores, quantum leaps in technological development and medical advances, population surges, political divisiveness. You are just a bit older than some of us and much wiser, Doug. What advice, as you look over your career and you look over all of the things that you've experienced, would you give to a new lawyer?

F. Douglas McDaniel: Well, I don't want to sound flippant here; but if I could get to the young man before he became a lawyer, I'd tell him forget it. I tried to get my own kids to be orthodontists rather than go to law school, and fortunately none of them did become lawyers. California has too many lawyers, and as a result there's a resort to frivolous litigation, because that's all there is available to a lot of lawyers.

But in terms of taking the question more at face value, the best advice I could give to a lawyer is, the way to be successful is to achieve the greatest proficiency in your ability to speak and write the English language.

Betty Richli: And moving up a step to a newly appointed appellate court jurist?

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F. Douglas McDaniel: Well, I really don't think I have a readily, let's say, expressible answer to that, because again it's the same thing: the job is changing so, because of the increasing frivolous nature of the cases that come before the Court of Appeal that, again, the advice thing would be the same. The most important thing you're doing is writing, so that's the place to develop the skills, and the way to do that of course is by reading. And like I say, I guess I can't go beyond that sort of response to your question.

Betty Richli: Do you believe that the courts face serious challenges in the future in terms of their credibility, how they function, the work that they do? What's your assessment of that?

F. Douglas McDaniel: What's the word, they face what? Credibility?

Betty Richli: Challenges in terms of the future, in terms of some of these issues that we see today.

F. Douglas McDaniel: Well, the lawyers and the court system are held in such wide disrepute these days and for some reasons not justified. There is a string of judges that Bill O'Reilly has tapped to give these nonexistent sentences to child molesters, and that creates a tremendous amount of public animosity and disdain for the courts and lawyers. I think if anything is going to ever change, which I really have any doubt, the only thing that could be done by the members or the people on the courts is to just ignore this claptrap kind of criticism and just stick to doing the job the best they can and hope for the best.

Betty Richli: What did you enjoy most about your judicial career?

F. Douglas McDaniel: These wonderful friendships that I made with these young people as they came along as my research attorneys. No question about that. I of course made some good friends on the

court itself, including you and Manuel Ramirez, and Gardner and I were great friends, and Kaufman. But I think finally the quality of life that one can say is enjoyable is the nature of the personal relationships that he or she has; and there is no lasting satisfaction out of writing a legal opinion, but there is indeed about becoming close friends with your colleagues.

Betty Richli: How would you like to be remembered in terms of your judicial career?

F. Douglas McDaniel: I couldn't care less. *[laughing]* I mean, it's a thought that never crosses my mind. Be remembered? I don't have any . . . it never occurs me that people would be thinking about me when I'm gone. So the answer to that is, to be as candid as I can, it never occurs to me.

Betty Richli: Do you think of yourself in terms of having a legacy with regard to your judicial career?

F. Douglas McDaniel: Nope. The one case I wrote in my view which might have had a significant impact on the Californian jurisprudence, Bro against Glaser, was summarily rejected by the judge up in the Third District. So I don't think I have any legacy, you might say. As I wrote over 2,000 opinions and only 180 or so were published, so I have no view about a legacy, and I doubt if there is any.

Betty Richli: Obviously you enjoyed being on the bench; you remained for 24 years, long past the time when you could have retired. But there must have been, as I see, obviously some things that you did appreciate about it. What was that? And how did that, if any, impact your life, your family, your friends, your community?

F. Douglas McDaniel: Well, finally everybody's got to make a living, and so in this case, it represented a wonderfully convenient way to make a good living and have the freedom to do all the other things that I wanted to do. We're going back to 1968. I had given a lot of time to the Republican Party and to the State Bar. I never made much money as a lawyer, and here along I was getting to the age, suddenly I said, "What am I going to do when it comes to retirement?" So I looked around and I thought, "Well, it looks like the Court of Appeal should be a place to shoot for." And I had the good fortune at that time; I was on the first disciplinary board created by the Legislature in 1965. The Board of Governors used to handle these questions, but it got to be such a lot of work they created this separate board. And each member of the Board of Governors nominated a person, and I was picked by John Cranston, who was the representative on the board from San Diego District Nine. And so we drew lots among this first 15 as to who would have the three-year, two-year, and one-year terms, and I drew the three-year and so did William French Smith. That name should mean a lot to you. He was one of the original Reagan kitchen cabinet; eventually

became one of Reagan's attorney generals. And so when I got this notion about the Court of Appeal, I said one night when we were out having drinks and dinner after one of the sessions of the disciplinary board, I mentioned this to him, and he said, Write us a letter." *[laughing]* That was a tip-off—which I did. And so it took from '68 to '74 of this letter writing and various other kinds of efforts to maneuver a nomination, in which there was a lot of pitfalls which you don't have time for here. *[laughing]*

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Betty Richli: You mentioned that one of the things that has been a great joy to you—and this was in an earlier conversation, an off-the-record conversation—was your involvement with character education and that you appreciated the fact that you as a justice on the Court of Appeal, it gave you somewhat of a forum and a format and an opportunity, a platform, to involve yourself with this. Are you still involved with that, and what is the character education?

F. Douglas McDaniel: Well, this is a long story; I don't know how much time we can take here. But as a lawyer, I was involved in praying juries. I might say here that I have total disdain for the jury system as a way except in criminal cases; but most civil cases are beyond the capacity of a lot of jurors to manage. So in 26 years of trying cases, I never once asked for a jury; but frequently the other side did, so I had to deal with them.

So in addition to haranguing juries, I was out of court making political speeches of various kinds. Get up at the Court of Appeal, and none of that. And so suddenly I was faced with a realization, you know. I felt sort of bereft, because I'd enjoyed that.

Well, I heard one night on the radio a lawyer named Tony Jackson was on KMPC talking about character education. And there was an outfit in Pasadena called the Thomas Jefferson Research Center, which marketed materials that were published in San Antonio, and it immediately got my interest. So within the week I went into Pasadena and decided to find out what this was all about and was absolutely enthralled, because in San Antonio the people who originally initiated this effort made a study of all the world's religions. They found out there are 15 character qualities common to all religions; and so to advocate, let's say honesty, as a way a child should behave does not impinge upon anybody's religious sensibilities, because all religions believe that honesty is a character trait to be practiced.

So one thing led to another, and so on Law Day in 1980 I composed a speech to the Rotary Club—I was asked to the program that day—and I started to talk about character

education, and it was sensationally received. And so for 15 years weekly, somewhere in this country I gave the same talk, which I refined over the time to increase its, I thought, effectiveness. But the thing that the Court of Appeal facilitated was the flexibility to drive out; in other words, driving to San Bernardino, I'd drive to Santa Barbara, I'd drive to Santa Monica, I'd drive to San Diego—I got out in the middle of day, I could do that—and then make up for the time at night and so on. So that was a chief benefit of this interest of mine; being on the court afforded the flexibility to pursue this effort to propagate the concept.

(01:00:16)

Betty Richli: Well, thank you, Justice McDaniel. We've appreciated your giving us your time this afternoon, your candor, and most of all your 24 years of public service as an associate justice on the California appellate court. It's been a very interesting and enlightening session. Thank you again.

F. Douglas McDaniel: Well, any conversation with you, Betty, is always a pleasure.

Duration: 61 minutes
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