

COURT OF APPEAL  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

SPECIAL SESSION IN MEMORY OF

ASSOCIATE JUSTICE ALEX C. McDONALD

October 3, 2016

Teri L. Smith, RPR, CMR, CRR, CSR No. 7949  
Official Reporter  
San Diego Superior Court



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 on.

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

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

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

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

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

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

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

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

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

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

20                   He filed in his tenure here 2,524 opinions,  
21 of those, 195 were originally published. Occasionally  
22 they get depublished when the California Supreme Court  
23 grants review or orders the case depublished, so he had  
24 195 originally published and 2,390 unpublished.

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

1 that.

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

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

7 Governor.

8 GOVERNOR WILSON: Thank you, your Honor.

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

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

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

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

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

28 The thing that I always found interesting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 And should I have brought a long bottle?

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

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

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

28 He sort of hesitated on that, but --

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

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

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

25                   So I would simply say this: I think that  
26 40 years after he left Boalt and received a Master of  
27 Laws, I think it would be more accurate to say that Alex  
28 McDonald was a master of life. He had an extraordinary

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

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

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

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

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

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

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

28 Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

28                   For example, when he offered to hire me in

1 1975, I told him that upon leaving my current position in  
2 Washington, D.C., I wanted to take several months off  
3 before starting the new job to travel and camp across the  
4 United States for several months with my wife Linda.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 legendary, and his appreciation of the law was contagious.

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

13           Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 receive and respond to his grandkids and his daughters.

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

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

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

12 PRESIDING JUSTICE MCCONNELL: Thank you very  
13 much.

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

16 MS. MOONEY: Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           So that's what I recall about my words 21

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10                   So thank you very much.

11                   PRESIDING JUSTICE MCCONNELL: Thank you very  
12 much.

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

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

19                   The Court is in recess.

20                   OFFICER JEFFERSON: All rise.

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

23

24

25

26

27

28