

1 THE HISTORICAL SOCIETY OF THE TENTH JUDICIAL CIRCUIT
2 ORAL HISTORY
3 of the
4 HONORABLE RICHARD P. MATSCH
5 United States District Judge, District of Colorado
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22 Interview by: A. Bruce Campbell
23 September 26, 2018;
24 October 4, 2018; and

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October 17, 2018

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1 **SEPTEMBER 26, 2018**

2 MR. CAMPBELL: My name is Bruce Campbell, I'm here
3 with the Honorable Richard P. Matsch, Senior United States
4 District Judge of the U.S. District Court for the District of
5 Colorado.

6 Judge Matsch has been kind enough as part of a
7 project of the Tenth Circuit Historical Society to sit for an
8 oral history interview, one of several interviews of senior
9 judges who were among the Tenth Circuit's distinguished
10 jurists.

11 **Growing Up in Burlington, Iowa (1930-1947)**

12 I am honored that you have agreed to sit with me for
13 this interview. Let's get started. You were born 88 years
14 ago, in 1930, in the town of Burlington, Iowa. To begin with
15 where is Burlington, Iowa?

16 JUDGE MATSCH: Well, Burlington, Iowa, is in the
17 southeastern corner of Iowa and on the Mississippi River. It
18 is historically a river town, for barges going up and down the
19 Mississippi as a line of commerce, and it also is--has been--
20 was historically central to the railroad.

21 MR. CAMPBELL: Were your parents from Burlington as
22 well? Does the family go back to that part of Iowa, parents,
23 grandparents? Tell us a little of that background.

24 JUDGE MATSCH: Well, parents were both born in
25 Burlington. My mother's parents came from Germany; married on

1 the boat when they came over and landed in Burlington, Iowa.

2 MR. CAMPBELL: Now, did they work their way across
3 the plains or across the Adirondacks or did they come up the
4 Mississippi?

5 JUDGE MATSCH: I don't know. I do know that they
6 were not in any other part of the country, that Burlington was
7 where they landed. And Burlington has a very large German
8 community.

9 MR. CAMPBELL: Now, that was the early 20th Century?

10 JUDGE MATSCH: That was still in the 19th Century.

11 My mother was born in the 19th Century, so was my father.

12 MR. CAMPBELL: Now, your father's family, were they
13 Burlington natives or immigrants?

14 JUDGE MATSCH: My father's mother--I'm not sure of
15 the background, but her father abandoned her and her sister
16 when her mother died early on, and my grandmother was then
17 taken over by the Odd Fellows Lodge and placed in the home of
18 a tailor who was from Germany whose name was Bauerbach
19 (phonetic), and she was raised in the family of this tailor.
20 And when he started to go blind from his work, he started a
21 grocery store in Burlington. The very same grocery store that
22 became Matsch's Market.

23 MR. CAMPBELL: The family business.

24 JUDGE MATSCH: Yes.

25 MR. CAMPBELL: Well, Burlington itself has an

1 interesting history, several firsts. In 1938 it was the
2 first--I'm sorry in 1838, it was the first capital of the Iowa
3 Territory. Burlington is reputed to be the home of the first
4 high school west of the Mississippi.

5 JUDGE MATSCH: That's news to me.

6 MR. CAMPBELL: And one more little pearl. In 1869,
7 a woman from Burlington, Arabella Mansfield, was the first
8 woman to be licensed as a lawyer in the United States.

9 JUDGE MATSCH: That's news to me too.

10 MR. CAMPBELL: This was some 108 years ago before
11 you wrote a pioneering decision about constitutional--
12 unconstitutional discrimination based on gender under the 14th
13 Amendment. But we'll have more of that in a little bit.

14 JUDGE MATSCH: Getting back to Burlington though,
15 that wasn't the original name of that settlement; the original
16 name of it was Shoquoquon, and I think it was an Indian
17 trading post.

18 MR. CAMPBELL: It must have been an Indian name
19 certainly.

20 JUDGE MATSCH: Because you know the French fur
21 traders were up and down the Mississippi. And then after
22 Shoquoquon, it was named Flint Hills, and that's appropriate
23 because Burlington sits on the high side of the Mississippi
24 with Limestone Bluffs.

25 And the way it got to be Burlington, as I understand

1 it, is some prominent person came there and thought it looked
2 so much like Burlington, Vermont.

3 MR. CAMPBELL: I think I read that. Can you tell me
4 a little about Burlington when you were growing up there in
5 the early '30s and '40s?

6 JUDGE MATSCH: Well, it was very much a cohesive
7 community and typical sort of a Norman Rockwell type place.
8 And people went to church, and people obeyed the rules. There
9 was a very small Jewish community, and there was a very small
10 African American community, although we had some diversity in
11 the school system and particularly the high school.

12 Burlington is a number of hills and North Hill was
13 where the wealthier people lived, and West Hill, which is
14 where we lived, was not so wealthy and did not have paved
15 roads behind Leebrick Street where we were on, and South Hill
16 was kind of a mix. But things were very much focused on the
17 river and the railroad.

18 MR. CAMPBELL: And Burlington wasn't just a tiny
19 little burg. I looked at some census numbers. Interestingly,
20 I think that the variance between the 2010 census and the time
21 you were a child is--there's very little difference, about
22 26,000 people.

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: It's a small city.

25 JUDGE MATSCH: Yes.

1 MR. CAMPBELL: Let's talk a little about your
2 immediate family. You were the youngest child of your family;
3 is that correct?

4 JUDGE MATSCH: Yes, I have three older brothers and
5 quite a gap. The brother nearest to me was six years older.
6 His older brother was two years older than he was, and the
7 oldest was six years older still.

8 MR. CAMPBELL: All boys?

9 JUDGE MATSCH: All boys.

10 MR. CAMPBELL: You mentioned in passing that the
11 family had a small business. Talk a little about the nature
12 of that grocery business that you mentioned.

13 JUDGE MATSCH: Well, it wasn't so small in the days
14 when I came onboard. My father actually had five stores
15 scattered around these hills, with the main store down on Main
16 Street in the middle of the downtown area and close to the
17 river.

18 But there is a thing called the Depression which
19 came along, so he had to cutback considerably. And I'm sure
20 that in 1930 with the Depression going on the accident of my
21 birth was probably something of a shock.

22 MR. CAMPBELL: That five stores is really the
23 counterpart to the supermarket?

24 JUDGE MATSCH: It was.

25 MR. CAMPBELL: But there had to be much that is not

1 common to today's supermarket. Where did you get produce,
2 meat, dairy, grocery items?

3 JUDGE MATSCH: Well, the meat primarily came out of
4 Davenport, Iowa, where there was Swift and Company, had a meat
5 packing plant up there, and in Ottumwa, Iowa, which is closer
6 by. The produce, vegetables, fruits were local, and we
7 actually bartered with farmers.

8 And it's a rural community so--

9 MR. CAMPBELL: Dairy--

10 JUDGE MATSCH: --there were a lot of productive
11 farms.

12 MR. CAMPBELL: Yes.

13 JUDGE MATSCH: I might interrupt--

14 MR. CAMPBELL: --please.

15 JUDGE MATSCH: --to say my father was an innovator
16 and he combined grocery--dry grocery and meat in the same
17 market. But traditionally before that--

18 MR. CAMPBELL: You had a butcher shop.

19 JUDGE MATSCH: --you had a butcher shop and a dry
20 grocery store.

21 MR. CAMPBELL: Right. Did you or your siblings work
22 in the business?

23 JUDGE MATSCH: For sure. We were more employees
24 than we were sons.

25 MR. CAMPBELL: That would keep you busy with five

1 different stores that--

2 JUDGE MATSCH: But as I said, by the time I was
3 ready to work, which was when I was nine, we were down to one
4 store.

5 MR. CAMPBELL: Did you mentioned bartering for some
6 of what you sold. Did you use credit with your suppliers or
7 extend credit to your customers?

8 JUDGE MATSCH: We had credit for a while, but then
9 there came a time when you couldn't do things on credit; it
10 was cash and carry. And we also had very limited credit with
11 customers. We had some business over on North Hill, and those
12 people we gave credit to.

13 MR. CAMPBELL: This was the North Hill that you
14 mentioned--

15 JUDGE MATSCH: Yes.

16 MR. CAMPBELL: --the right side of the tracks.

17 JUDGE MATSCH: That's right, yes.

18 MR. CAMPBELL: And by credit--nobody was giving you
19 his or her American Express Card. These were accounts where
20 someone would shop and you would send them a bill once a month
21 or--

22 JUDGE MATSCH: No, no, it was--

23 MR. CAMPBELL: --they would come in and settle up?

24 JUDGE MATSCH: They would come in and settle up. We
25 never sent out any bills.

1 MR. CAMPBELL: As you mentioned this was the height
2 of the Great Depression. And you mentioned also that it did
3 have some impact on the business and some of the stores going
4 from five to one over that period of time. Did the Depression
5 years expose your family to much hardship?

6 JUDGE MATSCH: Well, there was hardship, I'm sure,
7 at the parent level, but they didn't complain about it, and
8 they tried to give us pretty normal feeling about the economy.
9 So--it isn't where I was concerned about it as a child.

10 MR. CAMPBELL: As a transportation hub right on the
11 Mississippi--and here we're not talking about the North Platte
12 that you can wade across, it was three-quarters of a mile, was
13 it not, across--

14 JUDGE MATSCH: It's a mile wide.

15 MR. CAMPBELL: A mile wide there.

16 JUDGE MATSCH: With some very big islands.

17 MR. CAMPBELL: Yes.

18 JUDGE MATSCH: They were good for duck hunting.

19 MR. CAMPBELL: You mentioned the railroads and with
20 the river traffic, the barge traffic, did its being a
21 transportation hub insulate it at all from the Depression?

22 JUDGE MATSCH: I can't answer that. I don't know
23 the larger picture at that time.

24 MR. CAMPBELL: Okay. In speaking to me for
25 background for this interview, you referred to your mother as

1 being a hero to you from your early years growing up and that
2 your brothers had a significant influence on you as a boy.
3 Can you elaborate on the roles of influence of family members
4 on you as a youngster?

5 JUDGE MATSCH: Well, unfortunately my father was a
6 binge drinker, and he developed a serious problem where he
7 would disappear for a couple of weeks out on a drunk. During
8 those times, which were very stressful, we circled the wagons
9 so-to-speak and my mother was the strong pillar. In today's
10 world, she probably would have divorced him, but she never
11 contemplated that, I think, because she kept the family
12 together.

13 But there were two other influences there; one, my
14 grandmother, being my paternal grandmother, lived with us, and
15 she was also very strong. And she was a business woman
16 because she inherited the grocery business from the tailor--

17 MR. CAMPBELL: Who raised her?

18 JUDGE MATSCH: --yes, Bauerbach. And she had that
19 business when my grandfather came along.

20 MR. CAMPBELL: And did she teach the business to
21 your father?

22 JUDGE MATSCH: No, grandfather.

23 MR. CAMPBELL: Yes.

24 JUDGE MATSCH: And her husband. And then my father
25 came into it through him.

1 MR. CAMPBELL: Through the marriage.

2 JUDGE MATSCH: Yes. But these times of great stress
3 because of my father's alcoholism were times that united us,
4 and I think that we developed a real cohesive brotherhood as a
5 result of the tensions and stresses that were involved during
6 these periods of our father's absence.

7 MR. CAMPBELL: When you refer to brotherhood, are
8 you literally meaning with your brothers--

9 JUDGE MATSCH: Yes.

10 MR. CAMPBELL: --or extended family or--

11 JUDGE MATSCH: No, I'm talking about--

12 MR. CAMPBELL: --cousins?

13 JUDGE MATSCH: --my immediate family and my older
14 brothers who were solid. And we developed a relationship
15 early on. My mother used to have some trouble remembering
16 which child she was angry at and would confuse which one she
17 was calling out, so we told her just call us all Al, and that
18 persisted all the way through our lives. We never really
19 called each other by their first names; we were all Al. And
20 there was the oldest Al, big Al, middle Al and little Al.

21 MR. CAMPBELL: Well, where did the Al come--was one
22 of them actually Alan or--

23 JUDGE MATSCH: No, nobody--

24 MR. CAMPBELL: --Albert or--

25 JUDGE MATSCH: --was named anything like Al but, you

1 know, I don't know where it actually started but that Neil
2 Simon--

3 MR. CAMPBELL: I was just going to say there's a
4 Simon and Garfunkel--a Neil Simon song "You can call me Al."

5 JUDGE MATSCH: Yes, that's it. Well, actually I
6 think it came out of the Depression.

7 MR. CAMPBELL: And so many rock and roll--

8 JUDGE MATSCH: Not rock and--

9 MR. CAMPBELL: --lyrics did that--

10 JUDGE MATSCH: --not rock and roll then.

11 MR. CAMPBELL: No, no, no, but so many of what we
12 had in the '70s and the '80s are--

13 JUDGE MATSCH: Oh, yes.

14 MR. CAMPBELL: --are re-dos of things that came back
15 from the '20s and '30s.

16 JUDGE MATSCH: That's right, yes. There was a
17 Depression song too that had Al, you know, you knew me when I
18 was building the railroads--I can't remember all the lyrics
19 but they called me Al.

20 MR. CAMPBELL: Were there friends or other non-
21 relatives you recall that played a part in young Richard
22 Matsch's growing up in Burlington?

23 JUDGE MATSCH: Well, sure, I had good buddies, but I
24 will tell you, I think the most important influence from all
25 of that is the customers in the store because this was a time

1 when we were in competition in the same two blocks with three
2 other grocery stores--

3 MR. CAMPBELL: Wow.

4 JUDGE MATSCH: --corner grocery stores. And there
5 was some price competition, but it was customer loyalty that
6 we relied on. And so, the very important lesson that I
7 learned early on was to be very friendly with the customers,
8 the customer was always right, no political arguments get
9 involved. We did have some African American people who came
10 in; they were treated with great respect, and friendly, ask
11 about family things, illness, and that sort of thing so--we
12 were a brand.

13 MR. CAMPBELL: It's interesting how in the last
14 couple of decades, maybe a little longer, that some of that is
15 waned that--

16 JUDGE MATSCH: It's almost disappeared.

17 MR. CAMPBELL: Well, you know, we'll talk a little
18 more about it later, but there's cost and benefits to some of
19 our technology, and I think you've touched on a cost in terms
20 of the personal contact and the value of one-on-one
21 relationships that seemed to be replaced by some of our
22 digital world.

23 But do you have any recollections from your early
24 educational experience in your primary and secondary school
25 years? Were you in the public schools or--

1 JUDGE MATSCH: Yes.

2 MR. CAMPBELL: In Burlington?

3 JUDGE MATSCH: I went to--we all went to the same
4 grade school, my brothers and I. In fact, my father had gone
5 to that grade school.

6 MR. CAMPBELL: Really.

7 JUDGE MATSCH: And my parents' education was that my
8 father went to high school; my mother went to the eighth
9 grade. But my mother was very solid and encouraging in
10 schoolwork and attendance. And so, we had school buddies. I
11 was a Boy Scout--Cub Scout, Boy Scout, had buddies there of
12 course. And we--you know, we had sandlot baseball, organized
13 our own teams. The kid with the ball got to be the captain;
14 that sort of thing.

15 MR. CAMPBELL: Picked up teams and played after
16 school?

17 JUDGE MATSCH: Right.

18 MR. CAMPBELL: I have similar memories. I know you
19 excelled as a college and law student. Were you an honor roll
20 student as a youngster?

21 JUDGE MATSCH: Yes, it was easy for me for some
22 reason to go to the head of the class.

23 MR. CAMPBELL: And I suspect you were not the first
24 of the boys to go on to higher education.

25 JUDGE MATSCH: That's right. My oldest brother

1 Charlie--my father had the idea that he would get back to five
2 stores and each boy would have a store.

3 MR. CAMPBELL: Yes.

4 JUDGE MATSCH: But my oldest brother Charlie broke
5 the mold and went to junior college.

6 MR. CAMPBELL: There in Burlington?

7 JUDGE MATSCH: In Burlington. And then the
8 University of Iowa and became a CPA. This was influenced, by
9 and large, I think by my uncle, my father's brother, younger
10 brother, who had become very successful with the local
11 business called the Iowa Soap Company and became treasurer
12 there; did not have any children--married but no children, and
13 he pushed the education. He himself only had a high school
14 education.

15 MR. CAMPBELL: Were there teachers in elementary or
16 secondary school that had particular influence on you in your
17 later life?

18 JUDGE MATSCH: Yes, indeed, and these were all
19 maiden ladies, as they were called in those days. And their
20 lives were completely dedicated to their work. A couple of my
21 teachers had also taught--well they all had taught my brothers
22 but they did not put me in the shadow of my brothers. But in
23 particular, a woman named Mary Vincent was the geography
24 teacher, and she herself traveled a bit. And her practice was
25 to give out back copies of National Geographic if you won an

1 award, and I got a number of them.

2 But also, there was a woman named Mrs.--well, we
3 called them Mrs. as I think of it--Holstein (phonetic)--who did
4 music and English and also started reading poetry to us,
5 particularly the poetry of James Whitcomb Riley, which--

6 MR. CAMPBELL: And what level was she teaching you?

7 JUDGE MATSCH: It was fourth, fifth, and sixth
8 grades.

9 MR. CAMPBELL: Were these the one kind of thing
10 where you--

11 JUDGE MATSCH: Oh, no. No.

12 MR. CAMPBELL: --would combine grades or were all
13 your grades separate?

14 JUDGE MATSCH: They were separate, and we had a
15 lower level to the building for the first three grades and
16 kindergarten and then an upper level for the four, five, and
17 six.

18 MR. CAMPBELL: You mentioned some non-academic
19 interests and athletics, you mentioned pick up baseball games.

20 JUDGE MATSCH: Yes, we did that. And we actually
21 had a touch football team in grade school. And there were six
22 grade schools and we won the city championship.

23 MR. CAMPBELL: Oh, really. There was inter-school
24 competition?

25 JUDGE MATSCH: Yes, touch football.

1 MR. CAMPBELL: Now was this at the elementary or the
2 secondary level?

3 JUDGE MATSCH: Yes, sixth graders.

4 MR. CAMPBELL: Really?

5 JUDGE MATSCH: Yes. And--

6 MR. CAMPBELL: Your own version of Pop Warner.

7 JUDGE MATSCH: Well, we didn't have uniforms. I
8 mean we didn't have protective gear, and it was a safe
9 football, but it was fun. And our championship game was in
10 the stadium Friday night before the high school game.

11 MR. CAMPBELL: And this was at the sixth-grade
12 level?

13 JUDGE MATSCH: Sixth grade.

14 MR. CAMPBELL: So baseball and football were--

15 JUDGE MATSCH: Just baseball was organized. We of
16 course organized our own football games. But I was never very
17 good athletically. I was small and my brother Bill, older
18 brother, was outstanding. And the other two were--my brother
19 Bob, who's closer to me, had no interest in that. He was much
20 more interested in music and things that did not involve
21 athletics.

22 MR. CAMPBELL: And you said Bill was six years
23 older, number two son?

24 JUDGE MATSCH: Yes.

25 MR. CAMPBELL: Let's turn to the impact of World War

1 II on your early years. You were 11 years old or pretty close
2 to it when the U.S. entered the war. Do you have any recall
3 of your family's or your community's view of the war prior to
4 Pearl Harbor?

5 JUDGE MATSCH: Well, I think we knew it was coming.
6 Nobody was isolationist. Being not so far from German
7 ancestry, that was a concern. And my parents of course had
8 lived through World War I, at which time you couldn't even
9 speak German; it was prohibited.

10 MR. CAMPBELL: Post World War I, but--

11 JUDGE MATSCH: This was during World War I.

12 MR. CAMPBELL: Right.

13 JUDGE MATSCH: Our church had German services, and
14 they were prohibited from doing that. But when World War II
15 came in, there was an anticipation of it. And then of course
16 when Pearl Harbor Day just shook the foundation of everything.

17 I made a mistake. My--the brother who was athletic
18 was eight years older.

19 MR. CAMPBELL: Okay.

20 JUDGE MATSCH: Two years older--

21 MR. CAMPBELL: I may have misstated what you told me
22 that--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: Did Burlington see war production?

25 JUDGE MATSCH: Very much. The government put in an

1 ordnance plant, called the Iowa Ordnance Plant, to make bombs.
2 And that was a few miles outside of Burlington and close to
3 the area where we had a farm, sharecropper farm, owned but we
4 didn't farm it.

5 But when they built the ordnance plant, to staff it
6 we had a big influx of people--most of them from Tennessee,
7 but others from Appalachia, and they were of course culturally
8 quite different; that changed things somewhat.

9 But their housing--the government developed a
10 housing project not too far from the plant. On two different
11 occasions, there were explosions killing everybody working on
12 the lines which were mostly women. They had separated these
13 lines so that if one line blew up--production line I mean--it
14 wouldn't affect the rest of the plant.

15 MR. CAMPBELL: Were they working around the clock?

16 JUDGE MATSCH: Yes, they were. Three--you know,
17 this is at a time when we were playing catch-up to fully
18 become competitive in the war, so, yes. I vividly recall
19 those explosions, shook every house in town.

20 MR. CAMPBELL: Do you recall what they were
21 manufacturing out there?

22 JUDGE MATSCH: Primarily 500-pound bombs.

23 MR. CAMPBELL: Oh, really?

24 JUDGE MATSCH: Yes. But they had other products too,
25 but it was primarily bombs.

1 MR. CAMPBELL: And then the rail would take them to
2 the coast?

3 JUDGE MATSCH: Yes. And it was all a secret
4 facility of course. But everybody was in through the war and
5 of course my brothers--my brother Bill was out in California
6 working in a shipyard after he graduated from high school, and
7 he immediately went into the Army Air Corps and became a
8 fighter pilot.

9 MR. CAMPBELL: He was in his early '20s?

10 JUDGE MATSCH: He would be like 19--

11 MR. CAMPBELL: Yes.

12 JUDGE MATSCH: --at the time.

13 MR. CAMPBELL: You were too young to be involved in
14 that aspect of things, but did the people of Burlington
15 experience rationing as part of the war effort?

16 JUDGE MATSCH: Of course, gasoline rationing and
17 food rationing.

18 MR. CAMPBELL: Right.

19 JUDGE MATSCH: So that was a problem dealing with a
20 store.

21 MR. CAMPBELL: Talk a little bit about that; that's
22 a foreign concept to those people who are a little younger
23 than you.

24 JUDGE MATSCH: Well, we didn't have butter.

25 MR. CAMPBELL: Right.

1 JUDGE MATSCH: All of that went to the Army, Navy,
2 and--the whole military, but there were stamps for buying
3 meat, which essentially meant you could get meat once a week.
4 But we had to be very careful about making sure we got stamps
5 for steak or hamburger, whatever. There were other products
6 that were limited. And of course, cigarettes--we sold
7 cigarettes, but you couldn't get the name brand cigarettes;
8 we'd get cigarettes called Wings and others that were low
9 quality.

10 MR. CAMPBELL: The Lucky Strikes and Camels were
11 headed abroad.

12 JUDGE MATSCH: Yes. That was the--Lucky Strike
13 Green has gone to war was--they used to have a green packaging
14 and they changed to white because something about the making
15 of the color green was taken over by war effort.

16 MR. CAMPBELL: I remember the packages had on them
17 LSMFT.

18 JUDGE MATSCH: Yes.

19 MR. CAMPBELL: I'm trying to remember what that--

20 JUDGE MATSCH: Well, that meant Lucky Strikes Means--

21 MR. CAMPBELL: Fine Tobacco, right. And not Lord
22 Save Me From Truman or Loose Suspenders Mean Falling Trousers--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: When I was a teenager, Lucky Strikes
25 were my brand of a choice.

1 JUDGE MATSCH: Yes.

2 MR. CAMPBELL: Well, times have changed.

3 JUDGE MATSCH: Well, you know, we also--as

4 households, we had to save grease and put it in a can. And as

5 a Boy Scout we went around and collected--

6 MR. CAMPBELL: Collected.

7 JUDGE MATSCH: --the grease that went into making

8 nitroglycerin.

9 MR. CAMPBELL: I'll be darned.

10 JUDGE MATSCH: And we also collected cans--tin cans

11 as we called them, those were all saved, and bottles, and we

12 had recycling in those days.

13 MR. CAMPBELL: It worked a little different because

14 it was--

15 JUDGE MATSCH: It was required, yes.

16 MR. CAMPBELL: And now say a little more about the

17 grocery--is the grocery business still going on as one store

18 at this point?

19 JUDGE MATSCH: Yes, yes. We ran it late into the

20 night because the nightshift for the ordnance plant had buses

21 that picked up the workers, and our store corner was a bus

22 stop for the buses going to the IOP as we called it, the Iowa

23 Ordnance Plant, and that would stop there at ten o'clock.

24 MR. CAMPBELL: And you said this was largely an

25 immigrant population that was the workforce at--

1 JUDGE MATSCH: Well, immigrant in the sense that
2 they were from the south.

3 MR. CAMPBELL: Generally--oh, okay.

4 JUDGE MATSCH: Yes, they weren't from other
5 countries; they were crackers.

6 MR. CAMPBELL: You were beginning to see the
7 migration from the south at that time.

8 JUDGE MATSCH: Yes, at that time. And of course--

9 MR. CAMPBELL: The early part of the mass migration
10 from the south.

11 JUDGE MATSCH: Well, yes. But we kept the store
12 open so we could get the business of people coming in and
13 buying their lunch to go to work.

14 MR. CAMPBELL: Which must have worked closely with
15 the government as well with all the rationing and--

16 JUDGE MATSCH: No, we weren't. We were sort of
17 adversaries to the government because these were tight
18 restrictions. And we had some cattle out on the farm--you
19 couldn't slaughter a steer without the permits.

20 MR. CAMPBELL: Really.

21 JUDGE MATSCH: But we did at times.

22 **Higher Education (1947-1953)**

23 MR. CAMPBELL: Let's move on to your higher
24 education, the next chapter of your life perhaps post-
25 secondary school education. It's 1947, the war is over.

1 You're about 17 years old and just graduated from high school
2 and it's time to move on to higher education. Where do you
3 next go to school and how did you make that decision?

4 JUDGE MATSCH: I went to Burlington Junior College.
5 I made that decision I guess for two primary reasons, one is I
6 was going with a girl who was a year behind me in school and
7 so for her senior year I wanted to be still around.

8 MR. CAMPBELL: Amazing the things that influence
9 major decisions--

10 JUDGE MATSCH: Yes.

11 MR. CAMPBELL: --in our lives.

12 JUDGE MATSCH: The second thing is I wanted to play
13 football.

14 MR. CAMPBELL: Ah-ha.

15 JUDGE MATSCH: And I was 5'7" and 145 pounds which
16 was not quite the thing for a football player, but I played
17 anyway, and I was mostly a scrub, but it was one of the great
18 experiences of my life because almost all of the team were GIs
19 who had been--many of them who had been in combat, principally
20 in Europe. So I was little brother to most of the team.
21 There were only about four of us who were non-GIs.

22 MR. CAMPBELL: And a couple of years younger than
23 these people?

24 JUDGE MATSCH: Oh, quite a few years younger.

25 MR. CAMPBELL: Right.

1 JUDGE MATSCH: Most of them were 24, 25.

2 MR. CAMPBELL: I had the same phenomenon from the

3 Vietnam War that--half of my class in law school was three or

4 four years older--

5 JUDGE MATSCH: Yes.

6 MR. CAMPBELL: --because they had put in their time.

7 JUDGE MATSCH: And this was a very successful team,

8 we were undefeated.

9 MR. CAMPBELL: Ah-ha. Did you still live with the

10 family when you were--

11 JUDGE MATSCH: I did. Lived at home.

12 MR. CAMPBELL: --and were you working while you were

13 going to school as well?

14 JUDGE MATSCH: In the store.

15 MR. CAMPBELL: Ah-ha. And so you continued to work

16 at the store?

17 JUDGE MATSCH: Yes. Yes. And then a number of my

18 high school chums were also at junior college. But after the

19 first year--or during the first year we were talking about

20 going elsewhere. Most of them were going up to the University

21 of Iowa.

22 MR. CAMPBELL: Yes.

23 JUDGE MATSCH: My brother Bob, when he was in the

24 military, was in Japanese language school and part of that was

25 at Michigan, University of Michigan.

1 MR. CAMPBELL: Bob was the one who was next oldest
2 to you?

3 JUDGE MATSCH: Yes. So, he went into the war in
4 1942. And anyway, he was in this language program, the design
5 of which was to be available in the occupation of Japan. But
6 at any rate, he was concerned that I might get into bad habits
7 at the University of Iowa, going along with my colleagues.
8 And he was very impressed by the University of Michigan. And
9 by that time, I had decided that I wanted to go to law school.

10 MR. CAMPBELL: Oh, really, while you were still in
11 that first year of junior college?

12 JUDGE MATSCH: Actually, probably my senior year
13 because one of our customers was a lawyer.

14 MR. CAMPBELL: Senior year in high school?

15 JUDGE MATSCH: High school.

16 MR. CAMPBELL: Wow.

17 JUDGE MATSCH: And I had thought about becoming a
18 journalist because at high school I was a managing editor of
19 the student newspaper, and I had thought of going to the
20 University of Missouri which was then the top journalism
21 school in the area.

22 And I was headed in that direction but, you know,
23 this lawyer would come in and buy a couple of items. He lived
24 not too far away, and he was a very prominent lawyer and he'd
25 buy cigarettes and he would talk to me about what I was going

1 to do in life and he persuaded me that I ought to become a
2 lawyer.

3 MR. CAMPBELL: At the ripe old age of 17, 16?

4 JUDGE MATSCH: Yes. And the University of Michigan
5 had a law school that was prominent, and they also had--well,
6 what's called a combined curriculum, this was primarily
7 because of the returning GIs, so you could have three years of
8 undergraduate school, and then if your grade average was a B
9 or above, you'd go to law school if you could get in and the
10 first year of law school counted both for law school--

11 MR. CAMPBELL: In doing my background and one of the
12 questions I had here for you was--I noticed you were only six
13 years in your higher education and that's the combined--that's
14 the program you just referred to.

15 JUDGE MATSCH: Right.

16 MR. CAMPBELL: So, in 1948--

17 JUDGE MATSCH: I'm on to Ann Arbor.

18 MR. CAMPBELL: You're on to Ann Arbor in 1948.

19 University of Michigan was the big nine conference football
20 champions outscoring opponents 252 to 44 on its way to an
21 undefeated season and a national championship. Now, you
22 weren't one of those JC transfer recruits to that team now,
23 were you?

24 JUDGE MATSCH: No. No, I was not. As a matter of
25 fact, the junior college only had about 450 people, so we knew

1 the dean and others. And on one occasion the dean asked me
2 was I coming back for the second year, and I said, no, I'm
3 applying to the University of Michigan. And he said well
4 you'll never get in there. You know who Bob Ptacek is--who
5 was the outstanding quarterback at Michigan--and he said you
6 play football, but you won't be playing football at Michigan.

7 MR. CAMPBELL: Well Michigan was fairly dominant at
8 the time. And the community college, the JC had quite a
9 history itself. I mean it was founded back in 1920 as my
10 reading indicates and today is Southern Community College--

11 JUDGE MATSCH: Southeastern.

12 MR. CAMPBELL: Southeastern Community College.

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: Was a merger of the Burlington Junior
15 College and is it Keokuk?

16 JUDGE MATSCH: Keokuk, yes.

17 MR. CAMPBELL: Which was a community college that
18 had been founded in the early '50s.

19 JUDGE MATSCH: It's going very strong. I'm a strong
20 supporter of it.

21 MR. CAMPBELL: Your Alma Mater is--your first Alma
22 Mater is 100 years old now.

23 JUDGE MATSCH: Well, I established the Matsch
24 Brothers' Scholarship--

25 MR. CAMPBELL: Really.

1 JUDGE MATSCH: --when my oldest brother died, he
2 went two years there. So, Bob had gone one year there before
3 he went to the Army, and I went there. So, when my oldest
4 brother Charlie died, we decided to give a scholarship.

5 MR. CAMPBELL: Are you active in the administration of
6 the scholarship?

7 JUDGE MATSCH: Oh, no, no, but--

8 MR. CAMPBELL: School picks the students?

9 JUDGE MATSCH: --I contribute to it still.

10 MR. CAMPBELL: Right.

11 JUDGE MATSCH: After my other brothers have died,
12 we've maintained it and it's primarily--since my brother
13 Charlie was an accountant, this is primarily for students
14 interested in business and accounting careers and also for
15 nontraditional students.

16 MR. CAMPBELL: Ah.

17 JUDGE MATSCH: Because some of the industry around
18 Burlington had withdrawn, people needed to get a different
19 skill set.

20 MR. CAMPBELL: There were elements with the merger
21 of the schools of both of--vocational isn't the right--but the
22 community college as well as the more scholastic track--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: --or the more general education
25 track?

1 JUDGE MATSCH: Well, there's that too.

2 MR. CAMPBELL: Both.

3 JUDGE MATSCH: They go on to a four-year school.

4 MR. CAMPBELL: Right.

5 JUDGE MATSCH: And they don't play football anymore

6 though, but I guess they're good at basketball. But anyway,

7 it's very nice because I get letters back from those--

8 MR. CAMPBELL: Students.

9 JUDGE MATSCH: --who receive scholarships.

10 MR. CAMPBELL: That's got to be rewarding.

11 JUDGE MATSCH: And talking about what it has meant

12 to their lives.

13 MR. CAMPBELL: That's terrific. It must by now be a

14 significant number of--

15 JUDGE MATSCH: It is, yes.

16 MR. CAMPBELL: --people that you've helped through

17 college, that you and your family have helped through college.

18 JUDGE MATSCH: Yes. And I even gave a commencement

19 speech back there when we endowed this scholarship too so--and

20 the interesting thing is, one of the people who were on that

21 junior college team, Wayne Duke, went to Iowa then and went on

22 to become the commissioner of the Big 8 Conference and then

23 the Big 10 Conference.

24 MR. CAMPBELL: Really.

25 JUDGE MATSCH: So, yes.

1 MR. CAMPBELL: The Big 8 Conference which, of
2 course, doesn't include Iowa--

3 JUDGE MATSCH: No, no.

4 MR. CAMPBELL: --but Iowa State.

5 JUDGE MATSCH: Yes. He--after he graduated from--
6 he's a good friend of mine and stayed a good friend of mine.
7 And after he went to work for the University of Iowa in the
8 public relations, and he worked his way up through the NCAA
9 and into the commissioner of the Big 8 and then the
10 commissioner of the Big 10.

11 MR. CAMPBELL: Of course, the Big 8 is
12 unrecognizable. I went to a Big 8 school that is in Boulder.

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: Which is Big 8--I couldn't tell you
15 who's in the Big 8 anymore. But I will say--

16 JUDGE MATSCH: Well, the spawn to the Big 12.

17 MR. CAMPBELL: CU certainly has. Oh, Big 8 is now
18 Big 12--

19 JUDGE MATSCH: Big 12, yes.

20 MR. CAMPBELL: It's all Texas at this point as far
21 as I can tell. What did you major in as an undergraduate in
22 Ann Arbor?

23 JUDGE MATSCH: It was required--all of my courses
24 were required.

25 MR. CAMPBELL: Really.

1 JUDGE MATSCH: And they were directed by the law
2 school.

3 MR. CAMPBELL: So you signed up for the joint
4 program early on in your undergraduate--to do it in six years?

5 JUDGE MATSCH: That's right, I had to, or I wouldn't
6 have been able to be there because I had already lost a year
7 by going to junior college. The emphasis was on literature in
8 large part, history in large part. Two principle courses in
9 that regard were a year's course in English Constitutional
10 History and a year's course in American Constitutional
11 History, taught by an ex-lawyer.

12 MR. CAMPBELL: Well, you must have done well
13 academically as you were admitted to Michigan, a very
14 competitive law school back in that time--

15 JUDGE MATSCH: Yes, very.

16 MR. CAMPBELL: --as it is today. Were there other
17 activities as an undergraduate, and did you work while you
18 were an undergraduate?

19 JUDGE MATSCH: No other activities, I worked, and I
20 worked in a hash house.

21 MR. CAMPBELL: On campus?

22 JUDGE MATSCH: No--well, it's on campus--

23 MR. CAMPBELL: Right.

24 JUDGE MATSCH: --but not university connected. So,
25 I worked there for--you had to work your way up. I started

1 working in the steam room scraping dishes and dishwashing.
2 And then I worked my way up to being a busboy. And this was a
3 cafeteria, so the reward was two meals.
4 MR. CAMPBELL: Yes.
5 JUDGE MATSCH: Lunch and dinner.
6 MR. CAMPBELL: Was it part of the university or was
7 this--
8 JUDGE MATSCH: No, no, this was private. And to see
9 things--how different they were--we had a good part of the
10 staff that were hockey players from Canada.
11 MR. CAMPBELL: Right. Playing hockey at the
12 university--
13 JUDGE MATSCH: Yes. And--but they were in this
14 business called the Meal March was the name of the cafeteria
15 we worked.
16 MR. CAMPBELL: And they--the hockey team--put them
17 to work as part of their--
18 JUDGE MATSCH: Well, you know, they didn't have
19 these scholarships in that way. And, in fact, Chuck Ortmann,
20 who was the All-American tailback for Michigan, he didn't work
21 there the same hours we did, but he had a cushy job there and
22 also lived with the medical doctor on the--under the medical
23 staff--on the medical school.
24 So, they didn't give out these lush scholarships.
25 Of course, most of that team were GIs, so they were already on

1 GI Bill.

2 MR. CAMPBELL: Right. At this time as an
3 undergraduate, were you active at all in politics either
4 campus, local, state, or national?

5 JUDGE MATSCH: I had no outside activities. I kept
6 my head down, and I felt I needed to get this B average so I
7 could get to law school.

8 MR. CAMPBELL: Were there faculty members or others
9 that had any particular influence on you as a young college
10 man?

11 JUDGE MATSCH: Yes, one in particular who taught
12 English. And she was one of the most classy people I've ever
13 met. She had been on the left bank in Paris; she knew
14 Somerset Maugham and people like that. She taught this
15 English course, a very good course, and I wrote a paper on
16 Huck Finn because she had assigned Huck Finn. And I got the
17 paper back with a note to come to see her at office hours; I
18 did. She said what is your major? I said well I'm pre-law.
19 She said you're going to be a lawyer? And I said that's my
20 intention. And she said what a waste. She wanted me--

21 MR. CAMPBELL: A wise woman.

22 JUDGE MATSCH: --she wanted me to go on to a PhD.
23 But she got me into a class taught by--a seminar taught by
24 Allan Seager who is an author, short-story writer; it was a
25 small class of 12. And in the course of that I had to write

1 four short stories as a part of it and we had to read other
2 short story writers.

3 Well, it had been a very competitive thing to get
4 into that class because almost everybody there had already
5 written stories and got into it, but she inserted me into that
6 class, so it was a very interesting experience to be in that
7 seminar.

8 MR. CAMPBELL: I meant to ask when I was asking you
9 about your growing up in Burlington and you commented that
10 it's right on the river and the river I assume was a great
11 part of a culture, and what reminded me was your reference to
12 writing about Clemens or--

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: Was the river part of your youth?
15 Was there fishing, boating, swimming--

16 JUDGE MATSCH: No, nothing like that. Boy Scout
17 camp was on the river and we swam in the river, dirty as it
18 is, because in those days sewer outfalls were directly in--

19 MR. CAMPBELL: --directly into the river.

20 JUDGE MATSCH: Yes. But the fishing was mostly
21 commercial. And fishermen made their living that way, many of
22 them. Catfish was the big fish at the time. And as a little
23 kid, we would catch crawdads in a creek that was not too far
24 from the house, go up to a saloon and sell the bait to the
25 fishermen.

1 MR. CAMPBELL: Right, catfish bait.

2 JUDGE MATSCH: Yes, crawdads.

3 MR. CAMPBELL: Yes. And some pretty big catfish in

4 the river.

5 JUDGE MATSCH: They're huge catfish and they're

6 dirty--and they're way in the bottom, they're bottom feeders.

7 MR. CAMPBELL: That--I think you probably have

8 addressed this how you made the decision to stay on in Ann

9 Arbor for law school, did you consider other law schools or

10 was--

11 JUDGE MATSCH: No.

12 MR. CAMPBELL: --that program qualifying you if you

13 maintained a B average to go on to the law school there?

14 JUDGE MATSCH: Yes, I don't think it would be

15 transferrable--

16 MR. CAMPBELL: Right.

17 JUDGE MATSCH: --to any other school and I wasn't

18 interested in any other school. I wanted to be in Michigan.

19 MR. CAMPBELL: Your military service came after you

20 finished your formal education.

21 JUDGE MATSCH: Yes.

22 MR. CAMPBELL: So, you didn't qualify for financial

23 help under the GI Bill.

24 JUDGE MATSCH: That's right. And one of the things

25 that still troubles me in life is that I went to law school

1 under a college deferment.

2 MR. CAMPBELL: Right.

3 JUDGE MATSCH: The government at that time, wisely
4 or not, deferred people who were in school.

5 MR. CAMPBELL: Right. 2-S Deferment--at least it
6 was called that when I--

7 JUDGE MATSCH: You had to ask for it, and you had to
8 pass tests.

9 MR. CAMPBELL: Oh, really.

10 JUDGE MATSCH: Yes. We had tests every year. And
11 of course, you had to keep up in your college, but I think
12 college deferment is a very unfair thing because the people
13 who were fighting and dying in Korea were not in the same
14 economic class and also heavily African American.

15 MR. CAMPBELL: We didn't get over that real quickly.

16 JUDGE MATSCH: No, we didn't.

17 MR. CAMPBELL: And I'm a few years younger than you
18 but had a very similar experience in a war that lasted a long
19 time in the '60s, into the '70s, and quite interestingly the
20 point that you make, the Vietnam War seemed interminable until
21 we had a draft lottery--

22 JUDGE MATSCH: Yes.

23 MR. CAMPBELL: --and then those bags that came home
24 weren't just minority kids, they were the doctors' and
25 lawyers' kids.

1 JUDGE MATSCH: Yes.

2 MR. CAMPBELL: It had an impact.

3 JUDGE MATSCH: And you know, one of my very close

4 friends on the football team actually did go college

5 deferment, but it was over and the war was still on and he was

6 killed--

7 MR. CAMPBELL: In Korea.

8 JUDGE MATSCH: --in Korea, yes. And some of my high

9 school classmates were killed in Korea.

10 MR. CAMPBELL: As I say I can identify with what

11 you're speaking--

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: --because our spread in age is just

14 about the spread of the Korean War and the Vietnam War.

15 JUDGE MATSCH: Fortunately, I got back--I got to

16 Korea.

17 MR. CAMPBELL: Well, we'll come back to that. I

18 checked Michigan Law School's website and found today that

19 out-of-state tuition--which you would have been I assume--

20 today is \$60,508.

21 JUDGE MATSCH: Oh, my God.

22 MR. CAMPBELL: I assume it was somewhat less in

23 1951.

24 JUDGE MATSCH: Oh, yes, I think it was like \$3,000 a

25 year.

1 MR. CAMPBELL: Did you get scholarship help while
2 either in law school or as an undergraduate?

3 JUDGE MATSCH: No, I didn't. My father, being very
4 proud, refused to allow me to disclose his finances--

5 MR. CAMPBELL: Interesting.

6 JUDGE MATSCH: --in application--in applying for a
7 scholarship.

8 MR. CAMPBELL: Can you recall highlights from your
9 law school years at Michigan?

10 JUDGE MATSCH: Well, I was a drudge. I mean I
11 didn't do much but study and try to do the best I could
12 because--and here again, most of my classmates were GI Bill
13 people, but--no, I was pretty nerdy.

14 MR. CAMPBELL: I note that you nerded your way on to
15 the Michigan Law Review--

16 JUDGE MATSCH: Yes.

17 MR. CAMPBELL: --while you were at law school. How
18 did one go about qualifying for that honor when you were a law
19 student?

20 JUDGE MATSCH: Well, I'm not sure it was an honor
21 but the faculty selected. And in your second year you got
22 selected by the faculty vote for being on law review.

23 MR. CAMPBELL: After the--the summer after your
24 first year?

25 JUDGE MATSCH: Yes, based in large part on your

1 grades. And so I wrote for the law review in my second year
2 and then I was picked as one of six associate editors, which
3 meant that I was working with the second year--

4 MR. CAMPBELL: On your third year?

5 JUDGE MATSCH: Yes, in my third year, working with
6 second year people in the law review and helping them with
7 their writing, but I also had to write myself. And one of the
8 people that was--I worked with went on to become dean of that
9 law school.

10 MR. CAMPBELL: Really. But today your published
11 legal writings cover many hundreds of cases and many thousands
12 of pages. I looked for what I thought might be your very
13 first legal publication.

14 And let me read you its very first sentence and see
15 if you recognize it--and I quote "H owned real estate in fee
16 simple."

17 JUDGE MATSCH: That doesn't bring any particular
18 case to mind.

19 MR. CAMPBELL: That was published in Volume 51,
20 issue number one at page 121 of the 1952 Michigan Law Review
21 in a scholarly offering entitled Tenancy by the Entireties:
22 Creation by Deed from Husband to Husband and Wife by Richard
23 P. Matsch. We all have to start somewhere. And there were
24 other Richard P. Matsch published pieces in the Michigan Law
25 Review in 1952 and 1953; do you recall what these were?

1 JUDGE MATSCH: Well, I recall one of them, and I'm
2 having trouble reaching for the title now, but it was work
3 product privilege dealing with after the work product
4 privilege case came on dealing with a bridge model I think.

5 MR. CAMPBELL: You also dealt with denial of
6 intervention of an independent cause of action in a damage
7 suit. You were quite prolific back in the day. Some things
8 haven't changed. And you wrote a comment on standard
9 evaluation of dissenters' stock under appraisal statutes.

10 JUDGE MATSCH: Now, that one I do remember because
11 that was a result of my--of a summer--during the summers when
12 I was in law school I worked as a clerk for a local law firm.

13 MR. CAMPBELL: There in Ann Arbor?

14 JUDGE MATSCH: No, in Burlington, Iowa.

15 MR. CAMPBELL: Oh, really.

16 JUDGE MATSCH: Yes, I went back to Burlington, and I
17 worked for the very firm that was the lawyer who--

18 MR. CAMPBELL: Who was a customer of the grocery
19 store.

20 JUDGE MATSCH: That's right. And--

21 MR. CAMPBELL: Some of these things do pay off
22 about--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: --worrying about people.

25 JUDGE MATSCH: And the Iowa Soap Company was

1 involved in a merger--

2 MR. CAMPBELL: Ah.

3 JUDGE MATSCH: --and there was a trial with respect
4 to the dissenting shareholders.

5 MR. CAMPBELL: And the dissenters' rights.

6 JUDGE MATSCH: Yes, so I was working with one of the
7 lawyers in the firm in that trial and got interested in the
8 issue.

9 MR. CAMPBELL: Very, very interesting. Was your law
10 review experience a valuable one for you as a lawyer and later
11 judge?

12 JUDGE MATSCH: Well, it helped me get a job I think
13 because it was on my resume, and it also helped me with
14 writing discipline.

15 MR. CAMPBELL: I--the question was to come--did it
16 help with disciplined writing?

17 JUDGE MATSCH: Yes, for sure because there were word
18 limitations, these comments and case notes were reviewed by
19 faculty and criticized by faculty.

20 MR. CAMPBELL: And then you in turn did the same
21 thing when you were working at one--on the--

22 JUDGE MATSCH: Associate editor.

23 MR. CAMPBELL: Right. The legal profession is odd;
24 I think it is the only profession that I'm aware of where
25 we're foolish enough to turn over to a bunch of students the

1 highest level of editing of the highest level of scholarship
2 that--I say that somewhat facetiously, but--

3 JUDGE MATSCH: Disciplined writing is not common in
4 the briefs that I see.

5 MR. CAMPBELL: Right. But--

6 JUDGE MATSCH: And in some of the appellate opinions
7 I see.

8 MR. CAMPBELL: Probably some of the best of what you
9 see though comes from people who had that same experience you
10 did.

11 JUDGE MATSCH: Yes.

12 MR. CAMPBELL: Were there--I'm just ratcheting
13 another step up, were there colleagues, or faculty, or others
14 from your time in law school who had a particular influence on
15 your later life?

16 JUDGE MATSCH: Yes. One of them was my roommate,
17 also from Burlington, Iowa, who was two years ahead of me in
18 high school. He was in the Army.

19 MR. CAMPBELL: You caught up with him.

20 JUDGE MATSCH: And then went to the University of
21 Iowa and graduated and then came to Michigan Law. And we
22 roomed together after my first year there. And he was a very-
23 -very nice roommate and he studied hard too. He ended up
24 being a very good litigator in a law firm in Columbus, Ohio.

25 MR. CAMPBELL: Now, did you maintain that

1 friendship--

2 JUDGE MATSCH: I did.

3 MR. CAMPBELL: --over the years?

4 JUDGE MATSCH: I did. And he died a few years ago.

5 **Military Service (1953-1955)**

6 MR. CAMPBELL: After your formal education wound up,
7 you did spend time in the military, in the Army; am I right?

8 JUDGE MATSCH: That's right.

9 MR. CAMPBELL: Why the Army?

10 JUDGE MATSCH: Because I was drafted into the Army.

11 MR. CAMPBELL: Oh, is that right?

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: That deferment ended with the end of
14 your time at law school?

15 JUDGE MATSCH: Well, no, it was still going because
16 the war was still on. I graduated in June of 1953 and the war
17 was still going. So, I went first to infantry basic training
18 at Fort Riley, Kansas. Outside of Fort Riley there's a
19 training camp called Camp Funston and that was infantry basic.

20 MR. CAMPBELL: Where then were you stationed after
21 your basic training?

22 JUDGE MATSCH: Well, the war ended in July with the
23 armistice.

24 MR. CAMPBELL: Right.

25 JUDGE MATSCH: And then while I was in the infantry

1 basic and coming back from a long hike, hot and sweaty, and
2 tired and hungry we got--some of us got called out from the
3 company before chow and were taken over to a different
4 building and given psychological testing and also current
5 events testing and interviews and then were offered to
6 volunteer for the counterintelligence corps.

7 MR. CAMPBELL: Now, this was--this was something--
8 were you placed in that or was that something you had the
9 opportunity to volunteer for?

10 JUDGE MATSCH: I had no idea what this was about. I
11 was hungry and tired. They took us over, and that was part of
12 the test to see how you could perform when you're hungry and
13 tired.

14 MR. CAMPBELL: Oh, so that wasn't accidental that
15 you--

16 JUDGE MATSCH: Oh, no, this was weeding out, and not
17 everybody was offered this. This was strictly volunteer, and
18 they told us not very much about what the counterintelligence
19 corps did, but I spent another eight weeks at this same Fort
20 Riley.

21 MR. CAMPBELL: This is Army intelligence training
22 there?

23 JUDGE MATSCH: No. I was essentially a battalion
24 clerk there. And I worked with a lieutenant making game plans
25 as it were for tactical by--in the course of which I read

1 after action reports from Korea, small unit after action
2 reports, and then helped him design tactical training.

3 Then I was sent to Fort Holabird, Maryland, that was
4 counterintelligence school and I was there until April and
5 then sent to armed forces Far East.

6 MR. CAMPBELL: You spoke to me about a very
7 interesting 15 months in Korea right after the armistice. Is
8 that what we're talking about?

9 JUDGE MATSCH: Yes, a little longer than that but
10 right--not long after big switch was the exchange of
11 prisoners.

12 MR. CAMPBELL: And you were then stationed in Korea,
13 in Seoul?

14 JUDGE MATSCH: Yes, I was put into what was called
15 the Seoul Area Field Office, which was a very small unit, and
16 we did not work with the Army; we worked with the Korean
17 government.

18 MR. CAMPBELL: But you were Army intelligence at
19 that point?

20 JUDGE MATSCH: Yes. Well, we were in uniform--
21 remember we were there as part of the United Nations.

22 MR. CAMPBELL: Right.

23 JUDGE MATSCH: So we wore American uniforms and all
24 that, but we were out of rank, so--

25 MR. CAMPBELL: Tell me what that means.

1 JUDGE MATSCH: That means I was a Private First
2 Class, but I was given the same privileges as an officer. And
3 this was so that you could move back and forth between even
4 field grade officers and enlisted, so they didn't know whether
5 you were an officer or an enlisted man.

6 MR. CAMPBELL: Your uniform--you said it was an
7 American uniform--

8 JUDGE MATSCH: Yes.

9 MR. CAMPBELL: --but it didn't identify you as--

10 JUDGE MATSCH: It didn't put rank; it had--we had
11 U.S. That was it.

12 MR. CAMPBELL: Really.

13 JUDGE MATSCH: U.S. on the collars.

14 MR. CAMPBELL: And it didn't identify you as an
15 intelligence officer?

16 JUDGE MATSCH: Oh, no, no, you could--

17 MR. CAMPBELL: I mean what did people make of you
18 when you ran into some officer or--

19 JUDGE MATSCH: Well, we went to officers' clubs and
20 parties and all of that, but my particular work, which is
21 still classified--I mean I recognize classified as is one of
22 those where you get debriefed--but my work was largely with
23 the Korean National Police and the provincial government.

24 Seoul is part of Gyeonggi-do Province, and I
25 actually had regular sessions with the governor of Gyeonggi-

1 do to teach him English--reading in English.

2 MR. CAMPBELL: Now, is that the province where Seoul
3 is located?

4 JUDGE MATSCH: Yes, Seoul is the capital of
5 Gyeonggi-do Province.

6 MR. CAMPBELL: And this is a time--you say right
7 after the--or shortly after the armistice, there was a great
8 deal of destruction, refugee issues--

9 JUDGE MATSCH: Oh, yes.

10 MR. CAMPBELL: --human rights issues. What was
11 going on at this time?

12 JUDGE MATSCH: Well, Seoul was almost flattened,
13 very few buildings survived. Seoul had been taken and retaken
14 three times--

15 MR. CAMPBELL: Wow.

16 JUDGE MATSCH: --during the war. And so there--it
17 had been--you know, there were hardly any buildings that
18 weren't pock holed with ordnance, but there were some
19 buildings that did survive, and some of them were very nice,
20 and we were in one on a hill top.

21 MR. CAMPBELL: We being who; the intelligence or--

22 JUDGE MATSCH: No, the Seoul Area Field Office--

23 MR. CAMPBELL: Okay.

24 JUDGE MATSCH: --which there were about 20 of us,
25 and that was it. So here too I was absolved of some of my

1 guilt about college deferment because most of my colleagues
2 there were combat veterans.

3 MR. CAMPBELL: They were involved in the program
4 that you were part of?

5 JUDGE MATSCH: Yes. And one of them was very
6 influential in my life; had been in Europe. He had been a
7 lawyer, he was in World War II in Europe, and he was in the
8 reserves and got called back into Korea.

9 MR. CAMPBELL: So he was a few years older than you?

10 JUDGE MATSCH: Quite a few years older, yes.

11 MR. CAMPBELL: And was part of the team you were on
12 or was--

13 JUDGE MATSCH: Yes. This--well, we had different
14 teams with different assignments, but this was at a time when
15 Syngman Rhee, the president of what the Americans thought was
16 a democracy--those who weren't working there--was furious with
17 the armistice, wanted to continue the war and push back up to
18 the Yalu River and take over North Korea and unify.

19 So, there were these huge demonstrations, Pukchin
20 Tongil was the phrase which is push north, unify. And when
21 the American Army started pulling out--we pulled out the 25th
22 Division I think it was--there were anti-American
23 demonstrations, huge demonstrations.

24 MR. CAMPBELL: Because of the pull out.

25 JUDGE MATSCH: Yes, disagreement with the policy

1 because Syngman Rhee said, you know, we had them before--this
2 is when--before the Chongqing Reservoir and the whole Chinese
3 Army came in.

4 MR. CAMPBELL: Well, what was the thinking about
5 whether you would--if you pushed north, whether you would
6 confront the Chinese again?

7 JUDGE MATSCH: Well, it was assumed that you would,
8 but that the Americans and--the South Korean Army by that time
9 had become a pretty powerful force. And one of the things
10 that was involved was keeping them on short supply so they
11 wouldn't start north on their own. So, petroleum reserves,
12 that kind of thing, were controlled by the Americans.

13 MR. CAMPBELL: And the reserves were largely in the
14 north, were they not?

15 JUDGE MATSCH: No. I'm talking about the--

16 MR. CAMPBELL: Oh, the--

17 JUDGE MATSCH: --the logistical--for the South
18 Korean Army because it could have committed a pretty good--
19 themselves pretty well in a new war; they had been built up
20 and trained. But at any rate, there were these huge anti-
21 American rallies.

22 MR. CAMPBELL: Do you have any sense of what the
23 future of the Korean Peninsula looks like?

24 JUDGE MATSCH: None at all. It was an agricultural
25 thing. The idea that Seoul would become a major metropolitan

1 area and that Korea would be making automobiles and all that
2 was far from my imagination.

3 MR. CAMPBELL: What does the future of Korea look
4 like to you?

5 JUDGE MATSCH: I have no idea. One thing to
6 remember about Korea is that, you know, the dividing was very
7 artificial; it was sort of just--

8 MR. CAMPBELL: 38th parallel--

9 JUDGE MATSCH: --yes, sort of done on a map. And
10 wouldn't have been done at all except for Yalta and letting
11 the Russians into the Pacific War, which they never did
12 participate in but got credit for and so the dividing line was
13 Russian influenced.

14 But all of the major resources for industrialization
15 were in the north, the rivers--and there was some industry in
16 the north. The south was agricultural.

17 MR. CAMPBELL: Agricultural.

18 JUDGE MATSCH: Yes, so the governor of whom I spoke
19 was actually a North Korean who fled to the south when the
20 communists took over.

21 MR. CAMPBELL: Was there--was there massive--

22 JUDGE MATSCH: Well, yes--

23 MR. CAMPBELL: --migration from North to South?

24 JUDGE MATSCH: --you know, the people who were
25 involved in the industry, the people who were managers, fled

1 the communists.

2 MR. CAMPBELL: I didn't realize that, and that must
3 have some tie to the industrial development--

4 JUDGE MATSCH: Sure.

5 MR. CAMPBELL: --in the south and--

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: --the dwarfing of that in the north.
8 Before we leave your military experience, speak just a bit--
9 you've eluded a couple of times to working with the governor
10 of the province.

11 JUDGE MATSCH: Well, I was mostly keeping that going
12 by teaching him, going to these sessions with him. And we
13 read children's school books. He was learning to read
14 English, but that gave me an input into that provincial
15 government.

16 But then the police were national police not local
17 and I worked with them and--so I learned--here I came out of
18 law school, full of due process and individual liberty and all
19 of that sort of thing. Then I got into something that was
20 quite different, which included--

21 MR. CAMPBELL: Elaborate--elaborate somewhat.

22 JUDGE MATSCH: Interrogation methods were not
23 consistent with Miranda at all. And the treatment of people,
24 ordinary people in these mass rallies--I attended these
25 rallies for purposes of getting information and--

1 MR. CAMPBELL: Now, are these the anti-American
2 rallies you're referring to?

3 JUDGE MATSCH: Yes, they were--they built a big
4 soccer field called Seoul Stadium--it wasn't destroyed--it
5 would hold 100,000 people. And there would be these rallies
6 there where people were forced to attend the--you know, it's
7 divided into Gus and Dongs and smaller units of government in
8 a province--and people were ordered to attend these. And they
9 would shout anti-American slogans in these.

10 MR. CAMPBELL: And they're ordered by the South
11 Korean government--

12 JUDGE MATSCH: Yes. Yes, show up.

13 MR. CAMPBELL: Was it effectively a police state at
14 that point?

15 JUDGE MATSCH: Largely, it was--yes, it was not a
16 democracy.

17 MR. CAMPBELL: Well, it did democratize over the
18 years but--

19 JUDGE MATSCH: Yes, it's been back and forth
20 somewhat but Syngman Rhee was of course a big hero and icon
21 there and he was authoritarian. And the parliament was
22 somewhat subservient.

23 But these rallies--one of them was in front of the
24 American Embassy and was one of the few buildings left, which
25 involved ex-soldiers tearing out cobblestones in front of that

1 building and throwing them through the windows, and it was a
2 siege.

3 MR. CAMPBELL: And was this at the very time that
4 the American troops were--forces that were American troops--

5 JUDGE MATSCH: Yes.

6 MR. CAMPBELL: --that were withdrawing?

7 JUDGE MATSCH: They were withdrawn by divisions.
8 And by the time another division pulled out this got pretty
9 hostile. They weren't bad--you know, the people weren't anti-
10 American, and the government wasn't supposed to be anti-
11 American, but there were big protests.

12 MR. CAMPBELL: Let's turn to your legal career.
13 We've been going for an hour or so, do you want a break for a
14 little bit?

15 JUDGE MATSCH: Yes, we might take a short break.

16 MR. CAMPBELL: Okay. And maybe we'll--

17 JUDGE MATSCH: Get into the law.

18 MR. CAMPBELL: Just start into the law because we've
19 got a little time--

20 JUDGE MATSCH: All right.

21 MR. CAMPBELL: --maybe your bankruptcy tenure on the
22 bench and stop there before we--

23 JUDGE MATSCH: Okay.

24 MR. CAMPBELL: --get into the meat and potatoes of
25 the last 45 years.

1 (Whereupon, a recess was taken.)

2 MR. CAMPBELL: Continuing.

3 JUDGE MATSCH: Well, I wanted to go back to talk
4 about my experience in Korea. Beginning with this, that I was
5 in counterintelligence, and that means you're attempting to
6 prevent the other side from obtaining sensitive information,
7 so that's why it's counterintelligence.

8 But intelligence gathering, whatever counter or
9 active, is completely amoral. There are no rules. It is in
10 the interest of your country to abandon all of the things
11 learned in life about decency and morality. And coming out of
12 law school, legality, forget it. Your job is to obtain EEI,
13 Essential Elements of Information.

14 How you obtain it is up to you. You use sources and
15 you can abuse sources. Many of the people with information
16 are double agents; they deal with both our sides for their
17 personal gain.

18 This I think was a harsh reality and particularly
19 for me coming out of law school. And it is something that I
20 think has stayed with me and has reinforced my view of due
21 process, my view of individual dignity, my view of humanity,
22 and--

23 MR. CAMPBELL: The rule of law.

24 JUDGE MATSCH: --the importance of the rule of law
25 because I have been there without it.

1 MR. CAMPBELL: Have mores of that counter culture,
2 counter to the--American--Anglo-American legal system which
3 you were schooled in further permeated our culture? Are they
4 more threatening to us today? I mean, that which you
5 described had something that has pushed you back towards the
6 rule of law, back towards human dignity.

7 JUDGE MATSCH: Well, I came back with real emphasis
8 on the reverse of what I had been experiencing, but what
9 troubles me today is there is no moral compass.

10 MR. CAMPBELL: Right.

11 JUDGE MATSCH: The ship of state is sailing without
12 a compass. And individuals are living their lives with no
13 standard of normative values and no sense of decency.

14 When Justice Scalia talked about the--and was
15 criticizing the capital punishment cases on developing
16 standards of decency or something and he said the reverse is
17 also true, but in words that I don't now specifically
18 remember, but you know our entertainment industry, everyday
19 living is just done without moral values or a sense of
20 decency.

21 MR. CAMPBELL: I want to return to this because I
22 want to talk a little perhaps in another session--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: --about the state of not only the
25 judicial system as you see it but the state of our country as

1 you see it and the state of our planet as you see it because I
2 think--I mean that's almost presumptuous to tackle such
3 things, but I think there are real issues and questions that
4 are not necessarily the same as we've always had in our
5 tradition of American democracy.

6 JUDGE MATSCH: That's right. And, you know,
7 community values--this is when we heard politicians say this
8 is not our values, well, what are our values?

9 MR. CAMPBELL: Yes.

10 JUDGE MATSCH: I'd like somebody to explain them.
11 And this is true about every day human interaction and highway
12 rage, that type of thing; you know, it takes something like a
13 fire or a flood to suddenly recognize there are other people--

14 MR. CAMPBELL: --there is some humanity out there.

15 JUDGE MATSCH: That's right. But it takes something
16 like that to bring it out. As I said--

17 MR. CAMPBELL: I think I'm going to ask you to
18 return to those somewhat more macro subjects. Let's at least
19 for the rest of this session--and I am not shying from the
20 questions that you raised because they're perhaps the most
21 profound ones that we face as a nation.

22 JUDGE MATSCH: That's right. As a global--

23 MR. CAMPBELL: Beyond the nation.

24 JUDGE MATSCH: That's right.

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A Decade Practicing Law (1956-1965)

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MR. CAMPBELL: But let's turn to your early legal career, and that's approximately the decade of 1956 to 1965. 1955 or '6 you complete your military service--

JUDGE MATSCH: Yes.

MR. CAMPBELL: --and set out on a legal career.

JUDGE MATSCH: Yes. And I went back to Ann Arbor and talked with a professor whom I did not have when I was there. He reviewed my record and talked with me and gave me a very good letter of recommendation and then also gave me the names of alumni in a number of cities where there were strong alumni which includes almost everything.

MR. CAMPBELL: Right.

JUDGE MATSCH: Michigan has a very strong alumni, so I went to various places. Milwaukee I was offered a job there in the Foley Law Firm, Foley Lardner--

MR. CAMPBELL: Yes.

JUDGE MATSCH: --anyway I then came out to Denver. My brother was here already and married with two kids. And I went to John Shafroth who was the Michigan contact that I was given. And I ended up interviewing the larger Denver firms. And--including the firm you went with, and I ended up with Holme Roberts More and Owen as it was in those days who was--

MR. CAMPBELL: Oh, is that right, was it Otto Moore?

JUDGE MATSCH: No, no, it was--I can't think--M-O-R-

1 E--

2 MR. CAMPBELL: Okay.

3 JUDGE MATSCH: --oh, Robert More and he--no, he was
4 part of the old school Denver people. But most of the
5 practicing lawyers there were transfers from the east and GIs,
6 and one of them was 10th Mountain, Keith Anderson.

7 MR. CAMPBELL: I hate even to interrupt, excuse me.
8 But even when I started 15 years or so after you did, a
9 handful of the half dozen or eight law firms, I would say 80
10 percent of them--I mean 80 percent of the young lawyers who
11 were recruited were recruited from Michigans (sic) and
12 Chicagos (sic) and Stanfords (sic)--

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: --and Ivy League schools, not the
15 local law schools that had a real influence on Denver.

16 JUDGE MATSCH: Yep. Well, Denver was opened up as a
17 result of the war.

18 MR. CAMPBELL: And so your first job as a lawyer,
19 how did you come about actually making the choice of Holme
20 Roberts and Owen?

21 JUDGE MATSCH: I just felt much more comfortable
22 with the lawyers who were there, and I was able to talk with
23 all of the partners and associates, and they were a congenial
24 group, and I felt like I fit in there.

25 MR. CAMPBELL: It would take a decade to talk to all

1 of the lawyers in the big law firm today.

2 JUDGE MATSCH: Yes. One of them was from Michigan,
3 Doug Hoyt and he had graduated the year ahead of me.

4 MR. CAMPBELL: Oh, I didn't know that.

5 JUDGE MATSCH: 1952. He had been at age 18 a bomber
6 pilot.

7 MR. CAMPBELL: Wow. In World War II.

8 JUDGE MATSCH: Yes. Before he went to law school at
9 Michigan.

10 MR. CAMPBELL: I had some dealings with him, but he
11 was not a practicing lawyer at the time, by then he was a
12 developer or business owner.

13 JUDGE MATSCH: Yes, he was an oil and gas lawyer,
14 and then he saw that there was a lot more money in the
15 industry than there is being a lawyer for the industry.

16 MR. CAMPBELL: Did you consider returning to
17 Burlington or the other direction--did you consider locating
18 in New York or Chicago or the big urban centers? You
19 certainly with your law review experience and success had many
20 opportunities.

21 JUDGE MATSCH: Yes, I did. And when I was in law
22 school, I was headed in that direction. I was aware of
23 Covington Burling.

24 MR. CAMPBELL: In D.C.

25 JUDGE MATSCH: D.C. and of course the firms in New

1 York and--Cravath Swaine and Moore--among them. And they came
2 to interview on campus, and because I was obviously headed for
3 the Army, I didn't get interviews except by Cravath Swaine and
4 Moore. And a lawyer from Cravath Swaine and Moore sat down
5 and talked with me.

6 And this was one of the major turning points. He
7 said, you know, when you get out of the Army, feel free to
8 contact us because we're interested in you, and this is how it
9 works at Cravath Swaine and Moore.

10 MR. CAMPBELL: The stockings don't get any silkier
11 than Cravath.

12 JUDGE MATSCH: And he said--

13 MR. CAMPBELL: --and Cravath at the time was under
14 50 lawyers I'm sure.

15 JUDGE MATSCH: Yes. I don't know the size but it
16 was--you know, it was a New York firm--

17 MR. CAMPBELL: I know, absolutely.

18 JUDGE MATSCH: --well respected. He said we'll hire
19 you as an associate and in three years we'll either put you on
20 the associate staff or let you go.

21 After seven years, that's the partnership cut. And
22 if you're a senior associate and you've done well but you're
23 not going to be a partner--

24 MR. CAMPBELL: Find a new job?

25 JUDGE MATSCH: --we'll put you with one of our

1 clients. And one of my--as it happened, one of my classmates
2 went that very route and ended up at Ford Motor Company.

3 MR. CAMPBELL: Yes.

4 JUDGE MATSCH: But he then said to me I doubt that
5 you'll ever be partner. And you've got nothing going for you
6 except your brain. And he says--

7 MR. CAMPBELL: Now, wasn't he off.

8 JUDGE MATSCH: --yes, you come out of a small town,
9 you have no connections, your family has no connections, and,
10 you know, if you're going to be a partner there's more to it
11 than that.

12 MR. CAMPBELL: As I said, the stockings don't get
13 silkier. I think that may even be true today.

14 JUDGE MATSCH: And that stuck with me. And I
15 thought the hell with that.

16 MR. CAMPBELL: Interesting. Many lawyers who have
17 become federal judges early in their careers were active in
18 politics or public service; for example, party leadership or
19 elected state office or senior staff for governors, senators,
20 congressmen, or active in U.S. Attorney's Offices. Did your
21 ten years as a lawyer before you went to the bench, your pre-
22 judicial time as a lawyer, involve any such political or
23 public office experience?

24 JUDGE MATSCH: Yes.

25 MR. CAMPBELL: Can you elaborate?

1 JUDGE MATSCH: Yes. When I first arrived in Denver,
2 I told you I had an older brother here, my brother Bill, and
3 he was a Republican, but not particularly active.

4 MR. CAMPBELL: Now, was he--I'm sorry--but did he
5 have the accounting--

6 JUDGE MATSCH: No, no, this is the fighter pilot.

7 MR. CAMPBELL: Okay.

8 JUDGE MATSCH: And he got into a firm, small firm,
9 that was making chest shells for polio patients and was--

10 MR. CAMPBELL: Here in this part of the country?

11 JUDGE MATSCH: Right here in Littleton, Colorado,
12 yes--Englewood, Colorado. And anyway, he was going to become
13 a doctor, and he did pre-med at the University of Denver. He
14 also played football at the University of Denver when they had
15 football, and that's why he came to Denver, to play football.

16 At any rate because he was on a football team in the
17 Air Force and the coach there of that team was the civilian
18 coach at the University of Denver and brought a lot of those
19 players to Denver to play football, and they were very
20 successful.

21 But at any rate he was established in this business
22 and became a physiologist in practice by fitting--going around
23 the country and hocking these chest shell respirators.

24 MR. CAMPBELL: What were they plastic molds or--

25 JUDGE MATSCH: Yes, on the chest.

1 MR. CAMPBELL: Right.

2 JUDGE MATSCH: It got people out of the iron lung.

3 MR. CAMPBELL: Oh.

4 JUDGE MATSCH: Which was an awful device but
5 necessary to keep them breathing. So he became a breathing
6 specialist as well as a salesperson for this.

7 Anyway, that got me into some political activity. I
8 had of course been impressed with the Eisenhower presidency,
9 but the Denver Republican party at that time was almost
10 entirely the Denver Country Club, and these were elitists who
11 would rather lose than lose control of the party, I think.

12 But Jack Kelly, a young lawyer, and others were in
13 the group called Republican Associates and, without party
14 connection to the organized party, started going out onto the
15 street, and we knocked on doors and went to parts of Denver
16 that wouldn't vote Republican if their life depended on it
17 probably, but did go in there, knock on doors, and introduced
18 ourselves and promoted Governor Dan Thornton who was a big
19 friend of Eisenhower.

20 And I do remember an occasion when I was in west
21 Denver and knocking on a door, and a man came to the door in
22 his undershirt, and I was giving him brochures for Thornton
23 and others. And he said, "You're for Dan Thornton." I said,
24 "Yes, I am, I'm representing him here." And he said, "How
25 tall is Dan Thornton?" And I said, "Well, I'm not sure, I

1 think he's about six feet." And he said, "Six feet, well, I
2 didn't know they stacked shit that high." So, I learned what
3 it is to do street politics.

4 MR. CAMPBELL: Well, you know, as a Republican you'd
5 picked some difficult geography.

6 JUDGE MATSCH: Yes, I became a poll watcher in north
7 Denver--

8 MR. CAMPBELL: Yes.

9 JUDGE MATSCH: --in a very black neighborhood. But
10 at any rate it went on from that to--and I was at Holme
11 Roberts, and they wanted me to get trial experience, and I
12 wanted to get trial experience, so I--Don Kelley was the
13 United States Attorney--I went over to ask him for a job, and
14 we talked, and he said well I'll hire you, but you've got to
15 get party clearance.

16 He said do you know your chairman? You live in
17 Jefferson County--as we did. I said, no. And he gave me his
18 name--it was Don. And I went out to have lunch with Kearney--

19 MR. CAMPBELL: And is that--is that Don Carney of
20 Bradley Campbell Carney or--?

21 JUDGE MATSCH: No, it was Kearney--I almost went to
22 work with him at one time, but I can't remember the rest of
23 them right now--Tom, I guess--Tom. And he said we don't have
24 anybody else looking for the job, so okay, tell Don it's okay.
25 So, then I went to the U.S. Attorney's Office.

1 MR. CAMPBELL: And that was '59?

2 JUDGE MATSCH: Yes.

3 MR. CAMPBELL: If I'm not mistaken, in the ten years

4 in the Denver area, before you joined the federal judiciary--

5 first as a bankruptcy referee, you had four different jobs?

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: Talk a little about those. You

8 mentioned you started at Holme Roberts.

9 JUDGE MATSCH: Yes.

10 MR. CAMPBELL: Then a stint in the U.S. Attorney's

11 Office.

12 JUDGE MATSCH: Right.

13 MR. CAMPBELL: What else?

14 JUDGE MATSCH: Well, when Don Kelley left, Don

15 Brotzman came in as the U.S. Attorney; I worked with him. And

16 then when--everything was political in those days. And when

17 Kennedy beat Nixon, the writing was on the wall that this job

18 wouldn't be there anymore. Larry Henry came in as the United

19 States Attorney. I stayed on to finish some major trials, tax

20 fraud cases with him.

21 And then I was scheduled to go back to Holme

22 Roberts, but Kelley became the city attorney.

23 MR. CAMPBELL: And this was '61?

24 JUDGE MATSCH: Yes.

25 MR. CAMPBELL: At that time, Denver had started an

1 annexation war with Arapahoe County and Jefferson County which
2 went into litigation. Bob Wong (phonetic), who had been in
3 the U.S. Attorney's Office, went with Kelley and then they
4 approached me to come over to the city and handle this
5 annexation war.

6 MR. CAMPBELL: Really.

7 JUDGE MATSCH: So, I went over. And then Kelley
8 went to the Supreme Court--Colorado Supreme Court, was
9 elected, and Wong became City Attorney, and so I was his first
10 assistant.

11 And in addition to the annexation stuff, I was
12 involved generally in running the City Attorney's Office. And
13 then suddenly we got the police burglary scandal, so I was in
14 the middle of that which resulted in 52 officers going to
15 prison.

16 MR. CAMPBELL: And that was--

17 JUDGE MATSCH: It was a very difficult time.

18 MR. CAMPBELL: --'62 or '63?

19 JUDGE MATSCH: Something like that, yes, I can't
20 remember the exact number. But that was a very tense time.
21 And when Dick Batterton was the mayor, there were very few
22 Republican mayors in the history of Denver.

23 MR. CAMPBELL: In Denver, was this right before he
24 came in or right after?

25 JUDGE MATSCH: No, no, after, yes.

1 MR. CAMPBELL: So, it was in the '60s then?

2 JUDGE MATSCH: Yes, Tom Currigan is the one who
3 succeeded Batterton.

4 MR. CAMPBELL: Okay. All right.

5 JUDGE MATSCH: So that game was up. And then
6 Shumaker and Wong were starting a law firm, but Holme Roberts
7 and Jim Owen, in particularly, asked me to come back to Holme
8 Roberts as a partner, which I did. And so, I was there as a
9 litigation partner.

10 MR. CAMPBELL: At Holme Roberts?

11 JUDGE MATSCH: Yes.

12 MR. CAMPBELL: From about '63 to '65?

13 JUDGE MATSCH: Right.

14 MR. CAMPBELL: In the year before you became a
15 bankruptcy judge following the assassination of John Kennedy,
16 November of '63, your political activity included some effort
17 in support of the 1964 Civil Rights Act; can you talk about
18 that?

19 JUDGE MATSCH: Yes, but I would also go back to
20 Republican activities because Don Brotzman ran for Congress.

21 MR. CAMPBELL: Right.

22 JUDGE MATSCH: And I helped him in his campaign.

23 MR. CAMPBELL: He successfully ran.

24 JUDGE MATSCH: He ran and successfully ran. And I
25 went back to Washington with him just to--

1 MR. CAMPBELL: Now, which district?
2 JUDGE MATSCH: 2nd District.
3 MR. CAMPBELL: Okay.
4 JUDGE MATSCH: Boulder, Adams County.
5 MR. CAMPBELL: All right.
6 JUDGE MATSCH: Boulder at that time was Republican,
7 stronghold actually.
8 MR. CAMPBELL: Interesting.
9 JUDGE MATSCH: But anyway, I went back with him just
10 to help him get started in setting up his office and staff and
11 everything. But as a part of that, I attended John F.
12 Kennedy's speech in the State of the Union Address, which was
13 quite an experience, sitting in the gallery, Kennedy was the
14 president, and I helped draft Brotzman's response to the State
15 of the Union address.
16 MR. CAMPBELL: Now, was that--do you remember the
17 year that Kennedy was sworn in--
18 JUDGE MATSCH: '62.
19 MR. CAMPBELL: So was it '62?
20 JUDGE MATSCH: '63, the State of the Union Address.
21 MR. CAMPBELL: Okay. Which was delivered about six
22 months before his assassination.
23 JUDGE MATSCH: That's right, yes.
24 MR. CAMPBELL: Maybe eight months, something like
25 that.

1 JUDGE MATSCH: Yes. And, you know, the Republicans
2 were after him. He wasn't universally liked. But anyway, I
3 had that political experience running a--I was one of three
4 running a campaign.

5 MR. CAMPBELL: Brotzman's campaign.

6 JUDGE MATSCH: Yes, and we actually had an issues
7 committee of young lawyers that I met with ever Tuesday
8 evening in Boulder to write position papers.

9 MR. CAMPBELL: Now, where did those colleagues end
10 up? Are those people who you continued to--

11 JUDGE MATSCH: Well, one of them was Stan Black, who
12 was Black Hutchinson.

13 MR. CAMPBELL: In Boulder?

14 JUDGE MATSCH: Yes. And offhand I don't remember
15 the others.

16 MR. CAMPBELL: When I spoke with you in preparing
17 for today you mentioned that around that time you were part of
18 some effort in support of the '64 civil rights legislation.

19
20 JUDGE MATSCH: Yes, this is like in '63 when this
21 was bubbling up. I was at this time, you know, free
22 politically so--

23 MR. CAMPBELL: You had returned to private practice
24 then to Holme Roberts.

25 JUDGE MATSCH: Yes, I had. So, I was on a speech

1 committee to make speeches in favor of the Civil Rights Act,
2 and I did that in representing Congressman Brotzman. And on
3 one occasion, there was a meeting in Littleton, Colorado, by a
4 church group, and their effort was to subsidize African
5 Americans to move into Littleton, because it was such an all-
6 white community and they wanted to diversify it.

7 So, I attended a meeting of a group doing that. And
8 it was at that time that I met Martin Luther King.

9 MR. CAMPBELL: And was this a church group that--

10 JUDGE MATSCH: Yes. That was promoting this. There
11 were others too, and, you know, I had nothing to do with the
12 church, so it was a very memorable meeting--evening in a
13 Sunday school room in this church in Littleton. And Martin
14 Luther King was there; he had given a speech somewhere in
15 Denver, but I got to shake his hand and talk with him briefly
16 and saying that Congressman Brotzman--I'm sending good wishes
17 and so forth.

18 MR. CAMPBELL: Was King a contemporary of yours--I
19 mean age-wise was he--

20 JUDGE MATSCH: Well, yes, he was in his '30s.

21 MR. CAMPBELL: Share a little of that meeting. Were
22 you impressed with him?

23 JUDGE MATSCH: Oh, yes, it's hard to describe the
24 energy and the electricity that he generated. He was somebody
25 uniquely different, I think. And I could feel the power in

1 him, and he wasn't giving a speech as such. He stood there in
2 this room with maybe 15 people, and he stood behind a metal
3 chair with his hand on the chair and talked to us.

4 And he talked about the experience of his going from
5 the airport in Atlanta to their home and that they would--the
6 highway goes by an amusement park which was closed to colored.
7 And how he had to explain to his two children why it is that
8 they couldn't go to the amusement park. I remember him
9 talking about that.

10 MR. CAMPBELL: Did any of these work experiences
11 prior to your judicial career influence particularly your
12 development as a lawyer and ultimately as a U.S. District
13 Judge?

14 JUDGE MATSCH: Oh, for sure. You know, these
15 experiences I think added up to swimming in the sea of the
16 people. And it is because in my life I have encountered--very
17 close encounters with people from all different classes of
18 socially economic classes, legal experiences, and I think I
19 learned what it is to be a human being.

20 MR. CAMPBELL: And your lawyering years as part of
21 that?

22 JUDGE MATSCH: Yes, I mean we were, you know,
23 primarily a corporate client firm, but we did have some other
24 things and one of which was--I of course at this time had
25 trial experience. And one of our clients was an oil and gas,

1 drilling exploration company. The head of it was a fellow who
2 had been raised in the oil fields of Oklahoma, a rough and
3 ready guy.

4 And Jim Bye, in our firm represented him and his
5 company for tax stuff. Anyway, there was a time when they
6 were stealing cable from this company. And his plant manager
7 there was trying to stop that, so he decided to take his rifle
8 and go out there and lie in the burrow pit and wait for these
9 guys to come in--and they did--two young guys came in and were
10 unloading a cable and--on a pickup. And on their way driving
11 out, he stood up and yelled at them and pointed a rifle at
12 them, and they came--still kept coming on, so he shot and
13 killed both of them. So, he's charged with murder. And this
14 is in Cortez, Colorado.

15 And Jim Bye notified me about this, and I went down
16 there.

17 MR. CAMPBELL: And this was--the second stint--
18 you're a partner at Holme Roberts?

19 JUDGE MATSCH: Yes, I'm a partner. So, I went down
20 there, and I learned a lot of things, this being a small town.
21 And these two fellows were high school--had been high school
22 football players and heroes. And so, the town was aghast.

23 Our client was a young guy, married, had a couple of
24 kids, wife had cancer, and the situation looked pretty bad.

25 And I went to see George Dilts who was--had been the

1 district attorney down there and in private practice with
2 another fellow whose name escapes me for the moment--at any
3 rate Dilts was my contact. I found out that there had been no
4 real forensics done, like the path of the bullet. One of them
5 had been hit right square in the head between--in the
6 forehead; the other was killed in the chest with shrapnel.

7 And anyway, I called because I knew a forensic
8 doctor here--pathologist. I got him down there. And we were
9 able to get the autopsy pictures and saw that the bullet that
10 went right into the forehead had been the driver who was down
11 like this ducking, and unfortunately the second bullet hit the
12 steering wheel and shattered and went into the chest.

13 So, our defense was self-defense. He was in the
14 burrow pit, they were aiming the vehicle right at him and
15 swerved, and that's when he shot and unfortunately killed
16 them.

17 But I toured around the town a little bit, and I saw
18 a lawyer from Denver standing up in front of this jury.

19 MR. CAMPBELL: This trial was in Cortez?

20 JUDGE MATSCH: Yes. A lawyer from Denver standing
21 up in front of this jury from a Denver corporate law firm
22 would not be saleable, so I got George Dilts to--he did the
23 trial. And it was a not guilty verdict.

24 So, I had--this fellow was a rough and ready guy
25 and--you know, I lived with him and his wife essentially down

1 there for a couple of weeks getting this case ready.

2 Years later, I learned that my client, whom I got to
3 know well, killed his 16-year-old son with a butcher knife
4 because he was trying to defend his wife from this guy beating
5 her. Shows you--

6 MR. CAMPBELL: Yes.

7 JUDGE MATSCH: Anyway, that was a unique experience.

8 MR. CAMPBELL: Just to wind up the private practice
9 years, were there mentors or role models from this ten-year
10 period that were particularly important to your--

11 JUDGE MATSCH: Well, yes, there were several, but
12 not necessarily within that firm. In those days, you could go
13 over to the district court, Denver District Court building,
14 and walk into any courtroom and be--in front of the rail they
15 had chairs, and any lawyer could come in and sit down in the
16 well during a trial. And I did that on a number of occasions
17 and saw some of the deans of the practice working there.

18 So, you know, I like trial lawyers, and there
19 weren't that many trials in Holme Roberts' practice.

20 MR. CAMPBELL: Right.

21 JUDGE MATSCH: So, I ended up--there was a huge
22 anti-trust case out of Philadelphia for General Electric and
23 Westinghouse building turbines. Because turbines were such a
24 unique product, they entered into a conspiracy allocating the
25 work.

1 MR. CAMPBELL: The market.

2 JUDGE MATSCH: And that went to trial in
3 Philadelphia, criminal conviction. And then there were civil
4 trials all over the country. And one of the law firms
5 representing GE hired us to do background work. And one of
6 the things they requested was to read and brief every anti-
7 trust case that had ever been recorded; that was given to me
8 to do with an associate.

9 And so here I--and then writing position papers for
10 them based on things like what if we went to a default
11 judgment, or what does it mean to object to form in
12 depositions, things like that.

13 MR. CAMPBELL: And this was in the civil side that
14 came from the the criminal end?

15 JUDGE MATSCH: Yes. And they were--you know, these
16 cases were all over the country. And then they got combined
17 into this multidistrict stuff.

18 MR. CAMPBELL: Right.

19 JUDGE MATSCH: And so here I am itching to be in
20 front of a jury, and I'm writing these damn position papers.

21 MR. CAMPBELL: Right.

22 JUDGE MATSCH: Which sort of made me vulnerable to
23 Judge Arraj when he corralled me.

24 MR. CAMPBELL: I was going to say, that might have
25 cured you for the big firm practice.

1 JUDGE MATSCH: Yes, I mean, you know, I'm here to
2 try cases, not to write scholarly and lawyerly position papers
3 for another law firm.

4 **The Bankruptcy Bench (1965-1974)**

5 MR. CAMPBELL: After ten years of private practice,
6 came the bankruptcy court. In 1965, you left the practice of
7 law at the prestigious 17th Street firm of Holme Roberts and
8 Owen and became a full-time bankruptcy referee.

9 At that time, did you have much experience as a
10 bankruptcy practitioner?

11 JUDGE MATSCH: Almost none. The only work I had
12 done was I had put a poor fellow into bankruptcy and an
13 involuntary bankruptcy on behalf of the U.S. Bank we
14 represented.

15 MR. CAMPBELL: Right.

16 JUDGE MATSCH: So that was it. And I didn't know
17 anything about the bankruptcy court or practice.

18 MR. CAMPBELL: And is it fair to say that this is
19 not a position to which you had aspired in your decade of
20 practicing law?

21 JUDGE MATSCH: Not at all. And it was all because
22 of Judge Arraj.

23 MR. CAMPBELL: Well, we'll come to that. From your
24 own comments to the bankruptcy bar back in the mid '60s, I
25 think it is fair to say that you yourself were a bit

1 underwhelmed by the heights you had attained by your
2 appointment to the bankruptcy bench.

3 Let me read from an article in the bankruptcy bar's
4 newsletter reporting on a speech you gave the bankruptcy bar
5 just three and a half months into your tenure as a bankruptcy
6 referee in May of 1965. And I'm quoting from the newsletter,
7 regarding the speech given by Referee Matsch, "It seems
8 apparent that Matsch perceived a significant lack of
9 experience and professionalism amongst local bankruptcy
10 practitioners. He specifically stated that he had seen
11 evidence to suggest that practitioners often treated
12 bankruptcy work as the least desirable type of law related
13 work."

14 You certainly were not sugarcoating your take on the
15 state of bankruptcy practices in 1965. Given this skepticism
16 on your part, how did you happen to get appointed to and to
17 accept this job as a bankruptcy referee?

18 JUDGE MATSCH: Well, I had of course never had that
19 as a goal, but I had developed a good relationship with Chief
20 Judge Alfred A. Arraj as a result of my trial--many trials in
21 front of him as a prosecutor.

22 MR. CAMPBELL: U.S. District Court--prosecutor with
23 the U.S. Attorney's Office--

24 JUDGE MATSCH: Yes.

25 MR. CAMPBELL: --and the Chief Judge of the U.S.

1 District Court.

2 JUDGE MATSCH: Yes, and he loved to abuse, as we
3 thought of it, young assistant U.S. attorneys.

4 So there had been a couple of occasions when he
5 criticized me in front of a jury. I was getting a little
6 annoyed with that, and on one occasion we had--I had
7 prosecuted from under the Dyer Act, which was interstate
8 transportation of stolen vehicles, a very charming fellow who
9 had pretended to be from Norway and a ship building family and
10 ended up in Steamboat Springs and was a big fellow in the
11 town, all of which also involved a rental car from California.

12 So, he waived the jury. I don't remember who his
13 lawyer was. He waived the jury and we went to trial and Judge
14 Arraj found him guilty. But Judge Arraj was also fascinated
15 by this fellow; I could tell. So at the time of sentencing--
16 and of course we did not have sentencing guidelines; it was
17 purely discretionary. And I very seldom pitched for
18 sentencing, let the defense lawyers do that, and leave it in
19 the hands of the judge.

20 Well, the judge was irritated that he had to
21 sentence this man because he liked him, I think. And so, in
22 the beginning, he berated me for bringing this case. And was
23 saying we've seen all these stolen car cases--and this is
24 after the Supreme Court had said that keeping a rental car is
25 a stolen car--and you're turning this court into a collection

1 agency for Hertz.

2 So that irritated me. And I said to the judge,
3 well, Your Honor, I remind you that you found Mr.--whatever
4 his name was-- guilty after trial. And I'm not aware of your
5 oath of office, but I knew that due to my oath of office,
6 which is to prosecute crimes against the United States, and I
7 stopped. And I thought, oh he's going to hold me in contempt
8 or something.

9 MR. CAMPBELL: That doesn't sound like you.

10 JUDGE MATSCH: No response for a minute or two. And
11 then he proceeded to sentence him to prison. But from that
12 day on, I really got along well with Judge Arraj because I
13 stood up to him--

14 MR. CAMPBELL: Interesting.

15 JUDGE MATSCH: --and he admired that. I went to a
16 Christmas party at the house of Pete Holme, one of the senior
17 partners at Holme Roberts.

18 MR. CAMPBELL: Right.

19 JUDGE MATSCH: I encountered Judge Arraj there and -
20 -with my wife who was with me, of course, and he said I want
21 to see you in chambers 8:30 tomorrow morning. And I had no
22 idea why he would be doing that because I hadn't recently
23 appeared in front of him and, you know, I worried all night
24 what is wrong.

25 I got there at 8:30 in the morning; he sat me down

1 and talked about becoming a referee in bankruptcy. And I was
2 shocked. I didn't--anyway, to shorten this up, he was after me
3 for about a month to accept that job, and he gave me books to
4 read and all of that. And also told me that there were
5 problems there, nepotism being one, and there were many
6 problems which I won't go into at this point, but serious
7 problems. And I decided--well, there was an implied support
8 for a vacancy coming up on the court.

9 MR. CAMPBELL: Okay. That was my next question.

10 JUDGE MATSCH: Yes.

11 MR. CAMPBELL: Did you hope this might lead to a
12 district court judgeship or a political position of some sort?

13 JUDGE MATSCH: No, I was pretty much under the
14 impression that Judge Arraj--whose former law partner and
15 close friend was Gordon Allott, Senior Judge--that I'd be
16 getting an appointment as a U.S. District Judge if I took the
17 job.

18 MR. CAMPBELL: Giving up your position as a new--
19 relatively new Holme Roberts and Owen partner must not have
20 been easy.

21 JUDGE MATSCH: Well, it cost me money, considerable
22 amount of money and it was a shock to the lawyers at Holme
23 Roberts because I recall specifically telling Pete Holme, who
24 was sort of the manager, that I was going to become a referee
25 in bankruptcy, and he said I wouldn't be more shocked if you

1 told me you were going to be the postmaster in Swink,
2 Colorado.

3 MR. CAMPBELL: My next question was, did the people
4 at Holme Roberts think you had taken leave of your senses?

5 JUDGE MATSCH: They sure did; they sure did.

6 MR. CAMPBELL: What did Mrs. Matsch have to say
7 about this transition?

8 JUDGE MATSCH: Well, one of the great virtues of my
9 wife and our marriage was that she never questioned my
10 judgment on anything and never criticized me to my face, at
11 any rate, on anything I did including later in life some of my
12 more controversial decisions which led to adverse public
13 reaction. But she was strong--a strong partner in everything.

14 MR. CAMPBELL: You again addressed the bankruptcy
15 bar in a speech in April 1968, three years into your tenure on
16 the bankruptcy bench. You commented on the local state of
17 both consumer and business bankruptcy practice. Your
18 evaluation of the system does not appear to have changed
19 markedly as you call for farsighted reforms that were another
20 decade in coming.

21 And let me quote you from a 1968 speech to the local
22 bar--and I'm quoting--"The great misery is in the area of
23 consumer bankruptcy. This type of proceeding has become a
24 matter of increasing concern in our courts. In Colorado we
25 continue to regard these cases as individually significant and

1 to give each of them the full procedural course, even while
2 recognizing that the present law is inadequate, indeed perhaps
3 irrelevant to the problem. Yet it is the only statute we have
4 and it is our duty to make the most of it."

5 Turning to business cases you added--which again I
6 quote--"In the rehabilitation chapters, there is some tendency
7 simply to deliver over the client with little more than
8 fervent prayers for a repeat performance of the miracle of the
9 loaves and the fishes."

10 Bear with me, I've read this 20 times, and I laugh
11 each time.

12 JUDGE MATSCH: That's pretty good.

13 MR. CAMPBELL: Can you comment today on bankruptcy
14 practice in Colorado as you first encountered it in the mid
15 '60s? What was it like presiding over creditors' meetings,
16 riding herd over panel trustees, and leading prayers for the
17 repeat of the miracle of the loaves and the fishes?

18 JUDGE MATSCH: Well, this first meeting of creditors
19 had a profound effect on me I think, because, you know, the
20 bankruptcy lawyer for the debtor would put the debtor on the
21 stand and do the preliminaries, and then it was up to me to
22 question on behalf of the system and the public about
23 background and what caused the bankruptcy and so forth.

24 And we did that maybe 60 in a day. One day--which
25 went into the night--I did 90. These people all had stories

1 to tell. And in not a few of them they were there because of
2 health debt, and not a few of them were there because of a bad
3 experience with a lawyer--particularly automobile collisions
4 settled prematurely, obviously settled for less than the case
5 would be expected to recover and settled prematurely because
6 the person hadn't completed recovery from injury.

7 And it was clear to me that these were settlements
8 made by the low end of the bar who were hustling personal
9 injury cases who were settling just to get the rent money out
10 of the settlement because they were marginal practitioners
11 economically--well, in every way actually.

12 And, you know, on several occasions, I was so
13 shocked by this that I actually turned in a lawyer to the
14 ethics committee, but--the Colorado Supreme Court Bar.

15 It was shocking how many people were really
16 incapable of seeing and protecting their self-interest. And
17 were simply victims of a society that they didn't understand,
18 and that goes back to this earlier talk I made where--

19 MR. CAMPBELL: Even when they're represented, they
20 didn't.

21 JUDGE MATSCH: That's right, because the lawyer
22 representing them--many of them were just in it for their
23 appearance fee and that was it, and then they dumped them.

24 So, to see some of the inadequate lawyers and
25 inattentive lawyers was such a come down from what I had known

1 working from a law firm that had a very different type of
2 client.

3 MR. CAMPBELL: And public service--

4 JUDGE MATSCH: And public service, yes. And I
5 thought, you know, we're treating these people, putting them
6 through this process, and it's almost quasi criminal because
7 we're sort of accusing them of going into bankruptcy when they
8 didn't need to. Now, some of them were fraudulent.

9 MR. CAMPBELL: Of course.

10 JUDGE MATSCH: Yes.

11 MR. CAMPBELL: Not as many as some might think, but
12 of course.

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: I should add that your early public
15 comment on the state of the bankruptcy practice reflected no
16 lack of belief in the importance of the bankruptcy process and
17 included an invitation to improve it.

18 Your April 1968 speech concluded with words that may
19 be as astute and apt today as they were 50 years ago, and I'm
20 quoting you again, but "We as a nation are undergoing a great
21 awakening to the social and economic problems existing among
22 us. Our inertia has been broken and there is movement in many
23 directions. The question of debtor relief and credit problems
24 is but one focus of attention; but it is an important one.
25 What all of this boils down to and what I want to leave you

1 with today is an invitation, an invitation to get involved."

2 Was your invitation accepted?

3 JUDGE MATSCH: Yes, I think it was in a broad sense.

4 And that is that I was one of a group of referees in
5 bankruptcy, the leader of the group was Asa Herzog in the
6 southern district of New York.

7 MR. CAMPBELL: --southern district of New York.

8 JUDGE MATSCH: And he had a group of us working
9 toward legislation that--Uniform Commercial Code had just come
10 up, we're trying to get something like that for consumers.

11 But also--and I can't remember this man's name in
12 California who wrote bankruptcy books, treatises, why I can't
13 remember his name I'm sorry, but he was a part of that. There
14 was a time that we met in Washington, D.C. and talked about
15 developing movement toward a new bankruptcy code.

16 And as a part of that, I made some speeches around
17 the country to referees in bankruptcy and lawyers and also was
18 active in trying to promote within our own congressional
19 district, some movement towards this. Not because of my
20 efforts but as a part of the--sort of movement we did get
21 reform, we did get a new bankruptcy code, we did get more
22 prestige and recognition of the importance of the bankruptcy
23 court. It was recognized as a separate court as opposed to
24 just an adjunct to the U.S. District Court.

25 And we did get major changes in Chapter X and

1 Chapter XI, the reorganization parts of the statute, and we
2 also got the bankruptcy judge into more of judicial roles,
3 they no longer did these first meetings of creditors.

4 And most importantly--and I was concerned about it
5 at the time we got the U.S. Trustee System and we no longer
6 had these lawyers as trustees squeezing a few assets out of
7 people. And I was upset with that process too when I first
8 came in because these things that they recovered as assets of
9 the estate were often given over to one favored fellow who
10 sold them, so I changed that to a public auction. And we had
11 public auctions in the carpenter's union hall. And that
12 transformed that whole system so that they were no longer
13 wheeling and dealing in guns and sets of work tools and that
14 kind of stuff that you get as the only assets of the estate.

15 MR. CAMPBELL: And the bankruptcy judge or referee
16 was no longer the supervisor of the administration by the
17 trustees.

18 JUDGE MATSCH: That's right.

19 MR. CAMPBELL: You allude to that in the U.S.
20 Trustee's Office, but it's interesting, we're talking your
21 efforts along these lines are five to ten years ahead of the
22 reform.

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: You were--you and Herzog and a
25 handful of law professors--

1 JUDGE MATSCH: That's right.

2 MR. CAMPBELL: --Countrymen and--

3 JUDGE MATSCH: Countrymen, yes.

4 MR. CAMPBELL: --Troest or Treister--Countrymen was
5 the University of Minnesota.

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: Treister and Troest were the
8 California connection I think.

9 JUDGE MATSCH: Yes.

10 MR. CAMPBELL: It was a Congressman Edwards who was
11 from California.

12 JUDGE MATSCH: Oh, yes--from California, yes.

13 MR. CAMPBELL: But your concerns were amazingly
14 prophetic, you and this small group that went to work long
15 before the bankruptcy revisions. Although the rules came in
16 the mid '70s, the statute wasn't effective until '79, the '78
17 Act.

18 JUDGE MATSCH: Yes. Well, you know, bankruptcy
19 earlier had all the referee--the referees were mostly
20 part-time.

21 MR. CAMPBELL: Oh, yes.

22 JUDGE MATSCH: And there were many of them, and they
23 were sort of court TAs of the district judges.

24 MR. CAMPBELL: Well, a little-known fact is that
25 today we have something like 350 bankruptcy judges among the

1 91 or '2 districts--

2 JUDGE MATSCH: Yes.

3 MR. CAMPBELL: --you know, they match. There was
4 the same number of bankruptcy referees in 1938. But as you
5 point out, the vast majority of them were part-time and very
6 part-time. And funded in a very different fashion.

7 JUDGE MATSCH: One thing that I want to make sure I
8 don't leave out is the role of Benjamin Hilliard in my life.
9 He was the son of Benjamin Hilliard who had been a Colorado
10 Supreme Court Justice. He was a tried and true Democrat and
11 part of the establishment. And he had been appointed by
12 William Lee Knous who was then a chief judge of this court--
13 the district court.

14 MR. CAMPBELL: Knous was in the court at the time.

15 JUDGE MATSCH: Yes. And, you know, most of the
16 appointed trustees were Democrat, precinct people and that
17 kind of thing. But in spite of all that--which was not his
18 fault, it was the system--he was a brilliant scholar, legal
19 scholar, and had a high sense of personal integrity and knew
20 what the profession should be. And we went to lunch together
21 almost every day over in a drug store that was kitty-corner
22 from the courthouse--and we were in this courthouse to begin
23 with on the third floor.

24 MR. CAMPBELL: Before the Rogers Building.

25 JUDGE MATSCH: That's right.

1 MR. CAMPBELL: Or the one they call U.S. Courthouse.

2 JUDGE MATSCH: Yes, I was only here for six months
3 or so and then the Rogers Building was ready.

4 MR. CAMPBELL: Right.

5 JUDGE MATSCH: But--and I had some influence with
6 Judge Arraj about how the bankruptcy courtrooms would be. And
7 also, as part of when I first came over here, I said I think
8 bankruptcy referees ought to wear robes, and they hadn't
9 before that time, but one of the conditions I had with Judge
10 Arraj was we're going to go into robes. We should be
11 perceived more as judges than accountants.

12 MR. CAMPBELL: And the rules were set by the chief
13 judge of the district court--

14 JUDGE MATSCH: Yes, yes. So anyway, he influenced
15 my writing as well because we had no law clerk, we kept our
16 own minutes, typed our own minutes from adversary proceedings--
17 -

18 MR. CAMPBELL: Right.

19 JUDGE MATSCH: --and wrote our own decisions.

20 MR. CAMPBELL: The records were kept on an ancient
21 tape-recording machine.

22 JUDGE MATSCH: That's right.

23 MR. CAMPBELL: Often came out with undecipherable--a
24 recent history of Colorado's Bankruptcy Court speaks to the
25 contribution you made to Colorado's bankruptcy practice during

1 your tenure as a bankruptcy referee. And with 30 years of
2 bankruptcy practice experience of my own and having sat on the
3 same bench where you sat in the late '60s and early '70s some
4 25 or 40 years after you left that bench, I think I can fairly
5 observe that Colorado's bankruptcy's practice has progressed
6 in a positive direction.

7 You have been credited as having had an important
8 influence on this progress. And let me--bear with me to quote
9 from the Colorado bankruptcy history--one more quote to which
10 I refer--"In February of 1965 Chief Judge Arraj made an
11 appointment of Referee Bartley's successor on the bankruptcy
12 bench that would have a profound and lasting effect on the
13 court. The very force of Referee Matsch's own reverence for
14 the judicial process, his powerful intellect and demands he
15 made on himself and the lawyers who appeared before him had a
16 significant influence on raising the level of respect for the
17 bankruptcy court as an institution. Matsch's insistence on
18 formality and maintenance of distance between himself and
19 attorneys and other officers of the court have been hallmarks
20 of his long career as a jurist. These traits have their roots
21 in the early years on the bankruptcy bench."

22 You spent almost your first decade as a judge on the
23 bankruptcy bench, was this a valued part of your judicial
24 career and if so in what ways?

25 JUDGE MATSCH: Well, I--those are fine words, I hope

1 they're true, but I think that I came down--you know, I came
2 down these different levels of professionalism among lawyers
3 and I understood, I think, that there has to be leadership to
4 improve that. And I attempted to show that by some of these
5 talks, but by everyday insistence on the performance being up
6 to par in the courtroom.

7 But most importantly, I go back to the first meeting
8 of creditors and a deeper and broader understanding of what
9 life is like for--I don't want to use the phrase ordinary
10 people, but it's about as good of phrase as one can find to
11 understand those who have some difficulties in their lives.
12 So, I did get a broader spectrum of the human experience.

13 And I think--and I don't know if I may use such
14 words in this meeting but, as I think back, why did I ever go
15 to law school; what was I thinking in the goal of becoming a
16 lawyer. And as I think about it, it's from in part the
17 experiences in Matsch's Market, seeing what lives are like,
18 what happens. I wanted to do something for the people who get
19 shit on. And I think I still feel that way, using of course
20 the impartiality of what is required of a judicial officer,
21 but also knowing that people get hurt in ways that I don't
22 think are commonly recognized, and they feel pain in ways that
23 we don't see publicly. And I think that the system--all of
24 the systems should better recognize that there are people who
25 have difficult lives not of their own doing.

1 MR. CAMPBELL: I think that's a good place for us to
2 wind up for now. I deeply appreciate the fact that I'm
3 poaching as much as I am on your time, but I'd like to--I mean
4 we obviously are right on the threshold of your appointment to
5 the Article III bench, and there's a good bit I'd like to chat
6 with you about that. I think as we discussed we'll do this in
7 another session, but thank you very much for sitting with me
8 this morning. And we'll turn the machine off and get our
9 calendars out and see if sometime in the next few weeks we can
10 schedule another session.

11 JUDGE MATSCH: Yes, okay. Well, let me go get my
12 calendar.

13 (Whereupon, the interview was adjourned.)

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OCTOBER 4, 2018

MR. CAMPBELL: It's now October 4th, and we continue with U.S. District Judge Matsch.

We had last been speaking of your time as a Colorado Bankruptcy Referee from 1965 to 1974. Just a couple of questions to finish up on that subject. Are there any particular memorable cases from your years on the bankruptcy bench that--that come to mind?

JUDGE MATSCH: Yes, but before we get there, I want to talk about the title referee in bankruptcy. And, you know, there are some positions, like a U.S. District Judge or U.S. Senator, where the title itself would generate some respect for the person holding it.

But the title referee in bankruptcy is the reverse. And I think the biggest challenge going in there was to try to lift the position up and the respect that it should deserve as a really judicial system requires some effort, and that first effort was to get robes; that in and of itself I think helped a great deal.

I found that most lawyers were already calling Ben Hilliard judge. And when I told him we were going to have robes, and we went together out to a--I don't know where it was today but a place that made choir robes in Colorado, in Denver, he was like a kid at a birthday party. He was so

1 pleased that somehow, we were going to elevate this position.

2 MR. CAMPBELL: Did you run into--from the older
3 members of the bar who I assume now have all gone to the great
4 beyond--

5 JUDGE MATSCH: Yes.

6 MR. CAMPBELL: --I mean in my own case, I was just
7 starting practice as you had been on the bench for a couple of
8 years as a referee, but certainly my contemporaries always
9 viewed the bankruptcy court--you were addressing Your Honor
10 and you were addressing the judge, but that may have been
11 because of the changes that were implemented early on in your
12 tenure, or was there any difference in the senior members of
13 the bar who had seen years of the referee who really in some
14 respects fulfilled other than judicial roles as supervisors of
15 the trustees and whatnot.

16 JUDGE MATSCH: Well, I, you know, there was kind of
17 a cult--no, not a cult, but a group that--again this was part
18 of what we had to overcome--who were clustered around this
19 court and particularly the clerk and his son, but I think that
20 I was looked on as wet behind the ears because I was young.
21 What was I, 34?

22 MR. CAMPBELL: Wet behind the ears--

23 JUDGE MATSCH: That was what I was called. And some
24 of the people who were the regulars in the trustee panel were
25 skeptical about this, and of course they were concerned about

1 changing the culture.

2 MR. CAMPBELL: Well, you must have been a cold
3 shower to some of them because--

4 JUDGE MATSCH: Yes.

5 MR. CAMPBELL: --I can recall, and I'm talking 1970
6 so you would have been there for five years--

7 JUDGE MATSCH: Yes.

8 MR. CAMPBELL: --when I started, but even then,
9 there was a difference between you and some of the other--your
10 colleagues--and I can recall what are now known as adversary
11 proceedings as a technical term--

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: --but where you had litigation with
14 the trustee and creditors. And as a lawyer for the creditor,
15 which was the role I typically was in; you might walk in the
16 courtroom for a hearing and out of chambers would come the
17 trustee and the judge.

18 And it was--I mean you adjusted to it, but it wasn't
19 exactly the way you expected to confront matters. Now, that
20 certainly never happened in my experience with you, but that
21 must have been a bit of an adjustment for some of the old dogs
22 who were part of the group.

23 JUDGE MATSCH: Yes. Yes. And of course, I've
24 always believed in the formalism of a courtroom. And I think
25 it was former Chief Justice Burger who once said that

1 formalism is the sepsis of the courtroom--anti-sepsis I mean.
2 Anyway that was a problem in the beginning that--you know,
3 they thought they could manipulate.

4 MR. CAMPBELL: Were you resented by some of the
5 senior people?

6 JUDGE MATSCH: Well, sure I was resented because
7 Bartley was replaced.

8 MR. CAMPBELL: You were his replacement.

9 JUDGE MATSCH: That's right. And he had a
10 following. You know he went along with the group and he was I
11 think liked very much because, you know, lawyers tend to like
12 a judge who goes their way. And he went along with this. And
13 when he was not reappointed, there were a good deal of them, I
14 think--well, who were disturbed.

15 MR. CAMPBELL: He was--I didn't realize he was
16 considered for--I mean that he was interested in
17 reappointment.

18 JUDGE MATSCH: Oh, yes.

19 MR. CAMPBELL: He didn't just step down then.

20 JUDGE MATSCH: That's right.

21 MR. CAMPBELL: And what the appointments were--

22 JUDGE MATSCH: Eight years.

23 MR. CAMPBELL: I think six years maybe or eight.

24 JUDGE MATSCH: I thought they were eight, but, yes.

25 MR. CAMPBELL: And it was pretty much, was it not,

1 at the discretion--well, of course--for most--it wasn't many
2 years before that there was a single district court judge--

3 JUDGE MATSCH: Yes.

4 MR. CAMPBELL: --in Colorado, but it was pretty much
5 the chief's decision, wasn't it?

6 JUDGE MATSCH: Well, actually in my--we had three
7 judges.

8 MR. CAMPBELL: Right.

9 JUDGE MATSCH: Judge Arraj was the chief, Judge
10 Chilson, and Judge Doyle. And of course, Judge Chilson, being
11 very close with Judge Arraj would go along with anything Judge
12 Arraj wanted. And as I said before, Judge Arraj recruited me
13 hard, but Judge Doyle refused to participate in my
14 appointment.

15 MR. CAMPBELL: Interesting.

16 JUDGE MATSCH: He abstained. So, the order
17 appointing me was signed by the Chief Judge and Judge Chilson
18 and not by Judge Doyle.

19 MR. CAMPBELL: Okay. So at the time of your
20 appointment--by the time of your appointment, there were three
21 judges--

22 JUDGE MATSCH: Yes.

23 MR. CAMPBELL: --on the district. Because I think
24 Judge Knous--

25 JUDGE MATSCH: He died in--

1 MR. CAMPBELL: --was--in the early '50s, didn't he?
2 JUDGE MATSCH: No, he died in 1959 as--in chambers
3 when I was a U.S.--
4 MR. CAMPBELL: Oh, U.S. Attorney.
5 JUDGE MATSCH: --Assistant U.S. Attorney.
6 MR. CAMPBELL: But for most of his tenure, wasn't he
7 the sole--
8 JUDGE MATSCH: Yes.
9 MR. CAMPBELL: --sole district judge for many, many
10 years.
11 JUDGE MATSCH: Well, then Breitenstein came in.
12 MR. CAMPBELL: All right. Before his--
13 JUDGE MATSCH: Yes.
14 MR. CAMPBELL: --elevation into the--
15 JUDGE MATSCH: But Eisenhower comes in and a new
16 judgeship is created--
17 MR. CAMPBELL: I see.
18 JUDGE MATSCH: --and it goes to Breitenstein.
19 MR. CAMPBELL: Let me get you to return to--were
20 there any particular cases in that almost ten years on the
21 bankruptcy bench--
22 JUDGE MATSCH: 12.
23 MR. CAMPBELL: --that you recall?
24 JUDGE MATSCH: Well, sure. The big one was King
25 Resources and the Colorado Corporation, which was John

1 McCandish King who thought of himself as if he had the King
2 Ranch. But was very successful in promoting oil and gas
3 development--exploration and development around the world,
4 including in the North Sea, and in addition to oil and gas
5 exploration and development he was into minerals, gold mine in
6 South Africa. He had an empire, and he also had a subsidiary
7 in a Colorado corporation. So, it was big when he filed a
8 Chapter X.

9 MR. CAMPBELL: And as a Chapter X, and if my memory
10 serves me, that was in the summer of 1971, the--Chapter X on
11 its filing went to a district judge--

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: And when I met you, the pleadings
14 would be signed referee and special master.

15 JUDGE MATSCH: Yes. Fred Winner was the district
16 judge--

17 MR. CAMPBELL: Right.

18 JUDGE MATSCH: --that took the case, and we had
19 major creditors including major banks, and one of which was
20 Continental Illinois was a big creditor. And we had a
21 creditors committee, but Judge--we had appointed Jack Pfeiffer
22 as the attorney and Charlie Baer, who was retiring from the
23 Colorado State Bank.

24 MR. CAMPBELL: Colorado National.

25 JUDGE MATSCH: Colorado National, yes, Colorado

1 National Bank. He was the head of the trust department. And
2 that did not go well.

3 MR. CAMPBELL: I was going to--you've taken my next
4 question, was that met well by the general creditors of the
5 oil and gas industry?

6 JUDGE MATSCH: Well, no, especially the secured
7 creditors. They were very upset about what the hell does this
8 banker know about the oil and gas business. And they were
9 amazed at how well he did because he was an outstanding
10 scholar and, you know, he absorbed the work. I mean he began
11 to understand the industry. He went out to South Africa; he
12 looked at these assets individually and personally. So, he
13 did a bang-up job.

14 MR. CAMPBELL: And was well represented by counsel.

15 JUDGE MATSCH: Yes, yes.

16 MR. CAMPBELL: A law firm that no longer exists.

17 JUDGE MATSCH: That's right.

18 MR. CAMPBELL: Certainly, learned a lot about
19 bankruptcy. Wasn't this a time at which--if you look back--
20 and you don't have to look back very far from the start of the
21 King Resources case to your speeches to the bar where you
22 commented on the absence of some of the most sophisticated
23 practitioners from the practice in the bankruptcy court
24 because of the absence of large stakes.

25 JUDGE MATSCH: Right.

1 MR. CAMPBELL: Or at least that was--you suggested
2 that might have something to do with it. Well, things changed
3 in a hurry with the filing of King Resources. It was the
4 largest non-railroad reorganization in the history of this
5 country's bankruptcy statute when it was filed.

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: Some creature called Equity Funding
8 in Los Angeles was larger a few years later, but King
9 Resources was bigger than anything that had ever been handled
10 under the Bankruptcy Act.

11 JUDGE MATSCH: And it generated a lot of public
12 attention--

13 MR. CAMPBELL: Oh, yes.

14 JUDGE MATSCH: --but it did involve what I was
15 uncomfortable with, and this was a part of why I was for
16 changing this system to separate the adjudicative role of the
17 referee in bankruptcy from the administrative one, because
18 there were occasions when I sat down with Charlie Baer and
19 Jack Pfeiffer and approved or disapproved some of their
20 transactions because they were still doing some business of
21 course under Chapter X and dealing with leases, and I would
22 discuss this with them and then go to Fred Winner and talk to
23 him about it.

24 So, he was conflicted too in that sense that he had
25 to play a role as district judge approving some of the

1 transactions and at the same time going into the courtroom
2 later in adversary proceedings.

3 MR. CAMPBELL: Well, and it may not have been what
4 the statute contemplated, but I know from my own experience
5 that Judge Winner utilized you hugely in this.

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: I mean there was nothing that reached
8 him without first being referred to him. And his expertise,
9 while it was legion, wasn't in the area of bankruptcy.

10 JUDGE MATSCH: Oh, no.

11 MR. CAMPBELL: And almost nothing reached him. And
12 you were not acting as a referee in that, because there was no
13 role for a referee in old Chapter X.

14 JUDGE MATSCH: That's right.

15 MR. CAMPBELL: You were acting as the district
16 court's special master. And as I say, I can think of almost
17 nothing that went to the district court except on a
18 recommendation from the special master, which was--maybe a
19 decade ahead of Congress.

20 JUDGE MATSCH: Yes.

21 MR. CAMPBELL: But Judge Winner, through use of you,
22 implemented some distance that you're talking about--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: --between the adjudicator and the
25 supervisor. And it's--excuse me go ahead.

1 JUDGE MATSCH: There were some major bankruptcy
2 lawyers in the case.

3 MR. CAMPBELL: And we actually saw some out-of-
4 state, some national practice, which was--

5 JUDGE MATSCH: Yes, King Resources itself--I guess
6 John King--a lawyer from Texas--I can't remember his name--he
7 was very prominent in the practice and--

8 MR. CAMPBELL: I don't know if it was Bill Rochelle
9 perhaps?

10 JUDGE MATSCH: That doesn't sound right.

11 MR. CAMPBELL: We had Leonard Gesas from Chicago
12 represented King.

13 JUDGE MATSCH: Well, to illustrate something about
14 it that required, you know, with this back administrative and
15 then adjudicating, but my office--over in what is now the
16 Rogers Courthouse was actually a courtroom, and I had a
17 traditional office and my secretary's office next to mine, and
18 usually the doors were open. And this particular lawyer came
19 in one day while I was at my desk and the door open, and he
20 came in and asked my secretary to close the door. And then
21 she reported to me later the conversation which was, now keep
22 this a secret from the judge, but we want to nominate him for
23 the--gosh, I can't remember the--some high prestigious
24 bankruptcy group, but we don't want him to know about it.

25 Well, of course she told me about it, and I was

1 supposedly going to be influenced by the fact that he would
2 promote me as some--I don't even remember the name of this
3 group, but it was high prestige in the bankruptcy bar with
4 referees and lawyers.

5 MR. CAMPBELL: It may have been the old National
6 Conference of Bankruptcy Referees which--

7 JUDGE MATSCH: No, I'm in that group.

8 MR. CAMPBELL: --lives today which is now the
9 Bankruptcy Judges Union.

10 JUDGE MATSCH: Yes. Yes. Well, I did do some work
11 with that group with, as we said before, Asa Herzog and
12 others.

13 But, you know, the ethics of the bar in even a high-
14 profile case like this were questionable.

15 MR. CAMPBELL: What you're talking about is the dual
16 role of the referee, which was standard procedure for decades?

17 JUDGE MATSCH: Yes.

18 MR. CAMPBELL: Dating back to the turn of 19th, 20th
19 Century, I don't know that the bar appreciates it so much, but
20 of all the changes that came with the 1978 Bankruptcy Reform
21 Act, and there are lots of important changes with the melding
22 of Chapters 11 and 10, but I think hands down the biggest one
23 was what it did to the bankruptcy referees--

24 JUDGE MATSCH: Right.

25 MR. CAMPBELL: --in really converting them.

1 Certainly, you know, in the minds of the Article III judges in
2 general, they didn't become Article III judges that was clear,
3 but they became judicial officials and there was no question
4 about that. And it may have even had an impact on the skill
5 level and competence and prestige of those who applied for the
6 job going forward. It was no longer a position that was
7 viewed as a notch below real judicial function.

8 JUDGE MATSCH: You know, one thing that could be
9 mentioned is the expansion of jurisdiction, and I can't
10 remember the Supreme Court case now where we had the core
11 jurisdiction. It's before, of course, the legislative change,
12 but we had the core jurisdiction relating to the--

13 MR. CAMPBELL: Right.

14 JUDGE MATSCH: --of the estate.

15 MR. CAMPBELL: Summary--plenary battle.

16 JUDGE MATSCH: Yes. But then when a claim is filed
17 and then objected to--

18 MR. CAMPBELL: Right, and that came right from this
19 circuit. I think Judge Arraj may--

20 JUDGE MATSCH: It was Ben Hilliard.

21 MR. CAMPBELL: Ben Hilliard heard it at the trial
22 level, but it was appealed I think to the district court on to
23 this 10th Circuit, and on to the Supreme Court and decided by
24 Byron White.

25 JUDGE MATSCH: Byron White. But it was Ben Hilliard

1 who wrote the original opinion.

2 MR. CAMPBELL: I can't believe the case name is

3 escaping me, but it was--

4 JUDGE MATSCH: It was Patrick Tucker--Tucker I

5 think--

6 MR. CAMPBELL: No, no--

7 JUDGE MATSCH: No, that was back in--

8 MR. CAMPBELL: --but the case involved, as you

9 mentioned, whether a counterclaim--

10 JUDGE MATSCH: Yes.

11 MR. CAMPBELL: --to a proof of claim that was by way

12 of an avoidance claim that could not have been brought

13 independently, but it ruled that--that once there was

14 submission to the jurisdiction--and that battle goes on to

15 this day. I mean it gets different names from summary/plenary

16 jurisdiction battle, to core proceedings versus noncore, and

17 related to, and of course the Supreme Court has jumped back

18 into it so that it's--

19 JUDGE MATSCH: And the opportunity for jury trial

20 becomes a problem.

21 MR. CAMPBELL: It does. And although I don't know

22 in the history of Colorado bankruptcy there's ever been a jury

23 trial. Having presided in one of those courtrooms, I would

24 note that the current courtrooms, bankruptcy courtrooms, are

25 walled off where there's a jury box--

1 JUDGE MATSCH: Yes.

2 MR. CAMPBELL: --and it's a storage room. So, there
3 was a subtle message delivered by the Article III judges that
4 if you wanted to have a jury trial, you had to get the jury in
5 with the Xerox machine and the paper.

6 But the fact is that there are a few bankruptcy
7 jurisdictions today that with the consent of the parties and
8 with the consent of the district court--

9 JUDGE MATSCH: Yes.

10 MR. CAMPBELL: --and it isn't clear if that's
11 proper, but they happen in some occasions.

12 JUDGE MATSCH: Well, it's, you know, like magistrate
13 judges and the consent, having them play an Article III role.

14 MR. CAMPBELL: Right. And you've had for decades
15 the notion that goes against what we were taught in the first
16 year of civil procedure that you may be able to consent to
17 personal jurisdiction, but you can't consent to subject matter
18 jurisdiction, and the bankruptcy court is as hybrid when it
19 comes to subject matter jurisdiction.

20 JUDGE MATSCH: Actually, you know, in this district
21 now we have magistrate judges trying cases pursuant to
22 consent.

23 MR. CAMPBELL: Right.

24 JUDGE MATSCH: And I think that's unconstitutional.

25 MR. CAMPBELL: Well, I mean it's far from clear.

1 JUDGE MATSCH: And I think that it is not just the
2 fact that there ought to be a distinction between Article III
3 and Article I judges. But there is, in my view, the fact that
4 an Article III judge has to go through a political process and
5 of course nomination, advice and consent. And I believe that
6 the political process is important because the people--we lose
7 I think the view that it started--the Constitution starts with
8 "We the People," and the people's opportunity to have a role
9 through their representatives and Congress and actually in the
10 Senate of course--that they have a role in who becomes a
11 judge.

12 And of course, we see that today, and ever since the
13 Bork nomination that role gets played with vigor.

14 MR. CAMPBELL: And it is really--whether or not one
15 agrees with the point you've just made, it is only at that
16 stage because then the Constitution builds in the independence
17 once the people have--through their Senators--have advised and
18 consented--short of impeachment--that's it. And so, it is
19 really the one time in the judicial independence process that
20 the political process is designed to have a role.

21 JUDGE MATSCH: And you know there are now
22 suggestions of term limits; change the Constitution, term
23 limits of judges. I saw one recently where somebody in the
24 Senate I think proposing 18-year terms. But you know--and
25 there are concerns about age limits perhaps and, you know, I

1 take no position on that being super antiquated myself.

2 But I have a concern--and maybe we'll get to this
3 later--about judges over playing their role. I think that we
4 have a great deal, a numerous amount of judges these days
5 where they, in my judgment, are arrogant in issuing nationwide
6 injunctions, for example.

7 I don't see that one U.S. District Judge in one U.S.
8 District Court can have the temerity to issue an injunction
9 barring an executive order--

10 MR. CAMPBELL: Affecting--

11 JUDGE MATSCH: --from being implemented, where does
12 that come from? That is not the role of the U.S. District
13 Judge.

14 MR. CAMPBELL: Well, it's almost engaging in a
15 notion of one district court instead of 90 district courts--

16 JUDGE MATSCH: Yes.

17 MR. CAMPBELL: --in terms of the territorial
18 limitations of the powers of the court. And we will talk
19 about that I hope at some greater length.

20 **United States District Judge (1974 to Present)**

21 Let me just--one last question before we move on to
22 your time as a federal district--as an Article III judge. If
23 you hadn't been appointed to the Article III bench, where do
24 you think your career would have taken you? You had been a
25 partner at a prestigious law firm; you had been a litigator in

1 as prestigious a prosecutorial office as there is, the U.S.
2 Attorney's Office. Would you have stayed on as a bankruptcy
3 referee indefinitely? Would you have returned to practice?
4 Have you ever thought about where you'd be had you not moved
5 up to the Article III bench in 1975?

6 **Selection to Article III Bench**

7 JUDGE MATSCH: Yes. In fact, when I had the
8 understanding that probably the next vacancy on the U.S.
9 District Court would be me being appointed by Senator Allott
10 who was so close with Judge Arraj. And it would be sort of an
11 understanding I think that probably Judge Arraj had with
12 Senator Allott as well. Senator Dominick was the junior
13 Senator.

14 MR. CAMPBELL: But nobody was on the threshold of
15 leaving, you were ten years on the bankruptcy--a lot can
16 happen in ten years--

17 JUDGE MATSCH: Yes, but you've forgotten the
18 appointment of Sherman Finesilver, the U.S.--

19 MR. CAMPBELL: Ah, he interceded before you were
20 appointed.

21 JUDGE MATSCH: Yes, when President Nixon comes on,
22 and there's a new judgeship that goes to Fred Winner. And
23 then Judge Doyle moves to the--

24 MR. CAMPBELL: Circuit.

25 JUDGE MATSCH: --circuit, and so there's a vacancy.

1 I think it's the other way around, Judge Doyle moves to the
2 circuit, Judge Winner gets appointed, there's a new judgeship.

3 MR. CAMPBELL: For Judge Doyle's--replacing Judge
4 Doyle.

5 JUDGE MATSCH: Yes.

6 MR. CAMPBELL: I think that's right.

7 JUDGE MATSCH: And so, Sherman Finesilver is
8 appointed in an announcement by Senator Allot that was
9 surprising to some of us, at a B'Nai B'Rith dinner.

10 MR. CAMPBELL: Okay.

11 JUDGE MATSCH: And when that happened, I went to see
12 Judges Winner and Arraj, and I'm saying, you know, I'm tired
13 of this work in bankruptcy. And now what I thought was going
14 to be an appointment is not, and I'm thinking of leaving. And
15 I was thinking of leaving. But then Judge Chilson was
16 thinking of retirement at that time. And so, they encouraged
17 me to hang in there.

18 MR. CAMPBELL: I can't but imagine that there were
19 many others in the Colorado bar who were themselves interested
20 in a position on the Article III federal bench. I mean there
21 had to be competition for the position I would think.

22 JUDGE MATSCH: Oh, yes. Well, for my position, yes,
23 Bill Erickson, who was on the Colorado Supreme Court at the
24 time.

25 MR. CAMPBELL: And happened to have been a former,

1 very close associate of Judge Winner.

2 JUDGE MATSCH: Yes. And so there was competition.
3 And of course, Peter Dominick was the Republican Senator, and
4 Floyd Haskell had defeated Gordon Allott in the next election.
5 And the interesting thing about that was I knew Floyd Haskell
6 very well, and I'd known him for years; we were on the Legal
7 Aid Board, and he was a Republican turned Democrat because of
8 the Vietnam War, and to everybody's amazement beat Allott.
9 And he of course was a very good friend of mine and supported
10 my nomination, but so did Peter Dominick. And there was a
11 group of lawyers who lobbied for me.

12 MR. CAMPBELL: It is unusual today when an Article I
13 bankruptcy judge is named as an Article III U.S. District
14 Court judge. It was not just unusual, it was rare in the mid
15 '60s or the mid '70s, yet in January of '74--

16 JUDGE MATSCH: Wes Brown over in Wichita--

17 MR. CAMPBELL: Right, right.

18 JUDGE MATSCH: --was one, and then it came to me,
19 and then of course Marsha Krieger.

20 MR. CAMPBELL: Well, this district has seen--

21 JUDGE MATSCH: Yes.

22 MR. CAMPBELL: --an unusual number. There have been
23 four I think that--

24 JUDGE MATSCH: Yes, John Moore--

25 MR. CAMPBELL: Right. Right. But again it

1 certainly--I suspect in the eyes of the bar in general--I'm
2 not suggesting--by that time probably in large part on the
3 account of King Resources there were some pretty darn good
4 lawyers who knew you and pretty senior members of Colorado's
5 business bar who got introduced to bankruptcy by John
6 McCandish King who I suspect were the group you referred to as
7 being supportive of your appointment.

8 But certainly, as a general proposition still at
9 that time your career on the bankruptcy bench, which was a
10 remarkable career, probably in and of itself wasn't what put
11 you on the district court.

12 JUDGE MATSCH: Yes, it helped a lot.

13 MR. CAMPBELL: I wanted to get you to talk and you
14 have about the process of appointment of federal district
15 court judgeships.

16 JUDGE MATSCH: Well, mine was extremely unusual
17 because of Watergate.

18 MR. CAMPBELL: Yes.

19 JUDGE MATSCH: That was happening.

20 MR. CAMPBELL: It was.

21 JUDGE MATSCH: And I received a letter--well, first
22 of all, I was on the bench when--and John McCandish King was
23 in the courtroom. I was hearing an issue and my secretary
24 came in with a note that Senator Dominick was on the phone.
25 And I took a recess, and King looked at me as if he knew what

1 was coming up. It was a surprising thing.

2 And I went into my chambers. And it was indeed
3 Senator Dominick who told me that he was going to send my name
4 to the President and would be supportive and so forth.

5 And I went back out, and of course I didn't say
6 anything to him, but King looked at me, as I said, like he
7 knew what that was about.

8 MR. CAMPBELL: He probably did.

9 JUDGE MATSCH: And he probably did.

10 MR. CAMPBELL: Well, your selection process--I don't
11 know if you recall this--was certainly efficient compared to
12 those of today. You were nominated 31 days after Judge
13 Chilson stepped aside to senior status, and you were confirmed
14 by the Senate 29 days after that.

15 The beginning to end, the process took 60 days--

16 JUDGE MATSCH: Yes.

17 MR. CAMPBELL: --in early 1975.

18 JUDGE MATSCH: Well, an interesting part of this was
19 that I got a letter from Richardson who--William Richardson,
20 the Attorney General, asking me to fill out an extensive--

21 MR. CAMPBELL: Elliot Richardson?

22 JUDGE MATSCH: Yes, Elliot Richardson--

23 MR. CAMPBELL: Right.

24 JUDGE MATSCH: --thank you. And--so I got this, and
25 before I could respond, we had the resignation of Richardson

1 and Ruckelshaus--

2 MR. CAMPBELL: Oh, yes.

3 JUDGE MATSCH: --the Deputy Attorney General--

4 MR. CAMPBELL: Right.

5 JUDGE MATSCH: --and I turned to my wife, and I said

6 do you think I should just send this back to whom it may

7 concern? And I did fill it out. And of course, Bork, the

8 Solicitor General, took over the office.

9 MR. CAMPBELL: The Saturday Night Massacre we refer

10 to.

11 JUDGE MATSCH: Yes. So, then William Saxbe becomes

12 the Attorney General appointed by Nixon, and he comes out of

13 the Senate. Then things were of course heating up on the

14 Watergate investigation hearings, and I began to be concerned

15 whether the President would be available to sign the

16 commission.

17 And my hearing back in Washington was very--there

18 were four of us and--

19 MR. CAMPBELL: From different districts--

20 JUDGE MATSCH: --yes, Brooklyn and--I'm not sure

21 where else anymore. I knew the judge from Brooklyn, and I

22 can't remember why. But at any rate, Roman Hruska from

23 Nebraska was the presiding Senator. And my wife and her

24 father, who had retired as chief judge of the tax court,

25 accompanied me along with my daughter, Betsy. And she was

1 with me because we couldn't get a babysitter on short notice.

2 MR. CAMPBELL: And was Betsy your youngest?

3 JUDGE MATSCH: Yes.

4 MR. CAMPBELL: Very young at the time.

5 JUDGE MATSCH: She was about five. And she's on the
6 record, because Senator Hruska asked her a few questions.
7 But at any rate it was very friendly and went through by voice
8 vote.

9 And then Judge Arraj being Judge Arraj set the date
10 for the investiture ceremony. And I hadn't received a
11 commission yet, and so the date was coming up, and I still
12 hadn't received the commission by mail, and Judge Arraj said
13 we'll go ahead anyway because we have it; it's in the mail.
14 And he said we'll just read from my commission if we don't
15 have it on time.

16 MR. CAMPBELL: And so, he swore you in privately?

17 JUDGE MATSCH: No, no, it was a little ceremony,
18 nothing like what they do today, but miraculously the
19 commission came in the mail the morning of the Friday
20 afternoon when the ceremony took place. And the ceremony
21 itself took 20 minutes.

22 MR. CAMPBELL: Did you then--

23 JUDGE MATSCH: I was on the bench Monday morning.

24 MR. CAMPBELL: I'm trying to recall if at that point
25 your role in the King Resources case--because King Resources

1 continued for another seven or eight years.

2 JUDGE MATSCH: It did--was it that long?

3 MR. CAMPBELL: It was before they--

4 JUDGE MATSCH: Well, I backed out of it completely.

5 MR. CAMPBELL: And by that time Judge Winner knew a
6 little about the bankruptcy law.

7 JUDGE MATSCH: Yes.

8 MR. CAMPBELL: More than a little.

9 JUDGE MATSCH: He handled the rest of it.

10 MR. CAMPBELL: And it lasted a long time because it
11 ended with 100 percent payout.

12 JUDGE MATSCH: Yes, amazing.

13 MR. CAMPBELL: And I can recall--I'm not quite sure
14 who made the comment that after confirmation of the Chapter X
15 plan where \$100 million of debts--much of which was public
16 bond debt--was paid in full. And I recall somebody saying as
17 everyone was patting everyone else on the back about what a
18 marvelous job that anybody involved had done, and somebody
19 piped up and said nobody gives credit to OPEC. The price of
20 oil and gas had increased by about 600 percent while the case
21 was--

22 JUDGE MATSCH: Yes.

23 MR. CAMPBELL: --was being administered, but that
24 was a long period of time and lots and lots of litigation,
25 much of which went away; money will do that.

1 JUDGE MATSCH: Well, it was pretty amazing how John
2 King had the assets, knew where to go, and there were some
3 brilliant people working in King Resources.

4 MR. CAMPBELL: There really--some names come to
5 mind: Rowland Boucher--

6 JUDGE MATSCH: Yes, he was--

7 MR. CAMPBELL: --and Roger Davis, the accountant, a
8 financial person.

9 JUDGE MATSCH: Yes. Boucher was, I think, the guy
10 who had his finger on the pulse of where to go.

11 MR. CAMPBELL: Yes.

12 JUDGE MATSCH: And I think he was a straight
13 shooter.

14 MR. CAMPBELL: I think he was well regarded by the
15 creditors--

16 JUDGE MATSCH: Yes.

17 MR. CAMPBELL: --which is as often the case when
18 somebody whose presence is as big as John King's was, and John
19 King could be bombastic. He wasn't well loved by his
20 creditors, but Boucher, as his right hand, certainly held
21 things together.

22 JUDGE MATSCH: He had a personality problem for
23 sure. And I'll tell you a side story about that. I first met
24 John King at King Resources when I was working on a
25 congressional campaign of Don Brotzman, my former boss as U.S.

1 Attorney. And I was on his campaign committee. And one of
2 the things we were doing was raising money. I went to see
3 John King for that purpose.

4 And he was in his palatial office with his huge
5 desk, and it had Saint George and the dragon--or slaying the
6 dragon and all that. So, I went in and saw the great man and
7 talked about the needs of the Brotzman campaign, and he
8 assured me that he was supportive of Don Brotzman. And I
9 gently went to the subject of we need some money. And he
10 called in his secretary and said well we want to help this Don
11 Brotzman's campaign, so give this young man stamps.

12 So, his contribution was in the way of a lot of
13 stamps for our mailings.

14 MR. CAMPBELL: Well, I recall seeing--

15 JUDGE MATSCH: I remembered that when John McCandish
16 came--

17 MR. CAMPBELL: Arrived in your court--

18 JUDGE MATSCH: --in my courtroom. What goes around
19 comes around.

20 MR. CAMPBELL: My goodness. Well, let me--before we
21 leave the appointment process just given where we find
22 ourselves today, tomorrow the Senate may vote on the
23 nomination to fill the vacancy of Justice Kennedy on the U.S.
24 Supreme Court. And clearly there's been a great deal of
25 political contesting, and some of it hasn't been a pretty

1 sight. It's a little different when we're talking about a
2 Supreme Court Justice--

3 JUDGE MATSCH: Of course.

4 MR. CAMPBELL: --then other Articles IIIs, but are
5 there any ways that you think the country could benefit from
6 reform of the process? What's happened with all the acrimony
7 that surrounded Judge Kavanaugh's nomination. Perhaps it
8 hasn't been good for the country. Are there changes we should
9 be hoping for, or are the issues that are there really
10 separate and apart from the mechanics for selecting federal
11 judges?

12 JUDGE MATSCH: Well, as you said, the Supreme Court
13 is different, and it's made itself different. And the problem
14 lies with the Supreme Court because it has become a
15 legislature, and it has stepped way out of its constitutional
16 role.

17 The people who are originalist I think--well, at
18 times have recognized that--Scalia at times has recognized
19 that the Court has overstepped its authority. And of course,
20 this is in turn a problem of the Congress for its failure to
21 address issues that have divided the country--abortion of
22 course being one--but there's more to it than that.

23 I have been appalled at times when justices of the
24 Supreme Court of the United States have gone out and made
25 speeches.

1 MR. CAMPBELL: And written books.

2 JUDGE MATSCH: And written books. And even gone out
3 on book signing tours. So, they've stepped way out of their
4 role, and they have themselves become politicized, and their
5 opinions I find to be appalling in that they go way beyond the
6 adversary process. Most of these opinions have more amicus
7 briefs than you would expect, and they now even become--well,
8 this isn't new they cite law review articles in support of
9 factual findings. They freely go well beyond the issues as
10 raised by the parties in the case. They're not restricted to
11 any record, and I think they have politicized the Court
12 themselves.

13 And one recommendation I would make is--and the
14 Court could do this itself, and that is instead of five/four
15 decision becoming precedent they should require of themselves
16 that they have to get six; that there should be a two-thirds
17 vote on a constitutional issue. If they're unable to do that,
18 they shouldn't decide the case. And simply address that
19 they're unable to achieve a majority.

20 These five/four cases with one justice like Kennedy
21 becoming the swing vote--that shouldn't be the case. And they
22 should also limit their opinions.

23 MR. CAMPBELL: Justice Kennedy has been
24 determinative in something like 80 to 90 percent--

25 JUDGE MATSCH: Yes.

1 MR. CAMPBELL: --of the five/four decisions over the
2 past decade.

3 JUDGE MATSCH: Well, and also, you know, I don't
4 particularly--I'm not an originalist. I don't believe in
5 addressing social issues as they are today by what people in
6 1787 thought.

7 But--for example the originalists who are also
8 generally speaking strong on the 2nd Amendment, if they were
9 truly adhering to it, they would say there's a constitutional
10 right to hold--to own muskets because that's what our arms
11 were at the time, but--

12 MR. CAMPBELL: In performing their function as
13 militia?

14 JUDGE MATSCH: Yes. Now, I am stronger on the 2nd
15 Amendment than that because of the Supreme Court's rulings
16 which I applied in several controversial cases here. But, you
17 know, they should accept their role as justices and stop
18 becoming celebrities.

19 And it seems to me one of the fundamental problems
20 in this country is everybody wants his 15 minutes in the
21 spotlight. And people going for nationwide recognition that's
22 a problem, it's a problem that John Adams recognized early on--
23 -he used a Latin phrase for it which I don't today remember,
24 but this urge to stand apart from your fellows and be
25 recognized in the spotlight is endemic to the culture.

1 MR. CAMPBELL: And particularly to the nonpolitical
2 branch of government.

3 JUDGE MATSCH: And it also is a motivation for some
4 of the high crimes that we see.

5 **Reflections on Cases of Note**

6 MR. CAMPBELL: I want to talk to you about some
7 important cases you heard as a trial judge. And in doing so,
8 I appreciate that we move to what may be the most delicate
9 part of this interview. You told me from the start that you
10 would not provide the back-story--your words--about cases you
11 have handled as a trial judge, and that is appropriate, and I
12 understand. The court record speaks for itself, and that is
13 as it should be.

14 However, in almost 45 years as an Article III trial
15 judge you have overseen a number of cases at the confluence of
16 the judicial process and pressing contemporary challenges in
17 our society. Without commenting on facts adjudicated or law
18 applied in any particular case, can you offer observations
19 about the interplay between the judiciary and areas where
20 highly charged, sometimes political issues, have found their
21 way to the nonpolitical branch of the federal government in
22 your courtroom?

23 Several examples come to mind. In the Keyes case
24 involving involuntary busing, desegregation of the Denver
25 Public Schools, which, while you did not try the case, you

1 inherited it from Judge Doyle; you for some 20 years oversaw
2 the school board's supervision of a large urban public-school
3 district. And that certainly wasn't part of the job
4 description when you took the job of Federal District Judge.

5 In retrospect, do you have thoughts about the role
6 you stepped into in the Keyes case?

7 JUDGE MATSCH: I do. And It should be recognized
8 that Judge Doyle's decision was reversed because he had found
9 the desegregation--the segregation in one area of the city,
10 which was when they determined to build a new school on the
11 west side of Colorado Boulevard.

12 MR. CAMPBELL: Kennedy probably.

13 JUDGE MATSCH: And instead of the--no, a grade
14 school.

15 MR. CAMPBELL: Oh, oh.

16 JUDGE MATSCH: Anyway, the Keyes case was actually a
17 reversal. And if you read the Keyes case very closely, and
18 Denver is described as a tri-ethnic community which included
19 the--I'm not sure if they referred to Spanish-American, but at
20 any rate it was looked at as a tri-ethnic community. And then
21 came the--if it's segregated in one area it must be segregated
22 in all, so the order is to--not to desegregate but to
23 eliminate racial segregation root and branch.

24 So, the call from the court was somewhat different
25 from how things turned out. So, the initial busing plan that

1 Judge Doyle put in at great personal risk was as a result of
2 also a community committee.

3 And when I first got the case, after some judges
4 recused themselves, and Judge Arraj asked me to take it, and I
5 did. I went out with Judge Doyle to the Episcopal Church--the
6 big one up here, Saint John's Cathedral.

7 MR. CAMPBELL: Right.

8 JUDGE MATSCH: And that was to meet the people who
9 were trying to work with the community to accept the busing
10 decree.

11 At that time, I thought, well this is a very active
12 community group, and I'm not going to have to do too much.
13 But of course, the issue of I can't send my child across the
14 street to the school here, they have to be transported all the
15 way over to the north side of town. And of course, the
16 opposition in the southeast corner of Denver was strong; that
17 didn't go away.

18 And as things played out, the issue went from plus
19 and minus 15 percent and so forth, but the Supreme Court in
20 other cases began to change the definition of what was
21 required, so that we go from desegregate root and branch to
22 integrate. And that changed the picture; that was done
23 gradually.

24 So, we were looking to what is the unitary system,
25 and that became something hard to define. And of course, in

1 addition to dealing with the Keyes original case, the Congress
2 of Hispanic educators came into the picture to raise the
3 additional issue of bilingual education. And of course,
4 Congress also passed a statute requiring equal opportunity,
5 and as I said, the goalpost kept changing. Fortunately, there
6 were good lawyers on each side of this. And of course, this
7 also was more than one time an issue in the election of Board
8 of Education members.

9 MR. CAMPBELL: Well, not only was the legal goalpost
10 dynamic so were the demographics of the district.

11 JUDGE MATSCH: Exactly, sudden influence of
12 Vietnamese refugees being part of that. One of the things
13 that came up during this time when the language--English as a
14 second language--was that some of the people from Vietnam were
15 tribe members of the Hmong Tribe, H-M-O-N-G, up in the hills
16 where there was no written language, only oral, trying to work
17 them in too.

18 But I also appointed a committee on compliance to be
19 a somewhat buffer between what was going on in court and
20 community acceptance. And I made the chairman of that a
21 teacher at--it wasn't the University of Denver at that time--
22 Metropolitan State College--and--I can't remember--Rios--Dr.
23 Rios, R-I-O-S. He did a great job in working with the
24 community along with Fay Hill, who was a friend of mine and
25 minister of the Presbyterian Church in Park Hill, and--not

1 Park Hill but on the--East Denver, the carriage trade part of
2 Denver houses. And the people who worked on that did I think
3 an excellent job of trying to explain this.

4 But there came a time--I even held Saturday hearings
5 on what needed to be done on busing assignments. And I
6 wondered sometimes on the morning--Saturday morning of that
7 hearing. I went to the courtroom early, and somebody had
8 polished--it was the court floor at that time--somebody had
9 polished that, and it was slick.

10 At any rate, I ended up over a weekend in the jury
11 room with a map of Denver, and I myself decided on busing
12 assignments and developed this map.

13 MR. CAMPBELL: Was this in the '80s by then?

14 JUDGE MATSCH: Yes, you know, it sort of all goes
15 together--yes, it was in the '80s. It was when there was
16 grave hostility. The Rocky Mountain News columnist--what's
17 his name--you would recognize him immediately--who was a very
18 good journalist--would at least once a month write a column
19 condemning me for destroying the school system and generating
20 white flight, a lot of which did occur.

21 And at any rate, there was continuing hostility and
22 school board members being elected opposing this. And when
23 people--they put up this map down in the administrative
24 building on 14th Street, I think--no--well, anyway
25 administrative building, and when people objected to my--I'm

1 just close to this school, we bought this house because of the
2 school being nearby--they would take them and show this map,
3 and it has my name at the bottom; write to him. A lot of
4 people did.

5 MR. CAMPBELL: Well--

6 JUDGE MATSCH: But this is a role that's not for a
7 judge because I am implementing, I am directing how the Denver
8 School System will function.

9 MR. CAMPBELL: A number of--

10 JUDGE MATSCH: Including of course this limited
11 English language.

12 MR. CAMPBELL: Right.

13 JUDGE MATSCH: That became--that's still as a matter
14 of fact in front of me. There's a consent decree out there
15 now.

16 MR. CAMPBELL: A number of studies indicate that
17 court ordered busing in Denver and other cities may well have
18 resulted in more rather than less segregation of children by
19 race in public schools.

20 For example, in Denver before Keyes, the Denver
21 Public School was something like 70 percent Anglo students. At
22 the end of forced busing in 1996, and now, DPS Anglo student
23 population is closer to 25 to 35 percent.

24 In your view, was this judicial foray into public
25 education simply a failure, or was there value other than or

1 beyond increased racial integration that flowed from the court
2 ordered end to de jure segregation by race of students in the
3 public schools?

4 JUDGE MATSCH: Well, I'm not clear about the
5 question.

6 MR. CAMPBELL: Well, I'm sorry it was a longwinded
7 effort.

8 JUDGE MATSCH: You asked me if it was a failure.

9 MR. CAMPBELL: In raw numbers perhaps because of the
10 demographics it doesn't--you have fewer Anglos by many fold
11 than preceded forced busing. You have a greater minority
12 population in the district and in some areas--and this may be
13 the difference between de jure and de facto segregation--but
14 integration wasn't necessarily the end result.

15 In spite of that, my question is, was there value to
16 the insistence by the courts of--through busing or otherwise--
17 to end de jure segregation?

18 JUDGE MATSCH: Well, that's difficult. Of course,
19 the changes in the City and County of Denver are stark.

20 MR. CAMPBELL: Massive white flight?

21 JUDGE MATSCH: Well, I'm not sure it's white flight
22 as it is influx of a lot of people from cultures very
23 different.

24 We have--I can't remember there's something like 60
25 languages in the Denver schools. And we're not just talking

1 about people from Mexico or South America, we're talking about
2 a lot of groups who come here as refugees. We're talking
3 about people from the Middle East.

4 MR. CAMPBELL: Eastern Europeans, Asians.

5 JUDGE MATSCH: Many Asians. So, it is hard to
6 evaluate the effect of court ordered busing on what has
7 happened to the demographics and the cultural climate in
8 Denver.

9 I think it was wrong for the Supreme Court to be so
10 direct in saying your job as a judge is to eliminate
11 segregation root and branch. Well, that's hardly the role for
12 a court.

13 So if you don't have the people on your side, it's
14 pretty difficult to tell them what to do. And I think that
15 that was a mistake, but it's at the highest level. And then
16 to work through this change from desegregation, eliminating de
17 jure segregation, and to integrate change, and that was a big
18 mistake, you know. It's questionable whether the Constitution
19 of the United States requires integration and cultural
20 assimilation.

21 MR. CAMPBELL: Right.

22 JUDGE MATSCH: And, you know, we're talking about
23 trying to change from what somebody years ago said was a
24 country that's like an Irish stew with ethnic groups
25 maintaining their identity and all that but working together

1 into some kind of a soup where everybody has to be integrated
2 into the same culture effectively. Because education is in
3 large part the transmission into another generation of a
4 certain culture, and it is not that anymore.

5 In fact, we are now more identified by some group
6 status than we are as an American. So, we're hyphenated
7 Americans, and we're also urging victimization based on some
8 history that is not entirely accurate.

9 I think that it has its effect of raising up the
10 issue of equality, of opportunity, which is something that you
11 know--equal opportunity is something that is a core value and
12 has been a core value in this country even though the
13 constitution was written by a bunch of elitists.

14 MR. CAMPBELL: And perhaps that's where--

15 JUDGE MATSCH: It brought the issue front and center
16 and we've struggled with different ways to address the issue,
17 but it's much broader than racial.

18 MR. CAMPBELL: And that said--and if I misspeak,
19 please don't hesitate to correct me. That prolonged process
20 did conclude with a--although there are aspects of it that
21 aren't concluded to today, as you point out--but did conclude
22 with a finding that Denver--the district was no longer
23 engaging in de jure segregation. Isn't that a victory for the
24 rule of law even though it was a painstaking process--
25 painstaking particularly for a judge who's asked to be

1 something beyond a judge?

2 JUDGE MATSCH: Well, you know, if you have read my
3 last opinion--

4 MR. CAMPBELL: '96?

5 JUDGE MATSCH: --when I released the district from
6 court ordered segregation and so forth, I pointed out that at
7 that time there was a black mayor, that power structure of the
8 city had changed dramatically, and that those who were without
9 a voice now actually had a voice and were directing the future
10 of not only the educational system but the political system
11 and the culture of the city.

12 So, I think what I ended up saying is job done. And
13 you responded as reasonably as could be expected; you've done
14 the job--you being the people of Denver.

15 Now, what has happened since is the result of a lot
16 of different factors.

17 MR. CAMPBELL: But the job was to end de jure
18 segregation, was it not?

19 JUDGE MATSCH: That's right.

20 MR. CAMPBELL: It wasn't to integrate although you
21 got a lot of mixed messages in the middle of your assignment.

22 JUDGE MATSCH: Yes.

23 MR. CAMPBELL: Let's move on. Extreme polarization
24 brought to your--bear with me just a minute--brought to your
25 trial court the Alan Berg case, where indictments arose from a

1 far-right-wing violent hate group's assassination of an
2 outspoken, arousing, extremist radio commentator. Does
3 polarization in the public's position on issues of public
4 interest such as intolerance of diversity, immigration reform,
5 gender discrimination, accompanied by growing disinclination
6 by our elected representatives to look for imperfect
7 compromise in dealing with such issues pose any threat or
8 challenge to the judicial branch?

9 JUDGE MATSCH: Well, that's a pretty difficult
10 question, but you refer to the Alan Berg case, and I think the
11 Alan Berg case should stand apart because that's a hate murder
12 by an organized Neo-Nazi group. And this fell along with some
13 of the other things that developed with the same people,
14 Bruder Schweigen. They were called, The Silent Brotherhood,
15 among other names, but Alan Berg was killed not because only
16 of his being outspoken, he was killed because he was a Jew.

17 And the case generated the problem. It was a murder
18 case obviously, but the Denver District Attorney declined to
19 pursue it as a murder case, and therefore the Department of
20 Justice came in and made it a civil rights case.

21 MR. CAMPBELL: Right.

22 JUDGE MATSCH: The issue was not just who was
23 involved in the murder of Alan Berg but why; what was the
24 motivation?

25 MR. CAMPBELL: Without which you couldn't have the

1 crime.

2 JUDGE MATSCH: That's right. So, one of the issues
3 --and fortunately I had such good lawyers in the case.

4 MR. CAMPBELL: Most of them serving in pro bono
5 capacities other than of course--

6 JUDGE MATSCH: Well, they were--

7 MR. CAMPBELL: --the prosecutors.

8 JUDGE MATSCH: --no, they were appointed by--

9 MR. CAMPBELL: Right, right. I don't mean pro bono;
10 I mean assigned.

11 JUDGE MATSCH: Yes. And, you know, the--I'm
12 suddenly forgetting--Bender--becomes the attorney for the lead
13 defendant. David Lane who didn't want any Jew involved in the
14 case, so here he's now being represented by a Jew. And he
15 accepted that finally.

16 And afterward, Justice Bender deserves a lot of
17 credit for being able to present a good defense and have a
18 client trust him.

19 But one of the challenges in the case was to define
20 Jew. And I gave the jury three definitions of Jew, one
21 religious, which Alan Berg was not; one was geographical, and
22 one was cultural. And they could find either one or any of
23 the three to justify calling Alan Berg a Jew and being killed
24 because of it.

25 MR. CAMPBELL: Interesting.

1 JUDGE MATSCH: But, you know, there were four
2 defendants and two were acquitted and two were convicted. But
3 the main one threatened me and not just at his sentencing but
4 also later on. I remember him saying I hope you like your job
5 because--at sentencing he said I hope you like your job, but
6 one day there's going to be a rocket in your tailpipe.

7 And one of the challenges in that case was security
8 because we knew there were others out there. These are not
9 the only people who were part of that brotherhood.

10 MR. CAMPBELL: Starting off from such cases--

11 JUDGE MATSCH: But that was truly a hate crime.
12 Now, we've become unable to define what is a hate crime.

13 MR. CAMPBELL: Some of it blends into what is now
14 called domestic terrorism.

15 JUDGE MATSCH: Yes.

16 MR. CAMPBELL: In the Oklahoma City bombing trials,
17 some felt you were tasked with upholding due process and
18 restoring public confidence in the trial process itself
19 following circus-like trials in then recent cases of intense
20 national attention, specifically the Rodney King and O.J.
21 Simpson cases, the conduct of which had shaken the American
22 public's faith in the quality and integrity of the American
23 judicial process.

24 Did you sense that the American trial process was
25 itself on trial when that case was assigned to Colorado and,

1 more specifically, to you?

2 JUDGE MATSCH: I didn't think about that.

3 MR. CAMPBELL: Or was it just another day at the
4 office?

5 JUDGE MATSCH: That's what I tried to instill in
6 everybody involved. Remember that the case was filed in
7 Oklahoma City and that it was first assigned to a judge in
8 Oklahoma City who early on decided that the trial would be
9 held at Fort Sill.

10 MR. CAMPBELL: Just a change of venue within the
11 district?

12 JUDGE MATSCH: Yes, that the place of trial should
13 be Fort Sill because of security concerns, well, and other
14 things that happened. And of course, the end result was the
15 Tenth Circuit disqualifying all of the judges in the Western
16 District of Oklahoma. In fact, the whole--all three districts
17 in Oklahoma.

18 MR. CAMPBELL: Well, my recollection was because all
19 of them were closely acquainted with people who had been
20 injured or killed.

21 JUDGE MATSCH: Of course. The courthouse was just
22 not far away and was itself--the windows were blown out as
23 part of the same blast. But at any rate, when the case began,
24 my assignment began in Oklahoma City. So I was, in the early
25 days, holding hearings down there. But I fortunately had a

1 great clerk of court, Jim Manspeaker, and he kept me away from
2 the press. And when I first went down to Oklahoma City and
3 came off the airplane, I had one of these press groups
4 following--not following me, but preceding me, asking me
5 questions as I got off the airplane and going to the hotel.
6 So, there was great hostility that this Denver judge was going
7 to take our case, including the governor and others who were
8 very upset about it.

9 But, you know, I stressed to everybody, this case is
10 not about me. When I was first notified of this, the press
11 got it; there was a demand that there be an opportunity to
12 talk to me about it. So, I stood out on the courthouse steps
13 on that afternoon and answered a few questions, but that was
14 the last time I ever met with the press. It was important to
15 recognize, all right, this is a trial; we have a lot of
16 trials. We're doing this as much as possible; it's just
17 another trial.

18 MR. CAMPBELL: I'm not sure it was the first day of
19 the trial, but there is a quote that stuck with me: "This is
20 not theater; this is a trial."

21 JUDGE MATSCH: Yes.

22 MR. CAMPBELL: Do you know who said that? It was
23 you.

24 JUDGE MATSCH: Yes. But, you know--and of course
25 there was a lot of press coverage. And CBS--what's his name--

1 Dan Rather.

2 MR. CAMPBELL: Dan Rather.

3 JUDGE MATSCH: Yes, took up residence over here in a
4 nearby building. But he wrote a letter to me. He had at that
5 time a program called 48 Hours.

6 MR. CAMPBELL: Right.

7 JUDGE MATSCH: And he wanted me to be on that 48
8 Hours program as what would be 48 Hours in the life of a trial
9 judge in a prominent trial.

10 MR. CAMPBELL: This was your chance for 15 minutes
11 in the sun.

12 JUDGE MATSCH: Yes, and of course I respectfully
13 declined the invitation. But I tried to keep everything in
14 perspective. There were things that changed, of course.
15 Congress passed certain statutes requiring that I transmit the
16 trial to, by closed-circuit television, to Oklahoma City;
17 which I did. And the thing about that that didn't get well
18 recognized, I think anywhere, was Gaspar Perricone, my friend,
19 was retired from the bench in Jefferson County--

20 MR. CAMPBELL: Right, and who had been a
21 practitioner before you as a--when you were refereeing.

22 JUDGE MATSCH: He was one of the trustees--

23 MR. CAMPBELL: Oh.

24 JUDGE MATSCH: --on the bankruptcy panel, so I knew
25 him well. And he accepted my request that he go down there

1 and sit on a bench in the FAA, the Federal Aviation
2 Administration, auditorium and where the trial was on the
3 screen. I had a fixed camera with a fixed position, so it
4 couldn't move around, and nobody could see the jury. But I
5 was on camera and the lawyers were on camera, and the witness.

6 MR. CAMPBELL: Yes.

7 JUDGE MATSCH: But he presided down there, and there
8 were like--350 was the capacity. He wore a robe. He sat
9 there and maintained order in that room and also explained
10 what was happening to the people.

11 MR. CAMPBELL: Well, that was a long assignment,
12 because the trial lasted--

13 JUDGE MATSCH: Twice. There were two trials.

14 MR. CAMPBELL: Right.

15 JUDGE MATSCH: And he did not ask for any money to
16 do that except for expenses.

17 MR. CAMPBELL: I know myself of what you speak
18 because the courtroom in which you tried the case still has--
19 that courtroom has been largely--

20 JUDGE MATSCH: Destroyed.

21 MR. CAMPBELL: --well, left alone as the district
22 judges have moved to the Arraj building. But the camera pod
23 and the block off of the jury is still there. When the
24 bankruptcy courts were renovated with TARP money, when it came
25 available, they moved the bankruptcy judges back into Rogers

1 for a year and a half, and I presided in that very courtroom
2 that still has the infrastructure that was built specially for
3 what you just described.

4 JUDGE MATSCH: I thought they tore that out for the
5 bankruptcy court.

6 MR. CAMPBELL: No. They walled up where it was--
7 where the camera was in the far back, very high up.

8 JUDGE MATSCH: The main thing about that case is
9 that I provided the defense counsel in both cases with all the
10 resources they asked for, because my experience has been in
11 the criminal trials that it's very one-sided when it comes to
12 resources available for investigation. And the government has
13 such an advantage. There's no budget. They can do as they
14 choose. And of course, they expended a lot of resources in
15 the investigation. And I decided that the primary defense
16 here was somebody else did it and that there were others
17 involved. So, I provided the defense team--it ended up with
18 maybe 15 lawyers on the defense team--so, they had the
19 opportunity to go to the Philippines. They had the
20 opportunity to go to Israel.

21 MR. CAMPBELL: And these were--these were
22 experienced and able defense counsel.

23 JUDGE MATSCH: Yes, out of Oklahoma. The district
24 attorney was out of Oklahoma, but all the other lawyers in the
25 case for the prosecution were from DOJ, but--and they did a

1 great job. But, you know, I spent--I don't know, but at least
2 \$15 million to support the defense in that case. And I think,
3 you know, the main problem with the criminal justice system is
4 it's so one-sided for resources. They can investigate, and
5 defense counsel has very limited resources. And as a result
6 of that, perhaps there are now budgets on capital cases
7 required of judges.

8 MR. CAMPBELL: There's another dimension of the
9 Oklahoma City bombing trial of interest. You ran into an
10 avalanche, a victims' rights avalanche, literally hundreds of
11 victims who wanted their rights respected in the middle of
12 this critical challenge that you faced, i.e. seeing that
13 McVeigh and Nichols got fair trials, got due process. I won't
14 ask you about the trial itself in this regard; the record does
15 speak for itself. But I would like for you to address the
16 subject of victims' rights.

17 I should explain, frankly I don't understand
18 victims' rights in this context. I have concerns about
19 victims of crimes. Perhaps they need and deserve medical
20 help. Perhaps they need and deserve economic assistance.
21 Perhaps they need and deserve emotional or mental help. But
22 aren't these simply questions of allocation of other scarce
23 resources, tax dollars apart from the judicial process? Some
24 folks, including me, don't grasp where does this have
25 relevance in the criminal judicial process. Stated otherwise,

1 if I murder a homeless person with unattractive acquaintances,
2 should I be in less trouble than if I murder a well-healed,
3 successful professional with sympathetic family and friends?
4 You have said all ideas are equal before the 1st Amendment.
5 Aren't all people, including criminals with attractive
6 victims, equal before the law when it comes to sentencing?

7 JUDGE MATSCH: Well, there are a couple of things
8 tied up here. When it comes to the trial itself, of course a
9 fundamental question is fairness and the ability to see the
10 defendant sitting at defense table as a human being and not
11 objectify this person as someone who has done some terrible
12 crime. This first became an issue for me in the Alan Berg
13 trial. His ex-wife, who had dinner with him the night he was
14 murdered, was a witness for the prosecution, setting the scene
15 for having the dinner, and then when Alan Berg went home to
16 his apartment when he was killed getting out of his
17 Volkswagen. She testified at the trial. She showed up at
18 closing argument to listen. I excluded her from the
19 courtroom. That became controversial. She, of course, was
20 outraged, and a lot of people were outraged, I learned. But
21 to me, she was there as an exhibit, the victim, while the jury
22 was listening to closing arguments.

23 So, in the Oklahoma City trials, I had the difficult
24 problem of very emotional testimony from people in the
25 building and relatives that was heartbreaking. One of the

1 most emotional parts of that case was that right there in
2 front of that building was a nursery, a daycare center, and
3 all of those children were killed, including babies. And we
4 had, of course, a lot of visualization of the scene. We had
5 as evidence the initial response. All of this was relevant to
6 the size of the explosive device and what the principal
7 components were, because the connection with the--one of the
8 connections here and particularly Terry Nichols was the
9 ammonium phosphate, the fertilizer as being the major
10 component of the bomb, which was, you know, a series of
11 barrels connected with ammonium nitrate, diesel oil and other.
12 So, I took the position that the impact, the nature of the
13 building and all that was relevant to the structure of the
14 bomb.

15 And, yet, it was the Tenth Circuit opinion, I think,
16 was well done in describing this problem of the emotional
17 impact of victim testimony on a jury determining guilt or not
18 reasonable doubt in the case. And I struggled with trying to
19 maintain a balance between letting these people talk and due
20 process.

21 Now, when it came to the sentencing hearing--

22 MR. CAMPBELL: Right.

23 JUDGE MATSCH: --I had a lot more leeway to let
24 these people testify because this goes to whether this person
25 should live or die. And I think there is an appropriate role

1 for some level of victim testimony in that because it shows
2 the consequences of criminal conduct. I don't--I've been told
3 of a recent trial in New York with allowing a number of women
4 to testify in a--I can't remember the details, but to my mind
5 went too far. But this--well, there's this piece that was
6 written in the New Yorker about the role of victims. If you
7 want to look at it historically, we had Haynes, that's the
8 victims' rights in the extreme where a community is outraged.
9 I'm not talking about lynchings. I'm talking about--

10 MR. CAMPBELL: Right.

11 JUDGE MATSCH: --the good old days of the ranchers
12 getting--

13 MR. CAMPBELL: Public hangings--

14 JUDGE MATSCH: Yes. And then also when I was living
15 in Burlington, Iowa, close down the river towards Madison was
16 the penitentiary. And there are actually--in those days, the
17 method of execution was hanging. And there was a large
18 courtyard in that prison and a bluff behind it. And people
19 went down there on that bluff and observed hangings. Victims'
20 rights have to be considered as vengeance. And there's an
21 element of vengeance in the system of justice. It isn't just
22 that we're going to isolate this person from the rest of
23 society because he's considered dangerous, but it's also
24 punishment. You deserve it. There's an eye-for-an-eye aspect
25 to that. Although, carried to the logical extreme, you would

1 kill this person the same way he killed someone else. Of
2 course we have now so sanitized the process of execution, the
3 procedures that--and the delays--that by the time someone is
4 executed in these--as a patient, and we even are concerned
5 about what kind of drugs are used, the sympathy goes to the
6 person being executed. People don't even remember what the
7 crime was.

8 So, there is a measure of vengeance involved in
9 sentencing and in the process, but you have to have this
10 delicate balance between, well, do we really have the right
11 person. Is he really guilty.

12 MR. CAMPBELL: I understand that not only deterrence
13 but both punishment, vengeance and protection of all are
14 elements of what's the function of the criminal law. What I
15 understand less, you have what the people through the
16 legislature have defined as a crime and what the people
17 through the legislature have defined as the parameters of
18 punishment. What I don't understand is the relevance of the
19 victim statements, impact statements that, I mean, certainly
20 apart from guilt or innocence, and due process in arriving
21 there, and assigning the prescribed punishment once there's
22 been a determination of guilt, why--not that the victims don't
23 matter, but why do they matter in deciding what the punishment
24 should be, and does that mean that perpetrators of crimes on
25 victims who have more persuasive, more attractive friends and

1 relatives should get more vengeance wreaked on them than
2 somebody who isn't particularly attractive and has been
3 convicted of the same crime but where nobody will step forward
4 to deliver a sympathetic victim impact statement?

5 JUDGE MATSCH: Well, of great importance is that the
6 public trusts the judicial system and that it accepts the
7 outcome of the trial process. There is a natural human
8 tendency to identify with the victim. After all, this is not
9 one to one, like a civil case. This is, by definition, a
10 crime against the community. Colorado has it as the People
11 versus--

12 MR. CAMPBELL: Sure.

13 JUDGE MATSCH: --John Doe. We have it as the United
14 States against John Doe. But it is that the fabric of our
15 society has been ripped apart by this crime. And to maintain
16 or obtain trust in this process, the people have to have some
17 sense of satisfaction that the result is just. You know, I
18 don't like the use of the word justice ever, because I don't
19 think it relates to what we do. And my view is, however you
20 define justice, it comes down in this system to there's been a
21 fair hearing, the process has been fair, and the result is
22 fair. So, it's fairness.

23 So, I think that, you know, the victim, you've got
24 to remember the role of the--I don't want to say the press
25 anymore, but the public reaction. And now it's just not

1 what's on news, the television or what's on radio or what's in
2 newspapers. It's what are the people saying out on the blogs;
3 what's social media. That's the real reaction that you have
4 to be concerned about.

5 And in the end, one wonders if the people would have
6 as much satisfaction, I think, with the outcome of the McVeigh
7 trial if he hadn't been put to death. And you have to say one
8 thing for McVeigh; he accepted the punishment and did not
9 prolong the appeal.

10 MR. CAMPBELL: He'd probably still be in the appeal
11 process if he hadn't.

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: You were confronted with upholding
14 the rights of the Ku Klux Klan to express publicly its very
15 distasteful views in conjunction with Martin Luther King Day
16 celebrations in Denver. In ruling in favor of the Klan, you
17 wrote, "All ideas are equal before the 1st Amendment." That
18 strikes me as a pretty unremarkable statement in a democracy,
19 and I suspect you would find it in a very real sense
20 unremarkable. But I don't think that--

21 JUDGE MATSCH: I'm not so sure it's unremarkable
22 today.

23 MR. CAMPBELL: Well, let me--today, and my next
24 question to you was, do you think that it is perceived as
25 unremarkable by today's general public? And does that give

1 you pause about the state of American civic education?

2 JUDGE MATSCH: Well, yes, it gives me pause. This
3 wasn't just recognition of the right of these extremists who
4 appear on the capitol steps and express their views. This was
5 also very much directed at the Martin Luther King march. And
6 of course, at the hearing, it was emphasized that there would
7 be reaction violently, and there was. And I accepted that
8 reality in making my ruling. But this raises the issue of the
9 heckler's veto. If you're going to suppress a speaker by
10 threatening violence that destroys the whole fabric of the 1st
11 Amendment, and I strongly support the 1st Amendment still.
12 But we are now at a time when the 1st Amendment is being
13 shredded because we have not only hate speech, but we have
14 political speech. When you have a student body protesting the
15 invitation of a speaker by surrounding the forum or by other
16 means that are coercive, you've eliminated the very foundation
17 of the public forum and the clash of ideas, which are
18 restricted. What would we be saying today of the revolution
19 and the author of Common Sense?

20 MR. CAMPBELL: Thomas Paine, isn't it?

21 JUDGE MATSCH: Yes, Thomas Paine. Thomas Paine was
22 certainly preaching hate speech to the well-established
23 colonists who were threatened by the possibility of a--

24 MR. CAMPBELL: civil war, right.

25 JUDGE MATSCH: --revolution. Yes. And they were

1 protecting their economic interests. So, would we--if Thomas
2 Paine were talking extreme right views, would he be prohibited
3 from going to a university campus and speaking out? This is
4 dangerous. This is dangerous to our principal of a democracy.
5 And it is, in my view, one of the greatest dangers we face for
6 the future.

7 MR. CAMPBELL: And how ironic that free expression
8 is what's under fire from this.

9 JUDGE MATSCH: Yes. You know, we have more freedom
10 for entertainers to come on with the most vulgar and
11 despicable expressions which generate a laugh. I don't
12 understand how audiences laugh about these things. Maybe
13 they're laughing to conceal their embarrassment. I don't
14 know. But there's greater freedom of profanity and obscenity
15 than there is political expression.

16 MR. CAMPBELL: In preparing for this interview, I
17 asked you about other cases you recall that you found were
18 particularly significant or interesting. The first case you
19 pointed me to was Hoover v. Meiklejohn in 1977, early in your
20 tenure on the Article III bench, 14th Amendment, equal
21 protection, gender equality case concerning a constitutional
22 challenge to the Colorado High School Athletic Association's
23 rule limiting participation in high school soccer, and I quote
24 from the ruling, "To members of the male sex." In a nuanced
25 equal protection argument, you ruled that Golden High School,

1 which was I think the class representative's school of
2 attendance, had three choices: to let girls compete in the
3 boys' varsity soccer program; to add girls' soccer as a
4 separate sport; or to shut down soccer as part of the athletic
5 program.

6 Do you recall what Golden High School ultimately
7 did?

8 JUDGE MATSCH: Well, you left out something about
9 the separate, which it has to be separate but equal.

10 MR. CAMPBELL: Oh--

11 JUDGE MATSCH: Equally funded and--

12 MR. CAMPBELL: And girl's soccer at the same level
13 as boy's soccer?

14 JUDGE MATSCH: Exactly. Well, the initial reaction
15 was to prohibit soccer. And it wasn't just Golden High
16 School; it was the Colorado High School Athletic Association.
17 They prohibited it. And then there was an outrage--a public
18 outrage at that because so many young people were playing
19 soccer by that time, including my own daughters and--on girl's
20 teams. But the public pressure changed their minds and they
21 went to separate but equal.

22 MR. CAMPBELL: A few years later, that same pressure
23 skipped over to the University of Colorado at Boulder. It was
24 dealing not with equal protection and the 14th Amendment, but
25 with Title IX.

1 JUDGE MATSCH: Yes.

2 MR. CAMPBELL: And they went with one of the other
3 alternatives that you offered. They shut down a great many
4 sports programs--

5 JUDGE MATSCH: Yes, at the University of Colorado.

6 MR. CAMPBELL: At the University of Colorado.

7 JUDGE MATSCH: Well, you know, and people who
8 remember this case assumed that it was under Title IX.

9 MR. CAMPBELL: Yes, and this was before Title IX
10 even got legs.

11 JUDGE MATSCH: Yes. This was flat out equal
12 protection.

13 MR. CAMPBELL: Right.

14 JUDGE MATSCH: And this was also the result of
15 trial.

16 MR. CAMPBELL: Let me--to that end, let me read a
17 lovely quote from your opinion. "Any notion that young women
18 are so inherently weak, delicate or physically inadequate that
19 the State must protect them from the folly of participation in
20 vigorous athletics is a cultural anachronism unrelated to
21 reality. The Constitution does not permit the use of
22 governmental power to control or limit cultural changes or to
23 prescribe masculine and feminine roles." Now, this was spoken
24 like a man with daughters. I have a daughter. As you point
25 out, this case was 40 years ago and considerably ahead of--

1 Title IX was enacted before it really got legs, and--

2 JUDGE MATSCH: Right.

3 MR. CAMPBELL: --this may have been even before its
4 enactment, but it was certainly before it appeared on the
5 scene--

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: --influenced--

8 JUDGE MATSCH: It's kind of just sitting there.

9 MR. CAMPBELL: Right. The next case--second case
10 you directed me to was Alpine Christian Fellowship v. Pitkin
11 County, which was a 1994 case that held that conduct of a
12 religious school in a church, physically within the church,
13 amounted to religious activity of the church, protected by the
14 free exercise clause, that can be restricted by zoning
15 ordinances only on a showing of compelling state interest,
16 which the county failed to show by its evidence. Again,
17 driven by the trial court record, finding that there was no
18 evidence of a compelling state interest. Why did you select
19 this as an exceptional case?

20 JUDGE MATSCH: Well, because I think this was an
21 effort to again apply the 1st Amendment to freedom of
22 religious exercise. This was a problem near Carbondale, and
23 it involved an established church there, but a non-traditional
24 church, and they wanted to have their religious school there
25 during weekdays, which was very unpopular with residents of

1 the area because of the increased traffic. And it was not an
2 opposition to the religious exercise; it just was that this is
3 a school, and it changes the dynamic--well, it changes the
4 neighborhood considerably. And so, the effort was to call
5 this simply a zoning problem and the adverse effects of
6 traffic coming in and out of this area during workdays,
7 school--weekdays.

8 But the educational aspect of this was not neutral;
9 it was religious. And my view of it was and is that an
10 indoctrination, education, whatever you call it, of a certain
11 religious belief should be protected. And we cannot look at
12 it as simply a school. You have to look at it as a religious
13 school.

14 MR. CAMPBELL: And, as you point out, in the absence
15 of a compelling--if it were creating a public health or safety
16 issue--

17 JUDGE MATSCH: Yes.

18 MR. CAMPBELL: --it was something else, but the
19 record didn't support that.

20 JUDGE MATSCH: That's right.

21 MR. CAMPBELL: The next case you pointed me to was
22 your decision in American Constitutional Law Foundation v.
23 Meyer, another 1994 case involving political speech under the
24 1st Amendment. And you found unconstitutional restrictions on
25 petition gatherers. Why did you select that among the cases

1 that--

2 JUDGE MATSCH: Well, this too goes to what is
3 protected political speech and the justification required,
4 registration and identification badges, and restrictions that
5 I think the people who are doing the street work here had to
6 be residents or citizens of Colorado and voters.

7 MR. CAMPBELL: Right.

8 JUDGE MATSCH: So, they could be voters. And this
9 was a problem of hiring people to come in and do polling. And
10 I thought these restrictions were eliminating the opportunity
11 for candidates to get their message out, and that these people
12 were not just taking names and addresses; they were
13 politicizing--they were publicly supporting a candidate. Now,
14 actually my ruling got reversed in part because the Tenth
15 Circuit went even broader. And I don't remember now, I
16 allowed some part of this--oh, I think the badges, so the
17 people would know that this is a pollster. But they--Tenth
18 Circuit went farther than I did. But this amounts to, you
19 know, how do you define political speech, and is asking
20 somebody to sign a petition political speech? Well, of course
21 it is.

22 MR. CAMPBELL: These cases obviously say something
23 about the importance of not the unlimited, unrestrained
24 importance, but the importance to you as a judge of the 1st
25 Amendment and free expression in political speech.

1 JUDGE MATSCH: You know, the 1st Amendment is first,
2 and that's because--by design, because all the rest of it
3 depends upon the recognition of the freedom expressed in that
4 amendment.

5 MR. CAMPBELL: When you say all the rest of it, I
6 assume you're referring to democracy.

7 JUDGE MATSCH: Yes, and the other amendments.

8 MR. CAMPBELL: Right. My favorite of the cases that
9 you pointed me to is one that every football fan from Pop
10 Warner to the NFL should have as required reading. This
11 was an early case in your--

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: --Article III career called Hackbart
14 v. The Cincinnati Bengals Football Club and Boobie Clark. The
15 facts are, operative key facts involved a late hit, a
16 blindside after a play was over that found itself in a civil
17 proceeding in a diversity lawsuit in your court in which a
18 member of the Broncos football team, after the play was over,
19 got cheap shotted in the back of the head--

20 JUDGE MATSCH: Yes, forearm shiver.

21 MR. CAMPBELL: --by a member of the Cincinnati
22 Bengals. And there were various tort theories of negligence
23 and reckless misconduct and outrageous conduct. Before I go
24 to your dealing with those various tort claims, I need to read
25 from your case. You give the reader a starter by defining

1 what this football stuff is all about. And you say, "Football
2 is a contest for territory. The objective of the offensive
3 team is to move the ball through the defending team's area and
4 across the vertical plane into the goal line. The defensive
5 players seek to prevent that movement with their bodies. Each
6 attempted movement involves collision between players with
7 considerable force and with different areas of contact. The
8 most obvious characteristic of the game is that all of the
9 players engage in violent physical behavior."

10 Well, the violent physical behavior in this case
11 resulted in injury to the plaintiff and, as I mentioned,
12 seeking relief in your court on various tort theories. And
13 you disposed of them all and dismissed them all. You look at
14 the matter of negligence or reckless misconduct and noted that
15 the character of NFL competition negates any notion that the
16 playing conduct can be circumscribed by any standard of
17 reasonableness. There goes reasonable care if you can't meet
18 a standard of reasonableness.

19 You moved on to dealing with reckless misconduct and
20 noted that the record, however, reflects that what he did,
21 unfortunately, was an example of the excesses of violence
22 which have become expectable as a result of the style of play
23 in the NFL. So, you got rid of the notion that something
24 could go to a standard of recklessness if it was part of the
25 standard of what was expected of you.

1 And then, finally, you look at a broader view of the
2 whole matter and started by actually quoting Oliver Wendell
3 Holmes on the function of the law of torts. And Holmes said
4 in his treatise on common law dating back to 1881 that the
5 business of the law of torts is to fix the dividing line
6 between those cases in which a man is liable for the harm
7 which he causes or which he has done and those in which he is
8 not. You went on to note that the difficulty--and this is
9 your holding finally dismissing the case--the difficulty with
10 that view, referring to Holmes, as applied to professional
11 football is that to decide which restraints should be made
12 applicable is a task for which the courts are not well suited.

13 You note, "There is no discernable code of conduct
14 for NFL players.... There are no Athenian virtues in this form
15 of athletics. The NFL has substituted the morality of the
16 battlefield for that of a playing field, and the restraints of
17 civilization have been left on the sidelines. Mr. Justice
18 Holmes' simple statement of the function of tort law and the
19 evidentiary record now before me clearly reveal the density of
20 the thicket in which the courts would become entangled if they
21 undertook the task of allocation of fault in professional
22 football games." And with that, you sent the plaintiff
23 packing.

24 JUDGE MATSCH: And I got reversed.

25 MR. CAMPBELL: Well, again, I think--and here is one

1 more area where it would appear you are again about 40 years
2 ahead of your time.

3 JUDGE MATSCH: Yes.

4 MR. CAMPBELL: And my question to you is, do you
5 think that football is going to go the way of boxing? You
6 grew up, as did I, listening probably to the Friday Night
7 Fights over the Gillette Cavalcade of Sports.

8 JUDGE MATSCH: Yes.

9 MR. CAMPBELL: That I wonder if--it may take some
10 time, because there's billions of dollars at stake, but is
11 football on the path that boxing was on? Certainly, one step
12 in that direction is a three-quarter of a billion dollar
13 settlement that the players associations recently reached with
14 the NFL concerning head injuries.

15 JUDGE MATSCH: Well, I'm not--I don't know about the
16 path. I'm proud of that, at least my writing, because I think
17 it accurately described professional football. Professional
18 football, if I were to describe it today, I would even be
19 stronger, because we are asking these players, and bribing
20 them, and incentivizing them with millions of dollars to ruin
21 their bodies.

22 MR. CAMPBELL: Not to mention their minds.

23 JUDGE MATSCH: Yes. I mean, you know, when you're
24 22, 23 years old considering an NFL career, you're not
25 thinking about what it's going to be like when you're 50 or

1 60. And to some extent, this applies to colleges as well,
2 because the style of play has changed dramatically.

3 I participated in a junior college football team. I
4 don't remember a significant injury from that season, not just
5 to me; I mean I don't remember real serious concussions or
6 broken bones. But football in those days was more push and
7 shove, more like rugby. And also, more like rugby, you didn't
8 have the protection of the big helmet, the facemask, so that
9 it becomes a weapon. And, you know, you didn't have 50-yard
10 pass plays; you didn't have collisions with people going full
11 speed; you didn't have 300-pound bodies crushing you down when
12 you're 200 pounds; you didn't have the size, the violence.
13 But that's what sells.

14 And another aspect of this that disturbed me greatly
15 is the audience and the idea of making so much noise that you
16 distract the opposing team so that the spectators, the crowd
17 as they call it, becomes participants in the violence. And
18 that eliminates--I mention Athenian virtues. You know, where
19 is the fairness of allowing the--you know, it wasn't all that
20 long ago that there was a penalty for crowd interference with
21 play calling; I guess it may be 30 years. But what does that
22 say? What is the fans' interest in the game and the
23 identification with the team so that these people are wearing
24 jerseys of players and some of these people that you see on
25 television are in these outrageous Vikings helmets and all

1 kinds of things. What's going on here? What is the cultural
2 aspect of this? What does this have to say about our society
3 as a whole? It's sex and violence, because in addition to
4 this violence that we're seeing that's almost gladiatorial,
5 you have the cheerleaders, you have the distractions of the
6 objectification of women, as we say now, with the
7 cheerleaders. And I don't know that it's going to change.

8 We do now have this rule that it's so vague that
9 it's hard to understand, targeting, where you're using your
10 helmet and head as a spear and a weapon, but, you know, how do
11 you enforce that when somebody's going full speed and a player
12 is being tackled and--you know, is he supposed to stop? So, I
13 think that until there's a change in our society's values that
14 at least modifies its interest in sex and violence, it's going
15 to continue. And it worries me more about what is our
16 standard of decency. I don't know that the word decency can
17 be applied to very much that happens in our country and in our
18 culture.

19 MR. CAMPBELL: We have digressed, and I apologize
20 for that. And I want to return to things judicial. We've
21 been running now for a couple of hours.

22 JUDGE MATSCH: Yes.

23 MR. CAMPBELL: How do you feel about continuing and-
24 -I'm torn because I'm poaching on more of your time than I
25 ever intended, but I'm thrilled that we're talking about some

1 of the subjects we're talking about.

2 JUDGE MATSCH: Well, I would rather do another day.

3 MR. CAMPBELL: Are you willing to do that?

4 JUDGE MATSCH: Yes, of course. I think, you know, I
5 can express myself in ways that I can't do otherwise.

6 MR. CAMPBELL: Well, but you're expressing yourself
7 in a way--this is--people like you and I have to realize we're
8 not going to live forever. But you're expressing--

9 JUDGE MATSCH: I hope not.

10 MR. CAMPBELL: --you're expressing yourself in ways
11 that are valuable for those of us who think history has
12 something to teach us. That this really is something that is
13 as I say, I'm torn because I know how precious your time is,
14 and you're being so very generous with it.

15 JUDGE MATSCH: Well, I consider this a matter of
16 importance. As I said, whoever may encounter these works
17 later, it may be of help.

18 MR. CAMPBELL: I think that's--

19 JUDGE MATSCH: And I would like at some time to talk
20 about the profession.

21 MR. CAMPBELL: Those are what remains.

22 JUDGE MATSCH: Yes.

23 MR. CAMPBELL: The next topic is judicial
24 philosophy. Then I get, as a retired trial judge, to ask you
25 about some of the mysteries of trial judging. And then we're

1 going to talk a little bit, if you will let me continue, about
2 the state of the judiciary, and the state of the country, and
3 the state of the world, and we'll solve all of its problems.

4 JUDGE MATSCH: Well, I am very concerned and do want
5 to talk about the--I think the steady erosion of the adversary
6 process and the decline of the jury trial and the decline in
7 professionalism.

8 MR. CAMPBELL: All topics I hope to ask you about.

9 JUDGE MATSCH: Yes, I think that we have, you know,
10 the judiciary can't function well without a qualified and
11 operating adversary system of professional lawyers as
12 advocates. And I think that a lot of what is going on here in
13 case management and changes in the rules are destroying the
14 very basic idea of these competitions in adversary proceeding
15 where professional ethics are the standard to be followed in a
16 fair adversary proceeding. But I want to really bear down on,
17 you know, there are two Supreme Court cases that have caused
18 this, and one is advertising by lawyers and the other is
19 accepting less than a 12-member jury.

20 MR. CAMPBELL: I've learned--as I think I've told
21 you, I've learned something about 12-member juries since you
22 and I started on this thing.

23 JUDGE MATSCH: But, you know, people who are very
24 much in favor of diversity and making the judiciary look like
25 the citizenry and having diversity and at the same time

1 accepting an eight-person jury. How much diversity are you
2 going to get with eight people? And, how much of a cross-
3 section of the community would eight people represent?

4 MR. CAMPBELL: My own experience tells me that while
5 it isn't perfect, a 12-member jury can really get you a
6 diverse slice--

7 JUDGE MATSCH: Yes.

8 MR. CAMPBELL: --in Denver, Colorado, in dealing
9 with a very, very profoundly serious issue and--

10 JUDGE MATSCH: Yes.

11 MR. CAMPBELL: --and it is a broadening as well as a
12 frightening and important experience to serve as a juror. In
13 recently sitting as a juror for a serious state court felony
14 trial, I was exposed to more diversity culturally than I've
15 been exposed to in a long time--sitting for a week and getting
16 to know 12 people better than I wanted to get to know them.

17 JUDGE MATSCH: Yes, and now expand that to our
18 juries, which is not just Denver, but 20 counties--

19 MR. CAMPBELL: Yes, right.

20 JUDGE MATSCH: --and you get rural, you get--well,
21 I'm proud of the juries that I've served with.

22 MR. CAMPBELL: Well, I also want to talk a little
23 bit about the function of the jury, criminal versus civil, one
24 a civil rights matter and the other is part of the
25 adjudicatory process, but has different stakes involved or

1 different functions involved.

2 JUDGE MATSCH: Yes. Well, and we also need to talk
3 about the over-criminalization of the law. Why should there
4 be 40,000 criminal felonies? You realize that is--

5 MR. CAMPBELL: Wow.

6 JUDGE MATSCH: --the size of the criminal code.

7 MR. CAMPBELL: No.

8 JUDGE MATSCH: No. And we have an almost strict
9 Liability--

10 MR. CAMPBELL: Well, why should we have--I don't
11 know what the number is, 8,000,000 incarcerated people?

12 JUDGE MATSCH: Because we've made so much conduct
13 criminal.

14 MR. CAMPBELL: Yes.

15 JUDGE MATSCH: I had the view that there should be a
16 third way. That we should have the civil law system, the
17 criminal law system and the public tort, so that you don't
18 have to first of all go beyond a reasonable doubt to prove the
19 case. And second, you don't have to use imprisonment as the
20 punishment.

21 MR. CAMPBELL: Or, maybe other things that could
22 functionally be done. We earlier talked about deterrence, and
23 isolation, and punishment. There are other things that have
24 to do with education and healing that maybe your third track
25 is more responsive to. I mean we don't learn very much from

1 history.

2 JUDGE MATSCH: Well, we don't even know very much
3 about history. I just read something the other day about a
4 poll of people who can't identify Ben Franklin or don't know
5 the year of the Constitution, who have no idea of our Anglo
6 roots.

7 MR. CAMPBELL: This is Jay Leno's street walking,
8 where he'd go out and ask people--

9 JUDGE MATSCH: Yes.

10 MR. CAMPBELL: --how many branches of government are
11 there, and they don't know the answer.

12 JUDGE MATSCH: But we don't want to recognize the
13 foundation of being British.

14 MR. CAMPBELL: Yes.

15 JUDGE MATSCH: These white men wrote the
16 Constitution. These slave owners. We shouldn't listen to
17 what they had to say because they're moral defects. Well--

18 MR. CAMPBELL: Well, let's take a pause. And again,
19 I'm going to--as I say, I'm--I really--

20 JUDGE MATSCH: Well, this is a worthy use of my
21 time.

22 MR. CAMPBELL: Well, I mean you have been amazingly
23 generous, and I didn't intend to impose this much, but I'm
24 torn because I'm not sorry given what we've been able to talk
25 about. And if you don't object, I'd love to continue for

1 another session--

2 JUDGE MATSCH: Yes, we will.

3 MR. CAMPBELL: --and we'll be covering some of these

4 topics that--

5 JUDGE MATSCH: I'm eager to do it--

6 MR. CAMPBELL: Well, thank you.

7 JUDGE MATSCH: --you know, because--

8 MR. CAMPBELL: Thank you very much.

9 JUDGE MATSCH: --it's very--you know, working with

10 you is so comfortable--

11 MR. CAMPBELL: Well, that's--

12 JUDGE MATSCH: --and easy.

13 MR. CAMPBELL: --that's a high compliment.

14 JUDGE MATSCH: I have no--I have no hesitation in

15 opening myself to you.

16 MR. CAMPBELL: Well, that's an unbelievably high

17 compliment that I never expected to receive.

18 JUDGE MATSCH: Okay.

19 (Whereupon, the interview was adjourned.)

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OCTOBER 17, 2018

MR. CAMPBELL: Let's try to pick up where we left off. At the conclusion of our last meeting, we had digressed a bit in talking about a number of cases you have handled over the past 40-plus years. The last of which that we discussed was the Hackbart case. And I think my last question was, with all its violence, do you think football is in for the same fate as prize fighting. As I said, we had digressed quite a ways, and I apologize.

Judicial Philosophy

Let's turn to things judicial and in particular judicial philosophy. Do you think of yourself as having an identifiable judicial philosophy? And if so, what is it? And has it changed during your 50-plus years on the bench?

JUDGE MATSCH: I don't think it's changed, and I'm not sure about the word philosophy. But I have I think adhered to the same motto of what a judge does.

MR. CAMPBELL: I think a job description is sort of a better--

JUDGE MATSCH: Exactly.

MR. CAMPBELL: --a better shortening than judicial philosophy.

JUDGE MATSCH: And I think I learned that primarily from Judge Arraj, who set a good example.

1 But, you know, I think I've touched on this before.
2 I think that judges--the newer judges have gone well beyond
3 the role of a judge in an adversary system. I think the
4 adversary system is waning and decaying because of the
5 emphasis on case management and the effort to make the
6 litigation proportionate to the stakes involved in the case,
7 which comes up through this amendment to Rule 1.

8 But we now have judges with practice standards that
9 are an insult to lawyers because they start out with dictating
10 what lawyers can and can't do in these cases. And we even
11 have some who set timers on what an examination or cross-
12 examination can be and ignore entirely the dynamics, the human
13 dynamics, of a trial, jury or otherwise.

14 And my view of it is that the judge should govern
15 the case but permit the lawyers to practice in their own
16 right. And in support of these case management judges, the
17 fact is we have some lawyers who don't have any idea how to
18 practice law and how to try a case. And I think while
19 diversity is a worthy objective in all society and opportunity
20 should be available, the fact of the matter is we've gone too
21 far with that, and we have a lot of people who never even
22 should have got into law school. And this is difficult to
23 say, but a good many of them when they get out of law school
24 are no longer employed in the legal profession, and a good
25 many of them try to do it on their own in solo practice. And

1 I don't really see how anybody can be solo today with the
2 complexity of the law.

3 MR. CAMPBELL: Let's--

4 JUDGE MATSCH: I don't think my job is to call balls
5 and strikes; I disagree with that. But it is to--particularly
6 in a jury trial--it is to assure that there's a fair
7 presentation of the case and that the jury understands what's
8 going on. So, I think it's very important. This is why I
9 don't permit lawyers to do voir dire because they tend to slip
10 over into argument. But, that's my opportunity to get
11 acquainted with the jury. And I think it's important for the
12 jury to understand the role of the judge as keeping things
13 moving.

14 MR. CAMPBELL: Let's talk a little bit about trial
15 management. Thirty years ago, plus or minus a few years
16 perhaps, the debate began raging on a more active role for
17 trial judges pretrial. Questions of abuse of discovery and
18 questions of too little focus resulted in the rule makers, and
19 the bar, and the bench, or parts of each of those, calling for
20 a more active role of the judge pretrial. Do you have
21 any sense of whether relating to that there is too much
22 pretrial discovery and motion practice if the trial judge does
23 not take a more active role in the case than might have
24 traditionally been the case?

25 JUDGE MATSCH: Well, I'll tell you what I do, and

1 that is--and have done for a number of years--I conduct a Rule
2 16 conference, a scheduling conference. After the case is at
3 issue, I set out a procedural order number one, which requires
4 the lawyers to meet and confer as required by Rule 26(f), and
5 then to contact the court when they're ready for a scheduling
6 conference.

7 At the scheduling conference, I ask a number of
8 questions. I suggest--I study the case by looking into
9 pleadings and the proposed scheduling order, and I discuss the
10 facts of the case as they--each side knows them--and then
11 attempt to narrow the issues at that time. And I don't
12 usually rule, but I will suggest if there's a Title VII
13 employment case and there's also the Colorado Anti-
14 discrimination law, I suggest that they go with the Title VII
15 then, at the state court--or the state law is superfluous and
16 not as well defined as Title VII is, as an example.

17 I'll suggest to them they may want to reconsider
18 whether they want both claims in the case. And at any rate, I
19 also make sure the lawyers know each other, that they've met
20 personally, and that they not use e-mails, and that they
21 understand that they can communicate and exchange information
22 without the necessity of filing discovery motions. And I
23 think that the authors of the Rules of Civil Procedure failed
24 to understand the trial dynamics, and they designed the rules
25 so that they can be used--they can be weaponized so that you

1 can have a flurry of interrogatories, and other discovery, all
2 these things which can not only cause an increase in the
3 expense, but also develop some antagonism between the counsel.

4 I also insist that there be lead counsel on each
5 side where there are multiple lawyers and that the
6 communications on any substantive matter be between the lead
7 counsel and not associate counsel or paralegals. So, I also
8 emphasize at that time that the purpose of this court is to
9 try cases and that while there are opportunities for
10 settlement, that's not my role. And we have--now, most of the
11 judges on this court don't send cases to magistrate judges for
12 settlement. I do if there's a joint motion by counsel to do
13 that, and frequently they have to do some discovery before
14 they can decide whether the case may possibly settle. But I
15 also talk about what are the stakes in the case in the
16 beginning; what are the damages theories. So, after that,
17 back off.

18 MR. CAMPBELL: Interesting. Do you find that
19 pretrial, not at the point where you say back off when the
20 thing is ready to be tried, do you find your function often or
21 in some instances is focus, is determining where there truly
22 are facts in dispute and what are the legal questions that are
23 involved in the claims and defenses, or is that the lawyers'
24 problem?

25 JUDGE MATSCH: Well, I don't believe in segmenting

1 the case. I believe in a holistic trial. It is kind of a
2 gross analogy, but I occasionally use it, of the old story of
3 about an old prospector coming into a bar in a mining town,
4 and he's really down on his luck, and he is shaking and
5 disheveled, and he comes up to the bar and asks for a drink,
6 and the bartender says, "Do you want a free drink?" And he
7 says, "Yes. Can you do it?" And he says, "Look at the
8 cuspidor over there," and the bartender points to a full
9 cuspidor. And the old prospector picks it up, and he says,
10 "Drink it." And the prospector is drinking it, and the
11 bartender says, "Wait, wait, that's awful. Put it down." And
12 he keeps drinking it. And the bartender then--after he's done
13 and wipes his mouth, the bartender says, "I can't believe you
14 drank the whole thing." And he said, "Well, I had to, it was
15 all one piece." So, I think of that as what a trial is. So,
16 I don't have motions in limine. I don't like motions for
17 partial summary judgment or ruling on points of law. Do it at
18 the trial.

19 MR. CAMPBELL: I want to kind of tie some of these
20 trial management questions into something that--comments you
21 made a moment ago, and perhaps this question attempts to do
22 that. Is more active trial management necessary when you're
23 dealing with able lawyers? I mean, is the problem really one
24 of inept counsel?

25 JUDGE MATSCH: The answer to that is yes as to inept

1 counsel. When I have experienced lawyers who then also
2 litigate against each other in particular, so they know
3 strengths and weaknesses of each, let them have it. And
4 that's why I don't put limits on time of opening statements,
5 closing arguments or any of that. Let the case flow. And no
6 matter how--a good trial, no matter what kind of preparation
7 you have as a lawyer, when you come in, often the--just to use
8 the military analogy, your tactical plan goes out the window
9 when the first shot is fired. And that is often true of your
10 planning how you're going to address the issues at trial.

11 MR. CAMPBELL: I think you've answered this, but I'm
12 going to ask it at the risk of some redundancy, and that is,
13 at what point should judges leave trial counsel alone and let
14 them do their own thing in the trial courtroom?

15 JUDGE MATSCH: When the case is called. Let the
16 lawyers--I often get this when lawyers want to file motions in
17 limine on an evidentiary issue, and my response to that is,
18 you stand up, make your objection, and you wear the
19 consequences. And if the jury makes--thinks that your
20 objection is foolish, that's part of the jury's response to
21 the way you're trying the case.

22 MR. CAMPBELL: Why are there so few trials today? I
23 think the number of cases that try is a single-digit
24 percentage versus the number of cases that are filed.

25 JUDGE MATSCH: I don't know a worthy answer to that.

1 I have some impressions. And my impression is, first of all,
2 it's too expensive. It takes a lot of money to try a case
3 anymore, and particularly it takes a lot of money for
4 discovery, and especially electronic discovery when you have
5 all these e-mails that are in the database. I've seen cases
6 where over a million dollars has been spent just on electronic
7 discovery. But another thing is, I think a lot of lawyers are
8 afraid of the courtroom. We have many lawyers who have no
9 mentors. And even in the big firms I don't think there's
10 enough mentoring going on. And then the fact that there
11 aren't that many trials means they don't get the experience.
12 So, I think a lot of them are afraid, and it shows sometimes
13 when they first stand up and talk to the jury, and they read
14 their opening statement.

15 There's a difficulty when you have cases with an
16 experienced and good trial lawyer on one side and a bad lawyer
17 on the other. There's a tendency among those who think that
18 the purpose is to "do justice" to help the lawyer who is not
19 performing adequately. And my response to that in my own mind
20 is, well, you've gone to a bad lawyer, and you're suffering
21 the consequences. But what if you went to a bad doctor? And
22 the risks are there. So, I don't--I let it happen.

23 MR. CAMPBELL: Let's talk a little relating to that
24 and the adversary system. I know from our prior meetings and
25 actually comments that you've made in the course of our

1 discussions here that you are a firm believer in the adversary
2 system. But are there not potential flaws in the system? For
3 example, mismatches in the skills, and abilities, and
4 resources of counsel on the opposite sides of a case, and
5 you've certainly answered that in part. But is that a
6 fundamental flaw or problem with the advisory system?

7 JUDGE MATSCH: Well, yes, it's a problem, but, you
8 know, this is a matter of weighing costs and benefits. And
9 while there are injustices perhaps as a result of the use of
10 the adversary system in cases like the ones we've been talking
11 about, the fact is it's better than anything else. It's like
12 what I think Churchill said about democracy. So, you know,
13 life is not perfect, and the systems aren't perfect, and we're
14 human beings, and we do the best we can. But the adversary
15 system still is, in my judgment, the best way to resolve the
16 case. It's not--you know, a search for the truth. I don't
17 agree that a trial is a search for the truth because what is
18 the truth? Most trials are lessons in history. And the
19 perceptions, the memories, all of these things are flawed
20 because we are human beings, and we are flawed.

21 MR. CAMPBELL: In your experience as a trial judge,
22 how often do the relative skills of counsel impact case
23 outcome?

24 JUDGE MATSCH: Too often for comfort, but again, I
25 don't worry about that.

1 MR. CAMPBELL: I think in my own experience as a
2 trial judge, perhaps not as often as people think do the
3 abilities of counsel drive the outcome. My experience is that
4 sometimes contrary to what the lawyers may think, what's going
5 on isn't a contest about which side is more effectively or
6 better represented. I know it was the case in my own instance
7 as a trier of fact, that the object was what does the law call
8 for, not who brought the prettiest lawyer to court with him.

9 JUDGE MATSCH: Well, there are a couple things about
10 that. One is, it isn't just the adequacy of the lawyer as
11 advocate; it's also the resources that are available before
12 trial. And the imbalance of competence of counsel is one
13 thing, but the inability to finance adequate investigation is
14 greater in significance, I think. But it is a fact there are
15 some lawyers who can charm a jury and who by their--I think--
16 let me say this. I don't know how juries decide cases. I've
17 worked with so many juries. Occasionally, I will talk to
18 jurors afterwards, but I never talk about whether I agree or
19 don't agree with the verdict. But I think that in--
20 particularly in trials of some duration, beyond a week, for
21 example, the jurors become very much affected by the demeanor
22 and manner of counsel. And I think lawyers often do not
23 understand or perceive that they're on stage. And that even
24 at counsel table, when they're writing notes or talking to co-
25 counsel or their client, the jurors are looking at them. And

1 it even comes at times I think to their clothing.

2 I remember an old lawyer, when I was first
3 practicing--I can't remember his name now, but said always
4 wear a brown suit when you're in a jury trial, because blues
5 and grays--jurors don't like then.

6 MR. CAMPBELL: Well, do you think in jury trials
7 that in focusing the jury on your--not only your instructions
8 at the apex of the case, but throughout the case where you're
9 advising them to focus on the evidence, is it part of your job
10 to focus the jury on the evidence and the law, as opposed to
11 the talents of counsel?

12 JUDGE MATSCH: Well, yes. I think you can do a lot
13 to minimize the adverse effects of a difference in the quality
14 of counsel by communicating with the jury as we go along and
15 using humor. I think it's very important for a judge to use
16 moments of humor, deprecating himself, for example. I do that
17 with age. And keep the jury loose, and that's a big part of
18 keeping their open minds. Because, you know, lawyers will
19 tell you you win a case on their opening statement, but it is
20 a problem.

21 What worries me the most is social media. And we
22 have now young--you don't have to be young, but we have people
23 coming into the jury box who are on their cell phones and
24 their various devices looking up information.

25 MR. CAMPBELL: Right.

1 JUDGE MATSCH: And even when a juror gets notice of
2 a particular case, they're going to start looking for it, and
3 they're going to start looking for definitions, and they're
4 going to go to Google, and they can look up the lawyers and
5 the judge and gain impressions from social media. And no
6 matter how often you caution them about that, it can happen
7 easily, because it's in their nature. And so, you get matters
8 that are outside the evidence affecting the verdict.

9 MR. CAMPBELL: I suppose--

10 JUDGE MATSCH: I don't know how we stop that. This
11 is--

12 MR. CAMPBELL: It's a larger and larger challenge,
13 is it not? Haven't you found that in the last decade or so?

14 JUDGE MATSCH: Oh, yes.

15 MR. CAMPBELL: Challenges that you never even
16 dreamed of--

17 JUDGE MATSCH: In the last few years in particular.

18 MR. CAMPBELL: Right. Right.

19 JUDGE MATSCH: And, you know, you could issue
20 orders. Some judges issue a big order, and they post it in
21 the jury room, but you've got to talk them into not doing
22 that. And--so issuing an order is like telling a kid don't
23 put beans in your nose, because it happens. And so you want
24 to avoid being dictatorial and also get the jury to appreciate
25 that they're on the same level as everybody else. I don't

1 allow lawyers to stand when the jury comes in, for example.
2 That's exalting them. The jury needs to know their role, and
3 my role, and the lawyer's role, and the witnesses' role and
4 play the role. And so, I don't patronize the jury, and I
5 think that can make them uncomfortable.

6 MR. CAMPBELL: I had an unusual, for a recently
7 retired judge, experience in that I sat on a jury not long
8 ago--

9 JUDGE MATSCH: Yes.

10 MR. CAMPBELL: --a month or two ago, on a very
11 serious criminal case before a very, very able state trial
12 judge. And I hadn't been in state trial court for 15 years
13 because I had been on the bench. And one very stark
14 difference was every time we took a break in the morning and
15 at lunch, in the afternoon, at the end of the day, we were
16 admonished relating to social media, newspapers, discussions.
17 I mean, I think the judge was effective, but clearly, he had
18 the concern you've just articulated of protecting the jury
19 from the flow of information that wasn't to be considered. We
20 knew it was coming. It got rather--but it was this judge's
21 way of dealing with what you're discussing. That as you point
22 out, it may be too late by the time he seats a jury--the
23 availability of information that is directly or indirectly
24 relating to the matter at hand may taint things. But it was a
25 constant struggle that was well done by this trial judge. He

1 certainly had the concern you articulated.

2 JUDGE MATSCH: Well, there's another thing that's of
3 great concern, and that is, I think we have a large number of
4 people, perhaps the majority, who do not trust institutions
5 today. And they don't trust the courts, just like they don't
6 trust the Congress, or the President, or the school board.
7 There's a great deal of anger and distrust, and it's justified
8 in too many situations.

9 MR. CAMPBELL: You've commented to me about the
10 importance of the jury in American jurisprudence--if the jury
11 is working, there's an effort for diversity to be reflected in
12 the jury--

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: --in those who are sitting on the
15 jury.

16 JUDGE MATSCH: That's why we need 12-member juries.

17 MR. CAMPBELL: Elaborate, if you would.

18 JUDGE MATSCH: Well, we have gone to--I think one of
19 the worst Supreme Court decisions is recognizing that you can
20 have a jury of less than 12 as long as it's six, and so we
21 have a lot of courts using eight-person--eight-member juries
22 in civil cases, and I see a lot of--when a case is removed
23 from the state court and I see the complaint and demands for a
24 jury of six. Well, the jury's role in the trial is to bring
25 the conscience of the community into the decision in the case

1 and also to reflect the community. So, we have twenty
2 counties on the jury panel for Denver in trials here. And you
3 need people of different backgrounds, not just race or
4 ethnicity, but farmers, doctors, people of all walks of life.
5 So, you try to get a cross-section. Well, you don't get much
6 of a cross-section if you've got six people there. And also,
7 I don't allow juries to take notes. I don't give them written
8 instructions. I rely on collective memory and collective
9 wisdom, and that's another thing you need 12 people to perform
10 that kind of a role.

11 MR. CAMPBELL: That's interesting. Let me come from
12 an extreme on this subject of civil juries. Do we need them
13 at all, juries that is, in civil cases? In courts like the
14 bankruptcy court or in the UK, they seem to do just fine
15 without them.

16 JUDGE MATSCH: Well, who says they're doing just
17 fine?

18 MR. CAMPBELL: Well, make the case for why juries
19 are necessary at all in civil matters.

20 JUDGE MATSCH: One of the principal reasons is that
21 the jury judges the law as well as the facts in the case. I
22 believe in jury nullification. I don't obviously instruct
23 them that way, and of course I instruct them--

24 MR. CAMPBELL: To the contrary.

25 JUDGE MATSCH: --to obey the law, yes, regardless of

1 any opinion they may have as to what the law is or what it
2 ought to be. That's part of the basic instruction at the
3 close of the evidence, but the fact is that a jury can say
4 this shouldn't happen. In a criminal case, in particular--

5 MR. CAMPBELL: Well, you know, I mean that's really
6 a civil right--

7 JUDGE MATSCH: Yes.

8 MR. CAMPBELL: --when you're facing off against the
9 officialdom.

10 JUDGE MATSCH: Right.

11 MR. CAMPBELL: A little different in civil
12 litigation.

13 JUDGE MATSCH: Well, but here too, you know, there
14 are statutory cases, cases based on statutory law where the
15 jury can decide, I don't know what Congress had in mind, but
16 this isn't right. I still believe that there's such a thing
17 as a moral sense inherent in human beings, and it gets
18 distorted early on, I think, in development because of the
19 circumstances in which a child is born. But there is
20 something in human nature about that, and I remember reading a
21 book called The Moral Sense, and I think that it's James--I
22 get mixed up with the James Q. Wilson and--anyway, the
23 beginning of the book says, my proof of a moral sense is when
24 you see children, and you have a group of children, and one of
25 them is in--sharing, one of them is left out, and there's a

1 sense of, well, that isn't fair. You hear children in a
2 dispute over a toy, "That isn't fair." Well, where does that
3 come from? Isn't that something that's inherent? Well, I
4 like to believe that. Sometimes empirical evidence says it's
5 wrong, but you have to believe that there are certain elements
6 of human nature that are good and look beyond that. And one
7 of the things that's important for a judge is to try to bring
8 that out in the courtroom with a jury.

9 MR. CAMPBELL: Do you ever long for a civil system
10 where the court more actively controls what evidence it will
11 hear? Do you ever find you're missing what you need in
12 evidence for either yourself or for the jury?

13 JUDGE MATSCH: Well, it depends on what the goal is.
14 That's why I say the goal is not justice. The goal is to get
15 this dispute adjudicated and resolved, and that's my purpose.
16 So, sure there are times when--there are many times, of
17 course, when I think there's an obvious question that hasn't
18 been asked of the witness. If I'm in a bench trial, I ask it.
19 And I take an active role in questioning witnesses in a bench
20 trial. In a jury trial, I won't do it. MR.

21 CAMPBELL: So, you never--

22 JUDGE MATSCH: Very seldom. I will at times for
23 clarification--

24 MR. CAMPBELL: Oh, I see.

25 JUDGE MATSCH: --simply ask something that lawyers

1 have overlooked, but it has to be something very neutral.

2 MR. CAMPBELL: And then presumably the lawyers have
3 a chance--another crack at it, if you--

4 JUDGE MATSCH: Yes, sure.

5 MR. CAMPBELL: Right. I sometimes--and I'm coming
6 back to a subject we were talking about because you've just
7 done so, the judicial philosophy and the function of what
8 you're doing in your job. I sometimes startle friends and
9 acquaintances, lawyers and nonlawyers alike, when asked about
10 my experience as a former trial judge and observing doing
11 justice was not part of my job description. Before I ask your
12 reaction, although you've already shared some of it--

13 JUDGE MATSCH: Yes. I say Amen.

14 MR. CAMPBELL: You beat me to the punch, because I
15 was going to quote to you from one of your cases, and I will.
16 In a sentencing in a 1996 criminal case, the case is called
17 U.S. v. Williams, and once convicted, Williams faced a much
18 longer sentence than that received by codefendants who had
19 cooperated with the prosecutor and testified against him. And
20 Williams sought a similarly light sentence, maintaining that
21 justice and fairness required as much. Your response on the
22 record was, and I quote, "I don't know that fairness and
23 justice have much to do with it. I have to punish you with
24 great severity because that's what the law requires me to do."

25 What are you saying there about a pillar of our U.S.

1 democracy we refer to as separation of powers?

2 JUDGE MATSCH: I'm not understanding what you're
3 asking me.

4 MR. CAMPBELL: When you say if there is a
5 distinction between doing justice and doing as you say in this
6 quote, "That's what the law requires me to do"--

7 JUDGE MATSCH: Yes. Well--

8 MR. CAMPBELL: --is that something that has to be
9 reconciled, or is doing justice not your job description?

10 JUDGE MATSCH: Well, I don't understand what--how
11 you would define justice anyway. But, to begin with, our
12 criminal laws are based on statutes. We don't have a common
13 law of criminal law. So, it is the society, the democratic
14 community, through their representation in the halls of
15 Congress and state legislatures that decides what is criminal.
16 And we now have--one of the biggest problems here is over
17 criminalization. We have these groups who go to the
18 legislature for a particular point, self-interest, and make it
19 criminal to go contrary to whatever they're trying to protect.

20 An example of this is fraud as defined by a failure
21 to adequately perform your duties as a corporate executive.
22 Well, you know, a lot of things should not be criminal, but
23 they're made criminal. And if you're going to perform the
24 role that you agreed to when you take the oath of office, you
25 enforce the law. And we have, of course, with the sentencing

1 guidelines eliminated, a lot of discretion that a judge used
2 to have, and this would be a sentence under the guidelines.
3 And it's my job to follow the guidelines, agree or disagree.
4 And there are ways to avoid a particular result, with a
5 modification in the case under the guidelines. But generally
6 speaking, the circuit courts enforce the guidelines strongly.

7 When we didn't have sentencing guidelines, and a
8 sentence was entirely within the discretion of the judge from
9 probation to 25 years, I studied the pretrial--I mean the
10 presentence investigation reports, and I listened carefully to
11 what the defendant had to say at his allocution, and his
12 lawyers, but I also would go back if there had been a trial to
13 review in my mind what the evidence had been.

14 And sentencings were done on Fridays, and I seldom
15 slept on Thursday nights because I attempted to match the
16 sentence not only to the criminal conduct but to the defendant
17 as a human being and what his life had, or her life had been.
18 And, you know, there's an example of how difficult it is to
19 obey the requirements of the law in a particular case comes to
20 mind with the Hayman fire. Hayman fire, as you'll recall, was
21 set--well, not set, started as a result of a forest service
22 employee who was in a divorce and who had received a letter
23 from her ex and was angry and burned it in a fire pit, and it
24 got out of control. Well, the world came down on that woman,
25 and of course the damage was horrible. But it came time to--

1 she pleaded guilty, and it came time to sentence her. And I
2 had a lot of her background and what her life had been like
3 and something about the reasons for the divorce. And I don't
4 remember what I sentenced her to in terms of years, but a big
5 issue was restitution. And we have mandatory restitution.
6 And the question--the government asked for the cost of fire
7 suppression, which of course is millions of dollars. And I
8 asked what's the property--what is the value of a national
9 forest? How do you measure the value of a national forest? I
10 said, disregarding any structures that were destroyed. And I
11 decided you can't measure the value of a national forest.
12 There's a fire; there's regeneration. You know, we even
13 prescribe fire burns. But I said I'm not going to sentence
14 this woman to a life of poverty, which would be required if I
15 impose the millions of dollars in restitution. So, I didn't.
16 I said I can't--I can't value the property that was destroyed.
17 Well, that was quickly reversed by the Court of Appeals,
18 saying the government's proposal is what you have to follow,
19 and so I did.

20 MR. CAMPBELL: For the restitution?

21 JUDGE MATSCH: Yes, and I don't know, \$15 million,
22 something like that. How is a person going to continue to
23 live? And I have recently received a request where--from a
24 defendant who has served 20 years but has--in a fraud case,
25 and he has restitution in--a huge figure--and he can't get--

1 the government is after him, garnishing wages, and he
2 essentially can't live his life because he's living in poverty
3 because of this restitutionary order that he can't possibly
4 ever meet, and that's wrong. Why are we doing that?

5 MR. CAMPBELL: It's a life sentence of sorts.

6 JUDGE MATSCH: It is. It's worse. You know, how do
7 you establish yourself? And even in a more normal case of
8 burglary or, you know, there's a value here of maybe \$10,000
9 or \$15,000, which is doable. But at the same time, you come
10 out of five years of prison; you have no skills, particularly
11 these days when the technology affects every job. You have to
12 be computer literate and capable to hold almost any job today,
13 even construction work. How does he assimilate or reintegrate
14 in the society, especially when his wages get garnished?

15 MR. CAMPBELL: It sounds like some of the thinking--
16 and again, you and I talked early on about not looking for
17 different levels of actual cases, and I understand that and I
18 want to honor it. So, this is a question you may wish to
19 decline to answer--but from just what you said, some of that
20 same thinking sounds like it may have gone into the 8th
21 Amendment case that you decided not long ago relating to
22 registration of sex offenders--

23 JUDGE MATSCH: Yes.

24 MR. CAMPBELL: --in terms of what is in a very real
25 sense from the defendant's perspective a life sentence, when

1 that's not really what you're going about doing, but you may
2 do--or may have been done. I don't know if that case is on
3 appeal or--

4 JUDGE MATSCH: It is on appeal, and it's been
5 argued, and it hasn't--the result hasn't come down. But we
6 have hysteria today about sex offenses, and especially against
7 children. And of course, that's abhorrent conduct. But, you
8 know, are you going to--well, in that case, I went to trial.
9 We had details with respect to how this has affected these
10 people, one of which--one of whom was a teenager and his sex
11 offense was trying to kiss a girl on a playground of the
12 school. He's now in his 30s, and he's still restricted as to
13 where he can live, what he can do, where he can work. Well, I
14 guess that could be described as an injustice, but I found
15 that it was the same as banishment and shaming, which are old-
16 fashioned sanctions/penalties. And we're going back to them.
17 And all we've got is the state legislatures and, for that
18 matter, the Congress saying this is not punishment. So,
19 because the legislature says it's not punishment, we're
20 supposed to say it's not punishment. But take a look at real
21 life.

22 **Trial Judging**

23 MR. CAMPBELL: Let's--we're talking about some of
24 these facets of the job of a trial judge and three or four
25 other areas, perhaps more specific than judicial philosophy or

1 an overall description of the trial judge's job, but some more
2 particular issues. And let me take up two or three of these.
3 Let's start with appeals and reversals.

4 **Appeals and Reversals**

5 A trial judge is in an interesting position. It's
6 been said that it's both, on the one hand, the job with the
7 most unfettered power, and, on the other hand, it's a job that
8 is perhaps held more to account than any other. Very few jobs
9 have every word one says recorded so that it can be questioned
10 for error. When you have been reversed on appeal, are there
11 times you have not agreed with the appellate court's
12 conclusion that you simply got the law wrong in the first
13 instance?

14 JUDGE MATSCH: Well, there are many times when I've
15 thought that the reversal was ill-considered, and it's
16 because--most of the time, it's because I see that--or
17 perceive that the appellate judges have not studied the record
18 and have not understood the basis upon which I've made a
19 ruling. This is particularly true in areas of law where
20 you're applying it to facts as determined by trial. And it is
21 distressing to me how many times I've seen a circuit opinion
22 that did not mention at all the reasoning of the trial judge,
23 but simply said he granted summary judgment and then go off
24 from there and make their own findings. And they don't even
25 have the whole record anymore. The records are there only

1 insofar as the lawyers provide an appendix.

2 MR. CAMPBELL: Would you agree though that the
3 appellate process is about far more than correcting the
4 mistakes of trial judges? And if so, can you explain why?

5 JUDGE MATSCH: Well, the purpose of the appellate
6 court in part is not just to see errors but to fit the case
7 into the continuum of the law. So, their responsibility is to
8 keep the river flowing, to relate the law to precedent. And
9 when you're going beyond precedent, to articulate the reasons.
10 So, there's no question that these--in the kinds of cases we
11 litigate today that they're policy makers, because there are
12 big gaps in what the legislation is. Take Title VII, you
13 know, it's all judge-made law. And the issue, for example of
14 whether sex in the Title VII includes homosexual, transgender;
15 it's a cutting edge issue. They're making that policy because
16 Congress didn't.

17 MR. CAMPBELL: It may not have been on the table
18 when Congress was--

19 JUDGE MATSCH: That's true, but also Congress is
20 fearful of being specific. Congress is more goal-oriented in
21 saying--you know, another area of the law that's so difficult
22 to deal with is the individual education, the Disabilities Act
23 where you have to have an individual educational plan for
24 autistic children, for example. I would get those cases to
25 review. How is there--you know, it's a very difficult thing

1 to take an extremely autistic child and mainstream him into a
2 regular classroom. Sure, it's wonderful to say we need to do
3 that, but get down to school district level.

4 MR. CAMPBELL: When considering the appellate
5 process, the availability of an appeal, apart from whether one
6 side at the trial court level believes a mistake has been made
7 in the application of the law by the trial judge, is a
8 recognition of the fallibility of the system itself. Is that
9 in and of itself important?

10 JUDGE MATSCH: Well, you know, trial judges are
11 human beings and they can have bad days and they can be under
12 stress that is unrelated to the case.

13 MR. CAMPBELL: Or, they might not even be very
14 smart.

15 JUDGE MATSCH: Unfortunately, that's also true.

16 MR. CAMPBELL: Present company excluded, of course.

17 JUDGE MATSCH: Also, you can be influenced by things
18 going on in your private life and your health. And sometimes-
19 -you know, I appreciate that there's a second look and that
20 these people don't have to live with my bad day. But the
21 other thing that is of great concern is the role of law clerks
22 in the--actually in both the trial court and the appellate
23 court, and certainly in the Supreme Court. And we have judges
24 who only take law clerks from certain law schools and who also
25 pride themselves on getting the top performing scholastic

1 people, and somehow that enhances them.

2 But the difficulty with that is that the law schools
3 have become schools of philosophy and are engrained in a
4 certain view of progressivism, and I'm not talking partisan
5 politics here; I'm talking about whether you're looking at
6 this from advancing a certain cause or whether you're looking
7 at it as a case to be decided on its merits and then also
8 working in, as I said, the continuum of the law. But, you
9 know, Judge Posner has written a lot, but he has written about
10 the appellate process and has said openly that most cases--
11 most opinions are written by law clerks. And it strikes me
12 often that it shows, because here we have appellate courts
13 with 25-page limitations and their opinions are 75 pages.

14 **Law Clerks - Role and Selection**

15 MR. CAMPBELL: Now, how do you go about selecting
16 your law clerks? And has that changed over the years?

17 JUDGE MATSCH: Well, now I don't--because of my age,
18 I don't hire out of law schools. I haven't been doing that,
19 because the normal thing is you hire in their second year.

20 MR. CAMPBELL: Right.

21 JUDGE MATSCH: And, you know, I don't want to have
22 some student accept an appointment by me, but I'm dead by the
23 time he or she is going to start serving the clerkship, so I
24 don't think it's fair.

25 MR. CAMPBELL: You've worried about that

1 unnecessarily a lot of times.

2 JUDGE MATSCH: Yes, but I have--you know, I don't
3 want to leave some law clerk or law student hanging without a
4 job. In addition, I used to, over the many years, hire term
5 clerks, one-year terms, and stagger them, one starting in
6 January, one starting in June. And I always interviewed them
7 personally, of course. But I have always looked for people
8 who have done something besides sit in a library. And an
9 example comes to mind, I had a woman from Harvard who had, you
10 know, pretty good grades, but nothing like top tier, and she
11 was from New York City. And I asked her about her background,
12 what she had done, and she revealed to me that she had been
13 selling ice cream from a cart on Wall Street. And I thought,
14 okay, you know something about people. So, I've always looked
15 for somebody who's done something besides being in the
16 classroom and who's got some real-life experience so that they
17 can appreciate what people
18 --the word ordinary I hate, ordinary people, but people who
19 are not college educated and who are under all kinds of
20 influences and stresses understand life. I've hired cab
21 drivers.

22 MR. CAMPBELL: I wish I'd known this. I spent a
23 year making Chevrolets on an auto assembly line and was an
24 munitions operator at a different job.

25 JUDGE MATSCH: I looked at that. Yes, I looked at

1 that. And I particularly looked at people--you know, we use
2 the term blue collar, but that includes farmers. So, I've
3 also had ranchers and people who know something besides how to
4 research law.

5 MR. CAMPBELL: I'm going to ask you about career
6 clerks. And as a trial judge, I've regretted that I didn't
7 have term clerks.

8 JUDGE MATSCH: Yes.

9 MR. CAMPBELL: Just because it kept a foot in the
10 outside world that was changing as fast as it's changing with
11 a younger, less experienced lawyer. But the bankruptcy
12 court's caseload increased three- or four-fold--

13 JUDGE MATSCH: Yes.

14 MR. CAMPBELL: --and the number of judges didn't.
15 And without career clerks, I could not have survived. Not
16 that you let go of the reigns, but just the staffing of the
17 federal courts, in Colorado at least, the state courts as
18 well, has made this phenomenon of the career clerk in some
19 cases a matter of survival for the judges.

20 JUDGE MATSCH: Yes, and the difficulty with a term
21 clerk of one year is--

22 MR. CAMPBELL: Is about the time you get them
23 educated and--

24 JUDGE MATSCH: Well, and you also--you have cases
25 that go beyond a year--

1 MR. CAMPBELL: Sure. Sure.

2 JUDGE MATSCH: --as most of them do.

3 MR. CAMPBELL: Yes.

4 JUDGE MATSCH: So, if they've been working on a
5 particular case and then they're gone, and you get a new law
6 clerk to come in and take over, helping you in that case. So,
7 yes, I think that the career law clerk has been a good thing.
8 But I mostly write my own final opinion--

9 MR. CAMPBELL: Right.

10 JUDGE MATSCH: --because I have my own style. And I
11 think anybody who knows me and what I have written in the past
12 would easily recognize if this is not Matsch. But besides, I
13 think that the less the better. It's like a thing that's
14 attributed to George Washington that "I'm sorry the letter is
15 so long; I didn't have time to write a shorter one."

16 MR. CAMPBELL: There's some truth to that.

17 JUDGE MATSCH: There is.

18 **Expert Witnesses**

19 MR. CAMPBELL: Let me move on to another aspect of
20 trial judging: expert witnesses. Under the rules of
21 procedure, expert testimony is available when it is helpful to
22 the finder of fact. Generally, do you find expert testimony
23 is helpful in your court?

24 JUDGE MATSCH: No. It depends on the subject.
25 Obviously, if you're doing a medical malpractice case, you

1 need some expertise and some forensic expertise instead of
2 just the providing doctors to tell not only the jury but me
3 about the particular disease or trauma.

4 But when it comes to--well, here's an example. We
5 have now a lot of insurance cases where their benefits have
6 been denied, a lot of them are underinsured or uninsured motor
7 vehicle drivers, and then they go back to the uninsured or
8 underinsured policy of their own, and their insurance company
9 denies the claim or reduces it. And in addition to getting
10 the claim for benefits, there's a claim for breach of the
11 common law, good faith and fair dealing, and there's a breach
12 of the Colorado statute that is penalty for delay or denial
13 but double the amount of the benefit.

14 So, those are always in the complaint in these
15 cases. And they want to--plaintiffs want to bring in an
16 expert on claims handling. And I tell them there's a Colorado
17 statute that details what an insurance company is required to
18 do in handling claims; that's the law. I don't need any
19 experts to explain that to the jury; I explain it to the jury.
20 And so, I get a startled reaction to not having an expert in
21 claims handling. You know, that doesn't even come within Rule
22 702. In my view that's the obligation of the court to define
23 the duty of the insurer.

24 So, and then of course we have--and the big problem
25 has been the toxic tort and the cigarette cases and the--you

1 know--let me tell you about the most uncomfortable I've ever
2 been in a trial, and that was the Dalkon Shield cases. You
3 may remember that there was this claim that the particular IUD
4 being sold by the ChapStick company was causing infection.
5 Because there was a retrieval string was wicked. And the
6 notion was that when that wicking, being outside the uterus,
7 in the vagina causes bacteria to wick up and causes
8 endometriosis and these other problems.

9 Well, these trials were being done all over the
10 country. Judge Fullerton had one in Denver first, and then I
11 had 12 of them. And the lawyers agreed to waive the jury and
12 go to trial with 12 plaintiffs, all of whom had different
13 experiences. And we did go to the trial, and I spent four and
14 a half months trying those cases. And we had expert witnesses
15 disagreeing about whether this wicking theory had validity.
16 And so, long story, but we did have a lot of expert witnesses
17 and a lot of testimony. I almost became a monk because of
18 learning too much about the female experience.

19 But at any rate, I ruled in favor of some and
20 against others based on causation, but I held to the theory
21 that was being spouted and all of this resulted in that
22 company going into bankruptcy because they couldn't pay all of
23 the claims. And years later the theory was disproved by some
24 scientist doing empirical evidence--research. So, expert
25 witnesses, you know, we're seeing it now in these district

1 cases. And they're--well, look at the ads that the forensic
2 experts put out; look at the ABA Journal and see the ads.
3 Look at these trial lawyers--you know, they're out there for
4 hire, and they'll do anything to help the cause. So, I don't
5 think that the ethics of the forensic experts are very high.

6 MR. CAMPBELL: Some pretty intelligent non-lawyers I
7 know have a somewhat stilted take on experts at trial. They
8 say this expert witness stuff just doesn't make sense. Each
9 side goes out and pays some attractive witness to say what he
10 wants him or her to say. How can that be helpful to the
11 finder of fact?

12 JUDGE MATSCH: Well, it isn't. It's harmful. It's
13 the exact reverse, but that's why we now have the Daubert
14 hearings to determine whether the expert is actually qualified
15 to express opinions on the subject, and those are sometimes
16 frustrating, but it's an attempt to be a gatekeeper and to
17 keep that sort of thing out. But that's an
18 overgeneralization.

19 Going back to a medical malpractice case, you find
20 that, you know, good lawyers will not hire somebody from New
21 Orleans who does this all the time. They'll get another
22 doctor in the community. That's difficult, because doctors
23 don't want to testify against each other, and neither do
24 lawyers in legal malpractice cases. But nonetheless, there
25 are those who see that there has been a botched surgery, and

1 they'll come in and testify about it. And I've had some
2 horrible medical malpractice cases coming out of the VA
3 Hospital.

4 MR. CAMPBELL: Do you find that lawyers sometimes
5 seek to use experts for reasons other than where it is helpful
6 to the finder of fact?

7 JUDGE MATSCH: Well, sure. They try to carry the
8 case. And, you know, a large part of the validity of the
9 expert is how the judge handles the expert. And I'm not
10 talking about the Daubert hearing; I'm talking about at trial.

11 MR. CAMPBELL: Right.

12 JUDGE MATSCH: One of the frequent occurrences is
13 that the expert tries to take over the case and lecture the
14 jury, and the lawyer will say, "What is your opinion," and
15 then stop, and the expert goes off on an area. I stop that,
16 and I say, "This is a courtroom, not a classroom. And you
17 don't talk directly to the jury. You respond to counsel. And
18 this is question and answer. So, you answer the question.
19 And counsel, you ask a question that can be answered with a
20 short answer."

21 MR. CAMPBELL: Have you ever had an expert offer to
22 explain the law to you, and I'm not talking about a lawyer?

23 JUDGE MATSCH: If so, it was very short-lived, so I
24 don't remember it.

25 MR. CAMPBELL: I've had the experience of finding

1 extremely qualified experts brought in and qualified and then
2 promptly excused them because I didn't need somebody to tell
3 me how to read a balance sheet or add a column of figures.

4 JUDGE MATSCH: Yes.

5 MR. CAMPBELL: But it gave that side of the case an
6 extra shot at argument or--

7 JUDGE MATSCH: Yes.

8 MR. CAMPBELL: --an extra shot at redundancy of a
9 piece of very simply understood evidence, but it came from
10 somebody who was perhaps better packaged than the witness who
11 had the--

12 JUDGE MATSCH: Well, this is an interesting area
13 because financing is now so complex with financial structures
14 that are a lot different from what's traditional and--like
15 REITs for example and others. Sometimes, you know, you have
16 to have an expert in the industry explain how the business
17 model fits into the industry, in particularly in financing.

18 MR. CAMPBELL: And sometimes the financing industry
19 I'm not sure understands what they've created.

20 JUDGE MATSCH: Yes. And they get into a lot of
21 trouble because their model didn't work.

22 **Chief Judges**

23 MR. CAMPBELL: Let's move on and talk for just a
24 moment about chief judges. You have had, I count, eight chief
25 judges in your almost 45 years on the district court bench,

1 you among them. Has it made any difference, significant
2 difference on who is the chief?

3 JUDGE MATSCH: Yes.

4 MR. CAMPBELL: Who has been the most effective and
5 why? Or, if you would rather not address individuals, that's
6 fine.

7 JUDGE MATSCH: I have trouble with that, but Judge
8 Arraj was an example of a good chief judge. But we didn't
9 have many judges in those days. We had four for example, but
10 he heard judges' needs, but in the end, he decided a lot of
11 things that maybe went beyond his authority, but we took it
12 because we knew he would be right.

13 But we then had, you know, unfortunate experience
14 with a chief judge who was corrupt, very gregarious, and was
15 very good at settling cases, but didn't really like trials, I
16 don't think. But then he was very well known among other
17 judges through different organizations. He was on a judicial
18 conference at one time and kept going down to Fort Meyers on
19 assignments. End result was that he was getting paid expenses
20 that were non-judicial. And I, being second in line, had to
21 hold meetings with the other judges knowing that there was an
22 investigation underway, and it could be criminal, and that we
23 had to circle the wagons and keep the institution going, and
24 he would not be there.

25 End result was, he was forced to resign. But as a

1 result of that, I became chief judge; I had the other judges
2 well-tuned. And then I also held regular judges' meetings,
3 and I also brought in the bankruptcy chief judge, the clerk of
4 the bankruptcy court, the chief probation officer, the chief
5 magistrate judge, and I met regularly, and that's when we
6 also, with the chief judge of the bankruptcy court,
7 coordinated the--

8 MR. CAMPBELL: Shared services?

9 JUDGE MATSCH: --the computer stuff, but also
10 budget.

11 MR. CAMPBELL: Right.

12 JUDGE MATSCH: So that we were able to move funds
13 where we needed them, for example. And I--you know, I don't
14 know that that's been going on. I have stayed away from
15 administration now for some years. But a chief can be
16 arrogant and do things without letting other judges know about
17 them.

18 MR. CAMPBELL: Well, that's to be--

19 JUDGE MATSCH: It's the only area that's collegial
20 when you're talking what policies to follow, who to hire, and
21 that sort of thing. And it also greatly depends upon the
22 relationship between the clerk of the court and the chief
23 judge. They have to get along and they have to be in sync.

24 MR. CAMPBELL: And I think that sets the table for
25 an awful lot of administration of how the clerk effectively

1 works with the chief or doesn't.

2 JUDGE MATSCH: Yes, the chief should not run the
3 clerk's office--

4 MR. CAMPBELL: Right.

5 JUDGE MATSCH: --and should also be very much aware
6 of how distribution of resources is equal among the judges,
7 even down to furniture.

8 MR. CAMPBELL: Well, I think my experience both in
9 law firms and as a judge is that one of the toughest jobs on
10 the planet is either clerk of court or non-lawyer office
11 manager.

12 JUDGE MATSCH: Yes.

13 MR. CAMPBELL: Because you find yourself in a
14 position that you're the chief operating officer, but you've
15 got all these egotists, be they senior partners or life-tenure
16 judges or 14-year tenure judges who have got big egos and are
17 used to having things their way, and the success of the
18 enterprise depends upon being able to maneuver within that
19 middle.

20 JUDGE MATSCH: Yes, I think one of the best
21 statements about being the chief judge of the court was--and I
22 can't remember which chief judge in the Tenth Circuit this
23 was, but it was years ago--and he was talking at the judicial
24 conference, he had just become the chief judge, and he said,
25 "Well, when I became chief judge, I felt, all right, I'm going

1 to take the reins. And I took the reins, and I looked out and
2 there wasn't any horse." So, that's kind of where a chief
3 judge is.

4 **Dealing with Trial Lawyers**

5 MR. CAMPBELL: He needs a good clerk to help him
6 find the horse. Let's turn a little bit to lawyers. What
7 attributes define the most effective lawyers you have known in
8 your time as a lawyer and judge?

9 JUDGE MATSCH: Well, I think the first thing is
10 having the experience with people from all walks of life,
11 understanding human beings, you know. You walk down the
12 street, and you see a number of people. You don't know what
13 burdens they're carrying, what crosses they're shouldering.
14 And I think a good trial lawyer has to understand human beings
15 and the fragilities and natures of human beings, and
16 particularly himself or herself, I have to say. And know your
17 own strengths and weaknesses, and attempt to develop the
18 strengths and minimize the weaknesses in yourself and then be
19 able to project--first understand your client and then project
20 yourself into that, not getting involved emotionally so that
21 you can't be objective, but then be able to look at your case
22 from the adversary's point of view and see the weaknesses in
23 what you've got. And then particularly understand the people
24 who are on that jury.

25 Now, some of the best trial lawyers I've seen in

1 terms of jury trials have not been very well educated in the
2 law. And, you know, I think that the worst thing that a
3 lawyer can do is think that he's smarter than everybody else
4 and that he's smarter than his opposing counsel.

5 You have to have humility. And you have to also
6 appreciate your role in the system and, of course, I'm
7 concerned about advertising and what advertising does to the
8 psyche perhaps of the lawyers. And certainly, we have darn
9 good lawyers who aren't motivated by money more than anything
10 else. You have to have a sense of public service. Even
11 though you're representing your client, you're a part of this
12 judicial system, and you have an obligation as an officer of
13 the court.

14 I think it wasn't bad when lawyers wore robes, wigs
15 and things.

16 MR. CAMPBELL: Right.

17 JUDGE MATSCH: I had an experience with barristers
18 as they were in the old days before they modified so much and
19 barristers and solicitors are no longer separated, but I had
20 an experience with Canadian barristers. And I was talking
21 with them. We were on the same side; I don't remember what
22 the case was anymore. But instead of depositions, in the
23 Canadian practice, a barrister could write a statement of what
24 a witness told him and admit it--

25 MR. CAMPBELL: Interesting.

1 JUDGE MATSCH: --because of the confidence and the
2 integrity of this barrister.

3 MR. CAMPBELL: I'll say that really in a sense is
4 playing by the rules that would be unfamiliar to today's
5 practice in terms of what imposes--what one must impose--to do
6 that, impose upon himself in terms of professional
7 responsibility.

8 JUDGE MATSCH: Oh, yes, and of course a lot of the
9 English barristers didn't have to rely on their income from
10 the practice because they were otherwise wealthy. There's
11 sort of an aristocracy.

12 MR. CAMPBELL: Perhaps we've touched on this, but
13 not so much directly. As a trial judge, what are among the
14 most important lessons you have learned? Where did you learn
15 them? And who has most influenced you as a judge?

16 JUDGE MATSCH: Well, I think I learned a lot of
17 lessons before I became a judge, and those lessons followed
18 into it and I think have helped me. And I talked before about
19 my background and my history of having been in many different
20 roles in life and also in the profession. But I've been
21 heavily influenced by Judge Arraj and his diligence, his
22 integrity, and his love of the trial process. I've learned
23 from him. I learned from him when I was a prosecuting
24 attorney in the U.S. Attorney's Office. And more than once he
25 humiliated me in a courtroom, and I've learned that's not a

1 good thing to do to young lawyers.

2 But I think I appreciate lawyers more over time than
3 I did when I first started out. When I first started out, I
4 was kind of an authoritarian, and I was kind of impatient and
5 wanted to move along. And one of the worst things I ever
6 said, and I've regretted it every time I think about it, I
7 was--in those days, you could be still in the university club,
8 even though we didn't have all these rules of you can't be in
9 a male-only club. But a lawyer known well to me had this
10 small case. I don't remember what it was about. I was
11 irritated that he brought it. And in talking with him at this
12 social event, having a drink, I referred to his case as a
13 little piss-ant case. And he took me on about that right
14 there, which was good. But that's a terrible thing to say
15 about a case. And, you know, it's the worst thing I've ever
16 said. Maybe not the worst, but it's something that I've
17 regretted even to this day, and that's maybe, you know, from
18 1975 or so, when I first started.

19 So, I sort of ramrodded some cases, and I've learned
20 to be more relaxed about it and let the case flow and not
21 worry about how much time this is taking. Part of that was
22 the pressure of the caseload in those days and the criminal
23 load with the Speedy Trial Act. You're knowing that you've
24 got to get this civil case done this week because you've got a
25 criminal case next week. So, some might say I mellowed out a

1 little, but I still can admonish people when it's necessary.

2 **Reputation and Isolation**

3 MR. CAMPBELL: Well, that brings me towards the end
4 of this list of trial judge related matters. Next category is
5 reputation. One does not sit as a judge for 45 years without
6 gaining a reputation. Whether or not you're aware of it, and
7 I suspect you are aware of it for the most part, you are no
8 exception. So, here goes. You have a multi-faceted
9 reputation. Here are some of the things that are said of you.
10 A stickler on the law; unafraid of controversy; unemotional
11 but fair and unbiased; a demanding taskmaster; feared and
12 respected by both sides, but capable of being curt and
13 impatient when you think lawyers don't measure up; disciplined
14 and hardworking; a loner, isolated from the legal community,
15 judges and lawyers; and my favorite, a relentless guardian of
16 the integrity of the judicial process.

17 JUDGE MATSCH: I hope that one is true.

18 MR. CAMPBELL: Which of these is justified and which
19 of these is unfair or misconceived?

20 JUDGE MATSCH: That's hard to answer. I don't
21 socialize with lawyers, so I don't hear them. But I think
22 unemotional is not quite right. I have emotions, but I don't
23 display them because I think that's hard. One of the
24 strongest tests of that has been in some tort cases. I tried
25 a case with a young woman, 17 or so, Saint Louis, beautiful;

1 she was a model. And she's out here at one of the private
2 high schools. There was a party and the kids were drinking.
3 There was a basketball goal in a driveway, and this was--the
4 kids were drinking in a covered swimming pool in Cherry Hills,
5 and they--the basketball goal had guidewires down to hold it
6 in place, and it was on a raised area with railroad ties and a
7 flowerbed. And they were running back and forth between the
8 keg and the swimming pool and their cars. And she was running
9 and jumped up on this raised area, hit a guidewire, knocked
10 her back, and she was unconscious. Kids were making fun of
11 her. And she was a boarder at the school. So, on a Saturday
12 night, she went to her dorm. On Sunday at noon, the counselor
13 said, "Has anybody seen," and gave her name. "No, we haven't
14 seen her."

15 He goes up to the dorm room and she's unconscious.
16 She had been bleeding in her brain all night. So, she was
17 totally paralyzed and couldn't move anything. And we had, in
18 the case, a day in the court--a day in the life of where
19 there's a video of what her life is every day. And all she
20 could do was move her eyes to communicate. So, in her
21 bedroom, the parents had yes and no and asked her questions,
22 and she would move her eyes to the yes or no. That's the
23 extent of her paralysis.

24 Fortunately, the owner--the homeowner had the
25 property in the name of his oil company and had a lot of

1 insurance. But they had to go to trial, and these are close
2 friends, the parents. And they had to sit there and--because
3 the insurance company wouldn't settle. And when they played
4 the life of this--day in the life, it was very hard not to be
5 emotional. I had the same experience of course with respect
6 to Oklahoma City and the evidence there and the pictures.

7 And one of the hardest ones was a pornographic
8 obscenity trial many years ago, bringing in films from
9 Denmark. And the jury had to decide about obscenity, and we
10 had to play those in the courtroom. And some of--women with
11 ponies and all that kind of stuff, and we had the courtroom
12 lights dimmed because of filming. But it was very difficult
13 for me to keep a poker face when this was being done. The
14 strangest thing about that case is, during deliberations the
15 jury wanted to see some of that again, and what they wanted
16 was the worst ones.

17 But, I mean, those are examples of--you know, you
18 can't say that I'm cold, an ice-cold person. I'm emotional,
19 but I can't reveal it. It's part of the discipline.

20 MR. CAMPBELL: Right--I recall, not the details, but
21 before you ever reached the Article III bench, in bankruptcy
22 court you presided over a case I was involved with. As I say,
23 the details escape me, but I recall it involved a nursing home
24 and some horrible conditions and some horrible suffering. And
25 I mean, clearly you were affected by it. There's nothing

1 wrong with that, but from that experience, from very early on
2 in my exposure to your court, there is certainly a difference
3 between the necessity and difficulty of controlling emotions
4 when you're overseeing the unfolding of all of this very
5 powerful stuff.

6 JUDGE MATSCH: I've also had it in criminal
7 sentencing.

8 MR. CAMPBELL: Yes.

9 JUDGE MATSCH: Where I had to impose a sentence that
10 I thought was terribly unjust and knew that it would be very
11 destructive of this person. And when I came off the bench, I
12 would be near tears because I did it to them. So, I wouldn't
13 say that I'm without emotions.

14 MR. CAMPBELL: Yes, I would agree with that. But
15 you've certainly been called on in circumstances where the
16 challenge to maintain--

17 JUDGE MATSCH: Yes, I also admit to anger, and I
18 admit that at times I've let that get beyond what I should in
19 the courtroom and maybe admonished some lawyer in a way that I
20 shouldn't, but I try--I think--as I was saying just two
21 minutes ago, I think I've modified that somewhat by, first of
22 all, not having the same pressure--time pressure as I did when
23 I first started here with the caseload as it was. We had
24 caseloads of 450 civil cases and there wasn't a lot of time to
25 get it all done. But--so, I've had a more relaxed calendar.

1 But I still think that if there's some impropriety going,
2 you've got to respond to it and do it quickly and strong.

3 MR. CAMPBELL: Talk about your reclusiveness as a
4 judge. Is it important for judges to separate themselves from
5 other judges and lawyers, and why or why not?

6 JUDGE MATSCH: Well, an example is the Inns of
7 Court. When Judge Christensen over in Salt Lake, whom I knew
8 and knew well, as all the trial judges in Tenth Circuit knew
9 each other pretty well because of the judicial conference
10 meetings--but he came up with this Inns of Court, tried to be
11 modeling it after the British. And so, they would--well,
12 you're familiar with the Inns of Court, I assume, where judges
13 meet with lawyers for dinner and then have talks. I don't
14 favor that. I'm very concerned about a personal acquaintance
15 with a lawyer or even a friendship and then dealing with him
16 or her in a courtroom. You have to be objective in dealing
17 with a lawyer, and you can't let your personal appreciation of
18 the good and bad in that person affect how you deal with them
19 in trial. And I'm not one for speaking to lawyers about how
20 to try a case, for example, or these things--or reading--I
21 don't know what they do in these Inns of Court meetings, but I
22 think it's inappropriate to mix with lawyers.

23 MR. CAMPBELL: I can't think of anybody about whom I
24 would worry less about his or her impartiality than yourself
25 because you were friends or acquaintances with somebody on the

1 other side of a case.

2 JUDGE MATSCH: But there's another aspect of this
3 that I want to get to and that's lawyers talking about what
4 Matsch said or did in a social occasion. And having lawyer to
5 lawyer talk about what the judge said.

6 MR. CAMPBELL: Right. And that you don't control.

7 JUDGE MATSCH: That's right. And so, an attorney
8 might come in under a great misapprehension about me because
9 something another lawyer told him that I did on a social
10 occasion. There's weaknesses--I mean there's--it's a downside
11 too.

12 MR. CAMPBELL: My next question is, is there a
13 downside to that?

14 JUDGE MATSCH: That's for sure. I recognize it.

15 MR. CAMPBELL: It's isolating.

16 JUDGE MATSCH: It is.

17 MR. CAMPBELL: It's lonely.

18 JUDGE MATSCH: I think this is an isolating job.

19 **Witness to Change**

20 MR. CAMPBELL: Yes. But let's move on to one or two
21 more topics relating to your serving as a trial judge.
22 There's been a good amount of change in your time on the
23 bench. The legal profession and the courts have seen
24 considerable change in the 65 years since you graduated from
25 Michigan Law School. I suspect some of these changes have had

1 an impact on your job as a federal judge. Please comment on
2 changes in these areas and how they have, if they have,
3 affected you.

4 The size of the district court and the population of
5 Colorado have doubled or tripled with a caseload increase by
6 even larger numbers. Tooting one's horn, much less
7 advertising, were unethical. Now, we are swamped by lawyers'
8 self-serving ads and billboards. Law firms are not immune
9 from the bigger is better movement. They have gone national
10 and international with branches around the world where you
11 start at 20 lawyers with a large firm. Now 2,000 lawyers
12 might be defined as a large firm. The firm--the venerable
13 firm of which you were a partner no longer exists in Denver as
14 such. Professionalism among the bar is today under fire. I'm
15 not sure this is a change, but the dynamics of it I think may
16 be somewhat different.

17 And finally, there is of course no turning back the
18 clock on technology. We couldn't function without
19 computerized court records and internet research and internet
20 filing. Yet, you are known to be a skeptic concerning the
21 digital age. These are significant changes on how the legal
22 practice is conducted, and you have been a part of--or
23 certainly seen much of this up close.

24 How has this affected your job as a judge?

25 JUDGE MATSCH: These things of course have changed

1 the context in which we try to do this work, but a change that
2 you haven't mentioned, which I think is the most important, is
3 the destruction of communities. We don't have communities in
4 the way in which we did when I first started practicing law
5 or, for that matter, the way I grew up. And that is the
6 family, including an extended family, was our first community.
7 And that included knowing your siblings, your parents, your
8 grandparents, your uncles, your aunts, your cousins. All of
9 that went away with people not staying home. The church was a
10 community. Lodges and social organizations were a community.
11 A person belonged to different communities and appreciated
12 that they're a part of that community and the community
13 values.

14 The bar, when I started practicing here, was a
15 community. There weren't that many lawyers. This was not
16 really an urban center. You could have a convention at the
17 Broadmoor with most of the lawyers who were practicing.
18 There, you socialized with them, and most importantly you were
19 on opposing sides more than once. And, you know, there was
20 self-enforcement of ethics. So, if you did something to a
21 lawyer that was tricky, be careful because you're going to
22 meet the same lawyer again, and he can get back at you.

23 MR. CAMPBELL: Or maybe at church or at a social--

24 JUDGE MATSCH: Yes. We don't have that anymore. We
25 don't have extended families. People are moved away from

1 their roots, and we don't have, certainly, a community of the
2 bar anymore. We have specialized bars so that you belong to
3 the plaintiffs' bar, tort lawyers, or defense, or oil and gas,
4 or whatever. So, they don't even have a state convention
5 anymore. You can't; there's way too many people. And I don't
6 think that we now have communities that are measured by a
7 special interest, be it a political interest or be it a
8 financial interest, economics. We pair off, so to speak, or
9 form communities in a specialized way, and some of them are
10 short-lived.

11 So, certainly we don't have the bar as we did, and
12 we have these specialized bars now. And a major change has
13 been women in the profession. I don't say that negatively. I
14 think that we have some very good women lawyers I've seen.
15 And to some extent, you know, my experience there has been we
16 have women lawyers who try to act like men and be very
17 aggressive and think you've got to man up, so to speak. But
18 we also have very good lawyers who understand that they have a
19 different perspective in approaching the adversary system.
20 And they are more inclined to be cooperative and understand
21 the other side than the traditional male advocate being a
22 lawyer with a sword and shield.

23 So, you can't say that this is good, or this is bad.
24 This is how we live, and we adapt. And the important thing is
25 trying to adapt and still preserve the institutional integrity

1 that we have to rely on, and that's what I said earlier. That
2 the problem is people are angry, and we have a community of
3 victims feeling oppressed. Different communities; I don't
4 mean just one.

5 MR. CAMPBELL: You've described change in lawyering
6 in Denver, Colorado. Do you suppose it would be equally true
7 in Burlington, Iowa or Steamboat Springs, Colorado?

8 JUDGE MATSCH: No, I don't. I think--you know, I
9 used to do Law Day speeches way back. Now they don't even
10 have Law Day anymore. But I did one in Fort Collins, and, you
11 know, there it is a small community, the lawyers all know each
12 other, and they know that they're going to be on opposite
13 sides at a different time and so forth. So, no, I think there
14 still is a community and the difference is size.

15 But I think it's very difficult to practice law in
16 small towns now because of the complexity of it. You know, I
17 clerked for a local law firm there in Burlington when I was in
18 law school and during the summers, and they weren't just
19 lawyers; they were on the school board, they were involved in
20 politics, they were leaders in the community. And I gave
21 this--maybe I've already covered this--I gave this speech "Is
22 There an Atticus in the House" based on the Kill a Mockingbird
23 Atticus.

24 MR. CAMPBELL: No, you haven't spoken to--

25 JUDGE MATSCH: I did that years ago to the Denver

1 bar at a luncheon. But, you know, that defending a black man
2 accused of a sexual assault of a white woman, of course that
3 was courageous. But the part of Atticus that I emphasized in
4 that speech was going out in the street and shooting a rabid
5 dog. Now, that's community. He steps out of his role as a
6 lawyer and stands up to defending a community from a rabid
7 dog.

8 MR. CAMPBELL: And his children's reactions of that
9 is just so beautiful--

10 JUDGE MATSCH: Yes.

11 MR. CAMPBELL: --in the movie or in the book.

12 JUDGE MATSCH: Yes. And, you know, we don't have
13 that. I mean, how many lawyers are doing other things? Some
14 are political, but--and maybe it's just the pressure of trying
15 to make a living is too much. But you can't define a
16 community in the metropolitan area like Denver, Colorado.

17 MR. CAMPBELL: We've lost certain communities--

18 JUDGE MATSCH: Yes.

19 MR. CAMPBELL: And it's interesting that you and I
20 have lived through a time of transition from, as you
21 mentioned, the bar was itself a community. That it is no
22 longer; a few decades ago it was.

23 JUDGE MATSCH: Well, you know, it's also the way we
24 handle old age. And where there's some of the frailties that
25 are developed as a result of age, including mental acuity.

1 What do we do when we're shipping those people out of the
2 family into a warehouse?

3 MR. CAMPBELL: Yes.

4 JUDGE MATSCH: And those people used to be in the
5 family.

6 MR. CAMPBELL: And there were functions that were
7 performed by different institutions than--

8 JUDGE MATSCH: Yes. Right.

9 MR. CAMPBELL: --than we see today, clearly.

10 Let's talk just very briefly about the Faculty of
11 Federal Advocates. You were credited with being instrumental
12 in the founding of the FFA. I believe in 1996 as chief judge
13 you commissioned a taskforce to design and establish this
14 organization. Can you talk briefly about why you did this and
15 what the Faculty of Federal Advocates is and how and why it
16 came about?

17 JUDGE MATSCH: Well, I can tell you the first part
18 of that, how and why it came about. And I've worked with some
19 good lawyers. What I wanted was to have an opportunity for
20 lawyers, and this is to be of, by and for lawyers. No judges
21 involved. And it would be an opportunity for the bar to
22 participate in the management of the court so that as it
23 proved if there's a problem, it can be brought to the
24 attention of the judges without this being one or two lawyers,
25 and then the judges can react against in anger or whatever.

1 And that is to include misconduct by a judge. If a judge had
2 a practice in a courtroom or in the handling of cases that the
3 bar thought was wrong, they could bring it to the attention of
4 the judges. So, it was to give an opportunity for lawyer
5 input into what we do.

6 I think the problem now is that the judges are a
7 part of the Faculty of Federal Advocates, and the whole idea
8 of this separation is gone. So, they do these, you know, it's
9 all right, and give a speech to them and all that. But when
10 they sit down and have these lunches or whatever--well, I
11 can't remember what they call it, but they do a Saturday where
12 they sit and move from table to table and so forth. I don't
13 think that should be. That's not the purpose. The purpose is
14 let the judges know what the lawyers are concerned about.

15 **The State of the Third Branch**

16 MR. CAMPBELL: What I'd like to do now is step back
17 and turn your focus to some broader subjects. First, the
18 general state of the federal judiciary. The U.S. judiciary
19 certainly has virtue as an institution that is alive and well
20 and important to our democracy. Rules governing impartiality
21 are followed as a matter of course. The bench is truly, after
22 appointment, independent from the political branches and other
23 outside influences. Judges are generally committed to
24 separation of powers and view their jobs as following, not
25 making, laws or public policy. Our federal judges are

1 generally able, smart, honest, hardworking, fair-minded
2 people. The U.S. judicial branch continues as an admired and
3 model by democracies around the world.

4 Yet, there are matters that the vigilant citizen may
5 be concerned about. As our forefathers envisioned, the
6 independence assured by life tenure is necessarily at some
7 cost to accountability. Like so much else, the political
8 process of selecting federal judges has become sometimes a
9 process of extreme partisanship where advice and consent of
10 the Senate is dictated largely by party affiliation more than
11 the qualifications of the President's nominees and the
12 country's best interest.

13 Some claim that judges are too quick to enter the
14 realm of political branches with judicial activism gone awry.
15 And transparency is not the hallmark of internal
16 administration of the third branch where, for example, the
17 process of filing a complaint for misconduct or incompetence
18 against a federal judge is unknown to most lawyers who
19 practiced before the federal bench. The judiciary has settled
20 federal judges' salary claims against the United States
21 government for a billion dollars with little or no coverage in
22 the media. Employees of the judiciary are excluded from the
23 Title VII anti-discrimination laws that cover private sector
24 employees.

25 Some in the other branches today are willing

1 publicly to comment on the merits of ongoing controversies in
2 the courts and the judicial officials handling those
3 controversies.

4 Looking at such positives and negatives, can you
5 offer any comment on your belief in the general state of the
6 wellbeing of the judicial branch in America today?

7 JUDGE MATSCH: Well, I think a lot of the things
8 that you're speaking about as virtues are not in reality. I
9 think that one thing is that the way in which judges are
10 selected varies a great deal as to who the senators are and
11 what the political circumstances are in the state. But I
12 don't know that judges have the same reputation as they used
13 to, and I think it's the judge's own fault, beginning with the
14 Supreme Court. I think the Supreme Court politicized the
15 judiciary, for that matter, way back to John Marshall, because
16 John Marshall's Marbury v. Madison was pretty hard to justify
17 as the circumstances and the political appointments of the
18 President and the midnight judges.

19 So, you can't divorce this role completely from
20 politics. In fact, I think that's one of the negatives I have
21 about magistrate judges handling trials by consent. They
22 haven't gone through the political process. They were
23 selected by other judges. But I think that it is an important
24 thing that the Senate plays its role.

25 But, you know, there is--I picked up, because I knew

1 we were going to be talking today, a biography of John Adams
2 by--

3 MR. CAMPBELL: David McCullough.

4 JUDGE MATSCH: And one of the things--I happen to be
5 fond of John Adams and his view of the Constitution and his
6 view of the future and his understanding of human nature. And
7 one of the things that he said was there's a passion for
8 distinction, the desire to be seen, heard, talked of, approved
9 and inspected that drives all of us, and to be wholly
10 overlooked and know it is intolerable. That has to do with
11 some of the motivations of some of the violent crimes, I
12 think. You're on the front page. But that gets away from
13 what I'm talking about, except I think that that affects a
14 good many judges.

15 I have been disturbed about these ceremonies for
16 investiture in which everybody gets up and talks about what a
17 wonderful person has been selected. And it sounds more like
18 the close of life instead of beginning. And a recognition
19 that the purpose here is to take the oath to serve the public,
20 not to have the public proclaim what a great person you are.
21 But, this desire for recognition affects judges. And there
22 are some judges who love to be in the news. And there are
23 some judges who love to step outside their role and issue a
24 national injunction and knock down a policy established by the
25 executive branch.

1 But the worst offenders are the Supreme Court
2 justices. And I think when you look at Justice Scalia and his
3 constant going over to the Federalist Society and writing for
4 the press, and now we have Justice Ginsburg being an icon in
5 books. That's not--you know, they're not supposed to be doing
6 that. Even Justice Gorsuch, who I know well, and I hear him
7 making--I read about him making a speech to the Federalist
8 Society about originalism. I don't think that's proper.

9 So, it isn't just political; it's being publicly
10 recognized that drives some of these judges, and I think Judge
11 Posner is an example. What the hell is--why is he writing
12 books about Clinton impeachment and this sort of thing?
13 That's not the role. You talk about me being reclusive;
14 that's part of the role. They ought to be staying in their
15 marble palace there and doing their job and deciding more than
16 65 cases a year rather than going on TV. I mean, how do you
17 trust somebody who--the public I mean--who is out there being
18 a celebrity. And we have a celebrity cult in this country,
19 you know. We look at music--not musicians--entertainers, but
20 the screen entertainers or screamers at these what they call
21 music now. And they express political opinions and influence
22 people's vote. So, it's just a world that has changed so much
23 that I question honestly the future of the system, whether it
24 can survive because the foundations are gone. And I think of
25 the family as the first foundation, because that's where our

1 normative values ought to be inculcated.

2 MR. CAMPBELL: The communities you spoke of a moment
3 ago.

4 JUDGE MATSCH: Yes. Yes.

5 MR. CAMPBELL: Do you see anything that--what can
6 change that?

7 JUDGE MATSCH: Well, what can change it is
8 technology and artificial intelligence. I think there are
9 people who are looking forward to the day when they can plug a
10 lot of data into computer algorithms and get a result that
11 adjudicates the case. And we have--you know, something that
12 has bothered me for a long time, and I think it was President
13 Obama who talked about science and the role of science in our
14 society and how policy should be affected by scientific truths
15 and we should follow the science in policy. That ignores the
16 fact that science is amoral, and science does not care about
17 values. It is always looking toward learning more and then
18 adapting with what it--what you've learned, supposedly
19 empirically, to human circumstances. You know, the people who
20 developed the atomic bomb I think had a great deal--well, we
21 know Teller and others had a great deal of remorse about what
22 they had accomplished and then how it got used.

23 So, we need--I don't want to follow science as
24 directing public policy. I want to follow human judgment and
25 collective wisdom.

1 MR. CAMPBELL: Is education the key to doing that?

2 JUDGE MATSCH: Well, I think education is not
3 working, because they're not teaching history, for one thing.
4 How can you understand the American experience in the present
5 and the structure without understanding history? And they
6 don't teach history because there are going to be trigger
7 points. People are going to get offended, and they go home
8 and talk to mommy or daddy about, you know, slavery, or
9 anything, corrupt Presidents in the past.

10 So, culturally we think we're smarter than all
11 other--not we in this generation, but the new ones, the
12 millennials, think they're the smartest people who ever got
13 born, and it's time for the old people to get the hell out of
14 the way because we can run this world through technology.

15 MR. CAMPBELL: Were we guilty of the same thing a
16 half generation ago?

17 JUDGE MATSCH: I don't remember it, but maybe that's
18 suppressed as a psychological mechanism. But, no, I never--
19 you know, I always looked to older brothers, for one thing. I
20 was always kind of the kid on the block, as I told you before,
21 in law school and the Army, and I appreciated and learned from
22 my elders and respected them. And I did the same thing as I
23 told you when I was a young lawyer here, and I used to go in
24 and observe some of the experienced lawyers trying cases.

25 Global Challenges

1 MR. CAMPBELL: Finally, let's step back even further
2 to consider global challenges. Let's take one more step back
3 and look at the state of our planet. On the one hand, while
4 far from perfect, the world is less hungry. The world is
5 better educated than ever before. It is healthier. It is
6 perhaps less tolerant of discrimination based on such things
7 as race, gender and religious beliefs. Such progress
8 notwithstanding, in many places there is growing inhumane
9 disparity between rich and poor. We seem unable to deal
10 efficiently or effectively with global challenges, such as
11 nuclear proliferation, damage to the environment, terrorism, a
12 technology that takes its toll on human interaction and
13 communication.

14 What is the proverbial prognosis for our grandkids?
15 Are you optimistic or pessimistic?

16 JUDGE MATSCH: I don't know that I'm either one.
17 I'm fearful. And you speak of all these things, and we hear
18 always about the international community. And what the hell
19 is the international community? I don't know. It's not the
20 United Nations when you have despotic governments sitting on
21 human rights commissions, for example.

22 The world is struggling between globalization and
23 tribalism, and that's a struggle that I don't know how it is
24 going to play out. Tribalism it seems to me is on the rise.

25 Part of that is, take Africa and how we divided

1 Africa up when we destroyed the colonial system and made
2 countries out of tribes who had no resources, no ability to
3 develop an internal economy that will function well. And then
4 they're pitted against other countries in the same area
5 fighting for resources, fighting for investment and fighting
6 just because they've been fighting for 3,000 years. And we
7 see, you know, economically, the world is not a community;
8 we're in economic wars all the time, which has been the basis
9 of a lot of real wars over time.

10 MR. CAMPBELL: Perhaps it is something to be feared
11 because some of our most daunting challenges are global in
12 nature, not tribal in nature or not local in nature. Our air
13 and water moves and doesn't recognize tribes and our
14 technology that makes terrorism that much more dangerous
15 continues to blossom, and yet we don't seem to have a
16 community that is on the scale of the challenges--to meet
17 those challenges.

18 JUDGE MATSCH: Well, that's right, and, we can't
19 identify ourselves as the world leader. The idea of promoting
20 democracy, promoting our branches of government--our theories
21 of government to other nations is ridiculous. When you have
22 countries that cannot be self sufficient in an economy because
23 they don't have resources, for example, you know, democracy is
24 not going to work there. You've got to have authoritarian
25 leadership in a lot of these countries. And I'm not so sure

1 that what we have is the model for the world anyway.

2 I think we completely forget about the fact that,
3 unlike any other nation of which I'm aware, we started with a
4 blank slate and that we suddenly had all of the resources
5 available. I've often thought the fact that we don't have the
6 western frontier where instead of filing bankruptcy you can go
7 out and homestead, move from Pennsylvania to the west, we
8 don't have that anymore. And we don't have the abundant
9 resources now. Many of the resources we need for technology
10 are localized in a very small area of the world. And we don't
11 have politically the ability to see how much we're
12 interdependent, and we don't have political leaders who are
13 doing that.

14 MR. CAMPBELL: There's no community out there to
15 match the global nature--

16 JUDGE MATSCH: You know if we had an asteroid headed
17 straight for earth, we may have a temporary community of what
18 are we going to do to stop it. But--and people are resentful,
19 I think, of other parts of the world. And we're not ourselves
20 assimilating the diversity that we have in the way of cultures
21 and ethnic backgrounds. We have people coming in, becoming
22 citizens. They pass the citizenship test, but they don't have
23 any idea of the history of the country and how we move that
24 forward.

25 So, I'm fearful, but, on the other hand, looking at

1 my own kids and grandkids, they seem to be a lot more globally
2 oriented than I ever was. They travel--they've traveled
3 abroad. I have a granddaughter who's been living in Costa
4 Rica in the jungle for a semester to improve her Spanish, and
5 then she went to Guatemala for another year--semester. And,
6 you know, her view of subsistence culture is not what I--she
7 knows subsistence culture living out there with a family in
8 the jungle. All right. She understands something about the
9 world that I don't.

10 MR. CAMPBELL: Well, and it may be that she's not
11 alone.

12 JUDGE MATSCH: Yes, there are others.

13 MR. CAMPBELL: --the millennials--

14 JUDGE MATSCH: Yes.

15 MR. CAMPBELL: --the generation,

16 JUDGE MATSCH: They go abroad.

17 MR. CAMPBELL: I think--back up 50 or 60 years when
18 we were young, and our parents might have been thinking about
19 the same things we've just been thinking about.

20 JUDGE MATSCH: Yes, from horses to automobiles.

21 MR. CAMPBELL: But at that time, it all didn't look
22 as rosy as it may look to us looking back--with two super
23 powers holding nuclear arsenals with the gun pointed at each
24 other, with the threat of annihilation of life as we know it
25 being very real and maybe one misjudgment away that--perhaps

1 we forget that there were some dire looking things that lay
2 ahead--going back a generation or two. I guess we don't have
3 the wherewithal to know where it all leads, but it's--

4 JUDGE MATSCH: Well, that's the thing that makes
5 life interesting and worth living--because we don't know how
6 it's going to come out.

7 **Richard Matsch, The Man**

8 MR. CAMPBELL: Let me touch on one final topic
9 before we finish. Let's turn to Richard P. Matsch the person.
10 We talked about you as a boy, and young man growing up, and as
11 a judge. This interview quite purposefully has largely
12 focused on--on Richard Matsch the judge. But before I finish,
13 I want to talk more for just a minute about the man apart from
14 the jurist. I suspect that your immediate family has been a
15 big part of your life off the bench.

16 In 1958, at age 28, about seven years before you
17 took the bankruptcy bench, you married Elizabeth Murdock, and
18 over the next decade you had five children. How did you meet
19 your wife?

20 JUDGE MATSCH: I was a young lawyer at Holme Roberts
21 More and Owen, and Church Owen was the leader of that firm,
22 and his wife was from--Peg was from Virginia, very social.
23 They were in the top social structure of Denver. And she was
24 giving a party at their house on Ray Street by the country
25 club. And the party was for people from the East to get to

1 know each other, people who had gone to college in the east or
2 born there, so it was all oriented towards people from the
3 East.

4 And my wife was living with another woman. They
5 were teacher--school teachers. The other woman was the
6 daughter of a classmate of Church Owen, so she was invited.
7 And she asked if she could bring Lib along, and they said yes.
8 But this Virginian wanted to make sure they had equal numbers
9 of males and females at this dinner, so she had invited some
10 men also from the East.

11 On the day of the party, somebody called in and said
12 he was sick, and he couldn't come. And so she called Church
13 and said, "You've got some single lawyers there, don't you?"
14 And he came down the hall at 4 o'clock in the afternoon, and I
15 was in my little cubical. And I stood up as he came in, and
16 he said, "Would you come to dinner at my house tonight?" And
17 I'm shocked. I don't know what to say at first. And then he
18 explained the circumstances, and I said, "Yes, I'll be glad
19 to." So I did.

20 And I got out there to this party. People were
21 having drinks on the patio, and everybody was talking about
22 where they were from, what schools and so forth. I was seated
23 at a chair. Lib was at a glider next to me. And so, we both
24 had drinks in our hands. And she turned to me and said,
25 "Well, tell me, where are you from?" She was from Washington,

1 D.C., of course. She said, "Where are you from?" And I said,
2 "Well, I'm from Iowa." And then I saw her turn her head away
3 like there's no interest in you, fella. So, I, in my mind
4 said, I'm going to make sure this woman pays attention to me
5 before this night is over, and I did. And it worked out.

6 And what she later explained to me as to why she
7 stopped talking was that she was mixed up between Iowa and
8 Idaho. She didn't know whether she would be talking about
9 corn or potatoes. And it went from there.

10 MR. CAMPBELL: How, if it did, did your family
11 influence your career on the bench?

12 JUDGE MATSCH: Well, none of this would have
13 happened if it hadn't been for my wife. We were partners in
14 the fullest sense of the word. And she had her activities in
15 her life, and I had mine. But children, of course, were the
16 major joint activity, along with horses and dogs and all of
17 that. But I never would have been able to pay the way on the
18 salaries that I had without her finances. Fortunately, she
19 had money that she had inherited. And I never would have been
20 able to do the things that I did without her full support.
21 And sometimes I think what happened shocked her--like when I
22 left Holme, Roberts, More, and Owen and went to become a
23 referee in bankruptcy, but she never voiced any criticism.

24 MR. CAMPBELL: Conversely, how, if it did, did your
25 career as a judge affect you as a father and husband?

1 JUDGE MATSCH: Well, you've got to ask my kids that
2 because they have often commented on growing up with a judge
3 and my always telling them when they went to a party or
4 something, "Look, whatever you do, if it's bad, it's going to
5 be on the front page of the newspaper. So, be advised."
6 MR. CAMPBELL: Do you think that's why they kept off
7 the front page of the newspaper?
8 JUDGE MATSCH: Well, I held them to standards. I
9 actually--
10 MR. CAMPBELL: I don't doubt it.
11 JUDGE MATSCH: I actually had many trials at the
12 kitchen table.
13 MR. CAMPBELL: Talk a little about that.
14 JUDGE MATSCH: Yes, well, I had, you know--if there
15 was conflict among siblings, we had a trial. And I had a
16 jury, being the other kids. And they talked about it at the
17 dinner table over meals. We always made sure that there were
18 family meals.
19 MR. CAMPBELL: Very interesting.
20 JUDGE MATSCH: Yes.
21 MR. CAMPBELL: So as hard as you might have been
22 working at some time, was dinner part of the agenda?
23 JUDGE MATSCH: Yep, you bet, at a certain time.
24 MR. CAMPBELL: What do you do, and have you over the
25 years done, for relaxation or recreation when you have not

1 been occupied with your family or your job? Are you a reader?

2 JUDGE MATSCH: Well, I was. I don't have that much
3 time anymore. I was a skier. Loved outdoors. I was a
4 fantasy cowboy. We always had a little acreage. We had
5 horses and dogs always. And we did things as a family a lot.
6 But I never had a hobby as such. Never was able to do
7 woodworking or any of that because I'm always too clumsy. So,
8 it's been pretty much family oriented. And, you know, my wife
9 and I had sort of different lives. She always was with
10 handicapped people and ran this handicap riding program and so
11 forth and very--and she was with the Tuesday afternoon club,
12 or whatever it's called. Women at the Denver Country Club
13 would meet. She was not a country clubber. We never did
14 that. But they would meet and have speakers and discuss once
15 a week on Tuesdays, and I did that a couple of times, when she
16 was president of that organization. And we talked about jury
17 trial, for example, but these are very well-educated
18 and bright women.

19 MR. CAMPBELL: Sometimes one can learn a bit about a
20 person in learning who they most admire, who are their role
21 models. Drawing from history, politics, academe, literature,
22 the arts and/or sport, who are among the men and women you
23 have most admired?

24 JUDGE MATSCH: That's hard. I admire people for
25 different reasons, you know. I admire General Patton for his

1 discipline and his vigor. I admire, of course, Abraham
2 Lincoln. And I have always thought that the Second Inaugural
3 Address is the best thing I've ever read. I admire Dwight
4 Eisenhower; again, Kansas boy. And I've often thought of his
5 role in deciding D-day and his ability to go down and shake
6 hands with soldiers of the 82nd Airborne knowing they're going
7 to get 80 percent casualties. That's discipline. I admire
8 General Grant, the butcher of the Civil War.

9 And I most admire my mother and my grandmother,
10 because they are very strong people. And if it hadn't been
11 for the strength of my mother, I don't know what would have
12 happened to our family in as much as my father had the
13 misfortune of being an alcoholic. And I admire my big
14 brothers.

15 But I've got a couple of philosophical observations
16 that you may want to hear in connection with why am I still
17 here at age 88.

18 MR. CAMPBELL: I'd like to hear those.

19 JUDGE MATSCH: One of them is, this from Espinoza,
20 "The purpose of life is not to be happy, but rather to use to
21 the fullest whatever talents God, or luck, or fate has
22 bestowed upon you." So, I have considered that I have some
23 talents, and I'm going to use them and keep using them.

24 And the other one is an unlikely thing from George
25 Bernard Shaw. "I'm of the opinion that my life belongs to the

1 community. And as long as I live, it is my privilege to do
2 for it whatever I can. I want to be thoroughly used up when I
3 die. For the harder I work, the more I live. Life is no
4 brief candle for me; it is a sort of splendid torch which I've
5 got hold of for a moment and want to make it burn as brightly
6 as possible before handing it on to future generations."

7 Those motivate me.

8 MR. CAMPBELL: Let me ask one more question. What
9 about regrets? Do any come to mind? If you were 17 and just
10 leaving home, if you had to do it over but not as a lawyer and
11 judge, what course might you follow? Is there a road or roads
12 not taken that you might like to take?

13 JUDGE MATSCH: Well, I once thought I was going to
14 be a journalist. That was when I was managing editor of the
15 high school newspaper. So, I thought seriously about that,
16 and I like Lincoln Steffens and Theodore White and some of
17 those heroes of the time for me. But then as I changed, you
18 know, I still would like to be a cowboy. And I've always
19 admired farming, but I knew that it's hard to make a living.
20 I sure didn't like the grocery business. But I think maybe I
21 would have gone on to be a writer. I told you this story, I
22 think, about my teacher at Michigan and my essay on Huck Finn.
23 And she asked me about what I was going to do, and when I said
24 I was going to be a lawyer, she said, "What a waste." And so,
25 I guess I might have gone the route of ending up being an

1 English teacher someplace.

2 MR. CAMPBELL: Let me say that you haven't all
3 together missed the boat in your desire to be a writer.
4 You've left a few tracks that are important, and I speak
5 almost in jest when I say a few tracks.

6 JUDGE MATSCH: Yes.

7 MR. CAMPBELL: There are thousands and thousands of
8 pages of your wisdom from the crucible of human interaction
9 and conflict.

10 Let's bring this to a conclusion. On behalf of the
11 Historical Society of the Tenth Circuit, I thank you very much
12 for your participation in our oral history project. You have
13 been extremely generous with your time. I appreciate that
14 talking about yourself is not something that you relish, but
15 the history of Colorado's federal courts, without addressing
16 your long and exemplary career as a jurist would be an
17 incomplete history. Your time on the bench has contributed
18 mightily to the quality of the administration of justice in
19 the federal courts of Colorado.

20 If I may be so bold, let me say you are a treasure
21 to the judges, lawyers, and citizens of Colorado and beyond.
22 And again, I thank you.

23 JUDGE MATSCH: Well, I thank you for those very nice
24 remarks. And I also appreciate the way you've conducted these
25 interviews and the research that you've done and reminding me

1 of things that I have long forgotten. It's been quite an
2 experience.

3 MR. CAMPBELL: Well, thank you. It's been an honor
4 for me.

5 (Whereupon, the interview was concluded.)

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