

Interview with New Mexico Supreme Court Chief Justice Charles W. Daniels

June 28, 2010

Larry J. Montano, Esq. and Anastasia S. Stevens, Esq.

Montano: *How has the transition been from being in private practice to being a Supreme Court Justice?*

Daniels: It's been wonderful. I didn't find it hard at all. I think it's for a couple of reasons. One is that I taught for quite a few years as a professor, as an adjunct, at NITA courses, CLE courses and so on. All those things require you to pull away from being an advocate, taking an overview of the process and seeing how it all fits together and taking the objective view. The other reason is that in the practice of law, if you're going to be really effective you have to be able to see the other side's view and anticipate the way a judge would view the arguments and issues, taking the public interest into account and how this all fits into the law, even the law that hasn't been written yet.

Montano: *You were very successful in private practice. What caused you to want to leave that career and enter this career you now have as a Justice?*

Daniels: I think it was probably a combination of a new adventure--and who doesn't appreciate having a chance at a new adventure, and it's a wonderful new adventure at that--and the thought that maybe I could give back, too, because this is a great way to give back. Instead of just representing one client or one cause at a time and focusing only on their own interests, I'd have a chance to try to take a much more global view and think about how the decisions fit within what's best for the law, and for the society, and so on.

Montano: *One of the things you mentioned is you have to think about the implications to the general public, to the Bar. Would you tell us how you address those concerns?*

Daniels: Our Court is more of a law-shaping court than an error-correcting court. We have to look not only at whether this party or that party prevails and balance among the parties in the case, we have to anticipate how the principle we're applying in this case and the articulation of that principle will affect people in the future.

We have to shape our language describing the principle in a way that will accomplish the intended results without causing unintended results that may be disastrous. You always have to be conscious about that kind of line drawing, not only the line drawing you're doing in the situation before you, but the line drawing that you're implicitly creating for the future. It's one of the things that makes the job so interesting.

Stevens: *How does the Court as a whole approach the balancing of principle with actual cases?*

Daniels: I'm glad to report that this is a very collaborative Court, a very congenial Court. I have four talented colleagues on the Court who all have the public interest in mind. We may occasionally differ on how to accomplish that goal because we are five independent minds. But you've heard that old saying: "Two minds are better than one." We have five here. And there's a lot of give and take, more than I would have anticipated. If you look at our opinions, you'll see that a remarkable number of them are unanimous. Not all of them started out that way in conference or even on the first circulation of opinions, but there is so much give and take in arriving at a principled common ground that we often end up unanimous where our brothers and sisters along the Potomac River end up with these splintered opinions where you almost need a guide book to figure out how to apply the case in the future.

Montano: *As Chief Justice, do you have a role in determining which Justice writes each opinion?*

Daniels: I have absolutely none. We get assigned authorship randomly by the Clerk before we ever see the file, before we ever read a word of the briefs. The Clerk keeps the workload absolutely equal among the five Justices in terms of authorship. We find out who the assigned author is the day we get the package of completed briefs and lower court opinions and other case materials. It has nothing to do with the past opinions that you've written, with your areas of expertise or prior practice or work

on the Court or interests or anything like that. It is just totally random. And in a way it's good. It forces us all to be generalists.

Stevens: *Your opinions tend to be very thorough and cover all the bases. I wonder whether you're doing that on your own or whether you're getting that from the briefs.*

Daniels: There are excellent briefs, and there are briefs that are sadly lacking. The better briefs certainly help the Court. Despite that, we all do a great deal of independent research and analysis on every case, no matter how good the briefs are. You won't find a Court opinion that simply repeats a party's brief.

Stevens: *Your opinions also feature a detailed statement of facts, which for a reader is priceless.*

Daniels: I think the facts are important. They help the reader understand whether or not justice was done, and I think there are several audiences we're speaking to. If we were just speaking to the lawyers and the parties in the case, we might just say, "you won, you lost, the case is over." But we're speaking to several audiences, and we need to tell them not only who won and who lost, but why.

Stevens: *Even if they never actually pick up an opinion and read it?*

Daniels: Yes. We have to assume some people read the opinions, although we realize that most people affected by them don't. Our Court is working out a procedure that's never been followed here before, but that we hope to get into effect within the next 60 days, of providing a plain-language summary of each opinion. It would be unofficial; you don't cite it as precedent. The purpose of this is to speak beyond the lawyers and judges to the public generally. We've already voted on it in principle and everyone was unanimous. What we want to have is a consistent format, something that's standardized. My own vision is a paragraph that basically explains the gist of the case for a non-legal audience.

Montano: *One of the things you mentioned is communicating to the general public what decision the Court has made and why it was the right decision to make. I expect there are decisions you sometimes make where your heart may be tugging in one direction but the law, let's say the Fourth Amendment, takes you in a different direction. How do you approach those cases?*

Daniels: The overarching principle has to be the rule of law. We have to follow the law and uphold it. There are separation of powers issues where we might disagree with a statute that was enacted by the legislature, signed by the Governor. We might disagree with a decision by an administrative agency on an area within their discretion, but we can't override that. Otherwise we'd be acting lawlessly. There are so many decisions where the rule of law has to take precedence over a King Solomon kind of ad hoc decision. Certainly there are times when you think it's unfortunate that police officers failed to get a warrant where the Constitution or other law requires one, and evidence must be suppressed. But it would be more of a shame to violate the law in a result-oriented approach instead of a principle-oriented approach. We are not strait-jacketed in our opportunities to improve the course of the law and do justice, however. If we see the law going in an unjust direction and it's in an area within our sphere of lawful authority to correct, then this job allows us to do something about it.

Montano: *What goes into the Court's process of granting certiorari?*

Daniels: It's a very subjective individual determination. Each Justice receives and independently reviews the cert petition and the lower court opinion, may do a little research, may ask for a response from the other side, may not, and when the Justice feels comfortable in voting whether to accept or deny cert, then a vote will be entered into the shared-access computer system. I try to vote on petitions within a few days, depending on the complexity of the questions presented. I don't let them sit around before addressing them.

We usually do not have cert conferences. If at least two Justices enter votes to grant, the Chief Justice automatically directs the Clerk of the Court to send out an order granting cert. We don't ask why, we don't discuss it. If all five Justices vote to deny, the result is also automatic. An order is just sent out denying cert. If one Justice, but only one Justice, votes to grant cert, we set it for the next conference of the Justices, usually within a week or two.

At conference, the Justice who wanted to grant cert makes a case for it. It generally needs to be something more than just that the lower court made a wrong judgment call on sufficiency of the evidence or whether a trial judge abused his discretion, or similar applications

of settled legal principles, because we're not primarily an error-correcting court. We're here to keep the ship of the law going generally in the right course, and we don't micromanage every decision of every one of the 300 judges in our judicial system. If the Justice who wanted cert persuades at least one other Justice that the issue is important enough for us to address and provide guidance on, we'll send out an order to grant cert.

Montano: *What do you look for in a good cert petition?*

Daniels: Something that demonstrates the reasons for us to exercise our responsibilities, that this is a case where we need to correct the course of the law. I'd advise lawyers to try to make clear in their statement of reasons for granting cert on the very first page the policy reasons why this Court ought to take the case, instead of just saying a lower court made a wrong call.

Stevens: *Do you think that cert cases ever have multiple issues worthy of Supreme Court review?*

Daniels: You know, that's always a hard judgment call because sometimes a record is such a mess that it may legitimately give rise to several issues. But if those issues are so good, you ought to be able to pick a few that are the best and not run the risk of having the best ones lost in the forest.

Stevens: *In that regard, how do you differentiate between criminal cases and civil ones?*

Daniels: We recognize that in a criminal case, appointed lawyers in particular have more pressure not to make decisions about dropping viable issues than there may be on private counsel or on civil counsel. On the other



Chile Indoors, Sunset Out
Jakki Kouffman

hand, effective advocacy is effective advocacy, no matter what kind of case it is.

Stevens: *Unlike the Justices of the U.S. Supreme Court you don't have the opportunity to be picky about finding the precisely perfect case for determining issues of law, do you?*

Daniels: That's right. We don't have the volume of cert petitions they do. Your chances of getting cert granted in the U.S. Supreme Court are pretty slim. I don't have a statistical readout, but my guess would be about 1 out of 10 would be your chances of having cert granted by our Court.

Montano: *When it comes time to decide a case, there isn't a lot of New Mexico law you can draw on. How willing are you to look outside of New Mexico law for guidance?*

Daniels: I think what other courts have done, other jurisdictions have done, is useful to look at because their opinions reflect educated minds that have looked at a similar problem and articulated their analyses. Not that considering those sources is going to prevent us from deciding what we think is right, because occasionally we'll arrive at a decision that may reflect the position of a minority of jurisdictions, if we think it's the right decision. I am most interested in the reasoning in out-of-jurisdiction authorities. I want to understand why somebody would come up with this conclusion or that conclusion when faced with a similar situation.

Montano: *You might have a New Mexico case that's close but it's not directly on point and a case from some other jurisdiction that is a little closer to being on point. Do you have a preference?*

Daniels: I think it would be most effective if you put both of them in. Obviously, we have to consider how our opinion is going to fit within the fabric of existing New Mexico law. If you have a New Mexico case that is on point, you certainly should rely on it and, if you have one that's close or even usable by analogy, you ought to put that in there because the New Mexico cases are more important. But if you have a good case from another jurisdiction that's close to being on point and clearly articulates a sound basis for the decision, you can rely on it. It won't have as much authority as New Mexico law, but may be persuasive.

Montano: *It seems the fact that there's not a whole lot of decided New Mexico case law can be both a blessing and a curse.*

Daniels: If you take pleasure in trying to make the law work well, it's a great opportunity. You're not bound up with stare decisis and having to follow precedents for the sake of the stability of the law, although there is merit in that too. In fact, I've written one separate opinion in the two and a half years I've been on the Court, saying I joined in the result because it was a matter of statutory interpretation that had been decided twice in the last 15 years by this Court, even though if it were a case of first impression, I would have gone the other way. It's hard for me to understand how the meaning of the words of a statute can change just because the last time it was decided by a 3 to 2 vote of this Court and one of the Justices in the earlier majority was replaced by me. I just don't think the law should be so unstable that one personality changing should make the difference in the meaning of a statute. Now, with a fundamental principle of constitutional law, I would probably be a little less reluctant to change a precedent, but even then I would have to think twice before overturning established law. Obviously, the fact that we don't have precedents on every issue that comes before us gives us more flexibility in making the law right.

Stevens: *When you're looking at legislation do you look not only at the words but at the chronological history of the statutes?*

Daniels: I look at everything I can. Sometimes the language is clear enough that you shouldn't look further than the words in the statute, because not every legislator might have looked at that history. But where the face of the statute isn't clear, you look to every guide you

can to try to determine what the legislature was trying to accomplish here. That's when we get into other considerations, including changes in the statutes over the years, changes as the bill went through the legislature, and so on.

Montano: *How does the Court decide whether to grant oral argument, and what do you find effective?*

Daniels: If you ask for oral argument before our Court, you generally get it. Almost invariably. I like to talk to the lawyers who have lived with the case, have a dialog about how the case fits within the principles that we have to apply, how it may lead to intended or unintended results. I like to just talk it out a little bit. I find oral argument very helpful if it's done right. I don't want someone to get up there and read their brief, and I prefer not to have an oral argument scripted and read aloud to us, because it makes it more difficult to engage in this kind of informed dialog.

Montano: *Are oral arguments going to be held in the New Court of Appeals building in Albuquerque?*

Daniels: It's already happened. Five days after I became Chief, we heard arguments in the new Court of Appeals building and their wonderful new courtroom. I hope we can get down there at least once a year, maybe twice. There is a constitutional provision requiring the Supreme Court to be in session in Santa Fe that has discouraged that happening in the past. Out of caution, we got written consent from the parties when we heard arguments in Albuquerque. I also would like to see us do it in other localities.

Montano: *I know you're a student of New Mexico history. How has that affected you as a Justice?*

Daniels: I have more sense of my historical responsibilities in this job than in any job I ever did. I look at those pictures up and down the hall. I see all those Justices pictures hanging on the wall and realize that I have a place among them and a responsibility among them. We have to get our opinions as right as we can, because once we file the opinion, it goes into those books over there, and they go back to the 1850's. Nobody has ever been able to change a word once they're in there. Once they're published, that's it.

Stevens: *Of the cases that come your way, are there particular issues that you personally enjoy most?*

Daniels: The ones that call for major policy analysis are the ones that are more interesting to me, and it's not just criminal cases. I'm enjoying cases in areas that I had no experience in, because each case requires me to really get into that new area. We all know as lawyers how each case gets us into a slice of human conflict and human experience, and you become an overnight expert on matters you never thought you'd get into before. This work on the Court is the same. The last two opinions I wrote involved an insurance coverage issue and the validity of an indemnification clause in a rental contract. That's not anything I ever dealt with in practice, but I found those issues fascinating because they involved policy considerations where our Court was called on to come up with resolutions that would keep the law on the course we thought the legislature was trying to set and also be consistent with principles in the greater body of our law.

Stevens: *How do you think that the transition from advocate to Justice has affected your approach to briefing?*

Daniels: As a judge, I feel just as I do as a parent with a memory of my own childhood. I try not to forget what it was like being in the other person's shoes. I think I still have an understanding of what advocates are doing. On the other hand, I never thought it was to the benefit of a client or to the credit of an advocate to be strident and to distort facts and to be accusatory. Those things are not persuasive. I never thought they were when I was an advocate, and I certainly am not impressed with them now as a judge. Some of the best and most persuasive advocates who come to our Court are the ones who concede things that may be against them and don't argue untenable positions. You're more inclined to listen carefully to the point they're making, the central point they're making if they are not overstretching and overselling any of their arguments.

Stevens: *What set you on the course to being a lawyer and a Supreme Court Justice?*

Daniels: A career in the law was not in my vision of the future as I was growing up. The truth is that I grew up after I finished high school and left home. I dropped out of college after just one semester, right after I turned 18, because I was wasting my time there. I was directionless and unmotivated, and I had no idea of who I was, where

I fit in, and what my future was. I joined the military, and after about two years decided I can do better than this, and started thinking a lot about it. It was helped by the fact that I was stationed at the North Pole at a remote radar site for a year and had a lot of time to think, read, and contemplate. I was 20 by then and had started maturing. I ran across a book about Clarence Darrow, the guy above the desk here [pointing to portrait], and it was like a flash of light from the sky. I realized that that's what I wanted to do and that I could do it, and from then on everything came easy. I had a clear picture in my mind of what I could do in life and started rearranging everything to be able to get a degree to let me go on to law school and to get into a courtroom, and that's how it all came about. When I was in high school I didn't have a clue.

Montano: *You've been a Supreme Court Justice for two and a half years now. Are you glad you made the transition?*

Daniels: Absolutely, but not because I was unhappy doing what I did before. I've been real lucky. I've had an extraordinary run of good jobs and good people to work with since I started law school. And I would be happy being a lawyer again or being a teacher again. I loved both those jobs. But assuming the people in their wisdom don't turn me out, I will be very happy staying here for as long as I think I'm competent to do it. I'm not doing this for the money, I don't need the glory--that's been an interesting collateral phenomenon--but I really enjoy the opportunity to do the work, and I find it challenging and interesting. I come in here with a skip in my step every day.

Montano: *This has been a great couple of hours.*

Daniels: Well, thanks!

Montano: *Thank you so much.*