

Arizona Bar Foundation  
Oral History Project:  
Arizona Legal History

Interview with John Nicholas and Sybil Webb Udall  
James F. McNulty, Jr., interviewer

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# ARIZONA BAR FOUNDATION ORAL HISTORY PROJECT: ARIZONA LEGAL HISTORY

## HISTORICAL NOTE

Although Arizona was frequently referred to as "the Baby State," due to its twentieth-century entry into the Union, the history of the legal profession in the state is rich and colorful. In the earlier days, lawyers were mostly self-educated men, who practiced alone, or with one partner at the most, and spent much of their professional time alternately defending and prosecuting some of the most colorful characters of the Old West, and trying to collect on bills from people who had come West to escape their creditors.

Through the first half of this century, some of the nation's finest lawyers took up practice in Arizona. As the state's population grew, a law school was added to the University of Arizona and lawyers formed an integrated state bar in 1933. After World War II, the state exploded in development with the rest of the Sun Belt, and the law profession kept up with this growth, experiencing many changes in the process.

Today, there are law firms in Phoenix and Tucson which employ upwards of 100 attorneys, who may specialize in fairly narrow areas of practice. Half of the students in the state's two law schools are now women. Over the years, Arizona's influence on legal matters at the national level has been significant. Several landmark cases have originated in Arizona, such as *In Re: Gault*, and *Miranda*. Arizona can claim the first woman to sit on a state Supreme Court: Lorna Lockwood. Two members of the State Bar now sit on the U.S. Supreme Court, one as the Chief Justice and the other as the first woman to be appointed to the Supreme Court.

However, because Arizona is a young state, there are still attorneys living who knew and remember Arizona's earliest legal practitioners during Territorial days. Many of these senior members of the Bar practiced or sat on the bench before the profession, and indeed society itself, experienced the changes of the last forty years. In an effort to preserve their memories, the Archives Department of the Arizona Historical Society/Tucson developed the **Evo DeConcini Legal History Project**, an oral history project. From 1986-1988, twenty-one oral history interviews were conducted, focusing on the reminiscences of lawyers and judges in the Southern Arizona area.

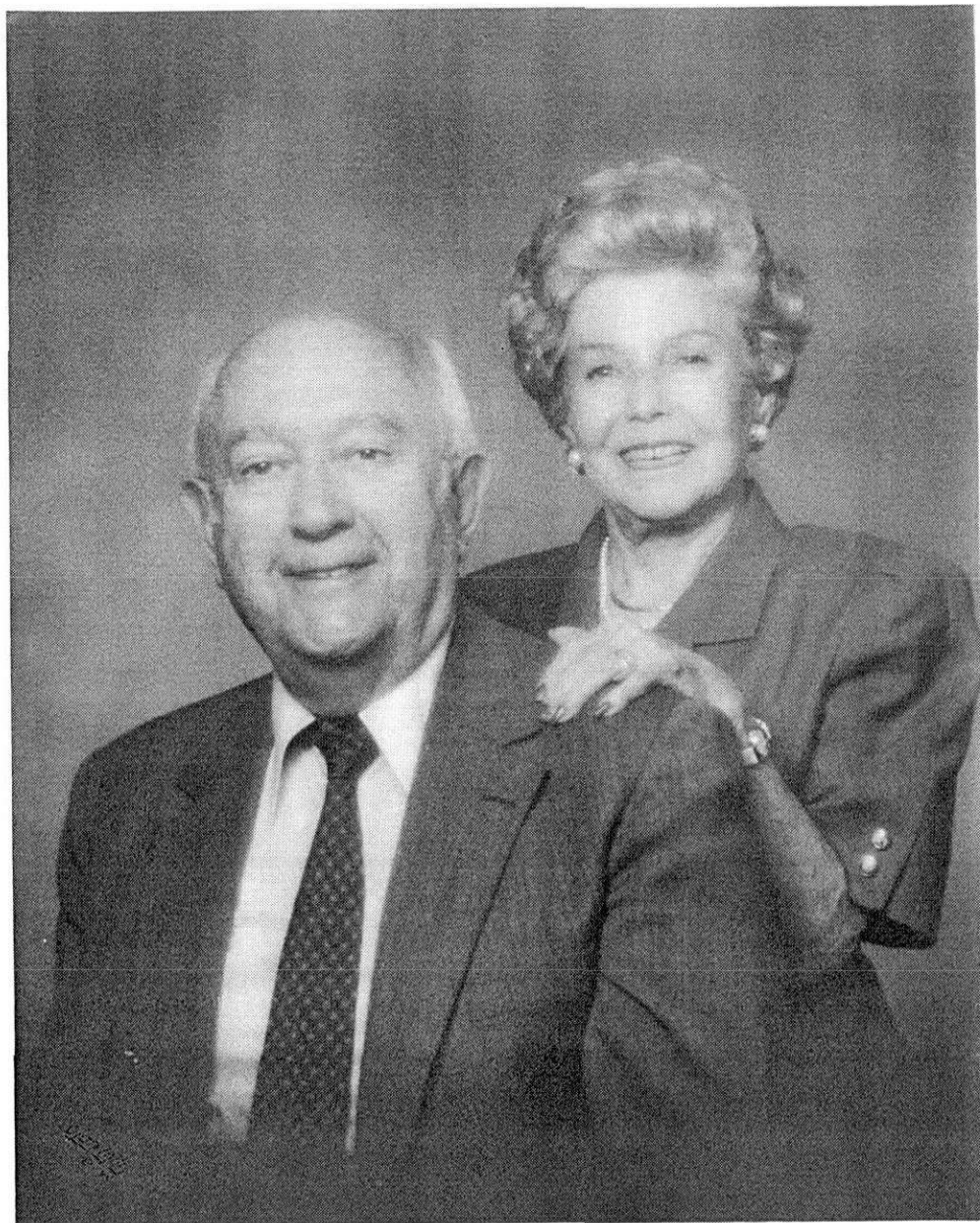
In 1987, the Board of Directors of the Arizona Bar Foundation expressed an interest in continuing to document the history of the legal profession in Arizona on a state-wide basis. In particular, the Board felt that the collection of oral history interviews with senior members of the State Bar would stimulate scholarship and publication on various topics

relating to legal history, such as water rights, land use and development, and civil rights, as well as on the history of individual firms and the State Bar, itself. The Bar Foundation and the Arizona Historical Society/Tucson agreed to work together to expand the DeConcini Project statewide, calling it the **Arizona Bar Foundation Oral History Project: Arizona Legal History**.

Raising funds for two interviews initially, the Bar Foundation designated that the first two recipients of the Walter E. Craig Distinguished Service Award, Mark Wilmer of Snell and Wilmer (1987), and Philip E. Von Ammon of Fennemore Craig (1988) be interviewed in October, 1988. Both interviews were conducted by James F. McNulty, Jr., who conducted most of the interviews for the DeConcini Project.

Because it is open-ended, it is not possible to fully define the scope and content of the Arizona Bar Foundation Legal History Project. However, in order to achieve the greatest depth and balance, and to insure that many viewpoints are represented, every effort is made to include both rural and urban practitioners, male and female, of varying racial and ethnic perspectives. Interviews are conducted as funds are made available. Transcripts of the interviews are available to researchers at the Arizona Historical Society in Tucson, the libraries of the Colleges of Law at the University of Arizona and Arizona State University, and at the Bar Center, in Phoenix. The Historical Society is also cooperating with the Ninth Judicial Circuit Historical Society in making copies of interviews with Arizona lawyers and judges from their project available to researchers here in Arizona.

The Arizona Bar Foundation Legal History Project is important not only because it is documenting the history of the profession in Arizona but because legal history encompasses every aspect of society's development. To study legal history means to study land development, environmental issues, social and educational issues, political history, civil rights, economic history--in short, the history of our society. All of these topics are, and will continue to be developed in these oral history interviews. They may be seen as a valuable and unique supplement to the written record as scholars begin to write the history of the legal profession in Arizona.



*John & Sybil Webb Udall*

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## Introductory Note

John Nicholas and Sybil Webb Udall granted this interview to the Arizona Bar Foundation Oral History Project on January 15, 1991. James F. McNulty, Jr. was the interviewer.

All Arizona Bar Foundation Oral History Project interviews are tape recorded and transcribed. Researchers wishing to listen to the interview may do so at the Arizona Historical Society Library, Tucson. Please ask for interview *AV 0412-19*. Copies of this transcript are sent to the narrator, the interviewer, the Arizona State University School of Law, the University of Arizona School of Law, the Arizona Bar Center and the Ninth Judicial Historical Society, Oregon. All original materials are housed at the Arizona Historical Society Archives, Tucson.



## John Nicholas Udall Sybil Webb Udall Interview

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McNulty: This is January 7, 1991. I am Jim McNulty and it is my great honor and privilege this morning to conduct interviews of Nick and Sybil Udall for the Arizona Historical Society and for the continuing project of the Arizona State Bar Foundation, in which we are trying to record the history of the great names and the great personalities that were part of the justice system of the state of Arizona, with particular reference to lawyers and judges, of which Nicholas Udall is both. [Adelaide Elm, Archivist for the Arizona Historical Society is also present.]

McNulty: Nick, good morning and thank you for coming here.

Udall: Good morning, Jim. I'm sorry I was a few minutes late. Normally punctuality is one of my strong points, but Tucson has changed in its street patterns and

traffic patterns a great deal since I came down here in September 1936 to have an abortive start at the study of law.

McNulty: You began your day by driving the wrong way on a one-way street?

Udall: Just about. I didn't quite do it, but I did make a U-turn in front of an officer that Sybil saw but didn't tell me about. Fortunately he didn't stop me.

McNulty: Well, if you do it again, you should ask Judge [Richard H.] Chambers, the retired chief judge of the Ninth Circuit to defend you, because he's had the same experience himself. Nick, I've read your biography and that is always part of our efforts here. I think, *Adelaide [Elm]*, really that the biography, as complete as it is, probably ought to be just made part of our whole pamphlet. You understand that this is to be typed . . .

Udall: Adopt by reference.

McNulty: Exactly. And that this will be typed and submitted to you and you will be asked to criticize it and correct it. After that we will publish that in a form of which we've got about two dozen now. Our emphasis is the law, but we're interested in the early history of the state and particularly of the pioneers of which you two are two. You were born in St. Johns, Arizona in 1915?

Udall: No. 1913.

McNulty: You're even older than I thought.

Udall: And my wife Sybil was born here in Tucson some time later.

McNulty: You were part of the colonization, you and your family, of Northern Arizona by people from Utah principally under the benevolent direction of the Church of Jesus Christ of Latter Day Saints. Is that not so?

Udall: Yes, but there's one little item that I neglected to put in this brief summary that I sent to you. One of my ancestors, my great-great grandfather Jefferson Hunt, passed around the perimeter of Tucson in 1847. So we really do go way back. He was the, I may have mentioned it, he was the ranking officer of the Mormon Battalion who belonged to the Mormon Church. It made the longest infantry march in history, according to what I've been told, from Fort Leavenworth, Kansas, to somewhere in Southern California and they disbanded there just as gold was discovered in California, yet most of them returned to meet their families in Utah.

McNulty: This was an effort headed up by General [Philip] Kearny.

Udall: That's correct.

McNulty: In William Tecumseh Sherman's autobiography, just published by the American Heritage Collection last fall, many references are made to General Kearny and the Mormon Battalion. And a number of people, a minority of course of the overall group, but a number worked their way to San Francisco where Sherman was the commanding officer of a small group of troops. And Sherman talks at length about the discovery of gold, and on the whole, quite flatteringly of the men whom he met.

Udall: This was an interesting portion of our Southwestern history in that it served the purpose of both the Mormon Church as well as the United States government. We were starting to have trouble with Mexico and they needed some men immediately. The Mormons were in the Missouri, Illinois area, so they had a battalion of them brought into the army to make this march. And whether it was threatening or really supportive I don't know, but at least it provided the Mormon Church with funds that were sent back by the soldiers to their families in Illinois as they started moving westward.

McNulty: You are speaking of Nauvoo, Illinois? Would that be where they began?

Udall: Yes.

McNulty: Your early years in primary school were spent in several places, were they not?

Udall: Yes. I remember when I was six years old we moved to a ranch at Hunt, Arizona, just east of the Petrified Forest. They built a one-room brick school house with one teacher. That's where I started to school and stayed until I entered the eighth grade. Then I went to St. Johns [Arizona] and went to school one year in the eighth grade. I graduated there in 1926.

McNulty: With whom did you live when you were in St. Johns?

Udall: Our family started in St. Johns, and Eager. That's where my grandfather had his families. And my father brought my mother from Thatcher, Arizona, when they were married, to live in St. Johns. After she died and he later remarried, we lived in St. Johns for a time until I was six and then we moved to this ranch. I was a little different from most of these kids now in school. I liked school. We had an eight-month school in Hunt. As soon as each school year was over I would go up to St. Johns and live with my Grandfather Udall, that's David K. [King] Udall, for a month to get in an extra month schooling in St.

Johns, sort of gratis. I did that until we moved back when I went into the eighth grade.

McNulty: Had both your parents received a high school diploma?

Udall: Yes. My mother and father met in Thatcher [Arizona] where he and his brother Levi went to get the last two years of their high school. They called it the Gila Stake Academy. Both of them finished in 1911, I believe it was. Both of them met their wives there. My mother was Ruth Kimball. In St. Johns they did not have a four-year high school. They had a two-year church academy in those days.

McNulty: What accounts for the powerful attitude toward education of these early Mormon pioneers?

Udall: I think it goes back to the religious philosophy that they had subscribed to. One of our sayings is, "The Glory of God is Intelligence." And we believe that. We cannot attain anything without knowledge, therefore education is one of the prime goals that we have in life.

McNulty: The people who contributed so much to the early Mormon migration and who came in a large part from Southern England, did they have that powerful feeling toward education when they left there or was this something that developed as time went by?

Udall: I think that it's more of the latter. In the book about my grandfather David K. Udall there's a summary or an appendix about his father David Udall, who joined the Mormon Church in England in 1850 and then migrated to the United States. In it he says one of his motives is to give his descendants a chance for opportunities that they would not have in England in the caste system that existed then. I'm sure that education was one of his goals, although he didn't express it. He arrived in St. Louis sometime in 1851, my grandfather was born there, and they stayed there for sufficient time for him to cross the plains to Utah. They didn't have very good transportation. They had to go with either wagons or handcarts. But as soon as the main body of the church arrived in Utah, under the direction of Brigham Young, education became one of their first goals.

McNulty: How old were you when you graduated from high school?

Udall: Sixteen.

McNulty: Did you continue your education right away?

Udall: No. I did register in the Phoenix Junior College but after about two weeks my father prevailed on me, because of the advent of the depression and with his large family, to find a job. So I discontinued my education for a couple of years. I worked at the Central Arizona Light and Power as a grunt, a lineman's helper, and then at the Arizona Industrial Commission.

McNulty: Had your family by then located to Phoenix?

Udall: We had moved to Phoenix in 1926 just as I started to high school.

McNulty: Your father was very much involved in government at a variety of levels, was he not?

Udall: Yes, he was clerk of court in Apache County when my mother died. There was an interesting side event there. He and his brother Levi who had spent two years together in strange lands in Southern Arizona obtaining their last two years of high school and were very close brothers discovered one Saturday afternoon that under the caucus system that then existed they were the respective candidates of their parties for clerk of court. They went to my grandfather and said, "What shall we do? Shall we flip a coin and one of us withdraw?" He said, "No. You conduct the campaign like gentlemen." My question in later years was, "And did he also add, 'And may they best man win'?" In any event, my father won and shortly thereafter he made his brother Levi his deputy clerk. After my mother died my father was so disconsolate that he resigned and retired to his cattle ranch and Levi was appointed by the Board of Supervisors as clerk.

McNulty: You're telling me then, that Levi won the Democratic nomination for clerk of the superior court . . .

Udall: They didn't have it by nomination. They had it by party caucus.

McNulty: So the Democratic Party of Apache County nominated Levi Udall for clerk of the superior court and the Republican Party caucus of the same county nominated your father John for the same job?

Udall: That's correct. Anyway, the blood relationship didn't seem to make any difference to them. While Levi was clerk of court he started to study law under the guidance of Judge A.S. Gibbons who many years later he defeated for judge of the superior court. But both Levi and my father were very active in religious and civic matters in the St. Johns area. My father, in addition to being clerk of court, was in the Arizona Legislature I believe for two terms, four years, in the early twenties, and became well-known all over the state.

He and Lewis [H.] Douglas, who was his age peer, became very good friends, were sort of the men that ran the legislature in that Lewis Douglas was the leader of one Democratic faction. There was an equal-sized faction that couldn't get along with each other. My father and two other Republicans were the swing votes so my dad and Lew made all of the political medicine in the legislature in those days.

McNulty: Was your father a Republican . . .

Udall: Yes, he was.

McNulty: . . . through his entire life?

Udall: During the depression he was one of the few Republicans in Arizona. He and Ralph [W.] Bilby and Irv [Irving A.] Jennings were three of the stalwarts.

McNulty: David King Udall, your grandfather, do you know what political party he was registered with?

Udall: I think that he was a Republican, that my grandmother was a Democrat and Uncle Levi's mother was a Democrat. Anyway, we've kind of split it down the middle. I'm the only Democrat in my father's family. He had ten other children and they were all Republicans.

McNulty: The story I've been told is that your uncle Grover Cleveland Udall was so-named because of the pardon extended your grandfather David King Udall by President Grover Cleveland. Have you ever heard that?

Udall: I've not only heard it, I've seen the pardon. In fact, I think it's in his book.

McNulty: So there's no question of your grandfather's disposition toward President Grover Cleveland as being thankful for this pardon from this wrongful conviction.

Udall: That's right. The conviction was for the wrong purpose. They were trying to prove that my grandfather had two wives, which he did, but my grandmother was living in Southern Utah and they couldn't prove it. So he was convicted on a charge of falsely signing an affidavit as to the homestead application of a gentleman by the name of Miles T. Romney, who was the grandfather of George Romney, one-time candidate for president of the United States.

McNulty: Did Miles Romney collaborate with authorities on that matter?

Udall: No. He went to Mexico.

McNulty: But is not the story that your grandfather had signed papers which verified that Mr. Romney had proved up on the homestead, that is he had built a building

of some size or of some value as a condition precedent to getting a patent for that land?

Udall: Well, I think the facts are some of which I have obtained from the federal court records from the storehouse in Bellflower, California, I believe it is; and I've seen others that Uncle Levi had. The fact is that Miles T. Romney settled on a homestead a few miles north of St. Johns. When it came time to make his application for a patent he needed two persons to verify that he had lived there for three years. My grandfather Udall was not a man of letters. He didn't have much of an education. He went to the clerk of court, before whom he signed the application as a witness, and asked him what it meant. This clerk of court was of Spanish descent—I can't think of his name right off—but my grandfather asked him the meaning of some of the statements. One of them related to the fact that Mr. Romney had lived on these premises and made certain improvements for the whole period of three years. My grandfather explained to him, according to the lore that I have, plus what I've seen in the file, that he had been by there periodically, he had seen laundry clothes on the lines and children and chickens and everything in the yards, so he presumed he was there all of this time, but he hadn't seen him there every day of every year of the three-year period. The clerk said, "Well, that will be fine," so he signed this application, along with, I believe, a man by the name of Crosby.

Well, it turns out that the statement was not absolutely correct so he was charged with perjury. Mr. Crosby was neither charged or convicted, I don't know which it was. But my grandfather was convicted by a judge who later signed one of the petitions, as I'm told, to President Cleveland for his pardon. I think that also was true of the district attorney. Arizona then was a territory. The trial was in Prescott.

To show you the venom that existed against this group of Mormons who had come to Arizona, grandfather's bond was fixed at \$25,000.00. In those days that was a great deal of money. Some wealthy rancher, I believe it was, signed a property bond for him so he remained out until the time of the trial. Then he was sent to the Detroit House of Correction under horrible conditions for a number of months until President Cleveland pardoned him when the true facts came out.

This judge was very anti-Mormon. He would not permit any explanation of how this application came to be signed by my grandfather. He wouldn't let the clerk testify. As you know, one of the requirements for a perjury conviction you have to do something knowingly and deliberately; and that testimony would have exculpated him completely. I think it was on that basis that he was pardoned and that explains Uncle Grover's name.

McNulty: Was your grandfather uncomfortable with this brief chapter in his life in subsequent years?

Udall: Well, it wasn't a pleasant experience but I don't think he ever held his head in shame. He knew why he was convicted and he knew that was why he was supported by the church. The church in Salt Lake City gave him every support it could, to his family and to him, and tried to get him out. They did get him out eventually by having the truth made known. He really wasn't presented and convicted of perjury, but because of polygamy, although they couldn't formally prove it.

McNulty: In the book *Arizona Pioneer Mormon* it is quoted from some newspapers at that time, some of the most inflammatory, even violent language with respect to the Mormon peoples. I suspect you are familiar with what I am speaking of, are you not?

Udall: Yes, I am.

McNulty: What accounts for the vitriolic disposition of those editorials?

Udall: Well, I can give you my explanation or justification. From the Mormon point of view it was a millstone that they had around their neck because they proclaimed that they belonged to what they considered to be the true church. A small number had more than one wife. And that brings resentment in people.

Another explanation is that they were a hard-working, thrifty people who were resented by frontiersmen who didn't respect the law or anyone else. We had very little law when the Mormons moved to the West. They also have a doctrine or creed that we believe in honoring, obeying and sustaining the law. So they ran counter to each other on that.

I suppose the more rational sociological explanation would be that the haves and the have-nots resent each other and the Mormons became haves because they worked hard and saved. The have-nots who wanted to live on other people, even in those days, resented that very much. Yet the unusual



thing is that the Mormons helped out everybody with whom they were associated in their communities. In fact, the first Catholic mass in Utah was held in a Mormon church. The Mormons let the Catholics use their facilities.

There was a Phoenix lawyer who grew up in St. Johns by the name of Greg García. I don't know whether you remember him or not, but he was still practicing when I commenced. He told me that he owed his profession and his status in life in his group of people because of my grandfather. There was no way for him to get an education beyond grammar school and my grandfather, who, then was the Mormon stake president in St. Johns, told him to come over and go to the stake academy even though he was not a member of the church.

So there are a lot of conflicts that have developed over all these years. Some people resented him and his people some people appreciated him. I've given you a couple of examples.

I can't give you any better explanation of the animus than that, but from the time that the church started developing in Ohio, Missouri and Illinois the members ran counter to the general populace. In Illinois, for example, at one time the place where the Mormons lived, Nauvoo, was the largest city in the state, even larger than Chicago in that time. In Missouri they were buying up much of land and that was resented. They would work hard and buy up the land. I think we see a modern-day phenomenon in the resentment of lots of people towards people of the Jewish faith because of their ability to work hard and acquire. And it's resented.

So I don't know whether that's an explanation. It's a little convoluted but I think it may cover it.

McNulty: Let's get back to you and the year 1930. You're about seventeen years old and you've just graduated from high school. You've spent a couple of weeks at Phoenix College and then you remove to, was it St. Johns?

Udall: No, I went to work for the old Central Arizona Light and Power Company. That's the predecessor of A.P.S. [Arizona Public Service Company]

McNulty: Oh, yes. Was that strictly because of money considerations?

Udall: Yes.

McNulty: How long did you work for CALAPCO?

Udall: Oh, about four months until I got a better job. Wages were very low in those days. I made three dollars and a half a day. A lineman, who was considered

the elite, made six dollars a day. That's a hundred and eighty dollars a month. And he would raise his family on that amount. It was hard work. I dug many a hole for high-tension power lines with a hand shovel and scoop and so forth, six feet deep, very neatly tailored. I remember that after the first three or four days my hands were so blistered and sore I couldn't hardly drive a car. But it was a good experience.

McNulty: When do you think you became interested in the law as a possible career?

Udall: I think when I had started to high school.

McNulty: Was anyone else in the extended Udall family, looking through both of David King Udall's families, was anyone else interested in the law?

Udall: Yes. Three of my uncles were lawyers at that time. My uncle Levi and uncle Jesse were the first two. Both of them had attended the University of Arizona Law School, I believe, at some point of time. My uncle Don had gone to Georgetown University. He was the youngest and I was the oldest of the two different generations. I think there was sixteen years between us. I can remember when he came home one summer, I was about six years old, something like that, he was courting his wife and they took me for a ride. I knew he was a law student. He was always very kind to me and he became a sort of an early role model. I decided I, too, wanted to go back to Washington and go to law school. That was at a very early age, but later I formulated it very firmly in my mind when I started to high school, that I wanted to be a lawyer.

McNulty: Wasn't it an extraordinary thing that a Mormon from St. Johns of very limited financial circumstances would wind up at a Jesuit law college three thousand miles away?

Udall: Well, I don't know how he got into the Jesuit college. That's where I wanted to go too, but one of my BYU [Brigham Young University] friends and I both went back there at the same time to go to law school. He wanted to go to George Washington and I wanted to go to Georgetown. He ended up in Georgetown and I ended up in George Washington. The reason was George Washington required two years of a foreign language and he didn't have it. Georgetown required a degree and I didn't have it. I had three years when I went into law school.

McNulty: Even back then Georgetown had a degree requirement?

Udall: Yes, they did, in 1937.

McNulty: Which, of course, the University of Arizona didn't have for probably thirty years afterwards.

Udall: Well, I started at the University of Arizona in 1936 but the depression was still on and I could not afford to stay there. I wanted to get married, also, so I went back to Washington. And George Washington was the one that was available. Professor Smith, as I was departing, made it clear that I would not be well advised to go to one of the second-class law schools that I could get into immediately. I had to return to undergraduate studies a little while to get the three years to get into George Washington. In fact, I was the last group to get in without a degree. They changed it in 1937.

McNulty: How did you support yourself when you went to law school at George Washington?

Udall: I worked as a civil service employee of the federal government and then after Sybil came back there we helped each other. She says she put me through law school but I say I did whatever studying was required. But we both worked in the government.

McNulty: Does that mean your law school classes were all at night?

Udall: Yes, with one exception. I went to day school once when I had a late afternoon job. But primarily it was at night, five to seven every night.

McNulty: Was your family, your father and your stepmother now, were they able to help you in any significant way financially?

Udall: No. I had been going to the University of Arizona Law School when I received a telegram offering me a job as a sorting machine operator. That was something I had learned to do at the Industrial Commission. Those were the precursors of computers, which we didn't have in those days. But I met that qualification of a sorting machine operator, I had taken the civil service exam and so within a day of the offer I withdrew from law school here. I talked to Chet [Chester H.] Smith, who was one of my favorite professors. He told me not to go to one of the grade B law schools, even though I was a little older than the average student in those days because I had stayed out of school four years and that the extra effort would be worth my time. So I followed his advice and when I went back there I enrolled in the undergraduate and went two more years to get enough credits. But when I registered in the program

I was able to get in, even though when I entered law school they actually had required a degree. But I sort of was grandfathered in. It's kind of a tough deal.

There's another interesting aspect of this, Jim. The District of Columbia had a requirement of three years attendance at a law school before you took the bar. I had gone to law school three years, but I had another year to go. Twelve of us at GW got together and decided we would take a bar review course, with all of the other things we were doing, and take the bar early. All twelve of us passed it. Most of them quit law school. But I continued and got my degree. Sixty-nine percent of the four hundred plus who took that bar failed it, including quite a few with degrees already obtained from either Georgetown or George Washington, the two good law schools in the district. Most of them were from the other law schools. Then I went to work as an attorney in the Department of Agriculture. One of my professors was a colleague there. And I continued to go to law school.

McNulty: So you finally did get a degree from George Washington after you'd already been admitted to the District of Columbia Bar?

Udall: I'd been admitted for eight or nine months, I guess.

McNulty: When were you admitted to the Arizona Bar?

Udall: I came out to take the bar here in January of 1944. Then I came back to my brother's funeral in May. I had passed it and was admitted then, in May of 1944.

McNulty: And have you practiced law in Arizona ever since?

Udall: I went back to Washington to consult with my wife and had told her that I had been offered a place to put my files, so to speak, with Paul [M.] Roca, who had been ahead of me at George Washington. So we sold our house and we quit our jobs and moved back to Arizona with our two sons in July of 1944. I have been either a lawyer or a judge ever since.

McNulty: When you were admitted to the Bar did that make the fourth Udall now admitted, after Levi, Jesse and Don?

Udall: I think so. While my father was serving as Federal Prohibition Administrator, he took a night law course from Terry Carson, who gave a bar review course in Phoenix. Dad studied this for about a year and read the booklets from some Chicago correspondence school, took the bar but he lacked one point of passing.