

Evo DeConcini
Oral History Project:
Arizona Legal History

Interview with Ralph W. Bilby
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THE EVO DECONCINI ORAL HISTORY PROJECT: ARIZONA LEGAL HISTORY

HISTORICAL NOTE

In 1985, James F. McNulty, Jr., former U.S. Congressman from Arizona and currently an attorney with Bilby and Shoenhair in Tucson, proposed that the Arizona Historical Society develop an oral history project to collect the reminiscences of senior judges and lawyers in Southern Arizona. As a former partner in one of the oldest law firms in the state, in Bisbee, he had long been aware of the wealth of information and experience expressed in many of his colleague's lives and careers, some of whom had been practicing law for over fifty years. In an effort to preserve and disseminate their stories and observations about the profession, the Archives Department of the Arizona Historical Society/Tucson developed a pilot program focused on Southern Arizona, with the goal of collecting the reminiscences of fifteen to twenty individuals associated with the legal profession over the last fifty years.

The project was funded through a challenge grant made by Roy Drachman and money subsequently donated by members of the Pima County Bar Association and the DeConcini family. At Mr. Drachman's request, the project was named for the late Judge Evo DeConcini, a highly-respected member of the Arizona Bar and a long-time friend.

Most of the interviews were conducted between 1986 and 1988, by Mr. McNulty. Interviews were also conducted by Robert

Palmquist, Jack August, and Adelaide Elm. Additional interviews with judges and attorneys conducted previously for other oral history projects were included with the DeConcini Project, to expand the scope of the project. The narrators, representing both rural and urban practices, were identified for inclusion by Mr. McNulty and other members of the State Bar. They included three judges, sixteen attorneys, the wife of a former state Supreme Court justice, and the legal secretary of one of the oldest law firms in the state. All transcripts and tapes are available to the public at both the Arizona Historical Society and the University of Arizona College of Law.

In addition to preserving the recollections of legal practitioners in Southern Arizona, the Evo DeConcini Legal History Project has spurred the collection and preservation of primary documents relating to legal history, such as day books, client ledgers, correspondence and photographs from law firms and individuals connected with the profession. It is hoped that the DeConcini Project will serve as a model for the collection of such memoirs and historic materials on a state-wide basis.

THE EVO DECONCINI ORAL HISTORY PROJECT: ARIZONA LEGAL HISTORY

SCOPE AND CONTENT NOTE

This collection consists of 43 cassette tapes (60 to 90 minutes in length), thirty-two 1/4-inch audio tapes, and twenty-one transcripts produced for the "Evo DeConcini Oral History Project: Arizona Legal History" by the Archives Department of the Arizona Historical Society between 1986 and 1988.

The collection is arranged in two series: (1) Oral interviews conducted for the project; and (2) Oral interviews gathered from other projects.

Series One consists of fifteen interviews: (1) Charles Ares; (2) Ralph W. Bilby; (3) Thomas Chandler; (4) Elizabeth Daume; (5) Ora DeConcini; (6) Gordon Farley; (7) Martin Gentry; (8) Thomas L. Hall; (9) Virginia Hash; (10) Norman Hull; (11) Ashby I. Lohse; (12) James F. McNulty, Jr.; (13) James Murphy; (14) Alton C. Netherlin; (15) Joseph C. Padilla; and (16) Wesley Polley. Interviews 1, 2, 3, 5, 6, 7, 8, 10, and 13 were conducted by Mr. McNulty. Interviews 11, 14, 15 and 16 were done by Robert Palmquist. Adelaide Elm conducted interviews 4, and 9, and Jack August conducted interview 12.

Series Two consists of five interviews: (17) Harry Gin; (18) Don Hummel; (19) Hayzel B. Daniels; (20) Rubin Salter; (21) Rose Silver. The Gin interview was conducted by Bonita Lam for the "Chinese in Tucson" project; Don Bufkin, Acting

Executive Director of the Arizona Historical Society, conducted the Hummel interview; Richard Harris and Carol Jensen conducted the Daniels interviews; Baiza Muhammad interviewed Salter for the African-American History Internship Project; and Rose Silver was interviewed by Mary Melcher for the "Women and Work: An Aural History," a joint project of the Arizona Humanities Council and the University of Arizona.

The bulk of the collection deals with the experiences and observations of these individuals relating to the legal profession in Southern Arizona over the last sixty years. The interviews document the following topics: education preparatory to the profession (law school, reading law, the bar exam); legal practice during the Depression, and the influence of the New Deal; relationships between the legal profession and politics; the role of judges vis a vis the Bar; the increasingly litigious nature of society; the effect of social changes on the practice of law; the experiences of women and minorities in the profession; and post- World War II changes in the legal system. Of particular interest are anecdotes about particular cases and clients; histories of several old law firms in Southern Arizona; University of Arizona Law School professors and courses of study; opportunities some had to practice law without a law degree; and remembrances of the colorful individuals who influenced the profession in Territorial days and early statehood.

The collection is valuable for its comprehensive look at

the law profession in Southern Arizona over the first half of this century, and its emphasis on the changes which have occurred within the profession during that period.



Ralph W. Bilby Interview

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Ralph W. Bilby Interview

Ralph W. Bilby was born in 1891 in Concho, Arizona, of a pioneer Mormon family from Utah. The family farmed near Thatcher, where Bilby attended Gila Academy and later married Marguerite Mansfield, one of his teachers. In 1915, he entered the University of Arizona, graduating in 1920 with a degree in law.

After working with Frank E. Curley, a noted Tucson lawyer, he became an assistant to the U.S. Attorney, and also formed a partnership with Ben B. Mathews and later with Ted K. Shoenhair. Bilby and Shoenhair's partnership lasted over fifty years, longer than any other in the state. Bilby was a delegate to the Republican National Convention in 1928 and again in 1948, and served as president of the State Bar in 1948-49. He was also elected to membership in the American College of Trial Lawyers. After 66 years in the legal profession, Ralph Bilby retired in July, 1986, and died on February 19, 1987.

Because Bilby's career spanned six decades, this interview is valuable for the light it sheds on changes within society and the legal profession during the 20th century. His early years in a rural environment contrast sharply with the later years as the senior partner of one of Arizona's oldest and most prestigious law firms. He describes his courses and professors in law school, and other members of the Arizona Bar in the earliest years.

Among Bilby's recollections of cases he was involved with,

the Bisbee Deportation case stands out as especially significant. He also goes into some detail about the merger of the two major law firms of Knapp, Boyle and Thompson, and Bilby and Shoenhair in 1946. Of particular value are his thoughts on issues such as the litigiousness of society today, alternatives to litigation, the relationship between law and politics and the benefits of an education for the legal profession.

RALPH W. BILBY INTERVIEW

Tape is rolling and this is October 21, 1966. My name is James McNulty and I'm in the very agreeable home of my friend Ralph W. Bilby with whom I will be chatting for the next little while. Ralph, thanks for the opportunity to do this.

Bilby: Most happy to have you here.

McNulty: I told you that we were going to begin on a kind of an autobiographical note. Why don't you tell me the names of your parents and where they came from.

Bilby: First I suppose you'd like to know where I was born.

McNulty: All right, that's a good start.

Bilby: I was born in Concho, Apache County, Arizona.

McNulty: The date?

Bilby: On the 15th of September, 1891. I was 95 years old last September 15th. My father's name was John Bilby, B as in Boston, B-I-L-B-Y. My mother's name was Ann Wallrad, W-A-L-L-R-A-D, Whipple. Ann Wallrad Whipple. My father was of Danish extraction. He was born, was conceived during his father's lifetime, of course, and was born after his father died.

McNulty: So his father died relatively young.

Bilby: Yes. I had two brothers and three sisters, and my mother, not thinking that that was a sufficient performance of her duty, she adopted a young girl, a young baby girl, Annie Farley, F-A-R-L-E-Y, whose mother died in childbirth. They were a poor family and

she had no place to go so my mother took her on and raised her. So she had seven children altogether.

McNulty: Were both your parents born in the United States?

Bilby: No, my father was born in . . .

McNulty: Denmark.

Bilby: . . . Denmark. My mother was born in Provo, Utah.

McNulty: Where did your parents first meet?

Bilby: Somewhere in Utah.

McNulty: Had your Dad been encouraged to come to America by the L.D.S. Church or by . . .

Bilby: No. He was a little boy.

McNulty: I see.

Bilby: His mother was converted and came across in steerage--that was after her husband had died--and brought him as a little baby boy, and then migrated to Utah. She was converted to the Mormon religion.

McNulty: Yes. And had your mother been brought up in the Mormon faith?

Bilby: Yes.

McNulty: In Utah?

Bilby: Yes.

McNulty: How did they happen to travel to Concho, or by what route did they get there?

Bilby: I think my father told me that he landed in Prescott, either Prescott or Flagstaff, in 1880, on Christmas Day. He had a contract with someone else cutting ties

for the new railroad, the Santa Fe.

McNulty: The line from Prescott up to Flagstaff, that connected the transcontinental route?

Bilby: Yes. I guess that must have been it. In any event, that's what he first did up there. Later, I do not know but I surmise that it was a sort of a call made by his church, that he move down and colonize the country around Concho.

McNulty: Do you remember your home in Concho?

Bilby: Oh, yes.

McNulty: What was it like?

Bilby: It was a two-story adobe place. The old adobe chimney is still standing, it was a few years ago when I was there, the remains of it. And the fruit trees my father planted are still bearing fruit. I've returned there several times.

McNulty: What did your father do for a living?

Bilby: He was a farmer, as farmers went in those days. They had a miserably poor living. Concho was a difficult place in which to scratch out a living. I think the principal crop probably was alfalfa and sorghum. They made molasses. They did it themselves, you know. With a mule tied to a grinder, they squeezed the cane, squeezed the juice and then boiled it and made molasses right on the job.

McNulty: Did anybody own any cattle, either beef cattle or milk

cows?

Bilby: Oh, my father owned several cows. He had a flock of sheep at one time. And I remember, as a little boy, herding those sheep and losing them one time. I remember that was the first time I ever saw a birth. A ewe gave birth to a lamb while I was herding them. To me it was an amazing sight.

McNulty: Did they have any cash crops? Or was everything pretty much raised for your own eating or your own wearing?

Bilby: What little cash they had. They probably would sell a little alfalfa. Probably sell a few gallons of molasses. My mother had her chickens and occasionally she would get enough eggs ahead to sell a couple of dozen eggs to the local merchant. And that's the-- they didn't have hardly any money.

McNulty: No. Were all the kids expected to work?

Bilby: Well they all did as far as they could. Such a thing as getting a job was rather rare, but they'd work around home. Of course all three of the older ones were girls and that made it more difficult. Later my sisters, two of them, became school teachers. They went to Tempe.

McNulty: For grade school, or primary school, what did you do?

Bilby: We had a one-story adobe building there, that was used both for a church and for the school. I don't know who owned it. I believe--I suppose the Mormon Church owned

it. I don't know.

McNulty: Who paid the schoolteacher?

Bilby: The county, I think.

(tape turned off then on again)

McNulty: O.K. After a very brief interruption, we resume again talking about the primary school in Concho. Ralph, do you think the L.D.S. Church paid the schoolteacher too?

Bilby: I. . . . No, I believe the county paid him. That's what I think they did.

McNulty: Was the community of Concho almost totally Mormon peoples?

Bilby: No. It was about fifty-fifty. About half Mexicans and half Mormons.

McNulty: Did the Mexican kids go to the . . .

Bilby: When I say Mexicans, I think those people that farmed that part of the community really, were more Spaniards than they were Mexicans.

McNulty: Especially if they came from over in the Rio Grande Valley.

Bilby: Yes. They came from over Santa Fe, Albuquerque and that country.

McNulty: Yes. Where Spanish-speaking people had been for a couple of hundred years.

Bilby: Yes. I remember of one family by the name of Canelario. They were as white as you are in complexion. And they had their own community affairs.

They were practically all Catholics. And the Mormons, of course, were all Mormons. There weren't any other religions represented in the community.

McNulty: Would you think things . . .

Bilby: They got along all right at the time. Such a thing as racism wasn't dreamed of then. The Mexicans, if you want to call them that, the Spanish, learned to speak English and a good many of the white people learned to speak Spanish. So they got along fine.

McNulty: Was it just a six-year school? Or did it go beyond the sixth grade?

Bilby: Well, you see, I left there when I was nine. So I don't remember beyond that.

McNulty: Where did you go?

Bilby: Went down to the Gila Valley.

McNulty: Did your parents stay in Concho?

Bilby: Oh, no. They, my father moved.

McNulty: To where?

Bilby: My father went down to the Gila Valley and bought a little farm near Thatcher. Sort of between Thatcher and Safford. And then he came back and moved the whole family. That was quite an expedition in itself.

McNulty: How did you travel?

Bilby: We had two covered wagons, four teams of horses. Took our milk stock with us. I believe my mother even took some chickens. I remember, one of my older sisters

drove one of the teams. I rode a little bay horse and drove the cattle. I remember how we had to improvise. We were coming down off the mountainous end of the Blue River, a rather steep road. My father didn't think my sister could brake the wagon enough to hold it, so he cut down a pine sapling and tied it to the back of the wagon with the tail, the top first, so that the branches would pull against the wagon. And she managed to get it down that way.

McNulty: The route that you took from Concho down to Safford, when you mention Blue River now you've told me that you came, you went easterly, south and easterly out of Concho.

Bilby: Yes. I think we went through Nutrioso. That's a little place in New Mexico.

McNulty: Yes. That's more or less along the route of the present-day U.S.180, that goes down through Glenwood?

Bilby: Somewhat so. They got down and got into the river. I remember we crossed the river at least fifty times.

McNulty: You're talking about the Blue River now.

Bilby: Yes. It ran right along the road, ran right along the river. We went into Clifton.

McNulty: You did go into Clifton. That means you picked up the San Francisco River as you went down the Blue.

Bilby: Yes, that's right.

McNulty: And then you're on the San Francisco and then you

followed it to where it meets the Gila.

Bilby: Yes. Followed it down to the. . . . They joined above Safford. And I remember landing at Solomonville, or just above Solomonville at San Jose.

McNulty: That would be the first kind of human habitation in the Gila Valley.

Bilby: No. There were quite a few people at Clifton. (pause) I had lost my hat and was wearing a red bandanna handkerchief. I had a shock of red hair, burned to a crisp, and was a pretty-looking sight. It was the first day of June, 1900. And I must have been something to look at.

McNulty: (laugh) Does this mean that the Bilby family pulled up stakes altogether in Concho?

Bilby: Yes. Left. Sold our little farm there.

McNulty: Was this at the instigation of the L.D.S. Church?

Bilby: No.

McNulty: Do you know what prompted your Dad to move the family down there?

Bilby: It wasn't possible to make a living in Concho.

McNulty: Too short a growing season, too tough a winter, too cold?

Bilby: Yes. It was cold up there. Very high, you know. The water wasn't particularly scarce, but the conditions for farming were bad. A short season, very few crops would grow there.

McNulty: O.K. So now you're in Thatcher and your Dad's farming again. Is all the family together down here in Thatcher?

Bilby: Yes. For a short time. One of my sisters, my older sister, soon got a teacher's license and got a job teaching in Clifton.

McNulty: What did she have to do to get the teacher's license? In terms of . . .

Bilby: I think she had to take an examination. Somehow they got together enough money to get both the two older girls to the Normal School at Tempe and then they both taught after that.

McNulty: With respect to you, you finished up primary school in Thatcher, did you?

Bilby: Yes. I finished high school there.

McNulty: Did you graduate from Thatcher High School or was there . . .

Bilby: Gila Academy.

McNulty: That served as kind of the high school for the whole of Graham County?

Bilby: No. I don't think they had high schools then.

McNulty: How old were you when you graduated from Gila Academy?

Bilby: I don't know. I stayed out a year or two. I remember the first time I ever came to Tucson, I came on the train. The first time I had ever ridden a train. And I came to play third base on the Academy baseball team.

They had sort of a baseball conference or meet they had at the University of Arizona.

McNulty: How old were you?

Bilby: (pause) I must have been about eighteen or nineteen. Possibly nineteen. I'd stayed out of school a year or two.

McNulty: Did you work with your Dad when you were out of school?

Bilby: Yes. And for other farmers. I was a very good hay pitcher. Most of them got a dollar and a half, I got two dollars a day.

McNulty: Did you have ditch rights for your farm from the mainstream of the Gila River?

Bilby: Yes. They had canal companies.

McNulty: Yes.

Bilby: Organized companies. I remember some of them: the Union Canal, the Montezuma Canal, Central Canal.

McNulty: Were your parents very active in the Mormon Church all these years?

Bilby: Well, the years when I was mature, they were, yes. My father was quite a staunch Mormon. My mother was very devoutly religious, but she didn't take part like my father did. Of course when you lived in Concho or you lived in Thatcher if you didn't take part in a church you didn't take part in anything. That was the whole.

. . .

McNulty: It supplied the social dimension of life as well as the

religious side?

Bilby: Well, your activity in the church pretty well described your standing in the community.

McNulty: Yes. When was the next time you resumed schooling after you left Gila Academy?

Bilby: I came here about, let's see, it was 1914 when I first came with the high school baseball team. I came later in 1915. I rode horseback that time.

McNulty: From Thatcher to Tucson?

Bilby: From Thatcher to Tucson. Took me three days.

McNulty: Going back a moment. Do you remember how long it took to move the family from Concho to Thatcher?

Bilby: No. But it must have taken a couple of weeks. I don't remember the exact time. But a few, ten or twelve miles a day is a big move.

McNulty: And that was exceptionally rough country for the trip.

Bilby: Oh, yes. And the roads were rugged then. You bounced off of one rock onto another one.

McNulty: When you rode horseback from Safford to Tucson, did you just go as the crow flies or did you . . . ?

Bilby: Oh. You couldn't do that. That would take you right across the Graham Mountains. I went down at a place called Aravaipa. And that was my first day. I stayed all night there.

McNulty: You mean you circled around the east of . . .

Bilby: I was at the west end of the mountains, of the Graham

Mountains.

McNulty: Oh, you went west from Thatcher to kind of the . . .

Bilby: Down about, well say where Fort Thomas is, and then up through the gap.

McNulty: And then you cut back to the south.

Bilby: And stayed all night at Aravaipa there.

McNulty: At the creek.

Bilby: Yes. Then the next morning I went over those Galiuro Mountains.

McNulty: Into the San Pedro Valley.

Bilby: Yes. At Mammoth. There is a little place up there that used to be a mining town. And I stayed there. I got there about two o'clock, left early in the morning. It had a cattle camp going on there and I remember how they welcomed me. The cowpuncher hadn't gotten in yet. Told me to get off and unsaddle my horse and they'd give me something to eat. They had food stewing on the fire there. Best meal I think I ever had. It was stewed beef and vegetables and some stewed apricots.

McNulty: From Mammoth did you come south around the east end of the Catalinas into Tucson?

Bilby: From Mammoth? Yes. Just the way you'd come now. Through Oracle and . . .

McNulty: Oh, then no. You went around the north side of the Catalinas and came down the west side of the Catalinas.

Bilby: No. You come from Aravaipa to Mammoth, you're going

nearly west.

McNulty: Yes.

Bilby: Just a little south of west.

McNulty: Yes.

Bilby: From Mammoth on to Tucson, you're going almost due south. You go around the western end of the Catalina Mountains.

McNulty: I see. Why were you making this trip to Tucson?

Bilby: I was going to go to school here.

McNulty: And you would have been about twenty- . . .

Bilby: . . . -two or -three.

McNulty: Yes. How many years of schooling had you had by this date?

Bilby: I think I was in the Academy for four years. Three or four years.

McNulty: And that added to the time you spent in school in Concho would have totaled how many years?

Bilby: Well, I don't know how much I had in Concho. Of course, I had some in the Gila Valley before I started the Academy. I went to grade school.

McNulty: I see.

Bilby: My father sold his farm in Thatcher and bought a farm across the Gila River on the north side. A little town called Graham. And I went to grade school there, for a while.

McNulty: Was Gila Academy a public school?

Bilby: The public could go, but they had very few people who were not members of the Mormon Church.

McNulty: Did the Mormon Church pay the teachers?

Bilby: I don't remember whether they had a tuition to pay or not. I suppose they did.

McNulty: Was there any other high school as such in the Safford area?

Bilby: You were talking to me about that a while ago. I just don't remember whether they had high schools then or not.

McNulty: As such. (pause) What had stimulated you to want to come to Tucson to go to school?

Bilby: I married my teacher, in Gila Academy. Thank God! (laughs) And she stimulated me.

McNulty: Tell us about her.

Bilby: Well she was a graduate of the University of Utah.

McNulty: A woman graduate of the University of Utah. Boy, there weren't many of them, were there?

Bilby: No. Marguerite Mansfield.

McNulty: Had she been born and raised in Utah?

Bilby: She was born in Beaver. Went to Salt Lake to go to school.

McNulty: She got a teaching degree at [the University of Utah].

Bilby: Yes. One of the finest human beings that ever lived.

McNulty: How had she come to find her way from Salt Lake down to the Gila Valley?

Bilby: I'll be darned if I know. I know that she came down on the train, and on the trip on the train going east, as you would go, from Tucson to Bowie, and the road ran into Thatcher going to the little line that ran from Bowie to Globe. On that trip, she ran across Mose Drachman. Roy's uncle. Oliver's father. He was clerk of the United States District Court, and was going to Globe, where the court was going to hold a session. And she met him and he talked to her, was very kind to her. Of course she was lonesome, new. She taught there. Taught English and drama. She put on a school play. I took part in it. I would stay after the rehearsals. We fell in love and I married her.

McNulty: Were you two about the same age?

Bilby: She was about a year and a half older than I.

McNulty: I see.

Bilby: So you see, I was out of school a year or two.

McNulty: Yes. Did that very often happen, the students marrying their teachers?

Bilby: Oh, I don't think it's a frequent occasion, no. Happens lots of times, but. . . .

McNulty: What was the age range of the pupils in Gila Academy. It must have been pretty big.

Bilby: You mean it must have been pretty old?

McNulty: Well I meant, yes, if you were, what, 22 or 23 when you got married?

Bilby: Yes.

McNulty: And then that's older than we would think of normally for . . .

Bilby: Spencer Kimball, president of the Mormon Church, was in that same class. And, I think he was a couple of years younger than I. I got behind those two or three years I stayed out.

McNulty: When you . . .

Bilby: I don't know whether it was. . . . (pause) Well, It had no historical interest so. . . . I was going to tell you, I could tell you why I stayed out.

McNulty: Well, tell us.

Bilby: (laughter) I doubt the Historical Society would be interested in this. I was going to school in this little one-room adobe school. The teacher was a man by the name of Austin Rhodes. He was a college graduate. He was from one of the Carolinas. Came out there. In those days conditions of sanitation weren't what they are today. And they all drank out of a common cup and a common bucket. The bucket was in a corner of the room. And the rule was that you could go and get a drink when you wanted to, but if somebody else was there, you couldn't go until they came back. Well, my kid Enemy Number One, was closer to the bucket than I was. He saw me get up and start and he got up and beat me to it. I didn't turn around and go back. I just

walked up there and waited until he got through. And he just stood there and sipped and sipped and sipped. He was trying, of course, to provoke me. And finally I couldn't take it any longer and I jumped on him and we hustled and I took the cup away from him. I drank. I tore the cup so it was leaking out. Dead silence in the school room. Teacher didn't say a word. I was a pretty good-sized kid then. He just told me to stay after school, and told the other kid to stay. And he gave both of us a switching. I think I could have licked him if I had tried. But I took my medicine. I went home. I told my Dad, "I'm not going back there anymore." He didn't make me. I stayed home and worked a couple of years. That's how I happened to stay out of school.

McNulty: Yes. O.K. I'm up to the year when you ride the horse to Tucson. You're a married man now and your wife Margaret has encouraged you . . .

Bilby: Marguerite.

McNulty: Marguerite. Excuse me. Has encouraged you to go into further education. What year was this?

Bilby: I believe it was 1915.

McNulty: And where did you go?

Bilby: To the University of Arizona. I think it was the second year of the existence of the, what was then called the law department.

McNulty: The law department. It wasn't even a . . .

Bilby: It wasn't a college. No. It later became a college, but. . . .

McNulty: Were there any entrance requirements?

Bilby: (pause) I don't know whether--I believe you had to have a high school diploma.

McNulty: Do you remember how big the student body was?

Bilby: When I attended, the first year, I'd say eight or ten.

McNulty: How long was the curriculum, at the Law School?

Bilby: You mean, how many instructors did we have?

McNulty: No. How long were you supposed to stay there to . . .

Bilby: Oh, before you could graduate?

McNulty: Yes.

Bilby: Until you'd taken a number of required subjects that they required you to have before you could graduate.

McNulty: And that normally required, what? A couple of years? Or even three years?

Bilby: Yes. I'd say it required at least three years.

McNulty: Do you remember who was in charge of the law department when you got there?

Bilby: Oh! Indeed I do. Samuel M. Fegtly.

McNulty: What do you remember about him?

Bilby: I remember he was a kindly old gentleman. Came from Northwestern University. . . . A man by the name of Robert M. Davis was one of the professors. He was a Harvard graduate, I think the best teacher I ever had.

Later there was a man by the name of Curtis. And one or two others. I've forgotten who they were.

McNulty: Do you remember any of your classmates?

Bilby: Yes. [H.] Earl Rogge.

McNulty: From Clifton?

Bilby: Clifton. Bill [William H.] Westover and Harry Westover of Yuma. Vinton Hayes of Willcox. We had one girl, one woman, which was rare at that time. A nice-looking, blonde girl from Montana. Lucy Stanton. I don't know whatever became of her.

McNulty: Did your wife stay in Safford and continue to teach school while you went to the University?

Bilby: No. She came and taught here, in a Tucson school.

McNulty: And did you folks stay pretty much in Tucson year round or did you go back to Graham County in the summers?

Bilby: (laughs) Oh, no, we stayed here and all the time I could, I was studying. In the meantime, I had two sons, Ralph and Kenneth. They were born while I was still in law school.

McNulty: You must have found the academic requirements of law school pretty strenuous.

Bilby: Yes. Dr. Davis was very helpful to me. And, of course, Fegtly couldn't have been kinder to me than he was. It turned out I was a pretty good student.

McNulty: And you graduated?

Bilby: In 1920. So you see, I was studying on and off all the

time from 1915 until 1920. So I put a lot of time in.

McNulty: Indeed you did.

Bilby: When I'd only been there one year and was started on the second year, in October, they held a bar examination. Held it in Phoenix. And at that time, under the laws of Arizona, like the laws of a number of other states, one could take the bar examination upon showing a certificate of good character and being resident of the state where you took it. Anyway, I qualified. And I went and took that bar examination. And I passed.

McNulty: This is after only one year at law school?

Bilby: Yes. And there were thirteen of us who took it, or who passed, and I was number five. You remember John Sanders?

McNulty: I do.

Bilby: He was one of them. He was the number one man in that graduating class, that bar examination. They had a very unique way of handling it. The bar examiners would sit and grade the papers while you were answering the questions. And then at the end of the day they would know whether you had passed the subjects you had taken. I think it lasted two days. Two or three, I believe two. They had all those who had passed and those who hadn't. I was told I had passed, and they were going to have us meet the next morning at the

Supreme Court and swear us in. About that time I received a wire from Tucson saying Marguerite had come down with typhoid fever. I had a little baby boy, so there was nothing for me to do but to get on a train and get home as soon as I could. So I wasn't admitted right at that time. But I was admitted in 1917.

McNulty: You could have practiced law as soon as you finished that examination. Why did you stay in school?

Bilby: I was determined I was going to have a degree. And I stayed with it until I got one.

McNulty: What degree did you get?

Bilby: LL.B.

McNulty: Yes. Were there a fairly high percentage of the Bar, in those years, that didn't have a degree?

Bilby: Quite a number of them, yes. You could practice without a degree, if you passed the bar examination. I, as a consequence of having taken that examination and passed, became the first student of the Law College, Law School of the University of Arizona, to be admitted to the Bar. I'm the oldest graduate of the University of Arizona Law School to be admitted to the Bar.

McNulty: Well, that means you must have gotten there very shortly after the law department was even formed.

Bilby: I think it was the second or third year.

McNulty: How did you survive, in terms of money, those five

years?

Bilby: Well, my wife was teaching, for one thing.

McNulty: What was she paid?

Bilby: And in the summer--I don't remember what she was paid. Enough that we squeaked by. And in the summer I would take jobs. Whatever I could get. Manual labor. And I was having a, pardon me, a hell of a time to make it. I didn't know whether I could go on. I somehow got the job of running the University Book Store. And I'll never forget, I went back to Dean Fegtly and I told him I'd gotten this job and I thought I could go on. He said, "Ralph, I'll give you anything in the world I've got but my wife and little baby, little daughter." And he almost did. He was a wonderful old gentleman. I stayed on and kept taking courses and taking courses until I got enough credits to graduate from the Law School. I graduated in June of 1920.

McNulty: You could have relieved your financial problems by going out and practicing law and forgetting about the degree, couldn't you?

Bilby: If I could have made a living, I could, yes. I don't know how. . . . Neither did I nor my wife want me to do that.

McNulty: You were determined to get the degree.

Bilby: Yes.

McNulty: Are you the first member of your family to hold a

baccalaureate degree?

Bilby: Yes. The only one.

McNulty: In 1920, you are now married, broke, and I guess you have two sons or . . .

Bilby: Shortly after I, Kenneth was born. Yes.

McNulty: Where did you go?

Bilby: I stayed in Tucson. I was qualified to practice law, of course. Legally. And there was a lawyer by the name of Frank Curley, Frank E. Curley, who was teaching a course in Private Corporations and I told him--I was taking his course--and I told him during the year that I'd been admitted to the Bar and I'd like awfully well to find a job, if I could, when I got my degree in June. I wished he'd keep his eyes open. He said he would. And the last lecture he told me to stay after the class left and he said that he would give me a job. Start me out the first of June, I guess the first of June, at a hundred dollars a month and he would raise it to a hundred and fifty in the fall. Of course, that was a godsend.

McNulty: Bigger money than you'd ever seen.

Bilby: Yes. I worked for him a number of years - four or five years. Was not getting the trial experience that I wanted.

McNulty: Frank Curley is a famous lawyer in the history of Arizona, in my opinion. Could you tell us a little bit

about him?

Bilby: He was a bright fellow. Came from Kentucky. I don't know what his school was, I think the University of Cincinnati. He came out here . . .

McNulty: There's a helicopter coming over the top of the house here.

(tape off for a few seconds)

McNulty: O.K. Am I about right here? Where were we marked before? Ralph, let me digress a little bit. Tell me about what you remember of World War I during the time you were here in Tucson. It must have seemed like a long way off.

Bilby: Yes, it did. Of course, I was subject to the draft and I was exempted because I had the two little boys. Nothing to support them with if I left. I was attorney for the draft board for years and years. I have any number of certificates.

McNulty: Was there any rationing or anything like that in Tucson in those days?

Bilby: I don't remember that so much. I remember when they had that flu siege. Wasn't that during World War I?

McNulty: Indeed it was.

Bilby: And I remember that they had it--City Council passed an ordinance requiring people to wear masks, face masks. And it was later contested and held invalid. But I remember a number of my good friends dying, at that

time. It did seem like it would never end. (pause) A lot of my friends were there: the Westover boys, Earl Rogge; I think Vinton Hayes went. Of course, in a different way, I paid for it by having three sons who have all done extensive military service. Ralph and Kenneth. . . . Kenneth's been decorated innumerable times.

Tape 1, Side 2

Bilby: And Ralph too. Kenneth saw lots of active service as an infantryman. So I know what it is in my family.

McNulty: We had begun speaking, before our last recess, about Frank Curley, who figured prominently in some famous Arizona law. Would you tell us about that?

Bilby: Yes. Well, it was while I was working for Frank Curley that they tried the Bisbee Deportation case. [1919] And I remember, during that time, of course he had close contact with the firm of Ellinwood and Ross.

McNulty: Which represented Phelps Dodge Corporation?

Bilby: Yes. He was actually hired by them.

McNulty: Now this was a civil case, was it not? Or . . .

Bilby: A criminal case.

McNulty: It was a criminal case.

Bilby: Yes. They prosecuted a fellow by the name of Wooten, I

think, who was a hardware merchant in Bisbee. They picked him out as one of those who had participated in it.

McNulty: Harry Wooten at the Busy Bee?

Bilby: Probably.

McNulty: And charged him with the criminal act of what? Kidnapping somebody?

Bilby: Yes. And they hired him a man by the name of Will Burgess from El Paso, who was the chief counsel for the defendant.

McNulty: This was the State versus Wooten. Is that right?

Bilby: Yes. They first indicted him in the Federal Court. A Judge Morrow, of the Federal Circuit Court of Appeals, came down and sustained the demurrer, the indictment on the ground that there was no such offense, federal offense, as kidnapping, so then they filed the information against him in the state courts. And the trial was held at Bisbee. Judge [Samuel L.] Pattee, who later became a partner of Curley's, was the presiding judge. They established a new law called the law of necessity, and Judge Pattee instructed on that law as constituting a valid defense.

McNulty: This was an instruction?

Bilby: People like, uh, Felix Frankfurter who was later the Dean of Harvard, came out here and I remember they raised a lot of objection on the ground that there was

no such thing as the law of necessity. Curley participated all through that trial. I suppose no one would care now if I told what his fee was.

McNulty: What was it?

Bilby: He was a good charger. And he would withdraw rather heavily, chunks like five thousand at a shot, maybe up ten. And when they got through, Mr. [E.E.] Ellinwood told him to come down to Bisbee; he'd like to fix his fee. He was telling me about it later and he said he sat there looking out the window, where you formerly were, or later were, at those rocks there . . .

McNulty: The law office immediately adjacent to the Copper Queen Hotel.

Bilby: Yes. He said, Ellinwood said "I have arrived at a figure in my mind which I think would be fair." He said he sat there looking at those rocks. He said, "I thought he'd never tell me." (laughter) He finally said "I think a hundred thousand dollars would be a good fee." That was an awful lot of money in those days.

McNulty: Indeed it was.

Bilby: I don't know what they paid Burgess. Frank, unfortunately, invested his in some commodities market and, I understood, lost a good part of it.

McNulty: Frank Curley's role, though, was to defend Wooten on a criminal charge of kidnapping before a Cochise County

jury, and he pleaded as a defense, the law of necessity.

Bilby: Yes.

McNulty: And the jury decided, what?

Bilby: That he was innocent. I presume the jury decided that it was necessary for them to take the action they did, because they couldn't deny that they did it. Everyone knew that people had been deported, and it was just a question of, "Were you justified in doing it?"

McNulty: Was the Wooten case a kind of a test case? Because certainly . . .

Bilby: That's my recollection of it, Jim.

McNulty: . . . there would have been a number of others for whom . . .

Bilby: Oh yes. They may have had some kind of stipulation that there'd be a plea entered of guilty if Wooten was convicted. I don't know. I remember during that time, Mr. John Mason Ross used to spend quite a lot of time in Curley's office. I guess doing some work that I was too young to do. I got acquainted with him and became very--well not attached to him--became a great admirer of his. He was a fine lawyer and a fine man.

McNulty: The man who subsequently became the Cochise County Superior Court Judge?

Bilby: No.

McNulty: I'm thinking of John Wilson Ross?

Bilby: Yes.

McNulty: Who's different from John . . .

Bilby: John Mason Ross was the Ross of Ellinwood and Ross.

McNulty: I see. How long did you stay with Frank Curley?

Bilby: Probably four years.

McNulty: That gets us up to about 1924. Where'd you go then?

Bilby: I had a chance to become assistant to the United States Attorney. It was during Harding's administration. The attorney, the United States Attorney was Fritz Bernard. I took the job and went over there and had lots of trial experience. I would sometimes try two or three cases a day. I finally got to where I had, I felt really at home before a jury. And that helped me greatly throughout my practice in subsequent years.

McNulty: Before what federal judges did you try some of these cases?

Bilby: Primarily about four judges. Sawtelle, William H. Sawtelle. He used to go to Globe, and we'd have sessions of the court over there. He was a very fine judge, a very straight-laced man. We became good friends. I remember we'd take long walks at night in Globe; he used to give me lots of good advice. I remember him saying to me, "Ralph, you can be a good lawyer, but you'll have to work. You've got to work hard." Which, of course, is sound advice any time.

McNulty: How many years were you with the U.S. Attorney's

office?

Bilby: Probably three or four.

McNulty: And where did you go then?

Bilby: A man by the name of Ben B. Matthews and I formed a partnership.

McNulty: How did you come to know him?

Bilby: He was, just graduated from Michigan. He was valedictorian of his class. Bright fellow. He was partners with George Darnell. George Darnell offered me the Deputy County Attorney's job and I turned it down. And he gave it to Ben Matthews. They then became partners. Later George decided he wanted to run for Superior Court Judge of Pima County, and he resigned from that partnership, and Matthews asked me if I would like to be his partner. So we formed the partnership, of Matthews and Bilby. I stayed on at the United States Attorney's office for quite a while, I know. We would put my salary into the pot, whatever we--you could also take private practice, at that time, while you were Assistant to the United States Attorney. In any event, we did very well.

McNulty: And operated as Matthews and Bilby from about, what? 1927?

Bilby: (pause) No, it was a little earlier than that. I'm not sure. Anyway, we operated for several years, and then Ted [T. K.] Shoenhair then came along and wanted a

job and we hired him. And a year or so later Ben's wife became ill and thought she couldn't live in Tucson. Anyway he moved to California. Ted Shoenhair and I became partners and I think we have been partners longer than any two men living in Arizona today.

McNulty: Going back over fifty years?

Bilby: Yes. Later Harold [C.] Warnock went to work for us; later became a partner.

McNulty: When you and Mr. Matthews made your partnership, where were your offices here in Tucson?

Bilby: Where the City Courts Building is today, 47 North Church Street. The courthouse was just across the street. The old courthouse was where the new one is, what we called the new one then, the domed courthouse.

McNulty: With the tiled roof.

Bilby: Yes.

McNulty: Who were some of the lawyers that you remember in the period 1925 to 1930 or 1935?

Bilby: Oh. Some of the outstanding members of the Bar then were Eugene S. Ives, of course Curley, John B. Wright, Samuel Pattee, A. A. Worsley, Mr. Lovell. Those were some. Frank Hereford.

McNulty: Incidentally, what happened to Frank Curley? Did he leave here?

Bilby: Frank Curley's wife [was ill], and he came out here, to help [her, but she] died of tuberculosis. They had one

daughter, Marie. She was teaching school in Nogales, Arizona, and her father got some Christmas presents together to take down to her at Nogales. On the way down wrecked his car and killed himself.

McNulty: Your firm . . .

Bilby: Frank Hereford was another prominent lawyer.

McNulty: Shall we take a break here?

(tape off for short break)

McNulty: Tape is rolling. Ralph, I thought we'd go to the time when you made the big merger of the law firms in 1946. That certainly was a significant time in your life.

Bilby: It was indeed. Would you be interested in how it happened?

McNulty: I would.

Bilby: We had at that time in Tucson just one golf and country club. That was El Rio, across the Santa Cruz, west of town. And everyone who played any golf at all belonged to it. One Saturday afternoon, I wanted to play and I went out there--I didn't have a game. And about the time I got there, Cleon Knapp came in. He didn't have a game and we said we'd play together, but I said, "Before we go, let's have a drink." So we moved up to the bar and had a drink. We hadn't talked too very long until he turned to me and said, "You know, you and I ought to be partners." I said, "You're spoofing." "No I'm not. I think we ought to be partners." I

don't know, Jim, whether what was said from then on--I don't think it'd be quite appropriate for me to say here. But anyway we talked all afternoon. We didn't play golf. We didn't drink very much either, we just talked and talked. And we agreed to meet again. And we did meet again, and again. I'm sure that his partners were not wholeheartedly for it. And I know that mine weren't. But we were determined to put it together. And if I do say so, we're two pretty strong characters. And we stayed with it and we put it together.

McNulty: Cleon Knapp was a pretty highly-regarded lawyer, was he not?

Bilby: A fine lawyer.

McNulty: What was his background?

Bilby: Well, he'd been in the legislature in Minnesota, and he'd gotten acquainted with the people who owned Calumet and Arizona. That owned the mines in Ajo. And he came out here and had his office at Warren, near Bisbee. He patented all the mining claims for the Ajo setup. About the same time, I think it was, Jim Boyle came out and he settled at Douglas, and they became partners. Jim Boyle, like I, was offered a federal judgeship and turned it down. I was offered the nomination for a judgeship on the Circuit Court, the Federal Circuit of Appeals. And turned it down. We

saw things somewhat alike. All three of us, Jim, Cleon and I were staunch and active Republicans. Jim Boyle made lots of political speeches and was an excellent speaker. Cleon was asked to make a talk at El Paso by Mr. Paul Kaiser, who was head of El Paso Natural Gas, and he did such a splendid job that Kaiser asked him to represent El Paso Natural Gas in this area. That's how our firm became attorneys for them.

McNulty: The Knapp and Boyle pairing, did they function under the name of Knapp, Boyle and Somebody when they were in Cochise County?

Bilby: Knapp and Boyle. Later Knapp, Boyle and Thompson.

McNulty: And was that a Cochise County law firm, originally?

Bilby: Yes.

McNulty: The C and A [Calumet and Arizona] is reputed to have owned a bunch of mining claims and Phelps Dodge had a bunch of money in Bisbee, Arizona, and the merging of the C and A into the Phelps Dodge cleared the way for the great expansion, Lavender Pit and the like.

Bilby: Yes.

McNulty: When did Knapp, Boyle and Thompson come to Tucson, Arizona?

Bilby: Well, of course, sometime before the merger with our firm. I don't know how long--it seemed like it was a few years. And during that time B.G. Thompson was also Assistant to the United States Attorney. They came

over here and became pretty well established. Of course, they brought with them some clients. They still represented C and A. And when C and A merged with Phelps Dodge, of course they represented a part of it. Ellinwood and Ross represented another part of it. They became attorneys for the Steinfeld interests. They were well-respected lawyers.

McNulty: So at the time of the merger were there three people in the Knapp, Boyle and Thompson firm?

Bilby: Yes. Really there were four, five. There was Arthur Henderson, who was not a member of the firm, but an excellent lawyer. He died comparatively young. And there was Jim's son, young Jim.

McNulty: And how about the Bilby and Shoenhair firm. How many of there were you?

Bilby: There was three of us. Myself, Ted and Harold Warnock.

McNulty: So when this merger was finally completed in 1946, you had something like seven or eight lawyers.

Bilby: Yes. And our big worry was whether the community was large enough to support such a great number of lawyers.

McNulty: Was any other firm even half that big?

Bilby: No. I don't know what was the biggest firm in Tucson at that time, but later, a few years later, various prominent firms sprang into being; Kingan, Campbell, Conner and Darnell. There were only four of them though. We did manage to get enough business to

survive, and survive rather handsomely.

McNulty: You had by then moved from your offices on North Church Street, had you not?

Bilby: Yes.

McNulty: To where?

Bilby: Up to the Valley National Building. P.M. McCauley had built that building. We were among the first tenants moving in there, Ted and I.

McNulty: Were there many lawyers in that building, early on?

Bilby: A number of them. A great majority of them, though, were in offices scattered around the town.

McNulty: You mentioned that Messrs. Knapp, Boyle and Bilby were staunch Republicans. Wasn't that a time when this state was overwhelmingly registered as Democrats?

Bilby: Yes.

McNulty: Was your political persuasion any bar to your practice that you ever remember?

Bilby: I don't think so. If it had any effect at all, I think it helped us.

McNulty: Why would it have helped you?

Bilby: Well, doesn't everyone respect a Republican?

McNulty: (laughter) I certainly do and I suspect that the majority would answer "yes." At least Republicans out of the mold that you've just described, surely so. You commented earlier on some of the names that you remember in the Bar 1925 to 1935. How about the period

1935 to perhaps 1945 or 1950. Who are some of the people that you remember as being excellent lawyers?

Bilby: Well, B.G. Thompson became one of the prominent lawyers in Tucson. As well as Mr. Knapp and Mr. Boyle. A little bit later than that Harold Warnock developed into a fine lawyer. Charles Darnell was a good lawyer. A couple of young lawyers by the names of Chandler and McCarthy started a law firm of their own. They were formerly with Charles Darnell's law firm. John B. Wright was at one time a United States Attorney here.

McNulty: In your practice did you ever have occasion to practice in places other than Tucson? Did you ever go to Graham or Greenlee or Pinal Counties, Cochise County?

Bilby: I think I've tried lawsuits in every county in this state. I believe I have. I've tried lots of cases in Graham and Greenlee. Quite a few in Santa Cruz and several in Cochise. We had, Ted Shoenhair and I had I think, more ranching clients than any law firm around here. Ranchers out of Willcox, Clifton, Safford.

McNulty: Your firm today has, oh, perhaps thirty-five lawyers. Would that figure have staggered you twenty-five years ago?

Bilby: It was inconceivable.

McNulty: Do you think the practice of law suffers in any respect because of the increasing size of firms and that national tendency?

Bilby: Did you say suffered?

McNulty: Yes.

Bilby: Well I don't know if it's suffered. I think some nice things about a smaller firm is the close relationship between the partners that doesn't exist in the bigger firms.

McNulty: But you think the quality of law extended the public is as good or even better than . . .

Bilby: I don't say that the lawyers today aren't just as good as they were then. I know they are more completely prepared on their particular subject they're following. For instance a tax lawyer--I knew very little about taxes, tax law. And in that respect in the field they are pursuing, they are perhaps better lawyers than we were in our day.

McNulty: This is the age of specialization. Has the law lost anything because of its entry into specializations?

Bilby: Well, just what I said a while ago, that it's lost the sense of intimacy between the partners that used to exist. Also there's another very strong factor and that's the women.

McNulty: Is that the single biggest change that you would have noted over sixty-some years of practice?

Bilby: Well that and specialization. I got a letter the other day from little Rosie Silver. You know Rose.

McNulty: I do indeed.

Bilby: Rose told me that when she was just starting, Ben Matthews and I were partners, she had known who I was in law school and she said I had the reputation of being a good student. And she had heard that Ben was a very brilliant student at Michigan so she said she thought she'd apply to us for a job. And she said she came to me and asked me about it. Of course she's exaggerating a little, but she said she'll never forget the look of horror on my face when I told her, "A woman. No. We probably don't have a job for you, but if we did we'd have to put you in the back office because people don't hire women as lawyers." But she said that despite her chiding me she'd forgive me because I had now gotten so I treated women with due respect and as though they were just as competent as men. And I'll say this, we've got some lawyers in our office that are just as competent as men. Very, very fine lawyers. Those two things are what has changed more than anything else. And the size of law firms, of course.

McNulty: What about the attitude of the Bar, generally, towards the Bench. Do you think there's been any change in that over these years?

Bilby: I wouldn't know what it would be, if it had been. I think the good lawyers all treat the judges with respect and I don't think you hear of the good lawyers

having any difficulty in court with a judge. I never did. Many of the judges were very dear friends of mine.

McNulty: Who are some of the judges that particularly stick out in your mind?

Bilby: Back in the earlier days? Well I think one of the finest judges we had was Clifford Faires of Globe. A wonderful, wonderful man.

McNulty: He served as Gila County Superior Court Judge?

Bilby: Yes. And, oh, Judge [Henry C.] Kelly of Yuma was a good judge. Judge [Joseph S.] Jenckes, Joe [Joseph S., Jr.] Jenckes' father in Phoenix was an excellent judge. There were several of them.

McNulty: Do any judges on the Arizona Supreme Court stand out in your mind?

Bilby: Well, there was one judge there that did more to influence my life than any of them, that was Judge McAlister. Judge A. G. McAlister.

McNulty: And how did he influence your life?

Bilby: He was a, he was County Attorney of Graham County when I was a youngster just in high school there. And he was a friendly, kindly sort of man. Tall, handsome young fellow from down South. I think he was from one of the Carolinas. And he used to pay some attention to me. He knew I liked him. He had something to do with my wanting to be a lawyer. He conducted himself as a

gentleman and I think was a credit to the profession. I don't say he was one of the greatest judges I have ever known, but he was a fine, fine man. He was a good friend of mine.

McNulty: A couple of judges with famous names: Jesse [A.] Udall and Levi [S.] Udall. You must have practiced before both of them or perhaps even with them.

Bilby: Yes. I practiced a lot with Jesse, not with Levi. Levi was a fine judge. So was Jesse, but I regard Jesse more as an intimate friend than thinking of him as a judge. He was in my high school graduating class and I knew him and his, knew Jesse and his wife intimately. She was a Lee. She and Levi's wife were sisters. Levi on the Supreme Court was an excellent Supreme Court Justice.

McNulty: Did you ever practice in front of him up in Apache County?

Bilby: Yes. More before Jesse, I guess.

McNulty: In Graham County.

Bilby: Yes. I used to appear before Judge [Dave W.] Ling. He later became District Judge for the District of Arizona.

McNulty: Cochise County had a couple of well-known judges, Albert [M.] Sames and Alfred [Collins] Lockwood. Did you . . .

Bilby: I've tried lots of cases before Judge Lockwood and I

have a high regard for him. I thought he was--I never knew him intimately, personally, but he I thought was an excellent judge. He would say it in a way you could understand it.

McNulty: His opinions wound up being printed in a number of legal textbooks for students at law college.

Bilby: Yes. He could write a good opinion. He might be wrong, but I think he was right more often than he was wrong. And he could express himself.

McNulty: Do you think society today is more litigious than it was sixty years ago?

Bilby: Yes.

McNulty: Why is that?

Bilby: Oh, I suppose because people have found that they can sometimes file what should be groundless lawsuits and get a lot of money out of it. I think the enormous verdicts they allow to stand for punitive damages is very harmful to society. I do not think that a corporation, for instance, who really doesn't belong to the corporation, it belongs to the stockholders, who have very little to do with running it, should not be penalized with punitive verdicts of judgments against them in the millions. It seems unjust to me and I just know it's not good for society.

McNulty: What remedy is there for that?

Bilby: Well, you're getting into the next election.

McNulty: True.

Bilby: Proposition 103, I think it is, wants to change our constitution. [Proposition to allow the legislature to limit awards in liability suits.] I'm very much opposed to it. Our Attorney General has given an opinion that the legislature, or the laws that now exist, has the power to regulate the conduct of attorneys. And I do not believe this is a subject that should be an amendment to our constitution as a permanent thing. I don't think they should be made that.

McNulty: You'd Favor a legislative solution dealing with the lawyers.

Bilby: Yes. Indeed I would. Particularly in view of the fact that the Attorney General said that that's perfectly legal and possible.

McNulty: Do you think people not only are more litigious but feel that the courts are the place that they can find an answer to everything? Sixty years ago, for example, were there places where conflicts could be resolved without getting into court, such as churches or fraternal lodges or other types of associations?

Bilby: I might express it this way: resorting to--suing somebody was a last resort. Now that's the first thing anyone thinks of, "I'll sue you." And it seems they can always get a lawyer who will sue, regardless of how

flimsy the case may be. I think there's more of that attitude, a good deal, than there used to be. In the early, early days, of course, people didn't have money to hire lawyers. And a lot of the things were in the little communities and the Catholic priest had a lot to do with settling differences between his parishioners. The Mormon bishop had a large influence on controversies. I think things got settled without all of the rancor and difficulty that goes to a lawsuit. Of course there weren't occasions for so many lawsuits. For one thing, we didn't have divorces every day of the week. They were rare. And in that respect I think conditions are a lot worse today than they were then.

McNulty: Was the justice of the peace, sixty years ago, more prominent or a more authoritarian kind of a person than he is today?

Bilby: Well, I think he was more prominent because he handled small matters. For years and years the extent of his jurisdiction, moneywise, was \$200.00. He performed lots of marriages and that sort of thing. I think he was more of a functionary in the community than he is today.

McNulty: Of course, you and I, as lawyers, know that his jurisdiction was \$200.00, but to the average person in the street, on the farm, they wouldn't be particularly familiar with that. Would they be inclined to take a

decision by a justice of the peace as being fundamental and decisive and unappealable?

Bilby: Well, they'd be less likely to appeal because if it was a matter involving under \$200.00 they'd have a hard time to make it profitable to appeal to a higher lawyer, even if they wanted to appeal. In those days you didn't recover attorney's fees unless you had a specific contract authorizing, like a promissory note. So if you wanted to go from the Justice Court to the Superior Court over a matter involving \$200.00 or less, it was pretty expensive.

McNulty: On another front, how would you compare the interface between modern day politics and the law? And lawyers and politics, for example, in the twenties?

Bilby: Play that over again, what you've said.

McNulty: The degree to which lawyers are prominent in political affairs today is, I would say, very high. And a lot of people make association between practice of law and political life. Was that true sixty years ago? Or were lawyers not as prominent politically then as they are now?

Bilby: No, I think lawyers were quite prominent politically. It wasn't at all uncommon for. . . . Well Mark [Marcus Aurelius] Smith was a lawyer. He ran for the United States Senate. Henry Ashurst was a lawyer. Many of the congressmen were lawyers, not so many as the

senators. But I think there were a great many more lawyers in the legislature then than there is now.

McNulty: Today there are relatively few. Perhaps in the Arizona House and Senate in 1986 there are, oh I think, something like three or four out of the ninety people.

Bilby: And I think there used to be many more than that in the days gone by.

McNulty: Has the declining number of lawyers in the legislature had a good or a bad effect, as well as you can tell, on State legislation?

Bilby: Well I never served in the legislature. You have. I think a lawyer with your training is better qualified to enact the laws than some cotton farmer.

Tape 2, Side 1

McNulty: Was it taken . . .

Bilby: To answer your question, I'd say "Yes." I think lawyers would be better legislators.

McNulty: Society kind of takes for granted that lawyers are very prosperous people, even rich people. Do you think that same public attitude was true with respect to lawyers sixty years ago?

Bilby: No, I do not.

McNulty: Were lawyers as commensurately wealthy then as they may

be today.

Bilby: I don't think so.

McNulty: What brought about that kind of change?

Bilby: Well, it was inconceivable that a lawyer, let's say 1930, would have a lawsuit that would involve several millions and make the lawyer independently wealthy for life. Those cases were rare. Just as I pointed out about the Curley fee, that was a huge fee. And hence you have lawyers now who are in practice a few years and are independently wealthy.

McNulty: Do you think there's more of a tendency for lawyers today to kind of become partners with their clients, than was once true?

Bilby: Not in my experience, no.

McNulty: Is that bad business, for a lawyer to represent a client and then kind of get in on the action with him, join the client in some way, or take a piece of the action, a piece of the business?

Bilby: I think it's a good way to lose a client.

McNulty: Yes.

Bilby: I don't know. I never experienced that. I never went in partners with. . . .

McNulty: You surely must have had a temptation a time or two or even an invitation.

Bilby: Probably. I don't recall any of that.

McNulty: Would you recommend a career in law to young people in

1986?

Bilby: That depends upon one's talents.

McNulty: You must know that competition for entrance to law school is very severe and although the applicants are down there's still probably two applications for every vacancy there is in a law school.

Bilby: Yes. I understand it's hard to get into the good schools.

McNulty: And the governing things are your grade average in undergraduate school or college and this SAT uniform test that's given. What are your feelings about that?

Bilby: Well I think that. . . . You asked me if I would recommend to a young man that he be a lawyer. If he has such qualities as the ability to speak well on his feet, if he meets people well, if he has a good appearance, he's of good character, yes, I think the law would be a good profession for him to follow. If he's more inclined toward technical matters, he's a great mathematician, or someone of scientific bent, then no, I think he'd do better to follow some other calling.

McNulty: The trying of a lawsuit, especially when there's only one lawyer on each side, that can be a pretty lonesome kind of an experience, can't it?

Bilby: Yes, indeed. Even when there's two, usually there's a senior and a junior. And the senior has to carry the

burden of making a decision. For instance, you'll come to cases where you have to conclude whether it would be better not for you to make an argument to the jury.

McNulty: Have you ever had that experience?

Bilby: Yes. I have.

McNulty: And why did you come to that conclusion?

Bilby: Because I thought that, "if I don't argue"--of course the procedure was that in criminal matters, particularly, there'd be an opening argument. And usually you didn't go in too deep into things. You'd save your fine argument for the end, the closing argument. I've seen times when I thought the opening argument did so little harm that I'd better leave it alone. But that's quite a serious decision to make.

McNulty: And a very lonesome decision.

Bilby: You bet. You've got to decide that yourself. It doesn't make any difference what your client says about it, "you may or may not do it if you want to," if it turns out wrong he blames you, not himself.

McNulty: Do you remember a few cases in your career that are particularly notable?

Bilby: Oh, yes. I remember a lot of cases. I've tried all kinds of cases. Both criminal and civil. I even tried a patent case one time. Went over to El Paso and tried it in a federal court there. Incidentally, [I] won it. I tried some important federal civil cases and some

important criminal cases.

McNulty: What are some of the criminal cases that particularly stand out in your mind?

Bilby: Well, I prosecuted the fellow who was charged with killing Rex Lee's father.

McNulty: You're talking of Rex Lee, the U.S. Solicitor General?

Bilby: Yes, whose term just expired.

McNulty: Why were you doing that? Were you on a County Attorney's staff or were you the U.S. Attorney?

Bilby: Carl Mangum was the County Attorney. And the Udall and the Lee families wanted him to hire me as Special Counsel, which he did. And I prosecuted the man. [In the 1930's.]

McNulty: Charged him with first degree murder?

Bilby: Yes.

McNulty: And what was the outcome in the case?

Bilby: He was convicted of manslaughter. I could prove no motive. I was convinced that he performed the act, but why he did it, I couldn't prove.

McNulty: To this day, do you have a theory as to why he did it?

Bilby: Yes. But not one I'd want to repeat here. He later committed suicide, by the way.

McNulty: Did he serve time in prison?

Bilby: No. I had a drunken judge, and the judge gave him a suspended sentence.

McNulty: The Lee and the Udall family were related to this man

who had been murdered and that was the cause of their interest?

Bilby: Well, Jesse's wife and Levi's wife were Lees.

McNulty: Sisters to the decedent?

Bilby: So was Carl Mangum's wife a Lee. She's still living.

McNulty: Yes. What are some civil cases that gave you some great satisfaction?

Bilby: Oh, I tried a portal-to-portal case against the Phelps Dodge. Won it. [In the early 1930's.]

McNulty: Whom were you representing?

Bilby: Representing a group of miners in the Morenci and Clifton area.

McNulty: Was this after the adoption of the National Labor Relations Act, or the Wagner Act, in the thirties?

Bilby: I don't remember, Jim. But I know I tried it before Judge Sames in Federal Court. Won it.

McNulty: And the claim was . . .

Bilby: And was awarded a ten thousand dollar fee, which was quite a lot of money then.

McNulty: Your claim was that they should be paid from the time they left the change room until they got back there?

Bilby: From the time they left their home, as I recall, until they went to work.

McNulty: I see. And the Phelps Dodge took the opposite position?

Bilby: Good lawyers, too.

McNulty: Who defended the case?

Bilby: Bill Evans and Joe Jenckes.

McNulty: In subsequent years, you represented the Phelps Dodge.

Bilby: Yes.

McNulty: And were retained by them for many years.

Bilby: Yes.

McNulty: Lawyers sometimes say, only half-jokingly, "The way to make a client out of somebody is give him a good thrashing in a contested case."

Bilby: (laughs) That happened to me in about the first case I ever had. A little old gentleman by the name of Amado, A-M-A-D-O. I was working for Mr. Curley. And he owed the O'Malley Lumber Company a bill, \$150.00 or \$200.00, and didn't pay it so we sued him. And I went down and tried the case. Won it. When we got through he said, "Mr. Bilby, I'd like to talk with you. Would you be my lawyer," he said. (laughter) So sometimes you do make a lawyer out of giving a client a good thrashing.

McNulty: Did you think trying a jury case was exciting?

Bilby: Yes. But I never tried one of any consequence that I didn't go into it with fear and trembling. As you get into the case and the evidence unfolds and so on, you become more or less at ease in the courtroom. But that takes lots of experience.

McNulty: And there's never any such thing as a perfect case?

Bilby: I don't know. I had a little case up in Morenci I

tried against Blaine Shimmel. Did you know Blaine Shimmel?

McNulty: I did. Yes.

Bilby: Doenges [Brothers] vs. Dover Copper [Mining] Company. [1932.] It didn't involve a lot of money. Oh, ten or fifteen thousand dollars. Something like that. But it did involve quite a lot of law. Shimmel said there was nothing to the case whatever. And we licked him. He appealed to the Supreme Court. Sustained the verdict. I enjoyed winning that lawsuit. Oh, I tried a case against Southern Pacific over the importation of Mexican vegetables. I've forgotten the detail of it. Duane Bird was on the other side with Francis Hartman. I won it in the trial court. They reversed it on appeal. But it was a well-publicized case. Of course I tried the Blackburn case as Special Prosecutor, in Graham County, where Blackburn was charged with killing a Mexican employee. We convicted him and he was executed. I think the only case that I know of, at least up to that time and I don't know of any since, where a, what do you want to call him, a white man was convicted and hung for killing a Mexican. It shouldn't be that way, but you and I know it is.

McNulty: The opponents of the death penalty in the Supreme Court, in a case that's coming up next week claim . . .

Bilby: Are arguing that very thing.

McNulty: Yes, that non-white people are predominantly the people on whom the death penalty is imposed.

Bilby: Yes. But here a white man--when you say white, of course, Hispanics are white too.

McNulty: Yes. Racially they are. But the expression's come down for many years.

Bilby: I don't know where we get it. So many things we're not allowed to say now as being racist, to me I think are unfortunate. The little jokes. Everyone had his--didn't everyone have his Irish joke?

McNulty: I'm sure they did.

Bilby: Didn't everyone make jokes about the Swede?

McNulty: Well, rightly so, of course.

Bilby: Yes. (laughs) Didn't people make jokes about black people?

McNulty: Yes.

Bilby: Without any rancor in their soul at all. Some of the cutest, funniest stories I've ever heard. You weren't making fun of anybody. Any more than you were making fun of the Irishman. But now you can't do that. No more.

McNulty: We do seem to have a very low threshold for any kind of humor like that.

Bilby: Yes.

McNulty: You told me once, Ralph, that Barry Goldwater had contacted you at the time of the anger and the

investigation into what history knows as Watergate.
Could you comment on that a little.

Bilby: Well, Barry asked me and he asked one other lawyer, I think it was. . . . The name will come to me in a minute. . . . If we would be his counsel and advise him in the impeachment proceedings that were filed against President Nixon.

McNulty: What did you tell him?

Bilby: I told him I would. Then you know how it turned out, that they never went through with it. He resigned.

McNulty: Would you have regarded that as an extraordinary historic opportunity?

Bilby: An extraordinary what?

McNulty: Historic opportunity for you and. . . ?

Bilby: I would have regarded it as a great compliment. And who was the lawyer that. . . . Was it Joe Riley?

McNulty: A Tucson lawyer?

Bilby: Oh no, a Phoenix lawyer.

McNulty: Frank [Francis J.] Ryley?

Bilby: Frank Ryley.

McNulty: Yes. Most lawyers today never knew what you might call "the pre-federal rules practice," one of the outstanding portions of which would be rules relating to discovery. Has the adoption of those rules and what we loosely call "discovery" changed the way trials are handled today?

Bilby: Yes, and I think by and large for the better. . . .
But I don't recall that that came into my practice too much.

McNulty: The theory is that the poker has been taken out of trials and that the dramatic stuff we think of as being television fare is no longer applicable. Is the gulf that great? Is the difference that much?

Bilby: Well, I think if you're trying to get at the truth that's a good way to get at the truth, don't you?

McNulty: To have discovery?

Bilby: Yes.

McNulty: Yes.

Bilby: That's why I said that they. . . .

(Tape off briefly)

McNulty: To sum up. . . . Ralph, looking back over this long period of time you've been a member of the State Bar, for sixty-six years, quite an extraordinary figure in itself. Looking back, though, over that period of time, assuming that you had an opportunity to do this all over again, and assume that circumstances were much the same, what, if anything, would you do differently?

Bilby: I think I would choose being a lawyer and I think maybe I've done some good, helped some poor people. But one of the great things I've gotten out of being a lawyer is the association I've had with fellow lawyers, many of whom I've found to be wonderful, fine men. And I

think that's helped to make my life as a lawyer worthwhile.

McNulty: Thank you, Ralph Bilby. The interview concludes at this time, at five o'clock. It's been a splendid experience for me and I hope for you as well.

Bilby: Thank you. It has.

End of Interview.

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