

Arizona Bar Foundation
Oral History Project:
Arizona Legal History

Interview with Clarence J. Duncan
Read Carlock, 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.



Clarence J. Duncan

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Introductory Note

Clarence J. Duncan granted this interview to the Arizona Bar Foundation Oral History Project on January 15, 1991. George Read Carlock, a member of the Ninth Judicial Circuit Historical Society 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 0412-20*. 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.

Clarence J. Duncan Interview

Carlock: Clarence, you have the honor of being born in Gila County, I believe.

Duncan: Yes, along with you. And I was thinking of some of the other people that distinguished themselves that were from Gila County. G.W.P. Hunt, remember, came in there. They said he was punching a burro. I don't know whether that was an exaggeration or not, but it wasn't very much if it was. He was the first governor of Arizona. Frank [L.] Snell, Charlie [Charles L.] Rawlins and his son George Rawlins came from there. George Hill first and then Rouland Hill came out of there. So we've had quite a number of lawyers that came from Globe.

Carlock: When were you born?

Duncan: In 1915, January 29th, in Globe.

Carlock: Was it in a hospital there or at home?

Duncan: No, someone said to me I was, at the time over near Globe High School, and they said, "Were you born here?" And I said, "No, I was born about two blocks over, on Fagan Street." Very few people, I suppose, were born in a hospital back in those days. Dr. Kennedy, whose partner was Clarence Gunter was the

attending physician. I was not named after Dr. Gunter. My father had a brother named Clarence and my mother had a brother named Clarence. That did it.

Carlock: How long had your family been in Globe then?

Duncan: Granddad came to Arizona in about 1895. He was in the retail business. He was also a United States Marshall. At one time he had a trading post, that was about the turn of the century, down at San Carlos. Then he ran for Gila County Assessor in 1912 when Arizona became a state and he was the only assessor Gila County had until 1941 when he died.

He was a great granddaddy, too, I'll tell you. He ran under the name of "W.G. (Dad) Duncan." He was a very amiable, friendly, and an extrovert; a tall Texan, about six-four. You didn't have many six-foot, four people in those days.

Carlock: What brought him from Texas to Arizona in the nineties?

Duncan: He had been a county clerk in Hillsboro County. About three years ago my brother and I took a nostalgic trip back to Texas to see—it was sort of a "roots" type of trip—and we dropped in to Hillsboro, to the county seat there and talked to the county clerk because Granddad had been the one that was the County Clerk when that historic courthouse was being built. It was one of these big, beautiful, ornate architecturally memorable courthouses. So we stopped in there and got acquainted because our granddad had been there.

There he had known a man, a very prominent retailer and banker by the name of G.N. Porter who had left there and come out to Arizona and sent for him, because he thought a great deal of him, and wanted him to work for him and head up some stores, which he did, in Globe. Later he and a fellow by the name of Brookner, who was later to become county treasurer during the time my granddad was county assessor, went into partnership and had an Indian trading post down in San Carlos.

Carlock: Was that W.W. Brookner?

Duncan: W.W. Brookner, that's right. Since the treasurer could only run for two terms, he would exchange it with his daughter, Laura Brookner, and then when she had served two terms would again run for two terms. They did that all the time my granddad was also county assessor. That office had no limitation on the number of terms.

Carlock: What did your father do in Globe?

Duncan: Dad first started out, down in San Carlos, as a young boy that learned telegraphy. He signed on a contract to go down, when Southern Pacific was building a

railroad down around Mazatlán, and he made two different trips down there for many months each time, and was a train dispatcher and telegrapher. He was about seventeen or eighteen years old. Then he came back and was train dispatcher in Fort Thomas, where he met my mother, whose family had moved from Texas, actually around the San Antonio area down in Southern Texas.

Carlock: What was your mother's family name?

Duncan: Cook. Originally it had an "e" on it and our forefather was actually born on board a ship from, I think, Surrey, England, to someplace in Virginia. One of my cousins looked up all the family history.

Carlock: That was your . . .

Duncan: That was my maternal grandparent, my mother's father, yes.

Carlock: From England to Fort Thomas was quite a jump.

Duncan: They actually landed in Virginia, then they were into Texas at some point. I don't know whether they were anywhere in between. From Texas, then into Arizona, where my father married. My brother was born in Fort Thomas. Then they moved to Globe. My father was assistant county assessor back in the days before the nepotism bill prevented relatives from working for office holders.

Carlock: How much older is your brother than you are?

Duncan: Two years.

Carlock: So you were born in Globe in 1915 and went to school there?

Duncan: Actually our family separated and I went with my mother into Texas to some oil-boom towns where the Cooks had also gone. She was living with them and we were with her. We were in a place called Desdemona and then a place called Rising Star, then we were in Colorado City. Then to the boom town to end all boom towns, a place called Borger, north of Amarillo in the Panhandle of Texas. That took me all the way into my senior year in high school when I came back out and lived with my father and went to Globe High School. Although I was with him each vacation for three months during that interval. Then I went to Tempe my first year, and then the University of Arizona the rest of my education, including the College of Law there.

Carlock: Did you get a Bachelor's degree before you went into law school?

Duncan: No, I didn't. No. Just ended up with an LLB. Then the dean, later on, gave you an opportunity to become a Juris Doctor.

Carlock: You had to pay something for it.

- Duncan: Oh, I think it was twenty-five dollars, yes, but I suppose the price was right, so I had that changed.
- Carlock: You went two years to liberal arts and then went into law school?
- Duncan: Yes.
- Carlock: When did you graduate from law school?
- Duncan: Actually, there's a hiatus in there. My class was of 1937 and in about Christmas of 1936, Senator Carl Hayden asked for a recommendation from Dean [J. Byron] McCormick for someone to be one of his administrative assistants back there. He then had Paul Roca and Jack Gavin. They recommended me and I went back there and finished my last year of law school at George Washington. But I needed to come out to take the bar examination early, so I dropped those classes, came out to take the bar examination, I passed and started practicing law. So I didn't really get my graduation until I came back from the war in 1946. I took Chet [Chester H.] Smith's bar review course that summer and also two classes which I needed to finish out. So I finished that summer, in 1946, but my degree reads 1947. So my class was 1937 and my degree reads 1947.
- Carlock: When were you admitted to the Bar?
- Duncan: In 1937. In October in 1937.
- Carlock: You didn't have to have a law degree at that time . . .
- Duncan: No.
- Carlock: . . . to take the bar exam?
- Duncan: No. You just had to be in residence in an accredited school for three years. That's the way that happened.
- Carlock: Do you remember who the bar examiners were when you took the bar exam?
- Duncan: Yes, I remember John [C.] Gust was one. Then there was one very highly regarded lawyer in Tucson. Do you remember his name? Would you. . . .
- Carlock: Gerald Jones, maybe?
- Duncan: Yes. I think it could have been Gerald Jones, Judge Jones. And maybe it could have been Westover? Could he have been the third?
- Carlock: I don't remember.
- Duncan: From Yuma.
- Carlock: It might have been, I don't know.
- Duncan: When did you?
- Carlock: I took the bar in January of 1948. I was somewhat after you.
- Duncan: Yes.
- Carlock: What prompted you to go to law school and become a lawyer?

Duncan: That's a good question. We lived across the street from Judge Faires, Clifford C. Faires, a marvelous judge and a wonderful Virginia gentleman, and I admired him a great deal. I used to go up and sit in the courtroom when he was trying cases when I was going through, well, at different times and vacations in high school, certainly my senior year. I remember that, by coincidence, one of the cases that was being tried was Reyes versus Trevilian. Reyes versus Trevilian went to the Supreme Court and became a landmark case in adverse possession: what the evidence needs to be in order to establish where the property line is between two houses, for example, and that's what this was about, two houses in Globe, Arizona. That got me interested in it. I talked to the judge a lot about it and I guess that was the deciding factor. He was my mentor all during the years and when I practiced up there he wanted me to succeed him. I thought about a political career and I just decided against it. And about that time I got an offer to come down here and become a partner in Jennings, Strouss, Salmon and Trask.

Carlock: Do you remember what lawyers you saw try cases when you visited the courtroom while you were still in college?

Duncan: You mean in Globe?

Carlock: Yes, sir.

Duncan: Just some local lawyers up there. George Rawlins was coming up. D.E. Rienhardt was there. Rouland Hill, George Hill was there.

Carlock: Did you ever see Clifton Mathews in court?

Duncan: Oh, yes, yes. An unforgettable man. And Ed [W.] Rice too. Ed was probably on an equal footing with Judge Faires as my mentor. I used to see him a great deal and thought so highly of him. If you go into my office at the firm now, which they allow me to use, you'll see on my back bar a picture of Ed Rice. Did you know him?

Carlock: I knew him well, yes. I knew him all my life.

Duncan: Yes. And Clifton Mathews.

Carlock: Right.

Duncan: He went early in the thirties to the Ninth Circuit Court of Appeals.

Carlock: They were both old friends of my father's.

Duncan: Yes.

Carlock: Well when you went to law school was there the same problem of getting admitted to law school that they have now?

Duncan: No. None at all then.

Carlock: What were the requirements?

Duncan: I don't even know. Just a certain number of hours of L.A.S. [liberal arts school] and there you were.

Carlock: And Dean McCormick was the dean then?

Duncan: Fegtly was the dean when I first went there. Dean [Samuel W.] Fegtly.

Carlock: Who was on the faculty?

Duncan: Was it Collier, in constitutional law? Chet [Chester H.] Smith, Dean McCormick. Let me come back to those names.

Carlock: All right. How large was the law school then?

Duncan: We had, I think, a hundred and twenty. Yes. And you know where it was? Right across the, it faced the library, the old main library.

Carlock: The same building I went to.

Duncan: Oh, was it?

Carlock: Yes.

Duncan: Floyd [E.] Thomas.

Carlock: Floyd Thomas was there then?

Duncan: Yes.

Carlock: It was quite an opportunity when you got to go be on Senator Hayden's staff, wasn't it?

Duncan: Yes. It was a bitter winter back there at the time. I was only with him, you see, from January until I came out to take the bar in 1937. Less than six months. And it seemed like it snowed all the time. But, yes, it was a nice opportunity, a rare opportunity. He was the chairman of the appropriations committee and a dean of the senate back there and highly respected. We were in 131 Senate Office Building. I can still remember the address.

Carlock: Did you have any thoughts about staying there instead of going back to Globe?

Duncan: No, I really never did. It wasn't the type of thing that I wanted to get into. Once I got into law school, I knew that that's what I wanted to do, practice law.

Carlock: And were you pretty sure you wanted to go to Globe to practice? Did you look around?

Duncan: Yes. I thought perhaps I would. I didn't have any—I guess I hadn't thought a lot about it. But I thought that would be, maybe, the normal thing to do. So I did go back there. And in 1937, when I was admitted to the Bar there weren't a lot of jobs open, as you remember, in those days. I got an opportunity to go with Rouland Hill as assistant county attorney, so I grabbed that. That was good experience, trial and otherwise. You not only had a lot of trial action, but we

gave a lot of opinions to all the county officers. It was a good way to introduce you easily into the practice of law, and all the, as you know, the assistant clerks and the legal secretaries are the ones that have to educate you after you get out and start practicing, and tell you which. . . .

Carlock: How many lawyers were there in the county attorney's office?

Duncan: Well, there was Rouland Hill and there was me. (laughs)

Carlock: Just two of you.

Duncan: There was just two, and we had one secretary.

Carlock: You did the criminal work and the civil work and everything?

Duncan: Yes, I did both.

Carlock: A lot of trial work involved in that?

Duncan: We had a fair amount, yes. We had a few sessions on criminal cases, mainly.

Carlock: Judge Faires was still the judge then at that time, was he not?

Duncan: Yes, all during those years he was the judge. I was thinking back at the old county courthouse. They had spittoons in those days, located at appropriate places, in all the hallways and in the offices in the courthouse and for every juror there was a spittoon on a round rubber mat right alongside the juror's chair, and at the attorney's tables there were spittoons. There was an old janitor named Dave Glen who had been there for years and years and his job was to arrive at five o'clock and clean the spittoons, which he did in a cubby hole under the stairway that led between the second and the third floor at the courthouse, and then sweep out. He'd put on this sweeping compound. All the floors had what they called this thick three-quarter inch battleship linoleum on there, that had been on there since the courthouse was built and is probably still on there now. It just lasted forever. And they'd put sweeping compound on there and these big pushbrooms about three feet wide, and they'd sweep out the entire courthouse every night, every night at five. And that was Dave's job.

Carlock: Who was the clerk of the court then?

Duncan: John Wentworth. He was there forever.

Carlock: He was a historic character.

Duncan: All the public officeholders, except the sheriffs who changed by death or otherwise every now and then. Alf Edwards would have been sheriff, then Charlie Byrne.

Carlock: Was John Wentworth clerk of the court or clerk of the board of supervisors?

Duncan: No, he was clerk of the court.

Carlock: Clerk of the court.

Duncan: Yes.

Carlock: Who was clerk of the board of supervisors?

Duncan: I recall John Armour was a member of the board. He was a prominent rancher there by, had a place up toward Cherry Creek and had several sons, two of whom were near my age, Ben and Alvin. When I first was aware of the courthouse they had a horse-watering trough out there on the sidewalk near the jail, and it was kept in filled. It was kept many years after the horses were no longer brought in there except on rare occasions. And for a good many years along the, on sidewalk, right at the very edge of the curb but on the top, on the sidewalk they had tethering rings. They had drilled holes and put in a bolt and put a ring in it and you could tie up your horse and wagon. All along Main Street there for several blocks each way they had tethering rings. But back in those days, when the automobiles started having bumpers and bumperettes—the bumperette was the vertical piece on each side that was a little bit taller than the bumper—the cars would go up on the curb and the damned bumperette would hook in the ring and about once a day some car would get hooked on a tethering ring. That got to be such a nuisance they finally took them all out. So history, progress, went on very well in Globe. We got rid of the tethering rings and the horse trough.

The railroad out to McMillanville, you may—your folks were out at Copper Hill, though, weren't they?

Carlock: No. We were in Globe, but I remember the railroad to Copper Hill. I used to see the trains going.

Duncan: You had a railroad to Copper Hill, but you don't remember the one to McMillanville. Now here's a piece of history. The original railroad that came into Globe was the Gila Valley, Globe and Northern. Nobody but you and I and now Pablo will know what Northern meant. Northern meant that there was a spur of that that was a good deal longer than the one that went up to Copper Hills. It took off behind the Gila County Hospital, which your house would have faced, that cliff over there. And do you remember those hills that were about a hundred feet high and about two blocks behind the hospital where your house was over in there? Okay. You'll notice that there was an abandoned railroad spur that went up there and went up across the highway and through the box canyon. That went to McMillanville, and I'm told that at one time there were several thousand people, I've heard estimates as high as five thousand people, up

at a copper mine up at McMillanville. There probably isn't even anything but the headframe and the hole there right now.

Carlock: It's pretty hard to find anything there now.

Duncan: But think about it, a civilization that's that big that nobody except just a few people even know was there. Now the Gila Valley, Globe and Northern then became the Arizona Eastern, which became the Southern Pacific spur that goes in there. But that's what the Northern referred to. I only came across that information in recent years. I was aware that that railroad spur was over behind there but I didn't know quite where it went. But that was six or seven miles up to McMillanville. And think of the work that it took to construct that when you had fresnoes and stone boats and mules and dynamite and guys with shovels and picks, and that's the way they made it in those days.

Carlock: But they did it and they did it pretty fast too.

Duncan: They did it, yes.

Carlock: You mentioned one secretary in the county attorney's office.

Duncan: And that was my wife.

Carlock: That's where you met Mrs. Duncan, isn't it?

Duncan: That's right. Katherine was the secretary.

Carlock: When were you married?

Duncan: In 1939, about a year or so later.

Carlock: Was she still working there when you got married?

Duncan: Yes.

Carlock: Did she keep on?

Duncan: No, she quit.

Carlock: How long were you deputy county attorney?

Duncan: For just a year. And at the end of that year, Rouland Hill had moved to Phoenix to practice with George Hill over here, so I didn't run for the office, I just opened my own office in the Michelson Building, just a block down from the courthouse. Everybody was within a block of the courthouse, and the judge was very accommodating. We didn't have law and motion day. We may have had an unofficial law and motion day, but no one ever showed up then because you just called up the attorney and the judge and you arranged a time when you went over to see him. You saw him in chambers and you handled it that way. It was a very relaxed form of practice, not at all like Phoenix and certainly not like Phoenix is now.

- Carlock: You opened your own office when you left then after a year in the county attorney's office?
- Duncan: Yes, I was alone.
- Carlock: When was that?
- Duncan: That was in 1939.
- Carlock: What sort of work did you do mainly?
- Duncan: A little bit of everything, just a little bit of everything. I collected bills, I got divorces, I defended criminal cases, I probated estates, I drew agreements. Very little of any great importance. That's the way practice was in those days, and certainly that's the way my practice was.
- Carlock: Who became county attorney succeeding Rouland?
- Duncan: Frank [E.] Tippet, I think.
- Carlock: Did you defend Indian cases too?
- Duncan: Yes, I wrote up a story about defending an Indian case and sent it to the State Bar Journal . . .
- Carlock: They published it.
- Duncan: They published it, yes.
- Carlock: I remember reading about that, I remember when they published it. Did you have some other Indian clients?
- Duncan: Yes. The way you had an Indian client was, about twice a year Judge [Albert M.] Sames would show up from Tucson at the U.S. District Court. He would summons all the lawyers in Gila County to appear over there and take Indian cases, and it was gratis. I don't mean just low pay, I mean it was gratis. And this was your obligation, to be over there and take, on an indigent basis, these Indian cases. They would be charged with all different sorts of things, one of which I'll digress and tell you about now.

I was called over there with the rest of the Bar one day, and a fellow by the name of Richard Nosie, was summoned up to plead guilty or not guilty on murdering his wife. They appointed me to represent him. Well, heavens, that was a pretty big assignment for me, just a few months out of law school. But it turned out that he was willing to plead guilty. So we plead him guilty to, I guess, second degree murder. And he was in the penitentiary for years and years. This would have been in about the mid forties, I suppose. Then I moved to Phoenix. In about 1960 I was working with Abby [A.Y.] Holesapple in a case involving Tucson Gas and Electric and we went into the U.S. District Court in Tucson and Judge [James A.] Walsh was on the bench. They brought in a

prisoner. There weren't any other lawyers there and the U.S. Attorney said, "We need to arraign this man." They read the indictment against this man who had just murdered his mother and father. They read the indictment and the judge said, "Would you mind representing this defendant? We'll get somebody else later but you're present for the purposes of arraigning him, to plead." It was known at that time he was going to plead not guilty. So he plead not guilty. When they read the indictment and his name was Richard Nosie. I said to myself, "Isn't that a familiar name?" And I checked with the Dougherty girl in the Clerk's office—remember, she was Pat Scruggs' . . .

Carlock: Catherine Dougherty?

Duncan: Catherine Dougherty. And it was the same Richard Nosie. Now, here I am having been summoned before the bench to represent him on an arraignment in the forties and fifteen or twenty years later, I just happen to be in Tucson, a Phoenix lawyer in Tucson before the bench down there and I get asked by the judge to represent a man and it's the same Richard Nosie with the same crime, murdered his mother and father, with an axe this time.

Carlock: Did he remember you?

Duncan: I guess I never knew. There was never any conversation about it. It guess I was so stunned and the thing was so brief and I wasn't anxious to make a permanent connection with Richard Nosie.

Carlock: What happened in his second case?

Duncan: I never knew, but I would presume that he pleaded guilty to second degree murder and is in and out again by now. I hope someone hid the axe.

Carlock: Where was the crime committed?

Duncan: San Carlos, in both cases.

Carlock: On the reservation.

Duncan: On the reservation. But you could get hooked on a case like that and have to spend a month on it and you didn't get paid for it at all. Then, worse than that, the judge expected you to appeal it if it was appealable. D.E. Rienhardt and Cullen [A.] Little were appointed on such a case as that and they did not see specific enough grounds for an appeal on one of those federal cases that Judge Sames appointed them on. He disagreed with them and because they didn't appeal it, he disbarred them for a year. At the end of the year he expected them to come racing back in and move for readmission and they didn't do it. They would have been readmitted immediately but they had had enough pleasure in the U.S. District Court up there.

Carlock: They didn't see any need to be in District Court.

Duncan: No.

Carlock: Well those judges knew quite a bit about the lawyers that appeared before them, didn't they? And Judge Sames was certainly familiar . . .

Duncan: Yes, they did. Do you remember him?

Carlock: Yes.

Duncan: A rosy-faced little guy. He was described as the only judge who could strut while sitting down.

Carlock: They knew what kind of job that you were doing for your clients that they wanted you to represent that they wanted you to represent, didn't they?

Duncan: Yes, I'm sure they did.

Carlock: And they expected you to do a pretty good job.

Duncan: Yes, they did.

Carlock: Judge [Dave W.] Ling was that way.

Duncan: Yes, wasn't he.

Carlock: He knew whether you were doing a good job and he didn't want you to pull any punches about it.

Duncan: I enjoyed practicing in his court.

Carlock: How long did you practice in Globe?

Duncan: Until 1950. And you are about to ask how I happened to come to Phoenix.

Carlock: With time out for the war?

Duncan: Yes.

Carlock: We're not to Phoenix yet.

Duncan: We're not to Phoenix yet? The war came along and I joined the enlisted reserve. I had built up—I was a private pilot, working toward a private license, since about 1933. I soloed out at Sky Harbor [Airport, Phoenix] and I had built up some time over the years. It was expensive, you know, back in those days and you couldn't afford to fly very much but I did when I could. When the war came along I wanted to be a pilot. So I joined the enlisted reserve and went into civilian pilot training, which became known later as W.T.S., War Training Service. From there I became an instructor out at Sky Harbor in instrument flight and night landings, night flight.

Carlock: Still as a civilian?

Duncan: Still as a civilian in the early part of the war. Then when that program wound down, they needed pilots in the ferrying division out in Long Beach [California], which was the best job in the whole war, if there has to be a war. Most of us

who were instructors went on active duty basis at that time. We went through twin-engine transition and instrument training at Deming [New Mexico] and then went to Nashville [Tennessee] for officer's training and we came out as Flight Officers. We were later made Second Lieutenants while we were overseas.

I was stationed in Long Beach. At that time I ferrying everything that was manufactured, all the way from UC 45s to DC-3s to P-38s to A-20s to B-25s to B-17s to B-24s. I was delivering them from the factory all over the United States. Then you would fly back dead head on the airlines. The only drawback it had was that you were expected to come back immediately on the first flight when you delivered an airplane, because you had a high priority to fly back, and you didn't have any excuses for not getting back.

Carlock: But you would come back as a passenger on a civilian airliner rather than on a military craft?

Duncan: Yes, that's right. They wanted you back right away. So I delivered planes to everywhere, Portland to Dallas to Wichita, Kansas, to Cheyenne to Birmingham to Savannah to Reading, Pennsylvania. Just a dozen places where they were crewing up crews to go overseas and they needed the airplanes to be delivered to those fields. Either for that or for modification. In Romulus, Michigan, I'd go up and pick up a B-24 there and deliver it someplace.

Carlock: When was it that you started as an instrument instructor at Sky Harbor?

Duncan: It must have been about 1943. Then things happened fast after that. To Long Beach in the Ferrying Division, to Nashville for officer's training, back to Long Beach ferrying aircraft. Then in the last part of 1944 I was sent overseas to fly the Hump. By that time I had a lot of flying time including two planes I took to Australia for the Australian Air Force. One was a C-47, that's a DC-3, the original airliner, and then the next was a B-24. You would fly back dead head on army airlines, in that case. By that time I had lots of flying time built up so they sent me overseas to fly the Hump, between India and China. That would have been out of Assam in northeastern India into several bases in China. We flew occasionally into Yunan-yi, the home of the Flying Tigers—that's why I mentioned that name—but mostly Kunming and Chengtu, those were the principal places we flew. Chengtu was a twelve hundred mile trip. It took about six hours. We would leave bombs and gasoline for them for the air force up there to fight the war and take the war into Japan with.

Carlock: Were you over there when the war ended?

- Duncan: Yes I was, and for a while after it ended too. There were only ten airplanes that left India after the one that I brought home. I became an army airlines pilot over there after the war and we flew a regular route between Karachi through Agra or Delhi and into Calcutta.
- Carlock: This was still on active duty?
- Duncan: This was still on active duty, yes.
- Carlock: How long were you there in that capacity?
- Duncan: I didn't leave there until April of 1946. The war had been over for some time. But we had a lot of evacuation of troops to do, materiels, and one of the things I remember that I did was fly a lot of lend-lease records from Calcutta into Delhi and Agra for processing, because most of the things that we had over there were supplied by the British on a lend-lease basis. They were, as you know, in India and they had supplies there and they were in the war, so all of our tents and much of our food and gasoline and everything was on a lend-lease basis to the Americans who were over there flying the Hump.
- Carlock: Sort of a reverse lend-lease.
- Duncan: Yes. I was flying B-24s and then—at the first part, they called them C-109s and C-87s. The 109 was the tanker version of the B-24 and the 87 was the cargo version. Then about six months later we got into C-54s, which is the DC-4 version. It's a Douglas four-engine tricycle gear airplane. We had an expression that we thought we had died and gone to heaven when we got into that airplane, it was so much better in every respect than the B-24s that we had been flying.
- Carlock: Did you consider staying in the service after the war?
- Duncan: No, I didn't. I wanted to get back home and back to the law practice and I had no desire to stay in. I had hoped that flying would be part of my life when I came back. It turned out that it wasn't because it really hasn't been very practical to own a plane for very many people, and it's terribly expensive. And unless it's a hobby that you haven't had your fill of, you just won't follow it any longer. I had done everything and been everywhere, I felt.
- Carlock: When you started flying did you have to come down to Phoenix and rent a plane or take lessons in Phoenix?
- Duncan: Yes. Well, I went my first year to Tempe, then after that to the University of Arizona. And I flew while I was here out of Sky Harbor. Ruthie, she was then Chalmers, became Reinhold later, one of Arizona pioneer girl flyers, women flyers, Carl Knier was out there, Loyal Penn . . .
- Carlock: Was there an airport at Globe at all then?

Duncan: Yes. There was a landing strip out at Midland City, Kaiser Crossing. Do you know where that is?

Carlock: Yes.

Duncan: Okay. Some of the time it would be open and some of the time it wouldn't be. But this was before they graded off that strip out at Cutter between Globe and the San Carlos Reservation, it's on the reservation between Globe and San Carlos.

Then I flew a little bit while I was going to the University of Arizona. I would go out to the field and pick up a little time there. And right about the time the war broke, I started flying Civil Air Patrol. I would fly, I had a Luscombe airplane that I was a club member of and it was available and they needed all kinds of airplanes so the club made it available to me. So I flew Civil Air Patrol between Blythe [California] and Phoenix and [Davis-]Monthan Field in Tucson, flying parts that didn't weigh too much, airplane parts and mail and cargo and things like that. I flew that for a little while, and then went into the war training service.

Carlock: Well, you got out of the service in 1946 then?

Duncan: Yes.

Carlock: What did you do then?

Duncan: I went immediately to Tucson to take a bar review course from Chet Smith down there.

Carlock: Why did you do that? You were already admitted to the Bar?

Duncan: Well I'm out of law business for about four years and I wanted to refresh my knowledge of it.

Carlock: Taking that bar review course was a grind, wasn't it?

Duncan: Yes, it was, but it was something I felt that I needed to go through again.

Carlock: And you took some courses at the law college too?

Duncan: Yes. I did. And that gave me the—I only needed, oh my, I only needed five units. I wrote a research paper for one unit, mining law for a couple of units and insurance for a couple of units and that qualified me to graduate.

Carlock: Lester [W.] Feezer taught the insurance course?

Duncan: No, he didn't. It was someone else was teaching it at that time.

Carlock: Who taught mining law then?

Duncan: Chet Smith.

Carlock: What was your subject on the research paper?

- Duncan: The subject was: can you make the transference of property commence *in futuro* by deed as you can by will. I concluded that you could. And it's always surprised me that—it seemed to me that it was a clear case that you could do it and it always surprised me that it wasn't done more often and utilized more often in the practice of law, than it has been.
- Carlock: Was that in the summer of 1946?
- Duncan: The summer of 1946. That's when it rained all summer and every vacant lot had that desert grass on it about six inches high in Tucson.
- Carlock: Were you taking the bar review course and the regular courses all at the same time?
- Duncan: Yes, at the same time.
- Carlock: And doing the research paper at the same time?
- Duncan: Yes.
- Carlock: You had a busy summer.
- Duncan: Yes, it was a busy summer.
- Carlock: Was it of some importance to you to complete the requirements for a degree or did you just want to get your hand back in the study?
- Duncan: I felt that a man that close to a degree should not go through life without finishing the degree. I had intended to do it before, but once you start practicing law there never seems to be a time when you can take time off and go do it. And I don't think they were giving summer school. I'm not sure when they started law summer school.
- Carlock: They started that right after the war, for people like you and me.
- Duncan: After the war. Then I would have had to have gone someplace out of state or wherever to have gotten enough units to finish it.
- Carlock: So you completed the requirements for the degree by the end of that summer school session?
- Duncan: Yes. That was 1946. But not early enough to graduate with the 1946 commencement group, you see, so my diploma will read 1947.
- Carlock: So then back to Globe?
- Duncan: Back to Globe.
- Carlock: Opened your own office again?
- Duncan: Opened my own office. I had kept it and paid the rent on it all during that time. Just closed it up and paid the rent on it. And opened my law practice, such as it was. I managed to stay alive.
- Carlock: Pretty much the same sort of practice you had had before?

Duncan: Yes, a little of everything.

TAPE 1, SIDE 2

Carlock: Well, you became county attorney too, didn't you?

Duncan: No. I was only assistant county attorney to Rouland Hill, and I never became county attorney there.

Carlock: So you didn't go back in the county attorney's office at all?

Duncan: No. I busied myself—we reactivated the Globe Chamber of Commerce and I became president and kept busy. We had lots of different projects including the new county hospital and the highway widening and the re-routing of the highway through there. That started back in those days, although it wasn't completed until several years later, after I left Globe.

Carlock: Who was the superior court judge when you went back?

Duncan: Faires was still superior court judge, and the only one we ever had. It wasn't until later that we had more than one judge and that Faires retired. He had proposed that he would retire in the middle of any term and asked the governor to appoint me if I would take it. I just didn't want to have a political career, as nice as it would have been, and being a judge in Globe was a very dignified, nice career.

They would call, as you remember, Judge Faires to go listen to cases all over the state. He was very well regarded and conducted a courtroom very beautifully. All the lawyers liked him and he wanted me to do that.

Carlock: I remember him well. He was quite a gentleman.

Duncan: Wasn't he?

Carlock: How long did you practice in Globe then after the war?

Duncan: Until 1950. In the spring of 1950 Charlie [Charles L.] Strouss, who was still with Snell, Strouss and Wilmer, sent me a piece of business to handle for him. A client of his had a chattel mortgage on some property down at Roosevelt Lake, a couple that had a marina and a store and other things down there, to foreclose. I handled it for him to their satisfaction. I got acquainted with Charlie again when Ed Rice, when I came back from the war, said, "I've been on the board of governors from this district for so many years, why don't I just retire and have you do it." And I did. Charlie Strouss was on the board of governors and . . .

Carlock: This was the State Bar?

Duncan: This was the State Bar Board of Governors—and on his way to becoming president, which he did. In 1950 he became the president of the State Bar. By that time I was vice president of the State Bar. But when I became a member of the firm, moving to Phoenix, I thought it was inappropriate for the State Bar to have a president and a vice president out of the same firm and then have the next president also be out of the same firm. So I resigned on that account. But that's the story.

So I got acquainted with Charlie Strouss through the Bar and through this business that I handled. And another thing happened. Judge Faires had been talking to Thompson of Knapp, Boyle, Bilby, Thompson, Shoenhair.

Carlock: B.G. Thompson?

Duncan: B.G. Thompson. B.G. said to Judge Faires, "Do you know any good trial lawyers?" Judge Faires, for whatever reason and probably somewhat through friendship, gave him my name. Shortly after that Irv [Irving A.] Jennings, had met B.G. and said, "We are looking for another lawyer, a trial lawyer for the firm." And B.G. repeated what Judge Faires had told him. So they talked it over in the firm. I hadn't known Irv, but Charlie Strouss and I were friends. So Irv Jennings had Charlie Strouss call me one day in 1950, like a bolt out of the blue, and said, "How would you like to come to Phoenix?" Well, that's sort of an ambiguous question and I thought, For a party? To play golf? Or maybe, it occurred to me, he meant, which he did, to join the partnership. I had not given it any thought. I was happy in Globe. My prospects were improving. I liked it there. I had built a new home there. But I began to give it some thought and soon decided to do it. I came down and interviewed and they offered me a partnership and that's the way it happened.

Carlock: When did you move?

Duncan: Well I had Ted [J.A., Jr.] Riggins, too, you see, and Ted would have been fifth in the echelon, in the standing in the firm. Ted and I were in law school at the same time. He was one year ahead of me but we were friends. So I moved down in May of 1950.

Carlock: Who was in the firm then?

Duncan: Jennings, Strouss, [Riney B.] Salmon, [Ozell M.] Trask, Riggins, [Henry S.] Stevens and Duncan. Rex Moore was there also, before I got there.

Carlock: Was Nick [John Nicholas] Udall there?

Duncan: No, Nick didn't join the firm until, I'm thinking, about 1956 or 1957, even 1958, but along in those years.

Carlock: And you were on the sixth floor of the Title and Trust Building?

Duncan: Yes. We didn't even have all of the sixth floor back in those days, a little bit more than half of it. We expanded into that floor and then also all of the seventh. Then the Arizona Title Building was built and we went into there for, eventually about four floors. Then, I don't know that I can tell you the exact—when was the Renaissance Building completed? We moved from there over into that.

Carlock: I can't put a date on it. Two years ago maybe. A year-and-a-half ago, something like that.

Duncan: At least two, I think. Yes.

Carlock: What sort of work did you do when you joined the Jennings, Strouss, Salmon and Trask firm?

Duncan: Mainly I was defending personal injury cases for insurance companies. Ozell and Rex and I did a lot of that. We had lots of insurance companies. Then I began to be introduced to work at the Salt River Project, because it was more than a one-man job and Irv Jennings was doing it, and Ted Riggins, and so I was sort of a third man introduced into that work. And Charlie Strouss began to want to cut down on his work in the late fifties. He died in 1959, as I remember. He had known Judge [George R.] Darnell of the Darnell firm from the time he came into Arizona, and on a case of any importance at all, their firm, the Darnell firm, which represented Tucson Gas, would associate our firm, meaning of course, Charlie Strouss. Well he began to introduce me to the work in there and I became very active in Tucson Gas and Electric's work. At that time it was with Larry [Lawrence V.] Robertson, who was in that firm. After Larry left that firm it was Abby Holesapple and I for a good many years were a team in working on their cases.

Carlock: This was in their litigation or in other kinds of work?

Duncan: Litigation . . .

Carlock: What sort of litigation did they have?

Duncan: Rate cases, ongoing litigation for years and years over territory with Trico Electric Cooperative, and certification for territory before the Corporation Commission, that sort of thing.

Carlock: So it was not as much personal injury type of work?

Duncan: No, I got out of the personal injury work and into civil litigation, although I continued to do some malpractice work for the dentists and to do some work for the dental association on certification and examinations.

Carlock: You had mining personal injury case once in a while too, didn't you?

Duncan: I never did, but our firm certainly did. I can't remember—yes I did. I had one, Dodge versus Southern Pacific. It was a death case.

Carlock: You called me as a witness.

Duncan: Was that in the Dodge case?

Carlock: Yes.

Duncan: Was it? I'll be darned.

Carlock: You began to be active in politics, in a sense, about that time, didn't you? You took an interest in political questions anyway.

Duncan: Yes, I did. Of course with—my dad was superintendent of liquor control from 1933 until about 1966 and he was, you might say, active in politics in the sense that he felt that his employers were the members of the House and the members of the Senate and we were all on a first-name basis. That was later on. And in the first instance it was with the State Tax Commission, with Thad Moore and some of the other members of the Tax Commission. And we lived right across the street—when I was on vacation at the University of Arizona I would come to Phoenix and stay with Dad and we lived right across the street from the State Building. If you walked out of the front door of the State Building and right across the street you'd bump into our house on that lot there.

Carlock: What was the address, do you remember?

Duncan: The house was owned by a lawyer by the name of Baxter. Did you ever hear of that name?

Carlock: I've heard the name.

Duncan: It was a two-story place with a grand piano still in it, because she, Mrs. Baxter, was, I think, very interested in music and may have even given piano lessons there. We had lots of room to bounce around in the place and had lots of friends stay with us from time to time. So I sort of was thrown in with an awful lot of political people and I became very interested in the politics of all sorts, but not as a participant.

Carlock: Not as a candidate.

Duncan: Not as a candidate.

Carlock: You became pretty much interested in political philosophy, didn't you?

Duncan: I did run for president of the student body at one time, down at the Law School and was elected—I have described that in one of the things I wrote up for the firm—and Ted Riggins was my campaign manager. I ran against Byron Ivancovich. I said that he was rich and big and good-looking and came from a

pioneer family; a man that you could hate instantaneously. And that's probably why I defeated him. But anyway, that was my only venture, I guess, into. . . .

Carlock: I remember you at a State Bar convention, it must have been about the time you moved from Globe to Phoenix, in a debate over the adoption of the Bricker amendment. Do you remember that?

Duncan: Yes, yes very much.

Carlock: When was that?

Duncan: Frank Holman, the president of American Bar Association, was extremely active in that. Oh, that had to be early fifties. That was right away. Sovereignty in the—yes, that was a big thing to me. Always has been, always will be.

Carlock: Did that sort of start your interest in political philosophy?

Duncan: Yes, it did.

Carlock: You kept on with it, didn't you?

Duncan: Yes. I got acquainted with Judge [Marlin T.] Phelps and he was very active in Arizonans for—what was it—something like national security. Arizonans for America. It had a strong anti-communist orientation to it. He was on the board of that organization. So was Denny [Denison] Kitchel. So out of that I became, through that experience, interested in it.

Carlock: Did you maintain your interest in political philosophy?

Duncan: Oh, yes. And I, you've probably noticed that I frequently write letters to the editor. I've been looking back through my copies of my files and I've probably had as many as, well I counted fifty and I've recently run into maybe ten more, that the *Arizona Republic* and *Phoenix Gazette*, principally the *Republic* have printed, only recently have I, in the last year or so, have I been sending in to *Gazette*, that they have printed letters to the editor that I have written. I like to do that. I like to set the world straight on matters.

Carlock: Have they printed all that you sent?

Duncan: Oh, no. No, they've printed about one in three. They have a limitation of not more than one a month. I wasn't aware of that for quite a while. They stick to that pretty closely. But I think I get my one a month in all right.

Carlock: I think I see them at least that often.

Duncan: A lot of people notice that and they tell me at the paper that that is one of the most highly read sections of the paper. I believe it, because if I have a letter that is printed I can't walk very far in any group without someone telling me that they have read it. Usually the ones that agree with me. I'm not sure the others mention it to me.

Carlock: Well, you started with about a seven-man firm in Phoenix . . .

Duncan: Yes.

Carlock: . . . and went, how large is that firm now?

Duncan: You know, I don't know because being retired, I haven't been active in management. We keep losing them and getting them. But I don't know how many partners we have now. Certainly we have seventy or eighty lawyers down there, but I don't know, I can't tell you how many partners we have now.

Carlock: What caused the growth? Does the growth about parallel the growth of Phoenix or did the firm grow faster than the practice of law in Phoenix?

Duncan: I think our firm must have grown a little faster. I became active in management and for a good many years before retirement I was on the policy committee. Frank [B.] Campbell [Jr.] and Ted Riggins and I were the three senior members on the policy committee and naturally the senior-most members are the ones that end up having, whether they should or not, the most influence on how the firm grows and how fast it grows. Our policy always was that we were sure that we would have enough law business, we were all busy, busier than we needed to be, and we knew that we had at any given time enough law business to add another good lawyer if we found another good lawyer. When we found one that we were satisfied with, and one that we intended to keep, not just to shuffle him through or to take four thinking you would get one good one out of it. We only made offers to those that we wanted and that we thought would stay and that we intended to keep if they made good in the firm. And that was the way it happened.

Carlock: And the work was available to do to keep some expansion going all the time?

Duncan: Yes. We never had any problem with that at all.

Carlock: Now the firm had a very general practice, did it not? You said you started doing mainly litigation, a lot of insurance defense work, but the firm was doing all kinds of work at that time, was it not?

Duncan: We never did any criminal work. We tried not to handle divorces. And in more recent years—as most any lawyer knows, divorces are extremely traumatic. They are almost as traumatic to the lawyers as they are to the people going through them, and the tax aspects of divorces are extremely treacherous. We decided a good many years ago, fifteen at least, that we simply would not ever handle anymore divorces for anyone. And I think they've held to that in the firm. And no criminal matters. We don't handle much plaintiff's work, but then

we never did, because we were defense insurance lawyers, you see, and that sort of polarizes you.

Carlock: The firm represented the Salt River Project?

Duncan: Yes.

Carlock: Was that from the time you went there or did that business come in later?

Duncan: No. We had that business by the time I got there, but only since about 1946. In the forties, at some time, we had a very difficult income tax problem that Charlie Strouss worked out. I think Greig [E.] Scott may have been the principal lawyer for the Project at that time. Charlie Strouss began doing work for the Project. I can't give you the exact history of the transition, but our firm ended up with the work.

Carlock: Your firm also represented a lot of people in the produce business, didn't it?

Duncan: Yes. It was natural that we would represent the water users and the power district, because we did represent so many of the growers, Blaisdell and McCloud and we did some work for [John] Jacobs and quite a number of the growers.

Carlock: Art Bodine?

Duncan: The Bodines.

Carlock: Did you continue to do, after you sort of switched from personal injury work and defense work to utilities work, did you then do largely utilities work from then on?

Duncan: Yes. I guess you might say that it was, and it was a sort of specialized number of things. I did their *ad valorem* tax work and we had some appeals that went up, on the voluntary contributions that the power district makes in lieu of taxes. I had some work, quite a lot of work on that. Did a lot of work on trying to devise legislation that would clarify that situation. I did all of the sales tax work for the firm, and I did a lot of rate increase cases for Tucson Gas and Electric, it's now Tucson Electric Company. They were fast and furious and frequent for the reason that the Corporation Commission would always turn you down, which would require you to file a new petition immediately. With the regulatory lag that's inherent in that system you were always running behind. So we had lots of business on that.

Carlock: That's quite different from running a one-man law office in Globe in 1939.

Duncan: Isn't it. And for a while, being my own secretary over there too. I typed out. . . . I was thinking back, some of the differences in practicing then. We didn't have flat filing over there. We had folders, and all of the documents had to have a blue backing on them. Then they were folded, and it was on the full

legal-size paper. And there had to be, after you had typed up the legal-size document, then you had to put a blue backing on it. Then you folded it a couple of times. But on the blue backing it had to be typed also as to, "In the Superior Court, in and for the County of Gila," then what the style of the case was and the number of the case and who the attorneys were. It was a big job just to type up the blue backings for your pleadings. Then that went over and instead of being flat-filed, as all of our filing is now, that was folded two times and then put in an open envelope cover and then put in a filing cabinet, stood upright. It was the most inconvenient, wasteful way that you could possibly have of making and keeping records. Yet that was the system they had until about the time I left Globe to come over to Phoenix in 1950. They were still using that system then.

Carlock: Was Gila County one of the last to abandon it?

Duncan: I would assume that it probably was.

Carlock: You've seen a lot of other differences in the practice of law between 1938 and now, haven't you?

Duncan: Oh, yes.

Carlock: What are some of the striking ones?

Duncan: Rouland Hill had come over to Phoenix a good many years before, ten years at least, before I did. I was talking to him about the prospects of coming over, and he said, "You won't have time to practice law like a gentleman over here." Because he knew how easy and automatic everything was and how convenient it was in Globe. Written stipulations were something you rarely saw, because lawyers simply knew what they had agreed to and they knew each other well enough to know that . . .

Carlock: You were always doing business with somebody that you knew well.

Duncan: That's right. And no one reneged on anything and you could get together, call up the judge, or you didn't even have to call him up, just get together, walk over there with your paper and the judge would be in his chambers, and he was just as happy to do it there as on a law and motion day or any other time. Everything went so easy over there. There were no hard and fast rules of court and there were darn few rules of anything that couldn't be solved and circumvented by lawyers that had good will toward each other. So it was entirely different. Even the difference between, in the later years when I wasn't trying very many lawsuits. Now it's so complex on how you go about it. I wouldn't know how to get in the courthouse.

Carlock: Do you think the clients in adverse situations were as well represented when you did it in the informal, more casual way?

Duncan: I think better. I think better. And certainly our fees were a great deal more modest, and could be. Because you didn't spend a lot of unnecessary time on anything.

Carlock: You didn't do any discovery in a civil case, did you?

Duncan: No, you didn't, not until about 1950 when I came over here. I can remember when discovery started. I was on a panel for the State Bar, in one of the State Bar programs. There was Nick Udall and I, Morris [K.] Udall, one or two other guys, I can remember down in Tucson when the convention was held down there. That was at the time when we were educating ourselves and other lawyers with respect to the advantages of discovery. But of course, with discovery comes enormous expense of transcripts and taking a great many bites at the same apple, you know. So it's not an undiluted blessing.

Carlock: Did you notice a great deal of difference between the practice in Globe and the practice in Phoenix when you moved down here?

Duncan: Yes, quite a lot.

Carlock: Because of the difference of being in a firm instead of on your own or a difference in the style of doing things or what were the differences?

Duncan: Well, when you went to court everything was formal and it was arranged at a particular time in advance and it took some adjusting. It was more complex, even then, and immensely so later on.

I take a very dim view of the complexity of practice now, trial practice. I think it's becoming an anachronism. I think it's dying of its own hand. I think it is so costly, so complicated that something has to give.

I can remember when you tried a case in front of Judge Ling and he qualified the jury in ten minutes. Now, was that a police state that we were living in when we didn't get a chance to qualify the jury? The answer is no. Is it a police state that England lives in when they can bring a criminal case to trial, and solve it in two months? No, it isn't a police state. Can we expect a jackboot to arrive at the door with truncheons in the guy's hand simply because there's a way of handling litigation in a faster and more convenient way than we're handling it? The answer is no.

But we seem to seize upon every opportunity we can to make it more complicated and have more appeals and to reverse more cases and to make more

law and to devise more traps to fall into. I think we're going in the wrong direction.

I wrote the Supreme Court on this issue, incidentally, among my other letters that I feel compelled to instruct people on. I did write the Supreme Court and got some very good answers from them agreeing with me that this was going on.

I can remember Charlie Strouss talking to Art [Arthur T.] La Prade one time when Art was on the [Arizona] Supreme Court. Charlie was a premier appellate lawyer. Everyone had an extremely high regard for Charlie Strouss. Art was complaining to him one day—they had been in the attorney general's office back at the time under K. Barry Peterson, along about 1930, together. La Prade then went on the bench and then on the Supreme Court bench. He was saying, "We're just tied up. We've got so much more work than we can do." Charlie said, "Art, have you ever thought of writing short opinions and unless the case is really, ends in an injustice, to affirm it?" He said, "My best advice to you is to remember that your opinions will comply with the constitutional provision that an opinion has to be written on a case, if they simply say, 'On the authority of Doe versus Roe, we affirm this case,' or, 'We overrule this case'." And get on with the business. You should not feel compelled to write long dissertations in the numbers of cases you do, and in which you will have prepared so many nuances and so many traps for the next case to fall into. And every time you overrule a case and have it go back for trial you are going to have a hell of a lot more cases that get appealed to you because the attorneys are going to say, "My god, I've got a fifty-fifty chance of winning this thing on appeal."

Carlock: Did he get an answer from Judge La Prade?

Duncan: He got an answer agreeing with him, but without any change in the way they did business out there at all.

Carlock: When you wrote to the Supreme Court, did the answers that you got give you any insight into why they didn't change?

Duncan: No. They didn't. But they are aware, and they must be aware of the fact that this idea has merit.

Carlock: What do you think has brought about the change in the style of doing things that you're talking about? Getting litigation so much more complicated and expensive?

Duncan: I think lawyers take themselves too seriously when they get on the bench. They want to become Learned Hand, or Holmes at least, and they feel that by the time

they have spent all the hours and the drudgery of reading through the briefs, that they have such a grasp of the entirety of the subject at hand that they must, for posterity, try to shed some light on the subject beyond just affirming or overruling the case. The opinion, after all, represents their work and they want to be thought kindly of with respect to anything they write, so it can't be slipshod. So they end up making out of every case a "federal case," so to speak. I think that is behind it from the psychological point of view.

Carlock: Do you think that accounts for the lawyers becoming more contentious with each other?

Duncan: Oh, I'm sure it does. In the first place, out of these enormous lengthy opinions, you can fish out of them almost always something that is going to encourage you to appeal so that you can say to the judge, "Now look, in this case the court said this. Now if you really believe that, you apply it to my case." So you're going to find a lot of encouragement in some case, some Arizona case, that you wouldn't have found before. Also, as I said, the great numbers of appeals that are overruled, just the odds of it encourage the lawyer and the client to take a whirl at, taking it all the way to the Supreme Court.

Carlock: All that runs up the cost of litigation a good deal, doesn't it?

Duncan: Sure. Also, the ordinary guy, he just can't stand to pay the attorney's fees to try the case and then, if he wins it, to try to win it again in the court of appeals, and if he wins it, to try to win it again at the Supreme Court. And if he loses it there to try to win it again in the superior court. He just can't do it. Justice is being denied on that account as surely as if the Supreme Court were writing shorter opinions and missing one every now and then. That's my view. I don't know if or when the Supreme Court will not only agree to that, but begin to practice it.

Carlock: I think you find a lot of people that agree with you in principle, don't you?

Duncan: I haven't found anyone who disagrees. I really haven't. In my letter to the Supreme Court I said, "I'll be the first one to admit that when I was a lawyer, writing a hundred and fifty page brief and having to get a special ruling to permit me to write a brief of that length, I expected it to be read, every page, every paragraph, every word, diligently, and by all the judges on the court, and considered deeply. I didn't want any halfway measures on anything that I was taking up on behalf of a client. But I see it from a different perspective now, and I don't think I was entitled to it and I don't think that the clients can afford

it and I don't think the judges should approach it with that degree of trying to strive for perfection."

Carlock: Are you still active in the firm?

Duncan: Not at all. Beginning three years before I retired in 1980 I began cutting down my participation and my percentage in the firm, so that at sixty-five I fully retired from the firm.

Let me tell you that if you once quit practicing law for six months you won't be sure of anything anymore. If you're practicing law, you will have a pretty good feel that no Supreme Court case came out that affects your area that you don't know about it. You'll have a pretty good feel that there isn't a rule of the superior court that requires you to do something or tells you not to do something. You'll have to go back, and on the simplest thing, you would have to go back and review and dig it out again to be sure of it. You may, and probably will, find out there wasn't anything that was changed. But you don't know that. What you don't know requires you to do an enormous amount of work to make sure that you don't miss anything.

You cannot practice law, I think, without full-bore practice of law, pretty well. I didn't feel that I could, and I didn't feel that I wanted to.

People that see me just simply quit, it does concern me that they think, "Well, he really didn't have any affection for the law." That's not true. I had—and I think you believe this, Read—I did have a great affection for the law and it was on my mind constantly, but it wasn't, as it turns out when I got ready to retire, my whole life. I like to do writing; I like to play golf; I like to travel. I have a boat that I took sixteen times up to Lake Powell to discover a hundred canyons up there on a hundred-and-sixty mile lake. I just love doing those things, and a great many other things.

Carlock: What writing have you been doing other than letters to the editor?

Duncan: Letters to the editor and I wrote those two—I've written four or five other things that I haven't submitted yet on things that happened to me while I was practicing law. Like the Richard Nosie thing that I thought was extraordinary and that I kind of wanted to preserve. That's mainly it. I've got an Apple Macintosh computer so I can make extra copies and. . . .

Carlock: Do you revise? Are you a computer man or do you use it mainly as a word processor?

Duncan: I use it as a word processor. Katherine likes to work on it too, mostly as a challenge. I don't think they are very useful for ordinary people other than as a word processor. But they are great for that.

Carlock: Did you have any trouble learning how to use it?

Duncan: No, not particularly. The aggravating thing is that you will come to something that ought to be simple and you try to look it up in an index and you won't find it anywhere. If you had someone that knew how to work an Apple computer he could tell you, snap, that quickly. But the indexing is not user friendly. We bought just about every book that's available and there's lots of indexes in there, but if you wanted to find one that tells you how do you get rid of a footnote mark that found its way in because you hit something that you didn't intend to hit, you couldn't find it. We spent hours trying to get rid of that, punching at everything that we could punch, looking up every index, calling up everybody that we knew, to get rid of something that found its way into the margin. In the end there is a way to do it, but you won't find it in the indexes.

Carlock: Did you finally find it?

Duncan: Yes, and I couldn't tell you now how to get rid of it again.

Carlock: But you finally did something right.

Duncan: We finally did something right.

Carlock: Clarence, I've fired a lot of questions at you and you've been very good about responding to them. I may have skipped asking about some whole area that you think ought to be discussed. If I have, would you tell me what it is and we'll start over again.

TAPE 2, SIDE 1

Duncan: In 1986, I was asked to tell a little bit about the history of the firm and some of the early things about the partners.

Carlock: What was the occasion for this?

Duncan: It was for a lot of the associates who had come in recent years and didn't know anything about the firm or the members of it, and a lot of secretaries and paralegals and office personnel that were interested in some of the things that had happened. Would you be interested in my going over it or would you rather have a copy?

Carlock: I think it would be great to have you kind of go over it. I'd like a copy of it too, but I think it would be great if you would go over it, because you'll have a whole different slant in an oral presentation.

Duncan: All right. I may not follow this exactly here.

Carlock: No.

Duncan: Regarding the history of the firm, I said, "I shall begin at the beginning. Abraham begat Isaac and Isaac begat Jacob and Jacob begat Judas. There are a few other ancestors in between and I shall have to leap forward to the 1890s when Irv Jennings was born, presumably in a log cabin, in Taylor, Arizona." This gives the history of some of the guys in the firm. "Historians disagree as to whether it was North Taylor or South Taylor." We used to kid Irv and Renz [Jennings] about that because Taylor cannot be north or south. It's a wide spot in the road. "Taylor isn't the end of the world, but you can see it from there. Those of us privileged to witness his massive intellect, poise and judgment believe that he was at least twenty-seven years old when he was born.

"As a student he taught a senior class. When he was mustered out of the marines at the end of World War I the recommendations of his superior officers were so high, he was admitted directly to the University of Michigan Law School, where he met Charlie Strouss, a Pennsylvania Dutchman of equal brilliance. Script writers would refer to this as the Dutch connection."

This might be good for the Historical Society because this is one of the only sources that you are going to get on some of the history of these guys and where they came from.

Carlock: Right. We'd like to have it.

Duncan: All right. "Riney Salmon could conduct negotiations and draft documents with a precision which has forever set the standard in the firm, doubtless the product of his training in the exclusive finishing schools and academies of early Bisbee, Arizona, and San Angelo, Texas." A little humor there.

"Ozell Trask, a Kansan, cum laude Harvard Law School, recently deceased while a senior judge on the U.S. Court of Appeals, Ninth Circuit, completed the foursome. The letterhead was Jennings, Strouss, Salmon and Trask, but Riney Salmon's name was the first in the listing of attorneys, reminiscent of the day when railroad magnate [Edward Henry] Harriman proposed a merger with [George M.] Pullman to form a sleeping car company. 'But what will we call it?' asked Pullman. Harriman replied immediately, 'Why the Pullman Company, of course.'

"The partnership began in the south wing of the sixth floor of the Phoenix Title Building, expanded to the north wing then to all of the seventh floor, then in about 1965 to our present quarters." That would have been in the Arizona Title Building.

"Allow me to shift gears now from history to a series of vignettes of our firm's personalities. All of the incidents I relate really happened. There was a young lawyer from Winslow and Harvard Law School seated in Irv Jennings' swivel chair, feet on the desk, puffing away at one of Irv's Anthony and Cleopatra cigars, dreaming of the day, not knowing that Irv would arrive early that morning, he became attorney general of the United States. But more importantly, he gave us his daughter Ann Kleindienst." That was Dick [Richard G. Kleindienst] of course. He came in about, well he came in 1950, the same year I did but a few months later.

"Then there was our partner Henry Stevens, later of the Maricopa County superior court and court of appeals, now retired in Strawberry, Arizona.

"There was a local lawyer named [W.] Francis Wilson." You remember Francis?

Carlock: Sure.

Duncan: "Francis, he was to Henry Stevens what Moriarty was to Sherlock Holmes, a *bête noire*." Francis, you wouldn't have ever—is Francis still alive?

Carlock: I don't know.

Duncan: I don't know either. He was older than I am and I assume that most people that are, are dead by now.

Carlock: I haven't seen him for a long time.

Duncan: Francis was a sort of a dandy. At a time when—well, you know, a linen handkerchief with the four peaks showing out of his lapel. He didn't wear suede shoes, but . . .

Carlock: He wore white shoes.

Duncan: He wore white shoes. All right. So Henry and Francis were not allies. "His many affections included a carnation in a lapel or a linen handkerchief. He had just completed his year as president of the Maricopa County Bar. Henry, a down-to-earth type looked upon Francis with such disdain, that he rose at the annual election of officers and nominated someone else for the office of immediate past president, the ultimate act of *lèse-majeste*.

"Then there was Riney Salmon having his fun with Francis Wilson in a trial before Judge Phelps, before whom, incidentally, Riney could do no wrong.

Francis had taken the witness stand as to some matters and the old judge, whose profile resembled nothing so much as the great American eagle, took a dim view of this. 'My name is Francis Wilson,' he began. 'I first met the witness when he . . . ' 'I object, your Honor,' said Riney, 'I have no way of knowing what this lawyer is going to blurt out if he proceeds in a narrative form. He should proceed by question and answer if he is going to take the stand.' 'Sustained,' ruled Phelps. 'What is your name?' he asked Francis Wilson. 'My name is Francis Wilson,' answered Francis Wilson. 'And you first met this man when he . . . ' 'I object, your Honor,' said Salmon. 'He is leading the witness.' 'Sustained,' said Judge Phelps."

Can you imagine horseplay like that going on nowadays?

"For those who never knew him, Riney looked, acted and talked like the TV detective in 'Cannon'." Have you ever . . .

Carlock: No.

Duncan: . . . noticed that resemblance? "Except for the mustache. A gutsy guy who will be remembered forever by the local vegetable growers for driving a truck through the hostile and unruly union picket lines during a strike when nobody else would do it.

"Charles Dickens would describe Charlie Strouss as the merriest of men whose customary expression was of intense serious interest in what you were saying. On the inside he was waiting to explode with mirth at the first opportunity. If he had a truly important brief or document he would come down to the office on Sunday, and Monday morning, Marilyn Linlan, his talented secretary, would find a hand-written, finished draft on her desk. It would contain almost no strikes or corrections because Charlie could think it through correctly the first time when he had a pencil in hand. Charlie not only represented Del E. Webb from the time he was a carpenter on the Westward Ho Hotel, he was a father figure to him and those privy to the facts, give Strouss a major share of the credit for Webb's meteoric success."

Let me to skip over something here.

"Political strategy was Irv Jennings' first love and Irv was a master politician. He persuaded Jack [John R.] Williams, his long-time client. . . ."

He [Jack Williams] was with [radio station] KOY for many years and a lot of people will not know who Jack Williams was, but he was a radio announcer and a guy was liked immediately by everybody. He had one of these nice voices like Lou Grubb, that you just trusted him when you heard him and

liked him. And he talked sense, a lot of common sense from Jack. Over a period of time he got interested in politics and Irv promoted him for governor. Well.

"Political strategy was Irv's first love. He persuaded Jack Williams, his client, to run for governor and handled his campaign. The day after the election, Irv and I were holding a happy postmortem when Jack walked in. 'Well, Irv,' said Jack, 'I hope you're satisfied. You've always wanted a governor for your very own.

"Then there were two local doctors, father and son"—I think you know who I'll be talking about—"locked in a bitter dispute. Notwithstanding hours of negotiation in Irv's office, Irv walked with them to the elevator. Sensing it would be a matter of saving face for each, Irv said, 'Why don't we just flip a coin?' 'Agreed.' The father, Irv's client, won. But he never appreciated Irv's services.

"Year after year he would ride his Palomino horse in the annual rodeo parade, sitting proudly in his ostentatious silver-mounted saddle. Finally in desperation, Sophie Mesnar, our sainted bookkeeper, leaned out the window of the Phoenix Title and Trust Building as he rode by and shouted, 'Hey, Doctor, why don't you pay your bill?' That actually happened.

Sophie was one of a kind. She had more people at her funeral than I'll have at mine. And for good reasons, too.

"Then there was the time when Ted Riggins' wife, Elaine, who had a Rabelaisian sense of humor, then Riney Salmon's secretary, told a caller that Riney was not in. 'Will he be back after a little?' the client asked. 'No, I think that's what he went out for,' replied Elaine. Elaine reminds me of the secretary who had received a government inquiry, 'State the number of employees you have, broken down by sex.' She replied, 'None. Our problem here is liquor.'

"Then there was that Christmas party we held one afternoon in the library of the sixth floor"—this is right from history—"about 1954. In the center of the room was a huge oval solid mahogany table which Riney had bought from Southern Pacific when they closed the Apache Lodge at Roosevelt Lake in the early thirties."

Do you remember that? They had Apache Lodge down there. And one of the things that Southern Pacific hoped to do was to get people to ride the railroad train out to Globe and they would take them by bus up to Roosevelt

Lake. And they had this lodge there. It didn't amount to a lot, but it did have a beautiful big table that Riney acquired.

"On that table was laden with goodies to eat and a rich supply of kickapoo joy juice. We rented a piano from Gene Redewell, a piano dealer over on Washington Street, for our receptionist, Ann Knowles, who could play all of the oldies in any key. As you have noticed on these occasions, as the day wears on, there is an increasing compulsion to sing and to dance and to take off one's shoes. Bob Becker dropped in, he was secretary of the Del E. Webb Corporation and of the New York Yankees, which Webb and Dan Topping owned. We poured him a drink in a dribble glass which I had bought at Bert Easley's Fun Shop. It had a cut-glass appearance which concealed the very small holes drilled near the rim. I can still see him dripping and brushing the dribble off of his new Christmas blazer, totally unaware of why he needed to brush it off so often, thinking perhaps he had simply become a messy drinker, or wondering why everyone in the room seemed to be dying with laughter.

"Then there was the bubble-blowing contest we staged between Charles Strouss, Jr. and Dick Kleindienst. Each was given a jar of green liquid soap in which to dip the wire ring. They faced off against each other about eighteen inches. The object was to see who could bombard the other's face with the most soap bubbles. Except that Kleindienst's jar had green hair gel instead of green soap. Try as he might, he could only blow great gobs of gel into Charles' face while Charles had him inundated with bubbles. Not a pretty sight, but a memorable one.

"At the climax of the party, Riney dropped Charles' big heavy leather-heeled shoes out the sixth floor window onto the Adams Street sidewalk, mercifully missing all the merry Christmas crowd. That was our last Christmas party. Never let it be said Jennings, Strouss, Salmon and Trask didn't know how to quit when it was ahead.

"Charles Strouss, Sr., was reputed to be the best appellate lawyer of his time and the judges loved him. If he had ten points upon which he could win a case, he had the guts to discard eight and zero in on two. An instinct for the jugular. It was, 'Bang, you're dead.' So many lawyers have only an instinct for the varicose. The judges appreciated this talent for which he was richly rewarded."

I ended by saying, "There is more, much more. But taking a cue from Charlie Strouss, Good night. Merry Christmas, and God bless you all."

So this was something I did to try to give them a flavor of how the firm was back in the informal days, at around Christmas time.

Carlock: Well, I think it's very interesting. I'm glad you put some of it on the record.

Duncan: Well, it was different then. It was different then. We had one big library room. We had books, also, in some of our offices, and all the tax books, later on, were in Frank Campbell's office. You had some that went over into the bookkeeping. But mainly it was in, just the shelves lined all around the one big library room.

Carlock: You knew where the library was?

Duncan: Oh, boy, did I know where the library was. We didn't do anything important without thorough, thorough research. I don't know whether lawyers do that now or how they find time to do it.

I can give you a story that Henry Stevens told about Ray [Raymond] Allee.

Carlock: Please do. I remember Ray Allee.

Duncan: Pablo wouldn't know, but Ray was a very quiet old-time gentleman lawyer who practiced a lot of estates and civil work, drafting documents and things like that. He had a stutter. It was one that would really tie him up. He was over in Judge Speakman's court, Judge Howard [C.] Speakman. When Ted Riggins got out of law school, he went immediately into Speakman's court as court clerk. Ted tells me this story that actually happened when Ray was over on a case. He was making the transcript which you need to make on a suit to quiet title and file it. Remember that? All right. He was making a transcript and the validity of your decree quieting title depends upon whether you have the right things in your record. Ray Allee was perfectly aware of this. So he had this witness on testifying and he would get tied up with stuttering. He would say, "Wu-were you pupu-pupu-pupu-present?" And on and on he would go. Speakman thought that he could move the thing along and said, "Wait a minute Ray. Let me ask a question or two here." So Speakman started asking questions and Ray stood it about as long as he could. He says, "Wait a minute, Judge. I-I-I want to make a gugu-gugu-good record here and I don't want it all sc-sss-screwed up."

Carlock: Ray was a very careful lawyer.

Duncan: Of course.

Carlock: I saw a lot of him.

Duncan: Of course he was. And Speakman just may have, by taking over the examination, left out the very thing that Ray felt he needed to have in there.

Carlock: Sure.

Duncan: Did you ever hear the story of Lou [Louis B.] Whitney and George [T.] Wilson when Whitney was—here's a couple of the old original giants, trial lawyer giants of our time. It goes back into the thirties, certainly. Whitney was reading from a transcript of testimony and George Wilson came over and stood behind him. Whitney, of course—they tried cases against each other all the time and they liked to put the dagger in whenever they could. So Whitney said, "Your Honor, may I ask what Mr. Wilson is doing standing behind me?" George Wilson said, "Yes, your Honor, I'll reply to that. The reason I'm standing behind him is to see whether or not he is reading accurately from the transcript." So with that Lou Whitney reached around, in view of the jury, and took his wallet out of his back pocket and put it up here in his inside coat pocket and just kept reading. Have you ever heard that story before?

Carlock: No. I have not heard that story before.

Duncan: I've heard any number of people who know that that actually happened.

Let me take you back to a couple more old stories that happened. I was not, well I'll tell you one that I was present at before Judge Faires. In the middle of the summer, trying a case over there was just hotter than blazes. They didn't have even excelsior cooling in the courtroom there and everybody tended to go to sleep and certainly the judge, as he got older, would have a hard time staying awake and especially when the attorneys were droning on making arguments. I was in the county attorney's office then, assistant county attorney. We were trying a criminal case and when we got ready to sum up our cases the judge sort of leaned back and got drowsier than usual. I came to a point in my address to the jury when I said, "And you will recall when this evidence was attempted to be introduced and I said, 'I object, your Honor.'" When I said that, the judge roused up like this, and he said, "Overruled." And went right back to sleep. Nobody said anything. We all pretended not to notice it at all. No one, to this day, no one has ever talked about that, but that actually happened. The judge just heard the magic words and he overruled the objection.

There was another case that happened that the judge told me about. He was trying a case and the evidence had to do with a bottle of whiskey. Back those days there was a brand called Sunnybrook and Sunnybrook had a picture of a naval admiral on it, on the brand. The lawyer was asking the guy on the witness stand, "Did you see this bottle of whiskey?" "Yes, I saw it." "What kind was it?" The witness thought and thought and thought and then he says, "Well, it had a picture of an admiral on the label." About fifteen or twenty stage

whispers came out of the audience, "Sunnybrook!" And that actually happened. Everybody was . . .

Carlock: Everybody knew the name.

Duncan: A great many people, you know, in the audience knew and they wanted to help the witness out at that point.

Here's a story that actually happened, too, involving Irv Jennings. Irv was in the marines. When he got out of the marines and got into practicing law he became the commander of the local American Legion. Back in those days, I'm talking about, this goes back into the twenties, the American Legion was a force to be reckoned with. It had a high membership. He gravitated into trying a lot of cases called the "war risk" insurance cases. If someone was covered by government insurance and they became incapacitated, mentally incapacitated, later on you could recover the insurance. A lot of people had to sue to recover it and Irv developed a big practice in trying these cases before the federal court.

Irv had a guy by the name of Napoleon V. Sutton. He would have died just about the time I came into the firm, in 1950. He lived, I think, over around Chandler somewhere in later years. But Napoleon V. Sutton, really, his elevator didn't go to the top floor. Really didn't. And Irv could not see at all why the government didn't just pay off on this one because this was an open and shut case. But the U.S. attorney for some reason decided that this was one of the cases he was going to defend.

Napoleon was really quite a violent guy and right in the middle of the trial, the U.S. district attorney said something that offended Sutton and Sutton jumped over the table cursing and trying to get to him and the marshals had to restrain him. The first impulse that the U.S. attorney had was to propose to have him handcuffed for the rest of the trial. So Irv said, "That's fine. We'll have him handcuffed."

So here Irv Jennings is trying a case with a client that is so insane that the U.S. attorney has to have him handcuffed for the rest of the trial. Well I guess the outcome of the trial was never in doubt after that point. But Irv was always amused that the U.S. attorney who was trying to prove that he wasn't insane being the first one to insist that he be handcuffed for the rest of the trial.

Carlock: And Irv picked right up on it.

Duncan: Oh, just immediately.

Going back to historic figures, there was a lawyer that came back into practice in 1937 when I was admitted and in the county attorney's office, by the name of Tom [Thomas E.] Flannigan. Tom Flannigan had been in practice in Globe in the early years, and by that time he was not only an old man, I think Tom had bouts with the bottle from time to time. He got down and out and was for a year or two or three in the Arizona Pioneer's Home in Prescott. He came out of the Pioneer's Home and not having anything better to do, came back to Globe and was appointed to represent a guy who had given a hot check to a grocery store over there by the name of Cobb Brothers.

Carlock: I remember Cobb Brothers Grocery Store.

Duncan: Cobb Brothers Grocery, right. So Rouland Hill and I had gotten an indictment against the bum check writer. And away we went to trial, and as soon as the trial commenced Old Tom Flannigan, who presumably didn't know by that time anything at all about practicing law and may not have spent five minutes preparing the case—we thought we could absolutely depend upon that—he rose and said, "Your Honor, I move for the dismissal of this action because Cobb Brothers is not an entity." You know, the indictment said, "having given a bum check to Cobb Brothers." "It isn't an individual, it isn't alleged to be a partnership, it isn't alleged to be a corporation." I looked at Rouland and Rouland looked at me, and he had us. Here's this old guy who didn't even belong in court anymore, really, and he aced us. In five minutes we were out of court.

Carlock: Was there an E.J. Flannigan too?

Duncan: There were at least two boys. One was Oscar Flannigan, that I went to school with at the university, and the other was Ed Flannigan, yes, who was the Gila County recorder for many years. Many years. After, I guess, Sy Kinsman was a recorder. Ed Stuart was the recorder for many years, until the early thirties, and then Sy Kinsman beat him and was the recorder, and then after that Ed Flannigan. They were the two sons of old Tom Flannigan.

You remember a lot of people from over there too, don't you?

Carlock: Yes, sure.

Duncan: Here's some advice I gave to the firm. This is presumably because I'm senior enough to have seen enough of life to have learned something about practicing law.

"This man you have described, as you have described him, is a crook. Avoid whenever possible entering into an agreement with a crook because you

have no reason to believe that he will live up to it and you will have only taken the first step toward a lawsuit. If the agreement is carefully drawn you may have a good lawsuit instead of a bad lawsuit. But good or bad, one in which he will lie, cheat, suborn witnesses to perjury."

Here's some more advice that I gave at one time, just as a memorandum. It occurred to me to leave something with some of the younger guys. "The first bit of advice, when you are approached by a client who has just fired his last two lawyers, run, don't walk, for the nearest exit. Your ego will shout out to show him what a by-god real lawyer is. Don't listen.

The second bit of advice, of all the factors which make a client willing to pay an attorney's fee, one is paramount, and that is how hard did he work for me. No other factor is even close. The results achieved is frequently not even mentioned by clients in surveys.

"This was Riney B. Salmon's magic, quote, 'Let's meet for breakfast at five-thirty in the morning and get after this problem,' he would say. A master of one-upmanship. He would stop negotiations or the final signing of documents at the drop of a cigar ash. 'Listen to this paragraph on eminent domain,' he would say. 'Does anyone in this room know what it means? I don't know what the hell it means. Let's work on it until we know.'

"Quote, 'Mr. Smith is here'—all this is from Riney Salmon talking to his client—'Mr. Smith is here on an important matter. Hold my calls,' he would say in front of a client. 'I don't care who they are. And be sure to see that he gets copies immediately of every document that anyone has. And give him my home phone number, Peg,' he would say to his secretary in front of his client, Mr. Smith, of course."

And I concluded by saying, "For a doctor who would treat us like that, we would kill."

He had the absolute magic of making the client know that what his problem was, was the most important thing in Rineys' life; for all the client knew, it was the only thing that he was going to devote himself to for the foreseeable future and you never had to whip him or beat him to get him to work. He would want to get on it faster than you wanted to get on and work on it, if he had to stay up until midnight or whatever he had to do.

I was surprised. I ran into this years ago. Oh, in 1960 or 1965, at some Bar convention they had a movie of a presentation of a lawyer down in the Houston area, maybe even a small-town lawyer near there, who had done a great

deal of research on what it is that makes a client willing to pay your bill. I had assumed always, the results that I got for him, and certainly the results against whatever adversities you had to overcome to get results for him. He had done research and studied research and polls that had been taken among clients in other places and concluded that "results" isn't even close. The thing that is overwhelmingly stated as to what makes a client willing to pay your bill is "How hard did this guy work for me?" Maybe he lost the case. Maybe you think he shouldn't have lost the case, "But, god, did he work for me."

Well, I'll have to confess that until I heard that presentation, the client was just more of a nuisance than anything else. I got from the client what information I needed and then I wanted to run with the ball. If I needed more, I'd go back to the client, otherwise, "Go away and leave me alone. I'm going to win this thing for you and I'm going to kill myself doing it, maybe, but you're going to get the best I've got." He didn't know this, what was going on in my mind, and in the meantime he didn't know whether I was working hard on the case or not. So in the end, you know you did but he doesn't know you did. So the lesson from that for the younger guy is to make sure that the client appreciates, knows. And let him know by copies of things, by returning telephone calls. Let him know that you are working hard on his case and it means a lot to you. And that nothing else comes even close to that.

Carlock: Yes, I bet that's true.

Duncan: Even a low fee for having won a huge case, nothing that makes him so willing to pay a fee as whether or not, having hired a gladiator, the guy is willing to stand and shed his blood for him.

Well, that came as a rude surprise to me and I'm not sure I cured all my bad habits. But it certainly does make you think. When you see the amount of information they have and documentation for this proposition. Something every lawyer ought to know.

Carlock: Well Riney understood it.

Duncan: Riney understood it, yes. He really did.

Well, I'll tell you a small hero story. When I was president of the Globe Chamber of Commerce and interested in keeping all segments of the economy humming—mostly it was mining of course over there, but we were wanting to exploit everything that we possibly could—the Southern Pacific filed a petition to take off the railroad passenger train that goes from Bowie to Globe once a day.

They wanted me, because I was the president of the Globe Chamber of Commerce and because I wouldn't charge anything for it, to defend that.

The Corporation Commission had set the hearing for a Saturday over there and it was right on the day of our annual invitational golf tournament, which is something that I prized very highly. And I was in the middle of it. This was set for Saturday and I had two more guys to play, one in the morning and one in the afternoon. One of them was Ken [Kenneth G.] Flickinger, who later became the superintendent of contractors. The other was Doctor Foutz, who was a prominent dentist over here. They were over there and I was to play them, one in the morning and one in the afternoon. They set this damned hearing on Saturday. We finished it Saturday morning and I arranged for these guys to both play me at the same time on Saturday afternoon. It was a little bit of a disadvantage doing it that way, but arranged to do it. I was able to prevail. They held the hearing in front of all the town citizens who had come, and there were lots of them there, to make an impression on the corporation commission that we didn't want the train taken off. And we had Indian witnesses there that said, "Look, this is a treaty. That if we agreed to have you run the tracks across the reservation there, that we could ride the train to Globe and here you are taking off the train." I pointed out that the uneconomic aspects of it were not supported by the proper exhibits because they had folded in all of the passenger service with all of everything else. It was a system-wide thing—they hadn't done their homework on it. It really wasn't all that much of a lawyer's victory, it was a political victory because the corporation commission had no intention of letting them take that off. But I was able to try it that morning, get the thing behind us, and make my match in the afternoon, which was something that was on my mind, wondering if I would be able to get there in time.

Carlock: Was the S.P. represented by lawyers at that hearing?

Duncan: Norman Hull. Norman Hull was over there. Norman said to me, he took me off to the side and he said, "I tried to tell them. I tried to tell them we'd just be spinning our wheels to come over here and try this." You see, the corporation commission, being an elected body, does not like to go against the voters, do they? Haven't you ever noticed that?

Carlock: Rusty Wright was on the commission then, wasn't he?

Duncan: He was on the commission then. And Rusty Wright was, you're right, he was a city clerk in Globe for years and years and then he ran for corporation commission. And he was on that commission. You've got a good memory.

I don't know how you keep all these dates straight. Let's see if I have anything else of interest.

Carlock: Well, this is interesting stuff, Clarence.

Duncan: Here's a story you might enjoy. A true story. Everything I've told you is true stories.

In the thirties there was a lawyer over in Globe by the name of Gail Nichols. Gail Nichols did not have the best reputation in town. He had a client that he was representing on a divorce in front of Judge Faires. I wasn't present, but Judge Faires was. This was something that happened in chambers. It was one of these default hearings for a divorce. It was a divorce in which you had to get service by registered mail and so forth and you had to have the affidavit in sixty days before the time that you had the hearing or something like that. That's been too long ago. But there was some thing that he had stumbled on. His client came all the way over here from New Mexico and they were in the judge's chambers. I guess the judge picked this up, their procedural defect, and said, "We can't proceed with this divorce." Well, the client was just irate at Gail Nichols as she could be. When she got through, he said, "Well lady, you wanted a cheap lawyer and you damn well got one." And that was the end of that conversation. So presumably she had bargained him right down to *de minimus*, and that's what he told her, "Lady, you wanted a cheap lawyer and you damn well got one." The judge couldn't forget that.

Tape 2, Side 2

Duncan: Advice to young lawyers. A memo that I sent to members of the firm some time ago, called *Traps for the Young Ones to Avoid*. "The spirit has again moved me to share a lawyer-client axiom: Clients are frequently under stress to the point of paranoia. Underscored, do not appear too friendly to the other side and particularly the other lawyer. Your client may develop unquenchable doubts as to your integrity and loyalty to his cause. These doubts will magnify in proportion to the degree to which his fondest expectations in the case suffer disappointment. You say to yourself, I'm only being civil, even charming to this lawyer. It's part of my softening up process by which I shall better serve my client's interest. Your client sees you greet him like a long lost brother. You are talking to him out in the hall, telling jokes, laughing, smiling. What the hell is going on here? Don't you know he's the enemy?"

"Case in point, a true case. I went through Globe High School with a fine girl. Let's call her Emma. We were close friends. She came to me in Globe for a divorce against, let's call him Bill, who hired Riney Salmon in Phoenix. The four of us arranged a conference here. Now watch this carefully. At the end, Riney asked me to stay, quote, so the two of us could discuss details. Emma wanted to stay in Phoenix. Bill asked for a ride back to Globe with me. Could I refuse? The trap was sprung. Her expectations in settlement were totally unrealistic and could not be realized. Hmmm, she thinks, Duncan had a closed door conference with Salmon and then a two-hour ride with my husband. Later Bill told her during that trip that he had bought me off. She believed it, my protestations to the contrary, and dismissed me. Betrayed by her own lawyer and her good friend. And she will go to her grave believing that."

And that is the honest to god truth. That one occurrence in which I had the opportunity to have discussed, "How are we going to give it to Emma," and then he bummed a ride with me over to Globe. How could I turn him down, I had known him for years. He was a friend of mine. That gave the best foundation possible for her to believe what he told her, he went back and told her. They became reconciled. I'm not sure they're still together, but they became reconciled after that and for purposes of reconciliation he told her, "This is hopeless. We've got you boxed in. We've just bought off your lawyer." She believed it. Still believes it.

Here is the copy of the eulogy that I gave Ozell Trask, which tells you a lot about him. He's by now a sort of a historical figure.

Carlock: Right. Can we have a copy of that?

Duncan: Yes, I'll give you a copy of it. And also a eulogy I did for Ted Riggins after he died.

Carlock: We'll make copies and give these back to you.

Duncan: I've got an extra. You can keep it.

Carlock: All right.

Duncan: It's an odd—I've thought of this increasingly because you'll be—I have a brother that's two years older than I, living in Phoenix. He's got a real good memory, so we get together every now and then and talk about different things. It increasingly occurs to me that, who do I go to for history anymore? Who do I ask? All my folks are dead. All the friends that I grew up with, just about, are dead or have moved away. You go to Globe over there now, will you find any

pioneers? Just a few. Just a few. So all of these things, Globe as it was and law practice as it was, is getting embedded as the ruins of Rome.

Carlock: Well that's the reason for this kind of interview, Clarence.

Duncan: Yes. That's why I'm happy to share whatever I know with you and give you a flavor of the . . .

Carlock: That's why we want a tape of it and transcript too. Each has its own flavor.

Duncan: We were talking to Elias [M.] Romley one time about client relationship and billing your client on hard cases. He had a very hard-fought case, one of these career cases, that he did for a client and the client complained about the bill. He said, "The way I explained it to the client, I said, 'A trial lawyer just has so many good hard-fought cases in his life and you just bought one.'" I want you to know, as long as you're going into my history, that I felt one of the highlights of my professional career was that for twenty years I was chairman of the Ethics Committee. They called it Rules of Professional Conduct, but it was the committee that would write, that would handle all sorts of opinions, informal and written opinions for lawyers in the state of Arizona that wanted to know how to proceed.

In so many cases, if you took the time to try to get out a formal opinion and get a concurrence among the members of the committee, it had become moot. So as chairman of the committee, I had to recognize these things and I had to shoot from the hip, because he either went this way or that way and somebody needed to give him advice, good, bad or indifferent. So I would. And I never had one of them backfire on me. I think I would have understood, if it had turned out that I had really told him wrong and he got in a jam over it. Although I think probably the jam would have been less if he had acted with anybody's recommendation, mine or anybody else's. Particularly as chairman, they would know that he acted in good faith.

But at the time I retired, we had put out more formal opinions than the American Bar Association had put out in all of its history. In the twenty years that I was on there we processed more written formal opinions. Just hundreds and hundreds of opinions that had to be—you know, my phone was ringing all the time, some lawyer, "Here's what I'm up against. I've got a conflict of interest or a possibility of revealing confidential information or some other attorney is about to do this and what do we do?"

I felt that this was, that some member of our partnership really, the partnership itself really owed a duty, corporately, to devote a lot of hours to

the State Bar's problems, to the professional problems. It just happened that I was in a position to do so. Of course, Ozell was on the examinations committee for years and years and there were others active in the bar. But those were our two most active contributions. But I felt real good about that. It's an area that you get comfortable in because you've, over a period of time, read so many opinions and issued so many opinions so that you feel that you know your way around as versus a guy who doesn't even know where to go to find the first opinion. But I was as proud of that as any other thing that I've ever done, I think. We had a lot of good members that wrote a lot of good opinions. I just thought I'd mention that. That had a big part of my legal career right there.

Jusem: What were your duties as chairman?

Duncan: I would get, either by telephone or a letter, a request from a member of the Bar that says, "Here's my situation. What do I do?" Or, "Here's the other guy's situation. Is that ethical?" But principally we limited ourselves to advising the man who needed to have this advice before he could dare to proceed any further.

So then I would have to, I would usually make a, at least a first run on finding out what I thought the law was on it, and try to think of someone on the committee who had handled something of this sort before. If it was of major importance I had my choices on who to send it to and who not to send it to. If it was something that had to be out prompt, I knew who would get it out promptly and who wouldn't.

So I would assign it for a proposed opinion and I would tell them what the time limitation was and we would try to get it done and an opinion circulated for concurrence with at least a majority of the members by a certain length of time. Then I would issue it to the person out of my office.

So I spent a lot of my life doing that. A lot of my career was doing that.

Carlock: I was an ex officio member of your committee for a while, as a member of the committee on examinations and admissions.

Duncan: Yes.

Carlock: I got to have opinions without ever having to be the guy that wrote one.

Duncan: I know from the work that Ozell did on it that that was a bone-grinder, to make out the questions and to grade them.

Carlock: Yes, that was a lot of work.

Duncan: Oh, my god, yes. Ozell was a real jewel.

End of interview.

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Postscript

In this interview, my cherished friend Read Carlock drew me out concerning both my conservative ideology and my political involvement. I am not sure whether I shall be remembered as a lawyer or as an ideologue and polemicist.

Beginning even before World War II, a great part of my life has been spent studying the brutal tyranny of communism, buying reading and loaning books, attending meetings, arranging for speakers, giving speeches, debating opponents, writing articles, making contributions and supporting organizations. It has never been difficult to identify me as a man of the right. I engaged in these enterprises to the end that some day, perhaps even centuries later, the world would be rid of these terrorists.

I never dared to hope that it would happen in my lifetime. During the last year the iron curtain countries in Eastern Europe have been freed. A week before writing this, the Coup failed. Yesterday the communist party was outlawed. Today, as I write this, many of the Soviet Republics are declaring their independence from the USSR.

The fat lady has sung. It is over. There are no longer two superpowers. There is one superpower.

By this I do not mean we will not have serious future challenges. Indeed I believe we will, perhaps many ("When troubles come, they come not as single spies, but in battalions" —W. Shakespeare). Accordingly we should keep well prepared and sufficiently involved to keep smaller matter from escalating.

I choose to believe my efforts, ever so small on the grand scale, helped our cause in some way, but even so I have the great satisfaction of knowing I was right from the beginning about the danger and my critics were wrong.

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