

Arizona Bar Foundation

Oral History Project:

Arizona Legal History

Interview with Hon. Charles L. Hardy
Thomas W. Pickrell, interviewer
December 10, 1990
AV 0412-18

Tucson: Arizona Historical Society



1991

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.



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Introductory Note

Charles Leach Hardy was born in Los Angeles, California on January 24, 1919. He grew up in the town of Nogales, Arizona. He had a great deal of exposure to law while he was growing up, as his uncle, Leslie C. Hardy, was a prominent lawyer who revised the Arizona Code in the 1950s; his father Charles L. Hardy, was a Santa Cruz County Superior Court Judge; and his grandfather, Charles E. Hardy, was a justice of the peace and collector of customs in Nogales. Charles Hardy enlisted in the army and served from 1941 until 1946. After taking the bar exam in July of 1949, he was graduated from the University of Arizona School of Law in September and admitted to the bar in October.

From 1952 until 1955, Charles Hardy served as deputy county attorney for Maricopa County. He was assistant attorney general from 1957 until 1960. He served on the Maricopa County Superior Court from 1966 until 1980, when President Carter appointed him to the U.S. District Court for the District of Arizona.

In 1990, Judge Hardy retired from the bench. He kindly granted an interview on very short notice, one month prior to his departure on a one-year missionary trip to Taiwan for the Church of Latter Day Saints.

The Arizona Historical Society's *Arizona Bar Foundation Oral History Project: Arizona Legal History* would like to acknowledge the help of Mr. Thomas Pickrell who conducted the interview. Mr. Pickrell was Judge Hardy's law clerk and is now currently associated with the firm Sacks, Tierney, Kasen & Kerrick, P.A.

Charles L. Hardy

Interview

Pickrell: We are at the U.S. Courthouse located in Phoenix, Arizona. It is my pleasure to be able to interview Charles L. Hardy, who is the United States District Judge for the District of Arizona. [The date is December 10, 1990.]

Pickrell: Judge, if it's okay, I'd like to start talking about one of your grandfathers, Charles E. Hardy. I understand that he was a judge in Nogales. Maybe you could talk about him and explain how he came to Arizona.

Hardy: My grandfather was born in 1865 in Virginia. When he was really just a young boy, he ran away from home. His father was a minister and his father apparently beat him rather severely. My grandfather couldn't reconcile that with Christian virtues, so he ran away from home.

For a while he worked in a coal mine in either Western Virginia or Kentucky. He wound up in a little town called Scholesville, where a man named Boone kind of took him under his wing and educated him. Formally, I don't think my grandfather went beyond the sixth grade, but when I was a kid he was a very well-read person and really

in great demand as a public speaker. But he married Boone's daughter and my father and my uncle were born in Kentucky.

My grandfather went to work for a railroad and they came out to Arizona in 1894. I think it was called the El Paso and Western Railroad. It ran from Tucson to El Paso. Later he worked for the Southern Pacific of Mexico, down in Mexico.

He must have gotten into politics because when Woodrow Wilson was elected president my grandfather was appointed the collector of customs for the Port of Nogales. In those days that was quite a political plum.

After the Wilson administration, he ran for justice of the peace down there and he was the justice of the peace for about forty-five years. He was also, for a considerable portion of that time, the city magistrate.

Pickrell: I understand your grandfather had three sons?

Hardy: Two sons, and they were both lawyers. They both went to Wake Forest College at North Carolina and studied law. My father was the quarterback of the football team back there and my uncle was the manager of the baseball team. My uncle, Leslie C. Hardy, graduated in 1909 and my father in 1910. Immediately after graduation both of them worked for the Southern Pacific Railroad Company, not as lawyers but in some other capacity.

When Arizona became a state Leslie Hardy was the first assistant attorney general. The first attorney general there was named Purdy Bullard. My uncle stayed on as assistant attorney general for a couple of years and then he joined the law firm of Ellinwood and Ross in Bisbee. He only stayed there a year or two and he left because he didn't like the big firm practice. They had six lawyers. He moved down to Nogales and he and my father practiced law together. They also got into politics. He was elected to the State Senate and my father was the county attorney down in Nogales.

When Les Hardy was first practicing law, he was appointed to defend a man accused of selling liquor to an Indian. The case went to trial. The prosecutor had a bottle marked for identification as an exhibit and offered it in evidence. He handed it to my uncle for his examination. My uncle removed the cork and sniffed the bottle's contents. He then addressed the Court: "Your honor, I have no objection to admitting this bottle into evidence, but I do object to admitting its contents. That is not whiskey." It was formaldehyde! A

jail trusty had drunk the whiskey and filled the bottle with formaldehyde.

Pickrell: When you say "politics", were they affiliated with the Democratic party at that time?

Hardy: Only the Democratic party then.

Pickrell: Was that the only party at the time?

Hardy: It was in Nogales for all practical purposes. There were a few rich people down there who were Republicans but everybody looked down their noses at them politically. Until after World War II, Arizona was as solidly Democratic as was the Deep South. It changed after World War II when so many people moved out here from the Midwest and East.

Pickrell: So Leslie was an assistant attorney general. Did he practice in Phoenix or in Tucson?

Hardy: I honestly don't know. I've always assumed it was in Phoenix, but it may have been in Tucson.

Pickrell: And your father practiced as a county attorney in Nogales.

Hardy: Yes. Both of them went into the military during World War I.

Well, to back up a minute, my father met my mother in Nogales and they were married in 1917. She had come to Nogales from California although she had been born in Arizona, but she was raised in California. When my father went off to the army she moved back to California and when my father got out of the army he joined her in California and opened a law office in Los Angeles. And I and my two brothers were all born in California.

My father didn't like the big city so in 1922 the family moved back to Nogales and my father and my uncle and a man named Frank [J.] Barry joined together to form a law firm. They practiced together until about 1929 or 1930 as I recall. Then Mr. Barry moved to California.

Pickrell: Eventually, I believe, your uncle went on to become, was it a judge?

Hardy: No. The richest man in Nogales in the 1920s was a man named Wirt Bowman. He owned the First National Bank there. For years he was the Democratic National Committeeman in Arizona. Sometime in the late twenties or early thirties, probably the late twenties, he opened a gambling resort at Agua Caliente, south of San Diego.

My uncle was Wirt Bowman's lawyer and he moved to San Diego to work on the legal problems of the gambling resort. He was there a number of years.

Then he returned to Arizona, but he went to Tucson. About the time he returned, the New Deal had come in, Franklin D. Roosevelt was the president, and he became the attorney for the Public Works Administration in Arizona, which was a pretty good job in those days. I think it was that job that took him up to Phoenix and he moved up to Phoenix.

Then when the Public Works Administration phased out, he became a deputy county attorney for Dick [Richard F.] Harless, who was the county attorney then, who was later a congressman from Arizona. In those days, deputy county attorneys could practice law privately, so the benefit of being a deputy county attorney was that there was an assured monthly income and no office overhead of any kind. Anything made over that was just pure gravy.

He was a deputy county attorney until Harless went to Congress in about 1943. Then he practiced law here in Phoenix with Lou [Louis B.] Whitney. Lou Whitney chewed and smoked these cigars and he had a real rugged exterior. He had a cackle of a laugh, but he was a top-flight criminal lawyer. I remember when I first came here there was a fellow named Hufford who had a bar over here on Monroe, between Central and First and he was accused of bribery. He consulted Lou Whitney and asked what he would charge them, him and his wife. Whitney said it would be fifteen thousand dollars. His wife bristled at the idea. The guy said, "Well what are you going to do?" Lou explained it to him, and this guy said, "Well I think we better give him the fifteen thousand dollars." He got the guy off.

Since I've told you that story let me go a little further, because this is interesting. This man was accused of attempting to bribe a federal FBI agent and the case went to trial. That occurred about 1950, shortly after I came up here to practice law. I had a lot of time on my hands when I was first practicing law so I went over to the federal courthouse to watch this trial. I beg your pardon, it wasn't bribery, it was perjury, it was lying to an FBI agent. The man had been interviewed by an FBI agent with a court reporter present. The government had the court reporter on the stand, he was testifying, and he identified a transcript of the witness' testimony which he had taken down in shorthand.

Lou took him on the cross-examination and said to him, "Now Mr. Court Reporter, do you have the notes from which you made your transcript?" He said, "Yes I do." He said, "Do you have them with you?"

He said, "Yes I have." He said, "Will you turn to this part and read it to me?" So the court reporter read the notes. And in the transcript he had this man say something like, "I did this." In his notes he had it, "I did not do this." Just a flat out contradiction. Lou Whitney looked surprised and, "Mr. Court Reporter, how can it be that you say here he did this and here he didn't do this?" He said, "I knew that he didn't mean that he didn't do this. He meant I did this. That's why I wrote it down that way."

So I'm puzzling to myself, now how in the blazes did Lou Whitney learn, get any idea that this guy's notes were different than the transcript? So after the trial I asked him and he gave me this cackle laugh. He had a partner named Fred [A., Jr.] Ironside who was another top-flight criminal defense lawyer and they were puzzling what kind of a defense to make for this man and Lou said, "You know, Fred's always thinking of an angle. He said, 'Why don't we get the court reporter over here and ask him to read to us from his notes?'"

So they called the court reporter and asked him if he would bring his notes over and read it to them and then they just asked about things at random. In the course of this eventually part of what they asked about was the very key notes, but they never let on that there was anything interesting to them. The court reporter left. About five minutes later he came back. It had dawned on him what had happened and he said, "Gee, Lou, don't be too hard on me."

Anyway, my uncle practiced with Lou Whitney and Fred Ironside. Loretta Whitney is his widow and she's still alive.

Bill (W. T.) Elsing once told me an interesting story about my uncle. In the thirties, he represented one of several defendants accused of mail fraud. He moved to allege a crime. During oral argument before Judge Dave Ling, he diagrammed the indictment on a blackboard and demonstrated that it was not a complete sentence. His motion was granted, and the indictment was dismissed. However the Government obtained a new indictment, and my uncle's client was convicted.

About the time that I completed law school in 1949--I think it was while I was still in school--I was at my uncle's office in Phoenix one day when he received a telephone call from Senator Carl Hayden in Washington. Senator Hayden told him that President Truman had that day signed a pardon for his client. My uncle immediately telephoned his client, who was then living in California, to pass on the good news.

Sometime back in the fifties the Arizona legislature decided to completely revise and bring up to date the Arizona Code. The last official revision had been in 1928. There had been a revision in 1939, but it was never adopted by the legislature. Anyway, Les Hardy was appointed as the code commissioner, it was his responsibility to modernize the code, eliminate any contradictions and discrepancies.

He had a staff of young lawyers. In those days there were not many law firms that had law clerks and so for young graduates out of law schools working for the code commissioner was a fine way to get started. And there were a lot of young lawyers here in Phoenix who worked for him.

Les Hardy, in the fifties, was driving a 1937 Plymouth, and he had it until the day he died. And years after, some of these guys who had worked for him, would run into me and they'd always ask me, "Does Les Hardy still have that 1937 Plymouth?"

Anyway, he put together the Arizona Revised Statutes. After that he became the counsel for the Senate Judiciary Committee in Arizona and he worked as that until illness made it impossible for him to work at all. I've forgotten exactly when he died but it was sometime back in the sixties.

Pickrell: Judge, let's talk a little bit about your father. He also was an attorney. How did he meet your mother?

Hardy: I have no idea. In a small town like Nogales, she was a schoolteacher there, he was a lawyer and so they met somewhere and they got married.

Pickrell: And how many kids?

Hardy: Three. I'm the only lawyer in the family. One of my brothers went to West Point and was a regular army officer and is now retired. He lives in Scottsdale.

My other brother is in Texas and he's a sales manager for some electronics firm in Texas.

Pickrell: Judge, do you have any childhood memories that have been important to you in practicing law, or is there any childhood event that you really think was a turning point?

Hardy: No, I don't think so. I always wanted to be a lawyer. I remember that some friend of my father's was at our house once and asked me when I was a little boy, "And what are you going to be when you grow up?" And I said, "I'm going to be a lawyer," and my father bellowed, "Oh,

god, I hope not." I can't think of anything that happened there when I was a kid that affected me in practicing law later.

As I said, I always wanted to be a lawyer. And I was always interested in trials. Of course, when I was a kid a trial was one of the shows in town. We didn't have any television. We got to go to the movies maybe once a week. But often after school I went over to the courthouse if there was a trial going on.

And we had a few interesting trials when I was a kid. One was a prominent rancher named Burt Yost who was accused of killing a cowboy on his ranch. There was a dispute as to whether it was a self-defense or not. He was acquitted.

There was another notorious, if you will, murder case that came down from Tucson. An elderly woman named Mrs. [Louise Foucar] Marshall who lived right across Second Street in back of the women's dormitories at that time, the university's Maricopa and Pima Halls, she lived right across the street from that. Her husband [Thomas Marshall] owned a lot of property in Tucson. One night someone killed her husband and she was accused of the crime. Because of the publicity the venue was changed down to Nogales. Why it got changed there--because of the publicity--I don't know, because everybody in Nogales read the *Arizona Daily Star* and the *Tucson Citizen*, but that's where it went.

She was a little old gray-haired grandmother of a woman. When she took the stand, the judge had the witness chair taken off and had a rocking chair put up there for her to sit on while she testified.

She was represented by George [R.] Darnell who was a prominent lawyer in Tucson. It was Darnell, Holesapple and. . . And I think Avie [A.V.] Holesapple helped him. I can't recall whether it was J. Mercer Johnson or Jack O'Dowd who was the prosecutor. It may have been either of them. But it was a long trial and I vividly remember the testimony of a university student who was sleeping on a porch next door to the Marshall's home. For some reason he was awake and he saw the flash of a gun being fired. He could not say who did it, he just saw it. She was acquitted.

My best friend as I was growing up was a kid named Red Johnson. He and I were newspaper delivery boys. We delivered the *Arizona Daily Star*. When Winnie Ruth Judd was captured--when was that, 1931 or 1929, I've really kind of forgotten--the *Star* put out an extra. Now the *Star* was a morning paper, the extra came out at night

and they sent copies down to Nogales to be sold. Red was out on his bicycle selling these papers and he got run down by a fellow and suffered a brain concussion, was unconscious for three or four or five weeks. I used to go over to the hospital every afternoon to see him just as I got out of school. He eventually snapped out of it and recovered and was okay. But whenever I think of the Winnie Ruth Judd case, I always think of that episode with Red Johnson.

Pickrell: Judge, you are known as having a remarkably calm demeanor. Do you get that from your mother or your father?

Hardy: Well, I don't know.

Pickrell: Or is it something you developed later in life?

Hardy: Well, I might have gotten it from my father. When you put it that way, I think maybe I may have gotten it from my grandfather. He had a very calm demeanor. He could be tough as could be if he wanted to be. Just to give you a little example of what I regarded as toughness on his part, he was a conductor on the railroad in Mexico. There may have been bandits or rebels at one time--the story was that there were some of Pancho Villa's men--anyway, some men stopped the train. They wanted to take somebody off of there. He said, "You're not taking anybody off this train, and the first man who gets up here is going to get his teeth knocked out." They rode off.

But I don't regard my father or mother as being really very emotional.

Pickrell: What college did you go to?

Hardy: The University of Arizona. All my college was at the University of Arizona. I started at the University of Arizona in 1936. I finished in 1949. When I was there after the war, I ran into a fellow that I had known in Nogales. He asked me what I was doing there. I said, "Well, I'm going to law school." He said, "Are you still in college? I thought you should be a professor by now."

When I started in 1936, I only had enough money for one semester. My father had died in December of 1935, and I had to drop out and go to work. First, I went to work for the City of Nogales sweeping the streets. Then I got a job at the First National Bank of Arizona as a messenger, fifty dollars a month pay. About three months later they made me a bookkeeper, but they didn't raise my pay. When I was a messenger one of my tasks was to deliver the pay envelopes to the offices. And not only deliver them but help the auditor fill the pay envelopes. They were paid in cash in those days. There was no

withholding. And I learned that the president of the bank was paid four hundred dollars a month, the vice-president was paid three hundred dollars a month. The cashier was paid two-fifty and the assistant cashiers were paid two hundred. The people who were working as tellers were paid a hundred and a hundred and twenty five, one of them was a hundred and thirty five as I recall. The bookkeepers were paid seventy-five, but I was only being paid fifty. And it occurred to me that there was no great future in banking.

So after I had worked at the bank about nine months I quit. My mother, this was in 1937, my mother and my two brothers had moved to Tucson early in the summer and I quit about November. I went to work for Monte Mansfeld Ford lubricating cars, sixty-two-and-a-half cents an hour, which meant that I made about twenty-five dollars a month more lubricating cars than I did working in the bank.

I worked there several months and then got laid off and had a bunch of different little jobs of one kind and another. I worked in the lumber yard; I worked for somebody driving people around. I was able to get enough money though, to go back to school in 1938. And then got into the service during the war. I was in the service for four-and-a-half years. And went back and finished up in pre-law and then law school.

I and a lot of the people, when we got out of the military after World War II, went to law school in two years. They had an accelerated course for veterans. We got in three semesters each year. They did that by not having any Easter spring break and no summer break.

In 1949, my last semester, I was going to Chester [H.] Smith's bar review. We went at 6:00 in the morning, six until 8:00, classes from 8:30 to 11:30, back to the bar review at 7:00 'til 9:00. We took the bar exam in July before we'd graduated from law school. Some of my classmates who took the bar didn't graduate and they were not admitted to the Bar, they had to take it again. We were admitted about the first of October of 1949.

Pickrell: How big was your law school class?

Hardy: I would guess about sixty people. The Law School building was what I think is now called the Psychology Department down at the University of Arizona. It's right next to the auditorium.

Pickrell: Yes. The old main auditorium there.

Hardy: Right. There were only three classrooms as I recall. The desks were real wide, but they had two students seated at each desk in the

classroom. I don't believe there could have been much more than a hundred, a hundred and twenty in the whole law school. It was not a big school.

Pickrell: Do you recall some of your classmates?

Hardy: Oh, yes. Bob [Robert O.] Leshner down in Tucson; John Flynn, famous for the Miranda Case; Howard Thompson, who was on the superior court; Dick [L.] Greer, court of appeals; Tom [Thomas] Tang here on the federal court of appeals; B.L. Helm, superior court judge in Yuma.

Mel [Melvyn T.] Shelley, who is on the court of appeals, was a year ahead of me, as was his brother [J.] LaMar Shelley. Jack [L.] Ogg was a year ahead of me; he is a former court of appeals judge. Morris [K.] Udall was a year ahead of me. Bill [William C.] Frey was one of my classmates. He was a former United States judge. He's dead now. Mary Anne Richey was a year behind me. She's a former federal judge who's dead now. That's a few of them anyway.

Pickrell: Any particularly memorable professors?

Hardy: Yes, several. One difference that I see when I go to law colleges today as compared with when I was in law school is that today the average of age of law professors appears to be much lower than it was then. When I was in law school, all of the professors were middle-aged men. They all had practiced law and then got into teaching.

Brice [I.] Bishop who is a lawyer here in Phoenix now, he taught us one summer, taught a property course. I don't know how he got that job, but he was a mere lad compared to the other profs over there.

We had some really excellent law professors. Chester Smith was probably the most popular of the professors. He had this bar review course, and for years it was the only bar review course. And he presented it very effectively.

The bar exam, when I took it, included questions on public utilities law, mining law, and water law. I had not had any courses on those subjects in law school. The only thing I knew about it was what I had learned from Chester Smith. I got perfect 5.0 answers on those three questions. If it hadn't have been for that, I wouldn't have passed the bar.

Our tort professor was named [Lester W.] Feezer and he was a character. He was humorous as could be. He was a great admirer of [William] Prosser, and *Prosser On Torts* was kind of the bible in the tort class. In our last year of law school, the State Bar Convention was held down in Tucson and all the last year students were invited to the annual

banquet. Prosser was going to be the speaker. Feezer was ecstatic, we were all going to get a chance to hear Prosser.

So we all turned out for the banquet and Prosser spoke for an hour, one of the duller hours I've ever spent in my life. If you can find anybody who was there they'll agree with you. Judge [Walter E.] Craig, who is now dead, was present once when I was talking about this, and he chimed in, "You're dead right, Charlie. That was one of the worst hours I ever spent." Feezer was heartbroken.

The evidence professor down there was named Claude [H.] Brown and he was very effective. He didn't appear to have much of a sense of humor. He had kind of a hidden sense of humor. I guess that's a better way of putting it.

Pickrell: Judge, law schools today are known for being very competitive, in the sense that the person who gets the highest grades probably will get the best job. That sort of thing. Was that element there in the U. of A. Law School?

Hardy: No. First of all, I can't recall any fellow student who worked as a law clerk with a law firm before graduation. None at all. Some of my classmates went to work for law firms.

Judge [Earl H.] Carroll, who was just in here a few minutes ago, was a year or so behind me and he clerked for the [Arizona] Supreme Court. I guess that was the one clerkship available, the Supreme Court. Each of the Supreme Court justices had two law clerks, and most of them if not all of them came out of the University of Arizona in those days.

Then Judge Carroll and Bill [William E., Jr.] Platt, a superior court judge in Florence, they tied for the top grade in the state bar exam when they graduated and they both went to work out at the Supreme Court. Then Carroll went to Evans, Kitchel & Jenks.

But in those days, most people going to law school contemplated that they would finish and open a law office. They would look for an opportunity to get in with somebody who was in practice. But usually it was on a basis just of officing with them. You would not be working for them necessarily, you would just be officing with them. You just started practicing and hoped for the best.

One source of income for a lot of lawyers when they first got out, in Phoenix and Tucson particularly, was there were no public defenders offices in those days, and young lawyers would be appointed by the Superior Court judges to represent persons accused of crimes.

They could be paid up to one hundred dollars. Usually a guilty plea got them twenty-five dollars. If you went to trial you might get a hundred dollars. That was it. You got appointed. And when you were admitted to the Federal Bar you were almost immediately appointed to represent an indigent in federal court. And you did not get paid for that.

I got an appointment with a man who was accused of burglarizing the post office in Buckeye [Arizona]. He claimed to have an alibi and I went down to Eloy [Arizona] to look for his alibi witnesses. In 1950, Eloy was part of the old wild west. That was just before the days of the mechanical cotton picker and there would be ten thousand cotton pickers come into Eloy for the cotton season and it was a wild town. There were all kinds of homicides and slayings. I went down to Eloy one night and went into this bar looking for this guy and I was the only white person there. The bartender wanted to know what I was doing there. I told him I was looking for somebody and explained why and he said, "Well he ain't here and I don't know where he is." I never did find him. But all this was at my own expense. I didn't get anything from the federal government.

Pickrell: What was your first job out of law school?

Hardy: Well, when I got out of law school, my father-in-law arranged a deal with Elias [M.] Romley, and Moore and Romley's library became my office. I wasn't charged any rent but I did some work for the firm in exchange for the use of the library as my office. I had the use of their secretarial help, too. And actually, they turned over work to me.

Before I graduated from law school my wife and I had come up here and looked for a house to buy. We found a house on the east side of town, \$6,350.00, \$350.00 down, and the rest on a mortgage of about three percent. My monthly payments were \$45.00 a month.

So I wanted to buy the house and the developer wanted a financial statement from me. I said, "Holy cow, I can't give you a financial statement. I'm in college." He said, "We can't sell this house to you unless we know what you're worth." So I talked to Elias Romley about it. He said, "Put down that you'll make three thousand dollars your first year." So I put that down and got the house. And by golly, my first year of law practice I made almost exactly three thousand dollars.

Needless to say, law practice was much simpler in those days than it is now. I don't suppose there were as many as five hundred

lawyers in Maricopa County then. There were only six Superior Court divisions, contrasted with sixty-five now.

There was a consolidated law and motion calendar before Judge [Dudley W.] Windes every Monday morning, and that's where you would go to see all the other lawyers. You knew just about all the lawyers in town. And you know, you could always, if you had any kind of a problem with anything, you could always find some lawyer, ask some lawyer for some help, and he'd give it to you. There was no problem with it.

Pickrell: Were you also doing transactional work? Contracts, wills, things like that?

Hardy: A little, not much. I don't know how to answer that. I had formed some corporations, I had written some wills. But I would say really not much. I did quite a bit of domestic relations work when I was first practicing law, which I hated but which provided pay. I did a lot of subrogation work for some of Romley's insurance clients. I wrote some briefs for Romley on appeals and argued some.

Oh, I wrote one brief on a case that's reported as *Moore v. Southwest Sash and Door Company*. Moore was a contractor and he went out to Southwest Sash and Door to find some wood of some kind. It had to be cut and he was helping run it through this saw. Guiding the wood through it, he got a couple of his fingers cut off. And he sued Southwest Sash and Door, alleging they were negligent in not warning him. The case went to trial and Romley got a directed verdict.

It was appealed and Romley told me to write the brief. I wrote the brief and filed it. Several months later Romley came in and said, "My gosh, you didn't even ask for oral argument in this case." I said, "Was I supposed to?" He said, "Yes, you don't get it unless you ask for it." He said, "But you're okay because they affirmed us."

I went out to argue another case one day. Well, this elderly woman had a housekeeper and the elderly woman was on her last legs. The housekeeper had V.L. [Vivian L.] Hash prepare a will which left everything to the housekeeper. The children of the elderly woman challenged the will, claimed there had been undue influence.

It went to trial, before Judge Struckmeyer, Fred [C., Jr.] Struckmeyer. Hash testified that this woman came in and talked to him about this will, and he prepared it. But he said, "Before I had it executed, I and my secretary went out and talked to the woman to satisfy myself

that this was her will. She said it was and I was satisfied." So Struckmeyer either ruled or directed a verdict in favor of this housekeeper.

It was appealed and I was sent out to argue the case before the Supreme Court. Bill Platt was Judge [Jesse A.] Udall's law clerk then. So when I got out there he asked me what case I was on and I told him the case. He laughed and he said, "Gosh, my judge says that's the most flagrant case of undue influence he's ever seen." So we argued the case and the Court just jumped all over me. And they reversed it.

Pickrell: Eventually you moved on to the county attorney's office?

Hardy: Yes. An associate of Moore and Romley was Bill [William P., Jr.] Mahoney and he ran for the county attorney in 1952. I decided to go with him and worked with him during his campaign.

He was elected--well, he won the Democratic primary. He ran against John Flynn and Charlie [Charles C.] Stidham, who was also a year ahead of me in law school and who was later a county attorney and a superior court judge here in Phoenix. Bill won the Democratic primary and in those days that was tantamount to election.

So Warren [L.] McCarthy was the county attorney, he had not run for re-election, and Bill made arrangements to have me and Tom Tang and Stidham go to work right after the primary election, because McCarthy's people were leaving. And bear in mind now, this was when you could still practice law. And these guys were spending more time practicing law than they were taking care of the county's business.

Tape 1, Side B

So we go to work there before the general election. This is in 1952, the year that Eisenhower first ran for president. When the returns came in that night, the early returns, it looked like the Republicans were winning big in Maricopa County. So it looked like we were going to have a Republican county attorney. It looked that way, really, the next morning when we went to work. But by noon the tide had been burst and Mahoney was elected. But for a while we weren't sure.

Pickrell: Do you recall who was the Republican candidate?

Hardy: I really don't. I want to say Jim [James E.] Hunter. Well, whoever it was had to be kind of a sacrificial lamb, because sometimes the party put it up just to fill out the ticket. I really have forgotten who it was.

I remember one funny thing about the campaign. Bear in mind now that Flynn and I were classmates in law school. As a matter of fact, when we had finished law school, I had borrowed a truck from a friend in Tucson and Flynn and I loaded all our worldly possessions in this one truck and brought it up to Phoenix. One day during the

primary campaign, Dan Cracchiolo and I were out putting up signs for Mahoney. We had permission to put up a sign down at the corner of Sixteenth Street and Jefferson, right across from Eastlake Park here. There was a Flynn sign already there, so Dan and I proceeded to take the sign down. Just as we were taking it down Flynn drives up and wants to know what we are doing. We tell him and he was outraged.

Mahoney had quite a group of lawyers with him. I've already mentioned Tang and Stidham. But Dan Cracchiolo; Liz [Elizabeth] Stover who is a superior court judge now; Charlie [Charles N.] Ronan who later was the county attorney and a superior court judge and who died many years ago, Larry [Lawrence C.] Cantor who is still a deputy county attorney; Bill [William S.] Andrews who later was on the Board of Supervisors here and was one of the people responsible for my becoming a superior court judge, Jim [James H. Jr.] Green who died last year; Joe [Joseph F.] Walton who died last year; John Francis Connor who was a superior court judge before he went to work for Mahoney, and then died a few years later; and Jim [J.J.] Caretto who had been in the civil division under McCarthy and then Mahoney and who died several years ago.

When I became a deputy county attorney the salary was two hundred and fifty dollars a month. Mahoney persuaded the legislature to raise it to four hundred on the assurance that we would not practice law on the side.

Really, I never did understand how people could practice law on the side there. We were always busy, busy, busy. A lot of work and there was just no time for that sort of thing. I had to conclude that a lot of these lawyers who were practicing on the side were just letting the county's business slide, go. They just weren't taking care of it.

But I don't know what the situation is like in the small counties, whether they can practice on the side anymore or not. I know long after they could not in Maricopa and Pima they could and still do in the small towns. But that may not be true anymore. I don't know.

Pickrell: Bill Mahoney is a name that's very prominent in Democratic politics. Was he responsible for your becoming involved in Democratic politics?

Hardy: No. I was active in Democratic politics down in Tucson. You ask anybody down there they won't remember me, but I was active. When I got up here to Phoenix in 1950 I ran for precinct committeeman in my precinct and was elected. No, I wouldn't say that Mahoney was responsible for my being in politics. We just happened to think alike.

I might tell you something about Judge Tang though. Tang and my wife were classmates in high school and then he and I were classmates in law school. He got called back into the service during the Korean War. In 1952 when Mahoney was running for county attorney I ran into Tang on the street one day. He had just gotten out of the service. I asked him what he was going to do and he said he didn't know yet. I said, "Well why don't you go to work for Bill Mahoney in his campaign for county attorney? If he gets elected you can be a deputy county attorney." He just kind of shrugged his shoulders.

He was on his way over to the courthouse and he went up to Judge [Francis J.] Donofrio's division to watch something that was going on there. After he had been there a while a bailiff came in and said, "Are you Tom Tang?" "Yes." He [the bailiff] said, "You're wanted on the phone." He went to the phone and it was Bill Mahoney. He told him, "I'd like to have you come aboard and help me in my campaign." I had gone back down and told him, Mahoney, about Tang, that he'd be a good guy to get. So Tang agreed and came along. And he became one of the deputy county attorneys. That got him into public life and later he was a superior court judge.

Do you know the story about how he lost out of the superior court judge?

Pickrell:

No.

Hardy:

Well, Tang was an excellent judge and he became the juvenile court judge. He had a case where two young men, both seventeen or eighteen, beat up and killed another one. He had to make a decision whether to treat them as juveniles or as adults. He decided to treat them as juveniles, which meant that the longest they could serve any time was until they were twenty-one. The newspaper was outraged and the public was outraged.

I can't recall what year this happened, but he was up for re-election and had no opposition and he made it. But the next time he was up for re-election he had opposition. Fred Heine ran on the basis of this juvenile case and Tang was beaten by him.

When [Dennis] DeConcini ran for Senate, Tang was his Maricopa County manager and that's what got him the [U.S.] court of appeals appointment, which was a good choice.

Pickrell:

Were there any memorable cases that you had when you were a county attorney?

Hardy: Well, I had a case called *State v. Berg* which went up to the Supreme Court. It's importance is that it upheld the breathalyzer as a means of determining whether a person was under the influence of alcohol or not. As a matter of fact, there is kind of a little funny story about that.

A lawyer named Newman [W.] White represented the defendant in that case and he and I stipulated to a fact situation. In those days you could certify questions of criminal law to the Supreme Court. We stipulated to a fact situation to get a ruling from the Supreme Court.

I was out at the Supreme Court one day and Judge [Marlin T.] Phelps, I was walking by Judge Phelps' office over there, and he saw me and he said, "Hardy, come in here. I want to talk to you. This stipulation that you and White have submitted, it's left out a few things. If you could see Mr. White and see if you can get another stipulation and we'll add these other facts and maybe get a little stronger case."

So I got hold of him and he immediately smelled a rat. He wouldn't do anymore stipulating.

Wait a minute. Let me think of some memorable superior court cases when I was a deputy county attorney.

My last year or so in the superior court I was a civil deputy. I handled all the eminent domain cases. The biggest case was a case widening Thomas Road from Twenty-fourth Street to about Fortieth Street. A couple of the cases there went up on appeal. As I recall, we prevailed on them.

I don't remember any really big cases. When I was trying criminal cases I had a real variety of cases but nothing significant.

Pickrell: From the county attorney's office I believe you went to the attorney general's office?

Hardy: No. I made a mistake. I left the county attorney's office and went out to Scottsdale with a lawyer who unfortunately was more of a real estate developer or a real estate speculator than a lawyer.

I did, what we called it then, become a special assistant attorney general. I worked just part time in the attorney general's office. Bob [Robert] Morrison was attorney general then. I handled a couple of condemnation cases for the state, represented the real estate commissioner, advised the real estate commissioner.

I stayed out at Scottsdale a year and realized that was a losing effort. This was in 1956 and Scottsdale was still a small town then. It had not really begun to grow yet. There were only Milton Bissell and myself and two other lawyers, George [W.] Botsford and Kenny

[Kenyon T.] Palmer. And Palmer was not a practicing lawyer really. He was a guy with a law degree who was a real estate developer. He and a fellow named Garland developed Carefree [Arizona].

So after a year I decided this won't do. So I went to work for Morrison and he assigned me to the highway department. I filed the first condemnation cases in Arizona to acquire right-of-way for the Interstate Highway System. The first cases we filed were down in Tucson. I was there a couple of years trying condemnation cases all over the state.

Let me back up a minute. It's tough to represent the government on any condemnation case. An owner can always find an appraiser who will come in with an appraised value of what the owner thinks his property is worth. To be fair, the government can always find an appraiser to come in with what the government thinks it's worth. Because, you know, it's just all a matter of opinion. But usually the owner wants a heck of a lot more than it's really worth.

One of my cases involved right of way in what they called Mule Pass. When you go to Bisbee from Tombstone you used to go up over Mule Pass. Today you go through a tunnel. The state was acquiring the right of way for this tunnel. Well at that time at the top of Mule Pass there was a roadhouse and the guy owned the property through which they wanted the tunnel. Well, obviously it's going to throw him out of business. But loss of business is not compensable under the law of eminent domain. You are only buying real estate and you are only paying for damages to other real estate.

I had an appraiser, Mark Klafter, down in Tucson, who was then one of the really top appraisers in the state. This fellow, I've forgotten his name, was represented by a lawyer in Bisbee whose father was the publisher of the paper there and was kind of the spokesman for Phelps Dodge Corporation. I can't think of this fellow's name. His last name was Moore.

Klafter said that this taking was worth about \$1,600.00. The owner came in with evidence that it was worth \$80,000.00. We tried to a jury.

In a condemnation case, even though the government is the one that brings the action, the owner had the burden of proving the value of the property.

So this owner's lawyer had the right to make a closing argument. He started his closing argument about 4:00 in the afternoon and he

didn't finish until about 6:00. I figured that after about 4:30, every minute he was losing about \$500.00. The jury gave him \$3,000.00.

I had another case. I tried it in front of Warren McCarthy in the superior court. This was down on the freeway between Gila Bend and Casa Grande. This man had this roadside business and the freeway was going to go behind him instead of right in front as it had for years. This was an old man who was dying from cancer or something or other. They brought him to the courtroom in a wheelchair.

His expert witness was a man who had a roadside business between Buckeye and Gila Bend and this guy dabbled in real estate. He got on the stand and testified how this man was losing a hundred thousand dollars, or so. I got him on the cross examination the next day, well, I had had him on cross examination before the recess and learned that the only time he had ever been out to this man's property was one day when he was in Gila Bend and one of the gasoline distributors, Shell, Union distributor, asked if he wanted to go out and see where the new freeway was going to go. He drove out with him and they saw the thing and he drove back. That was the only time he had ever even seen the property. But he knew about property that was sold out at Ajo [Arizona] to justify what he was saying.

So I had him on cross examination the next morning and I'm just guessing and I asked him, I said, "You went out to the property again last night, didn't you?" He said, "Yes." I said, "What time did you get out there?" "Oh, it was about ten o'clock." I said, "It was dark, wasn't it?" He said, "Oh, the moon was shining." I said, "But you walked around and looked at it. Did that cause you to change your opinion?" "Oh, no. It reinforced it."

I argued that he wasn't qualified to testify. McCarthy overruled me and I took a beating and it was affirmed on appeal.

I had another case up at St. Johns. The owner's name was Rockwell. He was represented by Earl [P.] Platt. I was talking to one of Earl's grandsons the other day, told him I had known his grandfather and had had a lot of cases against him. This kid said, "My grandfather has kind of gotten out of practicing law. He has devoted his interests to his ranch." As a matter of fact, Earl really was more of a cattleman than a lawyer. But he was a tough man when he was a lawyer.

We go to trial in St. Johns before [J.] Smith Gibbons, who was the superior court judge, and a jury. I knew before trial that Earl was going to bring in evidence that somebody had offered Rockwell

something for the property and he was going to use that offer as evidence of value. Well, that's not the law and I was all prepared for him. He calls this witness and I stand up and object to him testifying and tell the judge I have memo on this point. It's just about noon so the judge takes the memo and we recess.

When we come back from lunch, the little county law library is up next to the judge's chambers, and I walk in, there are books open to eminent domain and I can tell he has been reading up on offers. We go back into court and the judge overrules me and lets him testify.

Then when we argued to the jury. Earl gets up and he calls every juror by name, "Mr. Johnson, Mr. Shumway, Mrs. Smith," and, "You and I have lived in this county all our lives. Our parents came here and built this up from a wilderness. And Mr. Rockwell came out with them. Are you going to let the state take Old Man Rockwell's property away from him without paying him a decent price?" The case went to the jury on a Friday and by 6:00 in the evening we've not yet got a verdict. Dick [L.] Greer was the county attorney then and I wanted to get back to Phoenix, so I went over to Dick's house and asked him if he would take the verdict. He said he would. And he said, and I was surprised, he said, "Charles, if there was one piece of advice I would have given you, I would have said, don't let Earl try that case in front of Smith Gibbons." I said, "Now you tell me."

I tried another case over in Safford [Arizona]. I was hired by Bob Morrison in 1958. Wait a minute. In 1958 I was working for Morrison and was elected the county chairman, Maricopa County Democratic Central Committee. There were a lot of people that claimed that that was improper, that I couldn't be involved in political activity because of the Hatch Act, but I was. Morrison ran for governor that year and got beaten badly after being smeared all over a lot of the papers. And Wade Church ran for the attorney general. Now the attorney general's office had its own candidate, a fellow named Barney King who was kind of an ineffectual type. Church beat him hands down.

So Church cleaned out the office but he was afraid to throw me out because I was the county chairman. So instead, he installed a couple of other people over at the Highway Department to keep their eye on me. I went to trial on a case over in Safford against Guy Anderson. Guy Anderson was the biggest lawyer in Safford, both in terms of practice and size, and he was kind of a huge evil-looking man.