

Arizona Bar Foundation

Oral History Project:

Arizona Legal History

Interview with Hon. Charles L. Hardy
Thomas W. Pickrell, 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.



Contents

Arizona Bar Foundation Oral History Project Historical Note

Photograph of Charles L. Hardy

Contents	i
Introductory Note	iii

Charles L. Hardy interview

"My grandfather was born in 1865 in Virginia"	1
"When Arizona became a state Leslie Hardy was the first assistant attorney general"	2
"My father met my mother in Nogales and they were married in 1917"	3
"My uncle was Wirt Bowman's lawyer"	3
"The benefit of being a deputy county attorney"	4
"Lou Whitney chewed and smoked these cigars and he had a real rugged exterior"	4
"Just a flat out contradiction"	5
"Les Hardy was appointed as the code commissioner"	6
"When I was a kid a trial was one of the shows in town"	7
"All my college was at the University of Arizona"	8
"When I got out of law school Moore and Romley's library became my office" .	12
"Law practice was much simpler in those days"	12
"Moore v. Southwest Sash and Door Company"	13
"The most flagrant case of undue influence"	14
"Bill Mahoney ran for the county attorney in 1952"	14
"Mahoney had quite a group of lawyers with him"	15

"Something about Judge Tang"	16
"I had a case called State v. Berg which went up to the Supreme Court"	17
"I filed the first condemnation cases in Arizona to acquire right-of-way for the Interstate Highway System"	18
"Mahoney got hold of me one day and asked me if I would help them get the Arizona delegation lined up for Kennedy"	21
"The nominating committee then met in a room upstairs in the Westward Ho" . . .	22
"The Crippled Children's Services in Arizona"	24
"I went on the superior court at the end of 1966"	25
"The system for assigning cases to the judges"	25
"Often I went to the older judges to solicit their advice and suggestions"	27
"John Burke had left Minneapolis one step ahead of disbarment"	27
"One of the greatest things that ever happened to the bench was the adoption of the present method of selecting judges"	30
"DeConcini wanted to recommend me for appointment to the district court, which frankly surprised the hell out of me"	32
"And that was it. That was the confirmation hearing"	34
"There is an enormous amount of civil rights litigation now"	35
"The advantages of being a federal judge"	35
"When my father was a superior court judge"	36
"I gave a man a death sentence once"	37
"Sentencing people is tough"	38

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 dumbest 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 dumbest 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. Its 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.

He had a real red face that when he got mad the blood would rush to his head and he would look like Satan incarnate. And we go to trial on this piece of property. This property is owned by a man named McEwen who is a Mormon bishop. It's in a little community just about thirty miles west of Safford. I can't think of the name of it now, but just before you get to the Indian reservation. We are trying this case and these two guys who are there to check up on me, both of them are as tall if not taller than I and they are both real dudes. They are dressed in flashy suits, and while I'm sitting up there trying the case, they're sitting behind me and they're kind of slouched down in their chairs and giving every woman who walks by the eye and so forth. So Guy Anderson makes his closing argument to the jury and he's telling the jury, "Are you going to let these fancy dudes from Phoenix take Old McEwen's property away from him?" So we took a beating on that one.

There was another funny thing that happened in that case. In the preceding election, there was a new superior court judge and a new clerk of court, both new. Consequently the superior court judge had hired a new bailiff. The case went to the jury in the morning and we recessed for lunch, came back after lunch and somebody said, "Where's the bailiff?" They couldn't find the bailiff. The jury deliberated in the justice of the peace courtroom. They found him in there with the jury. He was sitting in there while they were deliberating. So I made a motion for a mistrial, which was denied. And we appealed it. I think the case may have been appealed, but it was affirmed.

Pickrell: Well, I guess eventually you returned to private practice.

Hardy: I returned to private practice and went with Streich Lang, well it was then Kramer, Roche, Burch and Streich. I kind of thought I got out of politics when I went to practice law. But in 1960 Kennedy was running for the presidency and Bill Mahoney and Stewart Udall were supporting him.

Mahoney got hold of me one day and asked me if I would help them get the Arizona delegation lined up for Kennedy. I was really kind of an Adlai Stevenson man at that time. I say "kind of" because when I was the county chairman, the national democratic chairman, he was from Indiana, Paul Murphy, was out in Arizona. Mahoney and I had dinner with him at the Arizona Club one night. We were talking about people like Stevenson and [Estes] Kefauver and Kennedy and he said that one of the problems with Stevenson was that he could never make up his mind about anything. A brilliant man but he could never

come to a conclusion. I thought, "Ah, that's not the kind of person you want as a president." But I still was kind of for him in 1960, until Mahoney asked me to help him out. So I agreed to help him out.

Stewart Udall had all of the counties in Arizona pretty well lined up for Kennedy, but Maricopa was the problem. In 1956 the Young Democrats tried to get their candidate elected as county chairman. We got beat by the old crowd, badly, but we learned our lesson and two years later we were better prepared and that's when I got elected county chairman. So I had a nucleus within the Young Democrats who helped me, and some old Democrats for that matter, who helped me get elected county chairman to work on to try to get the Kennedy delegation lined up.

We had meetings and meetings and talked to precinct committeemen all over the county and trying to find out where everybody stood. Essentially most people were either for Kennedy or for Johnson. The conservatives were all for Johnson. Interestingly enough, had Johnson been the Democratic nominee in 1960 the *Arizona Republic* would have supported him over Nixon.

So the state central committee assembled in Phoenix for their convention to pick the delegation to go to the convention in Los Angeles. We figured that the old pros would do something to steal this thing from us. Sure enough they did. Joe [Joseph F.] Walton was the state chairman then and he called the convention to order and then he immediately called for a report of the nominating committee. Now we hadn't heard of any nominating committee. Right away I got on my feet, "Point of order. No one from Maricopa County has been appointed to a nominating committee." Joe blustered with this, "Well, I appointed them." I told him, "You don't have the authority. The county delegation decides on it." So he took a recess. It was about 10:00 in the morning.

Then for about four or five hours there was all this tugging and hauling and my name and the name of Francis Burns, who had succeeded me as the county chairman, were put up for the nominating committee. It finally went to a vote about three o'clock in the afternoon. I beat him by one vote, which put me on the nominating committee.

The nominating committee then met in a room upstairs in the Westward Ho. I wrote down the names of the people from Maricopa County who were to be delegates and alternate delegates without

consulting anybody, just wrote them down, and broke a lot of hearts. And outraged a lot of people who thought they should have been on there. But I named every one of those people.

One of the hearts I broke was John [P.] Frank's. John wanted to be on there because he aspired to be the solicitor general of the United States. He thought that if he could be on the winning bandwagon he could make it. I didn't put him on there because Joe [Joseph E.] McGarry in that firm was the president of the Young Democrats and Harold [R.] Scoville had been the county chairman. Now wait a minute, that's not right. Harold Scoville had done something. Anyway, there were two people from that law firm already there. I didn't put Scoville on either. I put McGarry. I put on a man from Mesa who was a [Stuart] Symington advocate. And I put on some people from Maricopa who were pro-Johnson, but it didn't do him any good because we had voted on the unit rule. The state could vote the whole thing. As I say, Stewart had the whole rest of the state just solidly lined up.

This was about April of 1960 and just before the state convention Kennedy came to Arizona. He flew into Tucson in the morning and he was met there by the county chairmen from all Southern Arizona. He flew then up to Flagstaff for a luncheon talk and invited all these county chairmen to go with him. Up there were all the people from Northern Arizona. When he got through there he invited them to fly down to Phoenix with him for a speech that night at the Westward Ho. Of course, all these guys from these little towns were just goggle-eyed with all the attention they were getting. They were all for him, boy.

There's another interesting thing about that, though. I don't know whether you know Bill [B.L.] Helm or not. He was a superior court judge in Yuma. He was a classmate of mine. A very quiet person. Oddly enough, he was the county chairman in Yuma County. To know him, you'd not think he was a political type at all.

Harold Giss was the senator from Yuma County and he was the powerhouse in the Arizona State Senate in those days. My uncle really worked for him. Giss was the chairman of the Senate Judiciary Committee, and he was the one who decided what was voted on in the Senate. He really ran that Senate. My uncle really admired him. He said that Giss read every bill through. My uncle said that Giss once called him about something that West had published and said, "Didn't they make a mistake?" My uncle checked into it and they had made a mistake. And it was Giss had caught this thing, not a lawyer. He was

a pro-Johnson man. But Helm brought with him the proxies of all the state committee members that couldn't come and had enough to out-vote Giss.

So we got the Arizona delegation committed to Kennedy. When we went to the national convention Arizona was the first state to vote for Kennedy. I think Alaska passed, Alabama went for Johnson, Arizona was next and we went for Kennedy.

As a result of that Mahoney became the ambassador to Ghana. Udall became the Secretary of Interior; [Carl A.] Muecke became the United States Attorney; and there were a lot of other little plums, a lot of little patronage jobs. A lot of people from here got jobs back in Washington.

Pickrell: From there you eventually wound up on the state superior court?

Hardy: Yes. When Sam [Samuel P.] Goddard was elected governor there was some kind of an alleged scandal involving the Crippled Children's Services in Arizona. A lot of money being wasted or spent improperly. He called me one day and asked me if I would consider taking an appointment to the Crippled Children's Services Board. He said, "We've got to clean up that mess out there." Well, I would take it. I had to get senatorial confirmation. I got it all right.

By law the board consisted of five persons, two of whom had to be practicing physicians. One of them was Joseph Ehrlich who was a prominent cardiologist here in town. The other was a prominent orthopedic surgeon in Tucson.

I quickly found out that all these allegations in the newspaper were greatly overblown and I reported this to Goddard. He didn't pay any attention to it. He was always making cracks to the press about that mess out there and we've got Charlie Hardy out there to clean it up. I told him, "Sam, there's nothing out here to clean up." The really unfortunate part of it was that what he was saying just outraged Ehrlich who was a Democrat, and a good Democrat. He was just furious about it.

Being on the Crippled Children's Services Board was an interesting experience and I learned a lot, really, about medical politics. Medicare was just coming in at that time.

The Crippled Children's Services in Phoenix was really started by a doctor named Henry Running. He organized some of the doctors and they got a little facility out on McDowell Road, kind of a little mini-hospital, and they were taking care of indigent children, providing

medical services to them, all free. Each of one would devote a day a week to working out there, all free of charge. In Tucson they had just a little clinic, they didn't have a hospital. But again, doctors performed these services free.

But Medicare was coming in, and the first indication we had of the changing times was that the anesthesiologists informed us that if there was money to be paid for their services they wanted to paid. They weren't going to do it free anymore. Both of these doctors on the board were outraged by that. Ehrlich referred to the anesthesiologists as the dregs of the profession. But they got their way and eventually all of the doctors were being paid.

Well, in 1966, the Democrats controlled the Board of Supervisors. Two of the Democrats were Bill Andrews who had been in the Pima County Attorney's office and [L. Alton] (Pat) Riggs, who was a lawyer out in Tempe and who had been one of my allies in the political tussle involving the county committee and the delegations up there.

And in 1966 I think it was [John R. "Jack"] Williams was elected governor and the Republicans got control of the board of supervisors. So I approached Pat and Billy and suggested that they establish a new superior court division. I told them if they would I was sure I could be Goddard's appointment to it. So they established one and I got Sam to appoint me to the superior court and I took office on January 29, 1966. Eventually you became the presiding judge of that.

Pickrell:

Hardy:

I was made the presiding judge after I had been on the court just a year. When I went on the superior court at the end of 1966, Yale McFate was the presiding judge.

The system for assigning cases to the judges was kind of a combination of a master calendar, individual calendar. It wasn't working very well and Yale and a committee had spent a lot of time trying to figure a way to straighten it out. They went over to Los Angeles and watched their system. And he had come up with a plan for it that was all ready to implant and right after he publicly announced the plan, the Arizona Supreme Court just jerked the rug out from under him, relieved him as presiding judge and appointed another judge, Fred [J.] Hyder, to be presiding judge.

Fred spent a year of doing nothing and at the end of that year the Supreme Court appointed me to be presiding judge. Why, I have no idea whatsoever. Maybe they thought because I was one of the

newest judges I would be less affected by any kind of cronyism or anything like that. I never asked anybody why.

Being the presiding judge in those days was a fairly simple job. When I took the bench there were twenty-one divisions, only twenty-one. You know there are sixty-five now. I, Howard [V.] Peterson and John Van Landingham, who was blind. We came on the bench at the same time; I was Division 19, John was 20 and Peterson was 21. It was a much easier job, I'm sure, than it is now.

I was talking to [C. Kimball] Kim Rose, the present presiding judge, the other night. I said, "Do you know all the superior court judges?" He said, "I know them by sight, but I'm not sure I know the names of all them." But you know, sixty-five of them, that's a lot of judges. The Maricopa County Superior Court is the second largest court of general jurisdiction west of the Mississippi River; only Los Angeles is bigger.

Pickrell: When you were the presiding judge was there a good atmosphere amongst the judges?

Hardy: Oh, yes.

Pickrell: Could they talk to each other about their problems?

Hardy: Yes. Let me back up just a minute there, Tom. When the Supreme Court pulled the rug out from under McFate, the Supreme Court directed that we go into an individual calendar system where each judge has his own calendar. Which really was the correct move. Really. Studies since have shown that individual calendar courts turn out cases much more quickly than do master calendar courts.

Yes, the judges met every month, as I recall. And of course there were a lot of Republicans and a lot of Democrats. I never saw a time when the judge's political views affected what the court did.

Tape 2, Side A

Each judge appointed his own probation officer. In many cases the probation officer was the judge's campaign manager when he ran for election. Often it was some retired law enforcement person. There were no women judges then--yes, there was, Lorna Lockwood was. She had a man as a probation officer. I concluded that we ought to have a woman probation officer. I got the approval of the Board of Supervisors to hire a woman in addition to the twenty-one men. There was a woman who was a juvenile probation officer whom I wanted to hire.

One of the judges, Huck [Harold D.] Martin who was a Republican, thought that we should have a Republican woman. It turned out that von Stantilf was a Democrat, so he wanted a Republican in. As a

matter of fact, he put up his own secretary, who was eminently unqualified to be a probation officer. The Republican judges just told him to forget it. They just backed me up all the way.

You could go to the judges. I consulted--Judge [Irwin] Cantor used to be right next door to me and I frequently consulted with him. Later, he went to domestic relations and moved somewhere else and Judge [Paul W.] LaPrade was next to me. He and I consulted.

But often I went to the older judges like Yale McFate or [Warren J.] McCarthy and [Robert L.] Myers to solicit their advice and suggestions. You know, not only about being a presiding judge, but about problems I had in various cases, what I should do or shouldn't do.

I had one interesting experience which eventually had some constitutional results. Judge [Morris] Rozar was appointed, I suppose by Governor [John R. "Jack"] Williams, to the superior court. At the next election when he had to run, he was opposed by a man named John Burke.

John Burke had come out to Arizona from Minneapolis several years before and had left Minneapolis one step ahead of disbarment. They claimed he was an ambulance chaser. When I was practicing law, I had a case against him. The only contact I ever had with him was during the deposition.

Well, Burke ran against Rozar. The name of the person in the county election office, who ran that, was John Burke and his name was always in the newspaper, John Burke, John Burke. You know, when you are an average voter and you're looking at the names of two candidates for an office and one's name is Burke and one's name is Rozar and that's all you know about them, who are you going to vote for? You are going to vote for Burke. So Burke got elected.

At our judge's meetings he always had something to say about everything and nothing bright to say about anything. One day about 11:00 in the morning I get a telephone call and it's Burke's bailiff.

My chambers were in the second court building, across Washington Street from the old courthouse. Burke's chambers were in the old courthouse, up on the third floor. The bailiff asks me if I can come over right away.

So I come over right away and go up to the third floor, get off the elevator, walk down the hall. There at the end of the hall is the bailiff and two lawyers waiting for me. If you've ever come up on a serious accident where somebody's been killed or seriously injured,

there's something about the expression on the faces of people that is kind of a sense of shock that you get. These people had that same expression on their faces as I walked down the hall. I was thinking to myself, "My gosh, what's happening?"

Well, they had been arguing a motion for a directed verdict in front of Judge Burke and the jury's not to come back until that afternoon. I'm told that Judge Burke is something of a chain smoker, so if the jury's not in the courtroom, he smokes on the bench. And this morning he's so drunk that he's having difficulty getting his lighter to his cigarette. He's all over his face. And they want me to do something about it. I tell them, "Wait a minute, wait a minute," I said. "John Burke is an elected superior court judge, and I'm an elected superior court judge. I don't have any power whatever here. If you want to do something about it you'd better get out to the Supreme Court." And I left.

That afternoon, a little after 1:30, I get another phone call asking me to come back. I come back over there. "What's the problem now?" "Well, Judge Burke has passed out and we can't get him up." I opened the door into his chamber, there he is passed out on a couch. So I call Art Johnson who was a police officer back in Minneapolis before he became a lawyer, he knew Burke, and I told him to get down here and get Burke home. I went in and excused the jury until further notice.

Not long after that, about 4:00 or 4:30 one afternoon, I get an excited call from a captain of the Phoenix Police Department. He wants to know if he can come over and talk to me right away. I said, "Certainly, come on over." He comes over and he's really agitated. I said, "What's your problem?" He said, "It's Judge Burke." I said, "God, what's he done now?" He said, "Well, the other night we got a report that somebody had been rolled in Harry Wilson's bar." There used to be a bar where the park is now. Right on the corner there catercorner to the second courthouse, right across from it there was this bar, Harry Wilson's. It was frequented by drifters and winos and losers and Burke's in there one night and somebody lifts his wallet. And he calls the police in. They are concerned because they've got a superior court judge.

But that's not all. He also frequents a bar up on North Seventh Avenue that's run by some guy who the police have reason to believe has Mafia connections, a blackmailer.

And that's not all. A prostitute tells an officer of the vice squad that there's a superior court judge who has offered her a hundred

dollars if she'll turn a trick with a guy in front of him. The officer scoffs at her and the gal says, "I tell you, I'm telling the truth. Why don't you come with me and you'll see. You'll see what I'm telling you." So he agrees and they go out to a motel out here on East Van Buren, the Caravan Inn. They go to this room and--this is from the officer's report--he goes in and here's Burke lying in bed. The officer says the sheets are down so that he's bare shouldered, concludes he has nothing on. Well, the deal he'd made with the prostitute was he would go in and confirm who it was and then he'd start protesting, "Oh, you didn't tell me someone else would be here." And he walks off and leaves.

So the captain has dumped all this on my lap and I was wondering, "What in the hell can we do about this?"

Shortly before this time, California had amended its constitution to authorize the disciplining of judges. Do they call it the judicial commission now? All right. And I was aware of that. Well, that weekend I'm talking to my mother-in-law, who spent eight terms out on the Arizona Legislature and knew her way around politically. I'm telling her about this problem with Burke. I'm telling her, "God, there's nothing we can do about it. We don't have any way of getting him out of office." I tell her about this California thing. She says, "Why don't you go out and talk to Senator Porter?" He was the president of the Senate and he lived in Mesa. She thought he was level-headed and listening.

So I call Senator Porter and I said I've got to talk to him and told him I've got a problem. He told me to come on out. I went out there and I showed him these materials the police department had given me and he was aghast. And I told him about the California thing, the California amendment. He said, "But the unfortunate thing though is that the time has passed for introducing any new legislation. We can't do it unless we can get unanimous consent." He said, "I'll tell you what I'll do. The leadership of both houses meets for lunch out at John Haugh's place every Wednesday"--Haugh was the Speaker of the House--"and I'll take it up with the boys and see what we can come up with."

By sheer coincidence, John Frank had been talking with John Haugh, not about Burke but about we need something like what California has. So Haugh is aware of that there's a device to take care of judges who go astray. And the leadership agrees that something

should be done and they get the Democratic leadership to agree also. They get it on a unanimous consent calendar and they refer to the voters an amendment to the constitution which created this commission and it was passed the next election. Burke resigned from the bench right after it was passed.

Pickrell: Well, it sounds like Burke was a pretty bad character. You've also had an opportunity to meet a lot of excellent judges on the bench.

Hardy: Oh yes. Although I will say, one of the greatest things that ever happened to the bench in Maricopa and Pima Counties was the adoption of the present method of selecting judges. Before that happened judges ran for election. They ran in their party primaries and if they were nominated then they ran non-partisan in the general. There was no designation of party. But in general most people knew who they were. As a matter of fact the Republicans gave their candidates money. The Democrats never did, they never had any money.

But as a consequence, a lot of judges were, whenever they ruled on anything that might be controversial, were kind of looking over their shoulder to see what the public might be thinking about this sort of thing. I've had at least one judge tell me, "I don't care what the law is, if the public wants something else that's the way I'm going to rule." And you know, the last year, the last election before they changed the selection method, all of the judges running against incumbents were all strict law-and-order guys. One candidate had billboards that were "strictly for law and order." He had a picture of handcuffs on the billboard instead of the scales of justice.

Pickrell: When you were under the election system for selecting judges, did most judges run unopposed?

Hardy: Yes. I never had any opposition. Once a fellow who was in the legislature announced that he was going to run against me. I was later told that Richard Kleindienst, who was then the attorney general of the United States, told him, "You're not running against Hardy." He didn't run.

But you're right. Most incumbents were not opposed. The newer ones might be, you know somebody might get some unfavorable publicity like Tang would be, but generally they were not.

Pickrell: And that is the method in which Sandra [Day] O'Connor became a judge, isn't it?

Hardy: Yes. I don't recall whom she ran against. She might have run for a vacant position.

Another significant event occurred while I was the presiding judge. As I have said, when I came on the bench, each Superior Court judge appointed his or her own probation officer, who worked only for the judge who appointed him. As a result, the probation officers of the probate judge and the two juvenile judges worked only at supervising persons their judges had placed on probation; they did not have to prepare presentence reports. The growing criminal caseload made it imperative that we be able to utilize all of the probation officers, and lead some of us to believe that additional officers would be needed. I began to lobby my fellow judges for the establishment of a probation office administered by a chief probation officer.

Most, if not all of the judge-appointed probation officers were opposed to the idea, and they had considerable influence with their judges. They did not want to give up their autonomy, and they were fearful that qualifications would be established that would result in their dismissal. We overcame their fears by grandfathering them into the department. With that accomplished, the judges were willing to deprive the old timers of their autonomy.

The first chief probation officer, a retired navy officer named Short, was a disaster. He tried to run the department like a ship and incurred the enmity of most of the probation officers. We replaced him with another man who also proved to be a disappointment. The third time, we found the right man, Henry Duffy, who succeeded in creating a professional department.

Pickrell: While you were judge you threw your hat into the ring to become a chief justice of the Supreme Court.

Hardy: Not the chief justice. [Ernest W.] McFarland was on the Supreme Court and he decided to retire. He told me beforehand that he was going to retire and suggested I run for the job. And I ran. Fortunately I was beaten by [James] Duke Cameron.

Pickrell: Why do you say "fortunately"?

Hardy: Well, I wouldn't be here today if I hadn't been. But I said a few minutes ago that the Republicans supported their candidates. Cameron spent fifteen thousand dollars more than I did during the election. And he got fifteen thousand dollars from the Republican Central Committee.

Had he not spent it he would have beaten me anyway, I think. He was much better prepared than I to run and he did something which was a real coup in my book. He had the support of organized labor, which is usually pro-Democratic. But when he had been on the Court

of Appeals, at one time one of the panels out there handled nothing but Workman's Compensation cases and his votes tended to uphold the victims. And organized labor thought that was great.

Pickrell: So you served as a superior court judge for . . .

Hardy: Thirteen and-a-half years.

Pickrell: And then you were appointed to the federal bench?

Hardy: Yes.

Pickrell: Can you tell us the background of how you came to be appointed to the federal bench?

Hardy: Yes. I was not the first choice. Senator [Dennis] DeConcini wanted to recommend Nick [Nicholas] Udall but the Justice Department would not accept him because they said he was too old. And the Justice Department was adamant about it. I received a call in October of 1979, one Sunday afternoon in October, from DeConcini who was out at a hotel here and wanted to know if I could come out and talk to him. I really had no idea what he wanted to talk to me about. He told me he wanted to recommend me for appointment to the district court, which frankly surprised the hell out of me.

I later learned that what caused him to focus on me was that independently of one another, when John [P.] Frank and Danny [Daniel] Cracchiolo learned that Nick Udall was not acceptable both men said to DeConcini "Well, if you want to appoint a Mormon why don't you appoint Charlie Hardy? He's a Mormon." So that's how I got his recommendation.

Now this is in about mid-October and DeConcini tells me that he hopes we can get everything processed so I can be confirmed by Christmas. By Christmas the FBI has not even started their investigation of me. They started just about Christmas and then weeks go by. We're into like March maybe.

I know that before I will be nominated, that the president is awaiting the recommendation of the American Bar Association and no one has interviewed me from the Bar. So finally I called somebody back at the Department of Justice who was kind of a liaison man with all the new appointees and asked him when the American Bar was going to investigate me. "Haven't they?" "No." The very next week I get a call from a lawyer in Los Angeles. He's all apologetic; he's been tied up in a trial. And he's over here within a couple of days to talk to me and to talk to other people around town.

I get the recommendation and the president submits my name. It's presented and then there's some maneuvering around there before DeConcini can get--I was getting ahead of myself.

When it's known that I'm being appointed I get a questionnaire from the American Bar Association, a questionnaire from the Association of Women Lawyers or something like that.

What was this amendment that the women wanted a few years ago to give them, equal rights?

Pickrell: The Equal Rights Amendment.

Hardy: Yes. Well, I was not in favor of the Equal Rights Amendment. I put that down on the questionnaire. I thought, "Boy, I'm going to catch it when this woman comes out here." No woman ever showed up. They had run out of funds to send someone over to interview me.

I got a questionnaire from the minority counsel of the Senate Judiciary Committee and I filled that thing out with care.

Then I was instructed to go back to Washington for a confirmation hearing. Judge [William Cameron, Jr.] Canby and I went back on the same day. It was the day that the news broke that an attempt to rescue the hostages in Iran had aborted.

My instructions were to report to this guy in the Justice Department first thing in the morning. I left there and he told me to be sure to call Senator [Barry M.] Goldwater. And of course, DeConcini was sponsoring me.

So I went over to Goldwater's office and he told me that he couldn't attend my confirmation hearing because he had just received a call to go to the White House, they wanted to talk to him about this Iran thing. When that was over he had to fly to Colorado Springs to the Air Force Academy for something.

Then I went over to DeConcini's office. The hearing itself, the hearing room was in DeConcini's office building. When the hearing commenced there were three men sitting up on the stand there. The chairman was Senator [Michael] Baucus from Montana. I had no idea who the other two were. I figured they were senators from somewhere. DeConcini got up and made a pitch for Canby and a pitch for me. Then Baucus relinquished the chair to him and he took over. About then I learn these other two men there are not senators, one is the counsel for the majority and one's counsel for the minority. Then DeConcini asked me some perfunctory questions. Then he asked the counsel if they had any questions. I remember the guy on the minority

side said, "No, Senator [Strom] Thurmond thinks that Mr. Canby and Judge Hardy are well-qualified." And that was it. That was the confirmation hearing.

Then DeConcini had some problems getting the full committee together to consider the recommendations. He eventually did and he got it approved.

Right after I took the bench I went back to Washington for an orientation course of a week. There were about thirty of us. Several were men and women who had been recommended to be judges but who had not yet been confirmed and a lot of them were fearful that they were not going to be confirmed. It turns out really they all did get confirmed but they were real concerned about it.

Pickrell: I just wanted you to reflect a little bit on some of the major cases that have come down while you have been a lawyer or have been a judge. This has been really an extraordinary three or four decades, while you've been practicing, for changes in the law. For example, *Brown v. Board of Education*.

Hardy: Well, I think that the most significant case to come out of the Supreme Court so far as the courts themselves are concerned is the *Miranda* decision.

When I was a deputy county attorney there was no *Miranda* rule. In effect criminal defense had very few rights of any kind. They had a right to a speedy trial, they had a right to representation by counsel. They had that right in Arizona by statute, but you know, as *Gideon v. Wainwright* established, they did not have that right in other states. But the *Miranda* case really changed the rules. Not only so far as questioning suspects is concerned, but its principles there broadened it into the other areas of search and seizure and that sort of thing, and made criminal cases enormously more complicated than they are today.

The *Brown v. Education*, well of course it was an important case for the people of the United States, particularly for Black people and other minorities. There's been a lot of litigation that arises out of that since then, but not an overwhelming amount.

Pickrell: I believe there has also been a considerable amount of litigation here in Arizona over voting rights.

Hardy: Yes, there has. As you know, Arizona is one of the states that is kind of under Justice Department supervision to be sure that any time we change laws affecting the election of public officers that we don't somehow rig it to favor any one group over any other group.

I had one of those cases, involving the changes in the board of supervisors districts in Yuma County a few years ago. And kind of upheld what had been done down there.

I guess there's one other significant amount of litigation, though, that has occurred in, possibly starting about the time I became a judge of the superior court, [and that] was in civil rights litigation. There is an enormous amount of civil rights litigation now, both in terms of sex, race, age discrimination, also violation of constitutional rights. We have a tremendous number of cases coming out of the, primarily, the state prison system, although some of it's out of the county jail system, of alleged violations of prisoner's rights.

Pickrell: Did you preside over the case involving the closure of East High School and Phoenix Union [High School]?

Hardy: Yes. There again there was a claim of racial discrimination and I ruled against it. Really what it amounted to is that a bunch of parents out there didn't want their kids to have to go so far to high school when they were at East High. [Frank] Haze Burch was on the Phoenix Union High School Board when East High was created. It was right at the edge, the east edge of Phoenix and Haze said he really opposed that; he said that was just the wrong place to put a high school. That it ought to be somewhere where it was more centrally located to draw in students.

Pickrell: Could you talk about some of the significant differences between being a federal judge and being a state judge. Is the work load a bit lighter?

Hardy: The work load is considerably lighter. When I was a state judge I was only on civil cases. I had a case load though, of about twelve hundred cases. As a federal judge my total case load of both civil and criminal is about four hundred.

On the other hand, a lot of those cases in state court are rather minor cases and really never get to trial. The cases in federal court, in general, there is more money involved, there are more frequently likely to be public issues of some kind or another involved and they can take a lot more time.

One of the advantages of being a federal judge is that a federal judge has two law clerks. And from time to time, because of the nature of a judge's case load, a federal judge may be able to get an additional law clerk to help out because of some complex litigation assigned to the judge. The superior court judges do not have law clerks per se. Many

of them, each judge can appoint a bailiff and many of them appoint law students, law graduates as bailiffs for a year, who then act as law clerks.

I might say, going back to that, when I became the presiding judge, well, when I became a superior court judge I took my secretary from private practice with me to the court. Technically she was a bailiff. When I became a presiding judge, I persuaded the other judges that each judge should have a secretary who was qualified as a secretary. To get the board of supervisors to go along with that we agreed to give up one bailiff, so that each judge could have a secretary. So each judge over there now has only one bailiff instead of the two they used to have.

One significant difference in Arizona between being a superior court judge and the federal district judge is that in any case tried without a jury, in state court the judge makes findings of fact and conclusions of the law only if requested by the parties. In most cases they are not requested. In federal in every case tried without a jury the judge must make findings of fact and conclusions of law. And furthermore the Ninth Circuit has stated time and time again, the judge must make his or her findings and conclusions, not just blindly accept what the parties present as findings of fact. That is one big difference.

Pickrell: Do you find that you feel a significant amount of independence in your decision making because you have lifetime tenure?

Hardy: Oh, yes. Well, no I don't think--I started to say yes, but that's not true. I have always believed, even when I was an elected judge, that I should call them as I see them, whether it hurts or not.

Oh, heavens, when I was a superior court judge I've been picketed, I've had all kinds of hate mail, people calling me and cussing me out. But I've never let that influence me.

No, I think the nicest thing about a lifetime appointment is just the security. You know you've got the pay forever. As long as you don't do something to make yourself impeachable.

When my father was a superior court judge, one night a salesman from Tucson, named [Lon] Blankenship, had been down in Nogales selling whatever he sold and was driving back to Tucson and he picked up a hitchhiker named [George J.] Shaughnessy. Shaughnessy had come out here from New York. His brother-in-law was the custodian of the National Guard armory, and as a matter of fact, was my Boy Scout-master, and Shaughnessy was staying there at the armory with his brother-in-law.

That night he broke into the weapons room and helped himself to a loaded forty-five pistol and took some forty-five ammunition. Blankenship picked him up as a hitchhiker and they were driving north to Tucson. About fifteen miles out of town Shaughnessy pulled this pistol on Blankenship, made him drive off the road, and then shot him. Dragged his body off the side of the road. Of course he had already got blood all over himself. Took Blankenship's money, took his car, drove up to Tucson, registered in the Pioneer Hotel registry with blood all over his clothes.

The hotel called the police and the police didn't have any report of any wrong-doing. But Blankenship's body was discovered very quickly and the alarm went out and the police in Tucson put two and two together and they arrested Shaughnessy.

He was prosecuted for first-degree murder. Counsel was appointed to defend him. I don't know why I was in the courthouse the day this occurred. It may have been the day the trial was to begin, I don't remember. But anyway, counsel made a motion in open court to continue the case. My father denied it. Counsel said, "In that case, the defendant pleads guilty."

Now in those days there were no Miranda rights and you didn't have to inquire as to a knowing and willing waiver of his rights or anything, and my father was kind of taken aback by it. But he set down a date for sentencing. Then a few weeks later my father sentenced Shaughnessy to die.

My mother was convinced that this was one of the things that contributed to his [my father's] death. She said that he really anguished over what to do about the case. As a matter of fact he went up to Tucson and took a room there and spent two or three days in the hotel by himself thinking about this thing, trying to figure what to do. My mother told me after he died that it really tore him up. He sentenced Shaughnessy to die and Shaughnessy was executed eventually.

My father told me once that when he was a kid there was a public hanging in Tucson and he witnessed it. And he said it was one of the most horrible things he had ever seen.

My mother's maiden name was Dorothy Leach.

Pickrell: Judge, were you involved in sentencing where they were sentenced to death?

Hardy: I gave a man a death sentence once. It was set aside. His name was Knapp. He was convicted of setting his two little children on fire. He

was recently indicted again by the attorney general. The only thing the state really had against him was he confessed. But his confession was really dubious in a sense. The defense now has some evidence that the whole theory--I couldn't believe that these two little children, one was only two and one was younger than that, could have set a fire. The defense has gotten some evidence that they could have somehow, I think.

Really, his wife could well have set the fire. But as I say, he confessed. And one thing that kind of influenced me was, shortly after he confessed his in-laws came out to the sheriff's station somewhere out in Mesa and he never protested to them, they made me confess or anything like that. He never said, I didn't do it or they made me confess or anything like that.

Sentencing people is tough. Although in recent years the legislatures have made it easier for judges because so many sentences are mandatory. The judge has no discretion. In the federal system now we have these sentencing guidelines which severely limit a judge's restrictions. So it's just easy to follow them.

But it's still tough because frequently the sentences called for are just so unreasonable. I recently sent a young Mexican woman away for five years on a narcotics charge. Although in a sense she knew what she was doing, her husband had dragged her along on it. But there were the sentencing guidelines. No discretion.

But the public wants people sentenced. Members of the public want everybody sent to prison except for members of their own family, their own friends. Without exception, everybody should be in prison. Only when it happens to them do they say, "Oh no, not my boy. He's different."

Pickrell: Judge, thank you very much. It's been a very interesting conversation.

Hardy: Well, that's nice. Thank you.

End of interview.

Index

- Anderson, Guy 21
- Barry, Frank J. 3
- Bishop, Brice 10, 21
- Blankenship, Lon 37
- Botsford, George W. 18
- Bowman, Wirt 3
- Brown, Claude H. 11
- Bullard, Purdy 2
- Burch, Frank Haze 21, 35
- Burke, John 27-30
- Burns, Francis 22
- Cameron, James Duke 31-33
- Canby, William Cameron 33, 34
- Cantor, Lawrence C. 15, 27
- Caretto, J.J. 15
- Carroll, Earl H. 11
- Church, Wade 20, 21
- Connor, John Francis 15, 31
- Cracchiolo, Daniel 15, 32
- Craig, Walter E. 11
- Darnell, George R. 7
- DeConcini, Dennis 17, 32-34
- Donofrio, Francis J. 16
- Ehrlich, Joseph 24, 25
- Feezer, Lester W. 10, 11
- Flynn, John 10, 14, 15
- Frey, William C. 10
- Gibbons, J. Smith 20
- Giss, Harold 24
- Goddard, Samuel P. 24, 25
- Goldwater, Barry M. 33
- Green, James H., Jr. 15
- Greer, Richard L. 10, 20
- Hardy, Charles E. 1
- Hardy, Charles L. (father) 2, 3
- Hardy, Leslie C. 2-6, 23
- Harless, Richard F. 4
- Hash, V.L. [Vivian L.] 13, 14
- Haugh, John 30
- Helm, B. L. 10, 23
- Holesapple, A. V. 7
- Hunter, James E. 14
- Hyder, Fred J. 26
- Ironside, Fred A. Jr. 5, 6
- Johnson, Art 28
- Johnson, Red 7, 8
- Klafter, Mark 18
- Kleidienst, Richard 30
- LaPrade, Paul W. 27
- Leshner, Robert O. 10
- Lockwood, Lorna 26
- Mahoney, William P. Jr. 14-16, 21-24
- McCarthy, Warren J. 14, 19
- McFarland, Ernest W. 31
- McFate, Yale 25-27
- Morrison, Robert 17, 18, 20
- Myers, Robert L. 27
- O'Dowd, Jack 7
- Ogg, Jack L. 10
- Palmer, Kenyon T. 18
- Peterson, Howard V. 26
- Phelps, Marlin T. 17, 18

Platt, William E. Jr. 11, 14, 19

Prosser, William 10, 11

Richey, Mary Anne 10

Riggs, L. Alton 25

Romley, Elias M. 12-14

Ronan, Charles N. 15

Rose, C. Kimball 26

Rozar, Morris 10

Running, Henry 25

Shelley, J. Lamar 10

Smith, Chester H. 9, 10

Stidham, Charles C. 14, 15

Stover, Elizabeth 15

Struckmeyer, Fred C. Jr. 14

Symington, Stuart 23

Tang, Thomas 10, 14-17, 31

Thompson, Howard 10

Udall, Jesse 14

Udall, J. Nicholas 32

Udall, Morris 10

Udall, Stewart 21-23

Walton, Joseph F. 15, 22

White, Newman 17

Whitney, Lou 4, 5

Williams, John R. "Jack" 25, 27

Windes, Dudley 13