

Arizona Bar Foundation

Oral History Project:

Arizona Legal History

Interview with Fred C. Struckmeyer, Jr.

Roger C. Mitten, 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.

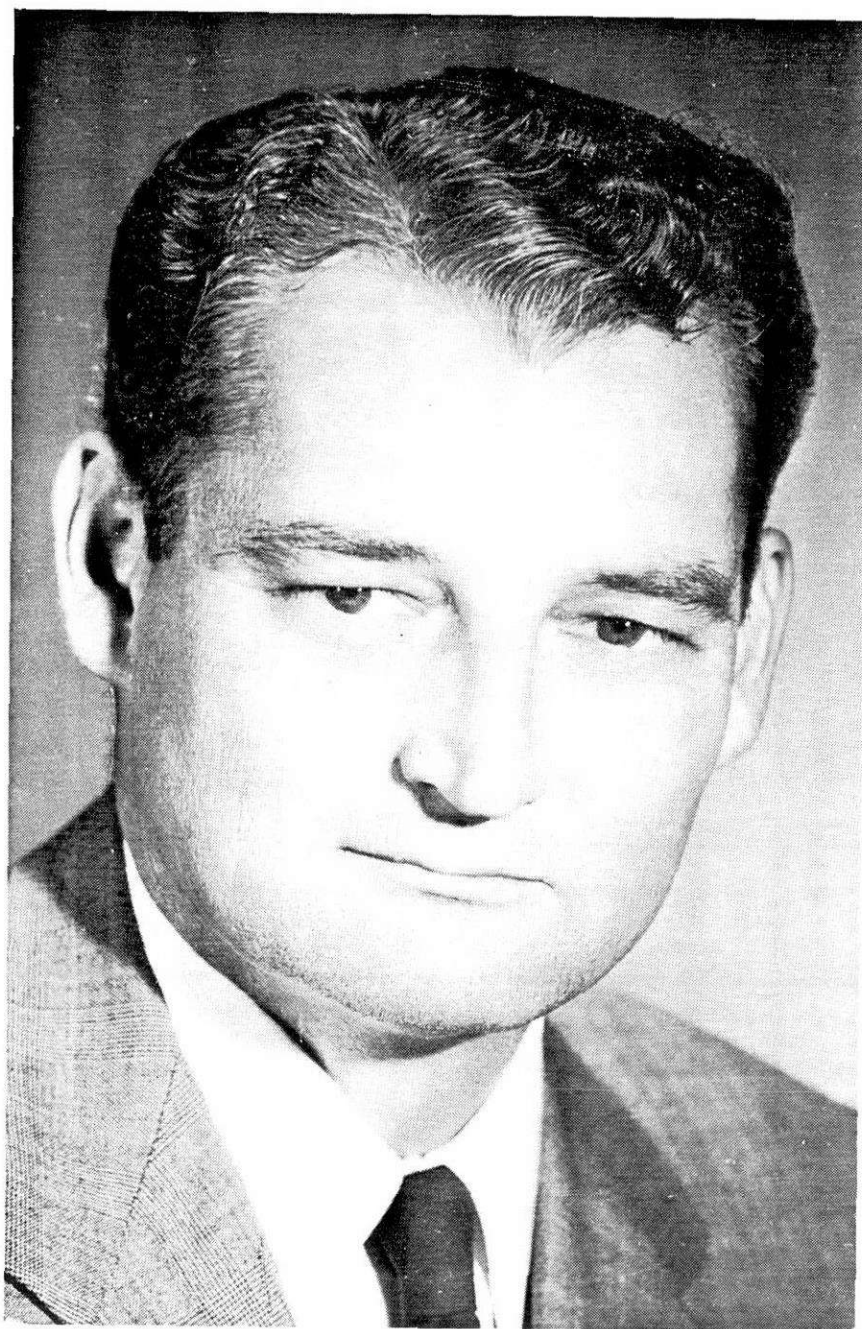
In 1987, the Board of Directors of the Arizona Bar Foundation expressed an interest in continuing to document the history of the legal profession in Arizona on a state-wide basis. In particular, the Board felt that the collection of oral history interviews with senior members of the State Bar would stimulate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



Fred C. Struckmeyer, Jr.

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Introductory Note

Justice Struckmeyer granted this interview to the Arizona Bar Foundation Oral History Project on May 21st, 1991. Roger C. Mitten, of the firm Mitten, Goodwin & Raup, conducted the interview.

All Arizona Bar Foundation Oral History Project interviews are tape recorded and transcribed. Anyone wishing to listen to the interview may do so at the Arizona Historical Society Library, Tucson. Please ask for interview *AV 0412-22*. Copies of this transcript are sent to the narrator, the interviewer, the Arizona State University School of Law, the University of Arizona School of Law, the Arizona Bar Center and the Ninth Judicial Historical Society, Oregon. All original materials are housed at the Arizona Historical Society Archives, Tucson.

An interview with
Justice Fred C. Struckmeyer, Jr.

Mitten: It's May 21, 1991. We're at Fred Struckmeyer's house in Phoenix. I am here as a result of his kindness to talk with him about his life in Arizona and his life as a judge. [Pablo Jusem of the Arizona Historical Society is also present.]

Fred, I want you to know that you're in complete control of this interview. The interview is for purposes of the Bar Association and the Arizona Historical Society, as I told you on the phone. If I ask you a question that's sensitive to you or that you prefer not to answer, that's fine. There's no obligation that you have to . . .

Struckmeyer: There may be a few sensitive areas in which case I'll indicate it.

Mitten: Precisely, and we'll just go on to other things.

Struckmeyer: All right.

- Mitten: After we're through, Mr. Jusem here will have this written up and you'll have a chance to read it and go over it and make sure that it's accurate and . . .
- Struckmeyer: As to grammar and that type of thing.
- Mitten: I just want you to know that you're in charge of this. Any time you want to stop, of course we'll stop, bathroom or get a drink or whatever. I just want you to know that. I wouldn't participate in it if it was any other way.
- Struckmeyer: Excuse me, but would you like a glass of water to start this?
- Mitten: I'm fine, thank you. We had a lot of fun, didn't we, Saturday night at the clerk's reunion? Do you remember when we started that, Fred?
- Struckmeyer: No, I don't remember what year that was started.
- Mitten: You know how that came about? I went to a movie in law school on Justice [Oliver Wendell] Holmes and his clerks had a reunion every year. Of course he was on the Supreme Court of the United States. I think second longest or something. A very long time. I saw that and I thought, "Isn't that a fun thing," never thinking that I would clerk for a Supreme Court Justice myself. When I came out from Chicago I met Jerry [Jeremy E.] Butler and Joseph [W.] Contreras and I told them about the movie and I said, "Do we do that?" You know, does somebody do that for Fred? They said, "No, but we ought to." I think our first one was 1966. So we had twenty-five of those, I think. Does that sound about right?
- Struckmeyer: That sounds about right. I enjoyed every one of them. Particularly this last one was really hilarious, because it got off on comedy things that had happened.
- Mitten: Really. Talking about the old truck. We'll do some of that today too. (laughter) You know all the fun things we did together, that was—you have had a group of men and ladies who have been very loyal to you over the years, I think.
- Struckmeyer: Yes, they have.
- Mitten: No matter how you ruled on the cases they have always felt that you were a good friend. I remember when I left the Supreme Court after clerking for you for a year and going to start in with Fennemore Craig, you said, "Roger, I'll never rule in your favor unless you deserve to win, but I promise I'll always read everything you submit." I always thought that was a wonderful thing, because knowing how harassed you were as a justice and how difficult it was to get that pile of papers read, that always meant a lot to me because I knew that at least I'd have one person up there reading. So

often you feel no one has read what you have written and you go up there and it's kind of preordained, you know.

Struckmeyer: Sure.

Mitten: I think we must have something like thirty or thirty-five clerks now. Does that sound right? You were on the court since when? 1955?

Struckmeyer: Yes. And that year was the first year that the legislature appropriated money for clerks. Strangely enough, or interestingly enough, there wasn't an appropriation for me because the judges that were on the court went to the legislature and they each one of them asked for the legislature to give them an appropriation for a clerk. But the person I followed didn't do that because he was leaving the court.

Mitten: That was Judge Rawghlie [C.] Stanford, was it?

Struckmeyer: That was Rawghlie Stanford.

Mitten: My god, yes.

Struckmeyer: He never asked for one. See, Rawghlie was a sort of a saving type of person anyway. And I'm not even sure he approved the use of clerks. (laughter)

Mitten: I remember when his son was on the superior court bench and I tried some cases in front of him.

Struckmeyer: Rawghlie Junior.

Mitten: Yes, right.

Struckmeyer: A very likable person.

Mitten: Yes, a very nice man. He got sick and died.

Struckmeyer: Kind of early in . . .

Mitten: Yes. I think he was not even in his sixties. Maybe late fifties or early sixties.

Struckmeyer: I think that's about right. I think your recollection's good on that.

Mitten: A nice fellow. And then he had another son I thought was a lawyer, who was developing land in Paradise Valley [Arizona]. I think old man Rawghlie had a lot of land, didn't he? The judge?

Struckmeyer: He had quite a bit of land, but his son wasn't astute enough—well, I won't say this. But anyway, he was very astute about financial matters. He went out there in Paradise Valley and that area north of Scottsdale and around Scottsdale and bought up land at two or three dollars an acre which he sold for four or five hundred dollars an acre, which would cost you fifty thousand dollars an acre now.

Mitten: How about two hundred and fifty thousand dollars an acre?

Struckmeyer: Oh, yes. I believe it.

- Mitten: I live near some of the land that he bought. I remember talking to him. I agree with your comment about, he wasn't known as an astute lawyer, that one, but he was certainly an astute land dealer.
- Struckmeyer: Yes, he was.
- Mitten: He didn't pretend to be the next Everett Bennett Williams or something.
- Struckmeyer: No, and he really didn't solicit business that hard.
- Mitten: Right. So we've had a lot of clerks. You were elected in 1955.
- Struckmeyer: Yes.
- Mitten: I think Stanford, did he retire then?
- Struckmeyer: Stanford had been governor and he had been a superior court judge and he ran for the Supreme Court and he served one term and retired. He was quite elderly then.
- Mitten: You were, and I think still are, the youngest person that was ever elected to the Supreme Court weren't you?
- Struckmeyer: That could be, but I'm not certain of it.
- Mitten: In 1955 you were what? Forty-three years old?
- Struckmeyer: I think that was. . . .
- Mitten: You were born in 1912 were you?
- Struckmeyer: Yes.
- Mitten: So if you were elected in 1955 you would have been about forty-three.
- Struckmeyer: Yes.
- Mitten: I know that when I worked with you, you were the youngest that had ever been elected. I don't think anybody has been appointed or elected that was younger than you.
- Struckmeyer: I think that's right because I was appointed to the superior court, I was in my thirties.
- Mitten: We'll get to why you stopped being a trial lawyer and all that later. That's the way it came about. Jerry Butler kind of picked up on the thought I had about if Holmes' clerks could do it why can't Struckmeyer's clerks do it.
- Struckmeyer: I have certainly enjoyed, over the years I've enjoyed it very much.
- Mitten: We all have enjoyed that. And it's kept us together too. And you know, by and large the clerks have a good feeling about each other. We give each other a little bit more leeway and a little bit more respect.
- Struckmeyer: You trust them a little bit more.
- Mitten: Yes. You know, I've had a number of cases with different ones and we kind of extend out to each other a little bit more. We were trained by the same mold.

Well you were born Frederick Christian Struckmeyer, Jr., for your dad, right?

Struckmeyer: Yes.

Mitten: I always thought the "C" stood for Carl because one of your sons was called Carl. But the "C" is for Christian.

Struckmeyer: "C" is for Christian. And Margaret insisted on, I wanted to make it C-A-R-L and she wanted K-A-R-L and guess how his name is? K-A-R-L.

Mitten: Right. And your other son is Kent [M. Struckmeyer]

Struckmeyer: Yes.

Mitten: And Chris? That's with a "C" isn't it? No, that's with a "K"?

Struckmeyer: No. His name is Christian.

Mitten: Oh, he's the Christian.

Struckmeyer: He's called Chris.

Mitten: I've got it straight now. Then Jan Holly is the oldest child?

Struckmeyer: Yes.

Mitten: Jan is married to a pilot, isn't she?

Struckmeyer: Yes. His name is Zeluff.

Mitten: Jack Zeluff's son?

Struckmeyer: That's Jack Zeluff's son. The doctor.

Mitten: The anesthesiologist.

Struckmeyer: Yes.

Mitten: A fine doctor.

Mitten: They got married, as I recall, just shortly after I clerked for you, around 1964 or 1965.

Struckmeyer: That could be right. I was thinking they have been married about twenty years.

Mitten: Yes, that's right. She's got to be in her early forties, I would think.

Struckmeyer: Yes. In fact she is probably, I think, just forty. I think Chris is forty-one, our oldest son. Well that would make her exactly forty.

Mitten: They've travelled all around, haven't they?

Struckmeyer: Yes.

Mitten: Is he still in the air force?

Struckmeyer: I think he's completely out. I'm not sure the date of his retirement, but he reached twenty years. And as you probably are aware, he came in from the University of Arizona ROTC and got his twenty years in and that's retirement date. Now if you came in from the Air Corps School, you probably would stay on and they'd make you colonel; eventually you would probably be a general. You know. But if you come in this way, they've

got these guys, they're favorites, they've been through it in school and that's what results. It's not too bad a system, actually.

Mitten: I remember when I was in the infantry and I went through O.C.S. [Officer Candidate School], the guys who went through West Point had a ring that they kind of clicked together.

Struckmeyer: Oh, yes.

Mitten: And I always wound up with the platoon that was on the outer edge of (laughter) the end of the world in Korea.

Struckmeyer: (laughing) I was four years in the army in the Second World War, and believe me, those West Point graduates, they got the automatic promotions every time.

Mitten: I thought I saw Zeluff and he told me that his son, the one that's married to Jan Holly, was flying over to the Gulf, the Persian War thing. He was delivering, oh some, he was a big plane operator.

Margaret S.: . . . all his medals.

Mitten: Oh, my goodness yes.

Margaret S.: He retired the first of May.

Mitten: Okay. Well that was after the war was over.

Margaret S.: But he got to take the [space] shuttle back to Cape Kennedy as his last flight.

Mitten: Did he really.

Margaret S.: Yes. He got to escort the shuttle back to Cape Kennedy. Then he thought he was going to get to do the simulator for the shuttle. They sent him to North Carolina to get his windshield repaired. Guess who was there. Every brass, every muckmuck, every braid who wanted to see—what's his name?—the general that was at McDill Air Force Base. Of course Fred used to be at McDill, so they sent him with a hundred and twenty three brass and he never got to do the shuttle simulator. And he never got to see the general.

Mitten: Good-looking family, yes.

Margaret S.: He never got to see the general. They'd just been using their house for a laboratory, a drug laboratory, in Tucson. Nineteen thousand five hundred and fifty dollars they have to spend on the sinks, all the tile, everything. They'd been using it for a drug lab since February.

Mitten: Who has?

Margaret S.: Somebody.

Struckmeyer: A renter.

Mitten: Oh, you mean somebody rented it from them.

Struckmeyer: They rented it.

Mitten: Oh, my goodness.

Margaret S.: They're in Redlands.

Mitten: So is he going to start flying for a commercial airliner now, do you think?

Margaret S.: Either United or American. He hasn't quite decided yet.

Struckmeyer: He has now. Except he has applied generally and they both have accepted him and he hasn't made a decision which one. But they're both good airlines.

Mitten: And I would think he wouldn't have any . . .

Margaret S.: (Voice sounds from a distance.) Trying to figure which one, Roger, has the best pension plan.

Mitten: I would think he wouldn't have any problem at all.

Struckmeyer: No.

Mitten: Well, I'm supposed to get on. I'm supposed to ask you, you know, were you born before statehood or after statehood, Fred?

Struckmeyer: I was born before statehood. I was born on January 4th, 1912, and we became a state in February, Valentine's Day—that's the fourteenth, isn't it—February 14, 1912. So I was born in the Territory of Arizona. I can always look down my nose because I can bring that up anywhere where anybody get's kind of smart-alecky and starts to spout off. (laughs)

Mitten: That's right, one of the Territory kids.

Struckmeyer: That sort of sets them back just a little bit. It shouldn't but it does.

Mitten: (laughing) Yes. Look down and see if you're carrying a weapon, if you're a cowboy or whatever. Your father came to Arizona around 1910 did he, or 1909?

Struckmeyer: In 1909 I think.

Mitten: And he actually—why don't you tell us where he was born.

Struckmeyer: My father was born in an area called Westphalia of Germany in a little town, and my mother told me one time. . . .

Mitten: Lübeck? Does that sound right?

Struckmeyer: It could have been. Yes. I think along in that area right in there.

Mitten: He was born in 1874, is that right?

Struckmeyer: In 1874. And his father and mother both died the same year. There was a plague of what was influenza and it was a strain apparently that was just a real, everybody that caught it died, apparently.

Mitten: Virulent, yes.

Struckmeyer: Yes. The strains are mild now or the people who have lived have become more immune to it, their bodies are more immune to it. But his mother and

father both died when he was one year old. When he got to be sixteen, he was the last of the children, he came into his inheritance. And my father went to what was then German South Africa. That was before the First World War when Germany had colonies in Africa. He looked around there and didn't like it and came to the United States. He, probably because his oldest brother who was ten years older, my uncle Carl who was a Lutheran minister, settled in San Francisco. I think he got out this far simply because it was closer to Carl. I guess.

Mitten: Sure. That was his only living relative.

Struckmeyer: I never heard him really say that, but that was the only living—he had sisters in Germany, but he never corresponded with them. But Carl did. You know and kind of keep him informed about that.

Mitten: Have you ever heard anything from them?

Struckmeyer: No. And I . . .

Mitten: After two world wars they might be . . .

Struckmeyer: No. They don't know I exist and I don't know exactly where they are. But there are relatives over there.

Mitten: Have you ever gone back to Germany?

Struckmeyer: No.

Mitten: The Second World War was . . .

Struckmeyer: Yes, well I got twenty miles from the Rhine River. That's close enough. But I think if I would go back to Europe I think I would enjoy going through Germany, present-day Germany.

Mitten: Yes, especially now that there's unification in the country.

Struckmeyer: Yes.

Mitten: Well your dad came out to America probably at the age of sixteen or seventeen or something like that.

Struckmeyer: Sixteen I think. Seventeen, yes, it would be along seventeen maybe.

Mitten: And went to some school in Illinois as a preparatory, I think you once told me. Then went to Michigan Law School?

Struckmeyer: Yes, he went to Michigan Law School for about a year and a half. Then his money ran out. All I know is what my mother said that he then went to work for a law firm in Chicago for six dollars a week. That's what they paid for law clerks.

Mitten: Well I remember I worked in Chicago for a couple of years. They were not very magnanimous with money.

Struckmeyer: Even then. (laughter)

- Mitten: Seventy years later or seventy-five years later. The old and the senior people kept it all I think. But then he went to Kent also, which was, as I remember it, it was like a night law school, so that people could work during the day and finish up their legal careers.
- Struckmeyer: That's right. A good school.
- Mitten: They've had some fine graduates from there. Did he practice in Chicago or did he. . . .
- Struckmeyer: And then he practiced a while in Chicago before he came out here, but I'm uncertain of how long it was. I think. . . .
- Mitten: I read something, eight or ten years.
- Struckmeyer: When was the Spanish-American War?
- Mitten: He was in that, wasn't he?
- Struckmeyer: Well, to this extent. They had the Illinois National Guard and when the Spanish-American War broke out they mobilized the Illinois National Guard to go to Spain. But they never got that far; the war was over. They were training in one of the Southern States somewhere. They may have got to Cuba and occupied it for a while.
- Mitten: Was he an enlisted man or an officer, do you remember?
- Struckmeyer: He was just an enlisted man. He was like, you know, like the National Guard is.
- Mitten: Yes. Was it shortly after the Spanish-American War ended that he came to Arizona? Is that your memory? (pause) I had it down someplace that he had practiced in Illinois about ten years.
- Struckmeyer: Well, I think so. He didn't come out here until about, I would guess 1908 maybe. Probably as early as he came out here.
- Mitten: And shortly after that, he married your mother?
- Struckmeyer: Yes, it would be a year or so or pretty near . . .
- Mitten: Her name was Inez Walker?
- Struckmeyer: I read someplace, but I think I must be wrong, that she was born in Florence.
- Struckmeyer: No.
- Mitten: I also read that she was born in the Midwest.
- Struckmeyer: No. My mother was born in Kalamazoo, Michigan.
- Mitten: Did he know her when he was in Michigan.
- Struckmeyer: No. She came out here because in one of the early X-rays, it must have been a pretty early one, they found a spot on her lungs, which they attributed to tuberculosis. The doctor told her she should come out here, so she did. But she never had tuberculosis, nobody ever found any tuberculosis on her.

- Mitten: Did she live in Florence?
- Struckmeyer: No. The Florence aspect comes in, my mother and father got married and they took their honeymoon, they took a horse and wagon and went to Florence. That's where they spent their honeymoon.
- Mitten: (laughing) That would be an arduous journey for most people. It wouldn't be a honeymoon.
- Struckmeyer: That's a pretty good trip for a horse and wagon though.
- Mitten: Really.
- Struckmeyer: Yes.
- Mitten: A couple of days to get everything to Florence. Your mom was a civic leader . . .
- Struckmeyer: I think they took a horse and wagon and went to Florence. Maybe they took the train, I don't know. The train did go to Florence. I think. I don't know.
- Struckmeyer: Yes, well if they got married after 1900 the train certainly was in existence by then, yes. The Santa Fe and the Southern Pacific.
- Struckmeyer: Florence isn't a place I'd pick out for my honeymoon, but . . .
- Mitten: Really, that's funny. Well, but you know, back in those days—they probably didn't have a whale of a lot of money, did they?
- Struckmeyer: Well, no. He had only been here a few years.
- Mitten: He was in private practice at the time?
- Struckmeyer: Yes.
- Mitten: I'll get back to your dad because I think your dad has a very interesting story and a life, but I would like to talk a minute or two about your mother, Inez and your brother, Jim [James A. Struckmeyer].
- Struckmeyer: Yes.
- Mitten: And he has now passed on, is that right?
- Struckmeyer: Yes, he passed on, oh fifteen years ago.
- Mitten: Jim was a lawyer also?
- Struckmeyer: Yes.
- Mitten: And did he take over, in effect, your practice and your dad's practice?
- Struckmeyer: Well, it wouldn't be my practice, but he took over my father's practice.
- Mitten: Okay. With Whitney and. . . .
- Struckmeyer: And [Harold E.] Whitney. And they kind of formed an association, sort of a loose association of some kind. I don't know exactly what it was.
- Mitten: Was he older than you?
- Struckmeyer: No. Jim was one year younger.
- Mitten: So he died quite early in life?

Struckmeyer: Yes, relatively early for nowadays.

Mitten: He was in his early sixties as I remember.

Struckmeyer: Yes.

Mitten: Yes. I had had a case with him once. You have two sisters as I recall.

Struckmeyer: Yes.

Mitten: Ryley? Francis [J.] Ryley?

Struckmeyer: My sister Esther Louise and everybody called her, she got the nickname of "Fritzie".

Mitten: I'd forgotten that. Who did Fritzie marry?

Struckmeyer: She married Frank [Francis J.] Ryley. He was a lawyer.

Mitten: He is the Ryley of Ryley Carlock . . .

Struckmeyer: Yes.

Mitten: The firm that came out of the southeast [Arizona], really organizing the Arizona Bank. I forget the name of that bank beforehand.

Struckmeyer: That's right. The Bank of Douglas.

Mitten: The Bank of Douglas. And they were the Copper people. They came up to Phoenix and then she married Frank Ryley? Was that his name?

Struckmeyer: Yes. Frank Ryley.

Mitten: He died, he had a hemorrhage or something to his brain and he died in an auto accident?

Struckmeyer: No, he died in an automobile accident. Nobody ever really figured it out. He left home and he got to the main street, Forty-fourth Street, and instead of stopping there at a red stop light, he just went right on through it and a car coming the other way hit him. A very violent collision. Nobody knows whether he died in the collision or he may have had a stroke or something, because he wasn't too young. He was getting along in years, Frank was.

Mitten: It wasn't too many years ago, it was five or six years ago or something.

Struckmeyer: Maybe seven or eight.

Mitten: He was quite a lawyer.

Struckmeyer: Oh, yes.

Mitten: I remember on a couple of occasions your sister Fritzie had called the court and I'd answer the phone and she'd say, "Where is that Democratic brother of mine?" (laughter) She was a Republican, wasn't she?

Struckmeyer: Well no, she was a Democrat.

Mitten: Oh, she was?

Struckmeyer: She ran for the legislature and was one term in the legislature. Oh, she got married and she was a Democrat. Frank was a strong Republican.

Mitten: Yes. But I think towards the end of. . . .

Struckmeyer: Well, it might be by the bit that she sort of lost her loyalty to someone. (laughs) Frank may have converted her into it.

Mitten: I know she was in favor of Senator [Barry M.] Goldwater for the presidency, I'm quite sure.

Struckmeyer: Yes, I think so.

Mitten: In fact, talking of Senator Goldwater, you and he sort of grew up together, didn't you?

Struckmeyer: Well, in one sense. Barry was, I don't know whether he was one or two years ahead of Bob, and Bob was a senior when I was a junior, I think. I never had any classes with Bob. He was around the school and he played on the school basketball team and I saw Bob [Robert] Goldwater play many times, play basketball.

Mitten: This was Phoenix Union High School?

Struckmeyer: In high school.

Mitten: Phoenix Union?

Struckmeyer: Yes. Phoenix Union High School.

Mitten: It was the only high school then, right?

Struckmeyer: Well Mesa, I think. There was a high school in Mesa.

Mitten: Your dad was also a member of Phoenix Country Club and they were members of Phoenix Country Club, the Goldwaters.

Struckmeyer: Yes.

Mitten: In fact I think Grandpa Goldwater started Phoenix Country Club, if I remember my history correctly.

Struckmeyer: Well, he may have been one of the earliest members, yes.

Mitten: He was the originator. And that's an interesting story about how there was a fire in your house and the stock of membership for Phoenix Country Club was destroyed. Do you remember that? The reason I remember it, Fred, is because you asked me to put you up for Phoenix Country Club and you had to have issued a new share of stock to you. your dad's.

Struckmeyer: I had forgotten about that, but that was true. Yes, that's right. You know, that had slipped my mind, but that's right. They had to have the stock reissued.

Mitten: And it was one of the original shares of stock that had ever been issued out of Phoenix Country Club.

Struckmeyer: That's right. It was one of the incorporated shares. After that they expanded and issued capital stock shares later, but these were really the first capital stock shares, I guess. You might call them that.

- Mitten: I remember when we went to play golf the first time, I think we played Encanto, and you said, "You know, I just don't have enough money to be a member of Phoenix Country Club like my father, but someday maybe. And just before or at the time you retired, you called me and said, "Will you put me up for membership? I'm going to use my father's stock." I thought that was so funny. (laughter) You had finally decided that it was okay, you could become a member of Phoenix Country Club.
- Struckmeyer: Yes. I used to go out and play there as a boy.
- Mitten: Sure. Where did you live as a boy?
- Struckmeyer: We lived on the corner of Portland and North Ninth Street.
- Mitten: Just south of Phoenix Country Club then.
- Struckmeyer: Well, it's three miles anyway. It would have been three miles.
- Mitten: South?
- Struckmeyer: Yes.
- Mitten: Right. And Phoenix Country Club was considered sort of in the far reaches of the city at that time.
- Struckmeyer: Oh, yes. They went out, they just bought farm land. They owned practically a square mile. The golf course was on it. It's not quite a square mile, it was almost. And they just bought that whole area. I can remember that whole area was nothing but farm land. North of McDowell. There were some houses, when I was a young man and a young boy, north of McDowell on Central Avenue that went up two or three blocks.
- Mitten: Up past the library?
- Struckmeyer: Yes, where the library is now.
- Mitten: Wasn't there an incident I had heard about that you and Goldwater, Barry, had played some golf and that he went into the men's locker room? I think you were probably with him.
- Struckmeyer: (chuckles) No. No, that's just a story that was told. Don't put that down in this record.
- Mitten: Your mother was quite active in civics, wasn't she?
- Struckmeyer: Well, yes, for quite a while.
- Mitten: A lot of welfare issues involving children. Worked with the legislature trying to get bills passed. Is that correct?
- Struckmeyer: Yes. I was reading in the paper about a month and a half ago about some school district down in the southern part of town, some comment about the racial, that I had desegregated the school before the Supreme Court of the United States. Which was true. It was kind of sad. They brought some sort of a suit and I went down there—I've forgotten exactly the basis of the

suit—I just went out and I took my car and I drove over to the school. They had a big two-story concrete school for the whites and they had a two-room schoolhouse on another lot down there, and they had the four first grades in one room and the four second grades, the four upper grades to the eighth grade in another room and two school teachers. There were outdoor toilets. So a year before the Supreme Court outlawed segregation, I ordered the school district to admit the children, as I recall.

Mitten: This was in the fifties?

Struckmeyer: Yes.

Mitten: You were superior court judge at that time?

Struckmeyer: I was superior court judge. And there's an interesting story on that. That was appealed, was in the process of appeal when the Supreme Court decision came out.

Mitten: In Brown?

Struckmeyer: Yes. Brown against the School District. The interesting part was that of the five judges up there, three of them were voting for reversal of my decision. Well, that ended that. I got saved from the reversal of the Supreme Court of Arizona by that decision. (laughs) Which is sort of an interesting commentary.

Mitten: Yes. But the Supreme Court always did not support you. I remember a couple of Indian decisions that I helped you write. And you said, "As well as we've written this decision"—you had really done it, all I did was find books for you—"Justice [Hugo] Black is going to overturn it because he really doesn't understand the Indian situation in Arizona." Do you remember?

Struckmeyer: Yes, and he did too. (laughter)

Mitten: Every time he had a chance. Well, we'll get to that. I want to talk about Inez a little bit, because we really haven't said anything about your mom.

Struckmeyer: Well, I don't know whether I got through. But anyway, when she was, it would be 1918 I think, she and some other women in Phoenix went out to the legislature and they got the statute, the segregation statute passed. And here's why they did it. Because the Phoenix Union High School was the only high school, other than possibly Mesa. The blacks were in the minority and Arizona, you'd have to understand, was settled by a lot of Texans. Not completely, but they dropped off and lived in Arizona going to California. These Texans, they didn't really like the blacks and there was a chronic fight going on in the high school between the blacks and the whites. There were so many more whites that the blacks weren't being educated. They just were

killing the blacks right on the school grounds, fights, vicious fights. So my mother and some other women went out and got a segregated statute permitting the building of a black high school in Phoenix, Arizona. And that's what happened. They did build a separate high school for the blacks. And that's how Arizona happened to have segregated school districts.

Mitten: That you overturned . . .

Struckmeyer: It permitted it, see. It didn't demand it but it permitted it. But then the school districts all did it.

Mitten: And then your decision subsequently . . .

Struckmeyer: Overturned it.

Mitten: Overturned the statute that was a pragmatic gesture for your mother to put through in the early days.

Struckmeyer: Yes. And that's how things change.

Mitten: Yes. Then things had changed and they weren't giving those black students a fair shake, really, is what was happening.

Struckmeyer: That's right. That's right, they weren't giving them an education. I was appalled at what I saw.

Mitten: She also wrote some poetry and did a little writing of. . . .

Struckmeyer: Well, I don't know that she did much of that. I don't remember that. (laughing) She may not have read her poetry to me, I don't know. She may have . . .

Mitten: Yes. Well, I was reading something about her and they said that she had written some poetry and some articles, but sometimes people have a way of overstating. That would have been your problem, Fred. (laughs)

Struckmeyer: Well, she enjoyed writing. That could be true, she might have.

Mitten: She died very shortly after your father, didn't she?

Struckmeyer: Yes.

Mitten: Even though she was quite a bit younger than he.

Struckmeyer: Yes, that's true.

Mitten: As I recall your dad died in 1955 or 1956 and your mom . . .

Struckmeyer: She died the following year.

Mitten: Yes. Within three or four months of his death.

Struckmeyer: Within a few months, yes.

Mitten: So that was a real love relationship they had, wasn't it?

Struckmeyer: Well, when he passed away her health wasn't too good either.

Mitten: But he was eighty-one and she was seventy or something.

Struckmeyer: Seventy-two.

Mitten: You had another sister. Not only did you have Fritz but you had another one.

Struckmeyer: Martha. Martha is still alive.

Mitten: Well Fritz is still alive, isn't she?

Struckmeyer: No. Fritz passed away six or seven years ago.

Mitten: I didn't realize that. After Frank died?

Struckmeyer: Yes. Not too far after Frank died. You know, she and Frank were very devoted, and (pause) she just didn't want to live. That's kind of . . .

Mitten: When people are married that long, that often happens.

Struckmeyer: Yes.

Mitten: They become more than just husband and wife, they are best friends.

Struckmeyer: She really just didn't have anything. There wasn't anything particularly wrong with her. She just died.

Mitten: She was probably very lonely.

Struckmeyer: Yes.

Mitten: Martha. Tell us about Martha a little bit. Was Martha younger or older?

Struckmeyer: Yes, she was the youngest.

Mitten: You were the oldest?

Struckmeyer: Martha was four years younger than I am. No, Fritz was the oldest.

Mitten: And Jim was a year younger than you, so you were the second oldest?

Struckmeyer: Yes.

Mitten: Okay, Martha was the youngster in the family then. Did she marry here and live in . . .

Struckmeyer: Yes, she married here and she's still alive and living here. Her husband is deceased.

Mitten: He had nothing to do with the law?

Struckmeyer: No, no.

Mitten: But the four of you were raised at Portland and Ninth Street?

Struckmeyer: Yes.

Mitten: Is the house still there?

Struckmeyer: No. The freeway goes down, now goes east and west and that told—well north of that is freeway. We sold the property there years ago after they passed away and the person who bought the property tore the houses down and put up an apartment house there.

Mitten: But that was a very small community of people. I remember when Dick [Richard M.] Fennemore and Benny, Benita Fennemore—you remember them?

Struckmeyer: Oh, yes.

Mitten: I guess they kind of grew up with you.

Struckmeyer: Sure.

Mitten: He might have been a little older, but they talked about . . .

Struckmeyer: No. I think they were, those two were about Fritz's age. I think they were a little older. Yes, just about a year or two older.

Mitten: They talked about Arizona to me in the early days, and it really sounded like a lot of fun. I mean, in the summers you'd go out on those porches without air conditioning and set up fans.

Struckmeyer: Everybody had a screen sleeping porch.

Mitten: Yes, and you'd put up sheets that were wet or something and blow air through them trying to make an evap cooler out of them.

Struckmeyer: I made, as a boy, I made an evap cooler for our house. I put gunny sack, I wrapped gunny sack and then I'd get a little pipe and put some holes in it and drip water on it and put a fan behind it, an ordinary fan, and blow air into the house.

Mitten: You know, I'm sure that very few of us would have come out if you people hadn't done that in the early days and suffered through those terrible summers. (laughter) Because without air conditioning, Arizona's a pretty rugged place.

Struckmeyer: Pretty rugged. But you know, they held court all year round. The judges would take their vacations for thirty days, though, and they tried to schedule a trial in the cooler months.

Mitten: Right. You know, just the few years I've been here, like twenty-eight years, in that period of time I've noticed that when I first came out, the summers were very relaxed in court and there were very few cases that went to actual trial in August at least.

Struckmeyer: Yes.

Mitten: But now, around the clock.

Struckmeyer: Around the clock. Yes.

Mitten: They have judges pro tem to step in for the judges that are on vacation.

Struckmeyer: Nothing is put over because the vacation calendars aren't run that way anymore. They just didn't schedule any trials in the summer. Or as few as possible.

Mitten: Everybody would go up to Prescott or Iron Springs and. . . .

Struckmeyer: Or to San Diego. Or, my folks, from the middle twenties, went up to Greer, Arizona.

Mitten: To the Mogollon country?

Struckmeyer: Yes.

Mitten: Your sister Martha, did she marry a fellow named Gilbert Smith?

Struckmeyer: Yes.

Mitten: And that's the entire family, the four of you?

Struckmeyer: Yes.

Mitten: Tell me a little bit about life in Phoenix when you grew up, the First World War. You were too young to completely appreciate that, I would assume.

Struckmeyer: I would be, in 1918 I was six. I remember—you see, my father was born in Germany and he had, was torn and that war, the First World War really kind of, he was a loyal American, but he was kind of torn. I remember him when peace was declared, or there was armistice declared, him driving down the street tooting the horn on the automobile.

Mitten: Happy to have the two countries at peace.

Struckmeyer: Yes.

Mitten: Well I remember that too, because my father's father was born in Germany and both the First and the Second World War, he said it was very difficult—of course the Second World War was different—but he said during the First World War, that the fight was in Europe, it was not about America. The fact that we got in was because of other things, a little political game. But he said that it was difficult for a lot of the German people to understand. That Germany at that time should not have been the aggressor, because German people felt that they were not doing something bad, you know. But for the Kaiser, they were okay.

But the Second World War, my father always felt that there was just no question Germany had become a crazy country. And he was very happy when [Dwight David] Eisenhower was appointed head of a European and American armies because my Dad said it takes a German to beat one. (laughter)

Struckmeyer: Yes, that's just about right.

Mitten: . . . and then knock out the Nazis.

Struckmeyer: Yes.

Mitten: What was it like after that? You started the depression, went into the depression, by the time you were about sixteen or seventeen the depression was on.

Struckmeyer: Oh, yes. I was a kid, you know, about sixteen and there were no jobs. It was an honest to goodness real depression.

Mitten: How was your father doing?

Struckmeyer: I'd go down in the summertime to look for a job and line up with guys and they'd go down the line and say, "How many children do you have?" "I

have two?" "How many do you have?" "I have three." "How many do you have?" "I have six." You'd get the job.

Mitten: Terrible. How was the practice of law for your dad at that time?

Struckmeyer: Well, he was always able to make a pretty decent living. He never became really wealthy practicing law, but he had a pretty good practice.

Mitten: By then he had already written the code hadn't he? The 1928 code?

Struckmeyer: The 1928. Yes. That was finished in 1928.

Mitten: That really was the highlight, wouldn't you say, of his early career?

Struckmeyer: Yes. He was the code commissioner. He had been, the governor had appointed him to fill a vacancy on the Maricopa County Superior Court. He served two years as a trial judge. His salary was, I don't know whether it was seventy-five hundred, no, it was five thousand dollars a year. And that was in the twenties. My mother told me once, she said he just couldn't continue as a judge although he would have liked to, because he had four children and a growing family and he just couldn't cut the mustard on that salary.

Mitten: I think a lot of men have found that true. This would have been around 1925 he was on the superior court?

Struckmeyer: It was 1922.

Mitten: In 1922.

Struckmeyer: I think the years were 1921 and 1922.

Mitten: Then he went from that to the commission?

Struckmeyer: Yes, his next public service. He practiced law and his next public service, you might say, was as code commissioner.

Mitten: The code was to take all of the Arizona statutes and put them together and annotate them?

Struckmeyer: Yes. The last code in 1913, the 1913 code was a year after statehood and the legislature had passed so many acts since statehood affecting so many different interests that they, he was hired to revise the whole thing and put it in some decent order. Otherwise it was just a group of session laws. And that's what he did. But he did a lot of consolidation and corrections in the English grammar and things of that type that he liked.

Mitten: Didn't he also annotate it with cases?

Struckmeyer: Yes.

Mitten: All of the cases that had applied to each statute?

Struckmeyer: Up to that time.

Mitten: That had to be a very useful tool for lawyers and for the legislature.

- Struckmeyer: Yes, and it was annotated right after the statute itself the annotations to that statute were put in. Of course it made it obsolete pretty fast too, because the legislature kept right on passing laws.
- Mitten: They didn't have pocket ports in those days, I suppose.
- Struckmeyer: No, they didn't.
- Mitten: They had to rewrite the book.
- Struckmeyer: Well, the publishing company, West Publishing Company came out with that.
- Mitten: I think Bancroft published that in 1928.
- Struckmeyer: Yes, but West became the big publishing company.
- Mitten: Right.
- Struckmeyer: Yes, Bancroft did publish it.
- Mitten: Did you get a lot of instruction from your dad? How was it growing up? He was a public figure. He had represented the governor, Hunt wasn't it?
- Struckmeyer: As far as the home, you know, mother ran the house. She told the kids what to do. Once in a while he'd help the kids with a little of their homework. That was about it.
- Mitten: After you became a lawyer, did you and your father practice together?
- Struckmeyer: Yes. When I first came out I practiced a year. Well, yes. Then, yes, about a year and a half with him. Then I had a fraternity brother by the name of Dick [Richard F.] Harless. Dick ran for country attorney. Dad took a liking to him and he contributed to his campaign a little bit. I think he spoke once or twice at some rallies for him. Dick was elected county attorney and he appointed me a deputy. I stayed on for three years. In the meantime the country had gotten in the Second World War. I knew where my draft number was, so I didn't volunteer or anything, I just waited and let them draft me. That was in February.
- Mitten: Was that in 1941, 1942?
- Struckmeyer: In 1942. That was a few months after the war had started. Then I spent four years in the service, in the army. Then I came back and I set up a practice for myself, by myself.
- Mitten: You hadn't married by then?
- Struckmeyer: No. My father was still practicing and he wanted me to practice with him but I was kind of inclined to practice by myself.
- Mitten: By then you had been pretty badly wounded in France, hadn't you?
- Struckmeyer: Well, I had been wounded in France, yes.
- Mitten: You were shot in the throat?
- Struckmeyer: I had been hit in the throat with a grenade fragment.

Mitten: Didn't you have to learn to talk?

Struckmeyer: Well, it cut the vocal cords and I couldn't talk. I ran into, I remember very well that operation, because it was in the Vosges Mountains in the winter in France. It was in October 26th. By that time all the streams were frozen over.

Mitten: This was 1943?

Struckmeyer: It was 1944. This doctor, they stripped me off stark naked and put me on the operating table because they had moved the hospital up closer to the front lines and part of the hospital didn't get there. They laid me out on this operating table stark naked and operated and put me under to finish the operation. I remember going that far. And this—when I came around in the next day or two, I was in a hospital bed in a tent hospital. I remember they had, what was wrong with this particular patient was tied to the end of his bed. That's where the record was kept on this patient.

Mitten: (laughing) You never wanted to leave that bed. They'd mistake you for someone else.

Struckmeyer: That record then was supposed to go with you everywhere you went. Well, they moved me back through, I eventually went through thirteen government hospitals and of course the record was lost at the first move. It never caught up with me. To this day I don't know where that record is. Every time they'd move me from one government hospital to another they'd ask me where the record was and I couldn't do any more than whisper. You know, I'd try to tell them in a whisper.

Finally I arrived in England and then they evacuated me back to the United States, because they didn't think I was ever going to speak again.

The doctor that operated on me, one of the things he did, he put down in the chart, "sutured vocal cord". Now every time I moved they'd ask me and I'd whisper, "Well he sutured the vocal cords. That's what he did." They'd say, "No, you must be wrong because they can't suture vocal cords." They'd tell me at every stop.

At every stop they'd look down my throat to see if they could see in there, with one of those damned mirror things. Particularly in England, they broke a front tooth partly off. This guy jiggled it trying to look down in there and look down my throat.

I was back home about a year and Frank Ryley subscribed to the *New York Times*, I think. One day he said to me, "Fred, look at this." And there was a whole page article in the *New York Times* about this doctor,

that while he was in the service, developed a technique for suturing vocal cords.

Mitten: He must have been the one you bumped into. Wasn't that fortunate.

Struckmeyer: I've always thought that. An amazing coincidence.

Mitten: The rest of them wouldn't have touched them.

Struckmeyer: Right.

Mitten: And you wouldn't have been speaking today.

Struckmeyer: They would just, if they went through here they'd have just tied it up. Isn't that amazing?

Mitten: You were very fortunate that didn't hit your aorta.

Struckmeyer: Yes. Of all the—gad, they must have had a hundred thousand doctors in the service. Every doctor in the United States practically was drafted. There weren't any at home.

Mitten: Well the effect of your having to learn to speak again and project your voice, decided something for you about doing trial work, didn't it? Because you were a trial lawyer up until then, right?

Struckmeyer: Yes, I had done a lot of trial work. So I couldn't do trial work. As far as knew, they didn't ever expect my voice to come back. They just retired me from the army, which was great. But they wouldn't retire me until the war was over with Japan. I kept thinking, "God, one of these days they're going to ask me to go fight in Japan. They're going to invade Japan." You know, I figured they'd have to invade Japan before they'd ever. . . . And they wouldn't discharge me.

Mitten: Where were you then?

Struckmeyer: I was floating around between hospitals.

Mitten: I see. You had done a lot of fighting before you got wounded, hadn't you? Up in the Alps?

Struckmeyer: Yes.

Mitten: Fighting in Austria?

Struckmeyer: Well, I fought, I was part of the invasion of (pause) oh, there below Rome. What was the name of the run around that [Winston] Churchill wanted?

Mitten: Salerno?

Struckmeyer: Yes, Salerno. The beach there, not Salerno. I was there. I was there from January until they pulled us out and we made the breakout. Then they pulled us out and they gave us training for a beach invasion, for beach landings. I thought we were going to Greece. Everybody thought that. But we took off and landed in Southern France. They had landed about three weeks before in Northern France . . .

Mitten: Normandy?

Struckmeyer: Normandy. And we came in three weeks or a month or whenever it was, a little bit later, and that was to take some of the pressure off Normandy. Then I went all the way up, and I was up the Rhone Valley four hundred miles. And I was finally hit in the Vosges Mountains about twenty miles from the Rhine River.

Mitten: You received the Silver Star?

Struckmeyer: Yes.

Mitten: And a Bronze Star?

Struckmeyer: Yes.

Mitten: And the Purple Heart?

Struckmeyer: Yes. Everybody that survived that long got those.

Mitten: I doubt that. Not the Silver Star they didn't, or the Bronze. Those are for valor, as I remember them. You were a platoon leader were you? An infantry platoon leader?

Struckmeyer: Yes.

Mitten: With the Third Infantry Division?

Struckmeyer: Yes.

Mitten: I forget what their emblem is, it was a blue one.

Struckmeyer: Yes. Blue and white stripes. And we used to sit in Italy and listen to the radio and Berlin Sally would broadcast about the Blue and White Stripes. It was regular army. She made comments about it, how the Germans were cutting it up. And the Germans were cutting us up. (laughs) She was right there.

Mitten: Well that's a famous division. So you got back and you couldn't be a trial lawyer and you started to practice on your own in what? In 1946?

Struckmeyer: Yes.

Mitten: For how long did you practice before you went on the superior court?

Struckmeyer: (pause) I think the governor appointed me in 1949, to the superior court.

Mitten: So two or three years of practice, you would have had.

Struckmeyer: I had four-and-a-half years in the superior court before I ran for the Supreme Court. I just about had, well almost five years practice as a trial judge in Maricopa County by the time I took office on the Supreme Court.

Mitten: Charlie [Charles C.] Bernstein was on the court at that time? The superior court?

Struckmeyer: Yes, he was on the superior court.

Mitten: Who else do you remember was there?

- Struckmeyer: Well, Lorna Lockwood came on when I was there. She came on the superior court when I was a judge there. She later ran for the—I remember Lorna talking to me about running for the Supreme Court when I was on. I ran for the Supreme Court and was elected, in a statewide campaign. She, I think it was two years later she talked to me about running for it. She said she wanted to run and I said, "Well I see no reason you shouldn't run if you want to."
- Mitten: She was, of course, the first woman Supreme Court justice in the United States.
- Struckmeyer: Yes, she was.
- Mitten: So we've had some distinctions in Arizona. We've had the first woman Supreme Court judge from a state and we've had the first woman Supreme Court of the United States justice. That's Sandra [Day] O'Connor.
- Struckmeyer: That's true, as I understand it.
- Mitten: Both occurring during your tenure as a judge.
- Struckmeyer: Yes. And of course I knew them both, I knew them both fairly well. I didn't know Sandra very well. She was on the court of appeals and I never really got acquainted with her other than seeing her generally. She was a very pleasant woman when I knew her.
- Mitten: Competent?
- Struckmeyer: Yes, competent, sure.
- Mitten: Well, whoever thought we'd have two Supreme Court justices from Arizona, [William R.] Rehnquist and O'Connor? I never thought we'd see that day.
- Struckmeyer: Well, you know, if you had said the day before they were appointed the likelihood of their—now as far as Rehnquist is concerned, he went back to Washington.
- Mitten: He was Solicitor General, wasn't he?
- Struckmeyer: And if somebody had mentioned it to you before hand, you could see that it could happen. But it was just a bolt out of the blue for Sandra. I understand that the (pause) yes, that she met the president [Ronald W. Reagan] on a houseboat on the Colorado River.
- Mitten: That's right.
- Struckmeyer: And that's how she got, he selected her because he knew her personally.
- Mitten: I think that it . . .
- Struckmeyer: He was acquainted with her, but I don't know how well but apparently. . . . She was a good-looking woman, and is, and a knowledgeable woman and I guess she impressed the president.

- Mitten: I think they met as a result of being with Chief Justice [Warren Earl] Burger. He was taking a vacation and I think Reagan joined them and they were invited to be with the Chief Justice I think is the way it went. And that's the way she met the Chief Justice . . .
- Struckmeyer: That's a little more detailed. Yes, that could very well be, because . . .
- Mitten: You know I practiced with John O'Connor for twenty-two years.
- Struckmeyer: Sure.
- Mitten: We really got to know them, our children kind of were raised with them and whatever. A very competent gal.
- Struckmeyer: Oh, yes. Sure.
- Mitten: Well, you know, I've kind of eliminated your education so why don't we go back. We've just been kind of jumping around, but I guess that's all right, isn't it? Let's go back and talk a little bit about going to school. I know at one time you did that. (laughs) And you were a pretty good student. Did you find high school easy or difficult?
- Struckmeyer: Well, I didn't work very hard and I wasn't a really outstanding scholar by any manner or means. You know, I was thinking, I've thought later if I was ever going to go back through school again, I would study harder.
- Mitten: Most of us would say that.
- Struckmeyer: I think so. Yes. Spend more time. . . .
- Mitten: Except maybe a Rehnquist who was so bright it didn't make much difference.
- Struckmeyer: Well, yes. Well I think he worked hard in the law. I think Bill worked hard through Stanford [University] and as a lawyer I think he worked hard.
- Mitten: You went to Phoenix Union High School?
- Struckmeyer: Yes.
- Mitten: Monroe School first?
- Struckmeyer: Monroe School.
- Mitten: Now a government building.
- Struckmeyer: We lived on the east side of town and most of the kids that I grew up with, a lot of them went over to the grammar schools on the west side of town. The one I went to, Monroe School, was sort of the, we had quite a few Mexicans going there and the thing that I enjoyed most, almost every day after school why we would adjourn to the next street off the school and the school fights were held there.
- Mitten: Were you one of those? (laughter)
- Struckmeyer: I got in a few of them. I had my share of it. They were kind of rowdy kids.

- Mitten: Did all of your family, the children, go to Phoenix Union? Monroe School then Phoenix Union?
- Struckmeyer: Yes.
- Mitten: Phoenix at that time was what? Twenty-five, thirty-five thousand people or something like that? It wasn't real big.
- Struckmeyer: Well, I'm trying to remember. The boundaries, up to the Second World War, were two blocks north of McDowell, I think. Did I mention that?
- Mitten: Yes.
- Struckmeyer: So the population was not—really the explosion of population came after the Second World War.
- Mitten: After people had seen what—primarily aviation brought them here. Trainees.
- Struckmeyer: Yes, they had so many, the airfields were in Arizona. And kids went back from New York and had never been out of New York and had lived all their lives in New York and decided there was a better place to live. They went to California and Arizona.
- Mitten: When did you graduate from high school, Fred?
- Struckmeyer: In 1929.
- Mitten: Did you think you were going to be a lawyer then?
- Struckmeyer: You know, I don't really think I thought about it very much. I think it was just sort of part of the family that I was going to be a lawyer.
- Mitten: How about for your brother?
- Struckmeyer: Jim? I don't know. My folks didn't influence either Jim or I to be lawyers. We made those decisions ourselves.
- Mitten: They didn't suggest that this is a good profession or anything?
- Struckmeyer: No. No, they didn't try to influence us on what we wanted to do.
- Mitten: That's very good. How did you do in high school? Were you in the top ten percent of your class?
- Struckmeyer: No. No, I didn't work very hard.
- Mitten: Okay. Then you went on to the University of Arizona?
- Struckmeyer: Yes.
- Mitten: Of course, as compared to Tempe at that time, the U. of A. was really a much better school, wasn't it?
- Struckmeyer: I think it was at that time. They upgraded Tempe a lot since then.
- Mitten: It was a normal, Tempe Normal [School], wasn't it called?
- Struckmeyer: Well, I think a year or two before they had made it a . . .
- Mitten: State?
- Struckmeyer: Yes. It was not a normal school at the time that I went there.
- Mitten: But you went to the U. of A. Did you go four full years or. . .

- Struckmeyer: Yes. I took a—here's what happened. My father had the four children he was trying to educate. All of us went two years to what is now the Phoenix Community College. It was then the Phoenix Junior College and they offered undergraduate courses. Not as many as they had undergraduate courses as the University of Arizona. But you could get Latin, German, Spanish, French, and of course the Board of Education prescribed English. You had to take English courses, basic English course the first year in college.
- Mitten: So that was a good kind of a beginning for college. You didn't go away, you still lived at home.
- Struckmeyer: Yes. I was home two years. Then I took, what they did then, but they stopped doing almost about the time I graduated. They had been giving a three-year combination course, three years of undergraduate work and three years of law school and you got an LLB when you graduated.
- Mitten: Right. Well they still did that in Illinois when I went to Northwestern and graduated in 1961.
- Struckmeyer: So you could get through in six years with an LLB.
- Mitten: Right. And you didn't have a Juris Doctor.
- Struckmeyer: And I didn't have a Juris Doctor. Well, oh, here about twenty years ago why they decided to cut that out and they wrote everybody and said we'll give you a Juris Doctor if you apply. I said, "What the hell difference does it make to me." I never applied. But Frank Ryley did and they sent him a sheet of paper and, you know.
- Mitten: They said, "You're a Juris Doctor."
- Struckmeyer: (laughs) You're a Juris Doctor, yes. But I never did that.
- Mitten: So you went to U. of A. as an undergraduate for one year?
- Struckmeyer: Undergraduate for one year.
- Mitten: And then you went on to law school.
- Struckmeyer: Three years in law school.
- Mitten: Was there any kind of test that you took in 1932, 1933?
- Struckmeyer: No. All you had to do was apply to go to law school.
- Mitten: I suppose they didn't have too many people applying during the depression.
- Struckmeyer: No, but the way they did it was this way. Now they go by grades, you have to have a certain grade scale to even be considered. And I don't know what all they take in, they take in other considerations too now, because so many apply. But then, why all you had to do was get your three years in and they gave the combination degree. What was I going to tell you? I was going to tell you something else too, but I forgot it.

Mitten: Whether they had some kind of a requirement to get into law school, a test or. . . .

Struckmeyer: No. Nothing. Just as long as you had completed the three years. So many hours. You had to have so many hours completed toward your liberal arts degree.

Mitten: Well, I would assume that people would be rejected in those days.

Struckmeyer: No.

Mitten: Really?

Struckmeyer: Anybody that applied to go to law school could go to law school. Here's what I was going to tell you. But here's what the dean did. He taught torts, the dean did. Dean [Samuel M.] Fegtly, dean of the law school. He taught torts to the freshman class and the first class he opened it up by saying, "Gentlemen," he said, "look to your right and look to your left." He said, "Those two won't be in this course next semester." And, boy, he just cut it exactly fifty percent. And they did it in every freshman class and that's the way they cut them down.

Mitten: So they weeded it out that way.

Struckmeyer: They weeded out the guys that didn't have the ability or the feeling for it or whatever it was.

Mitten: Who was in your class at law school that we all might have heard of here?

Struckmeyer: You know, I was trying to think the other day.

Mitten: You said Jim Harless, I think.

Struckmeyer: What?

Mitten: Harless?

Struckmeyer: Harless was about three years ahead of me. He never was in law school when I was. He was a fraternity brother but he wasn't, I never went to law school with him.

Well the peculiar thing is, when I got in law school I started running around with a group of young men that were not from Arizona. And my closest friends were a kid from Alabama, a fellow from Indiana, another fellow from California.

Mitten: They all went back to their own states?

Struckmeyer: Communities and practiced law.

Mitten: I see. Do you still talk with them or correspond?

Struckmeyer: They're all dead. Yes, those three friends of mine, we sort of hung around together in law school all the three years, the four of us, and they're dead. You know I'm not so damned young, seventy-nine.

Mitten: Oh, that's not so old in today's world.

Struckmeyer: Well, it's no record, of course, but it's . . .

Mitten: No. No J. Early Craig yet.

Struckmeyer: No, not yet. How old was Early?

Mitten: He was ninety-nine when he stopped practicing and almost, one month short of a hundred when he died.

Struckmeyer: I was thinking that.

Mitten: You know, I took him into his last trial. He tried a case with me when he was ninety-six years old.

Struckmeyer: Is that right?

Mitten: We tried one in front of Tom [Thomas] Tang, who is now up on the Ninth Circuit Court of Appeals.

Struckmeyer: Oh, yes.

Mitten: He's a friend of yours.

Struckmeyer: Sure.

Mitten: We walked into court and John [J.] Bouma and Bob [Robert H.] Green were defending the case. John Bouma over at Snell and Wilmer and Bob Green with Robbins and Green. They were the defendant's attorney. I was the plaintiff, of all things. Had a wonderful time in front of Tom. Tom stood up when J. Early Craig came in. He looked at the jury and he said, "I just want you to know that this is the senior member of the Arizona Bar Association, and we're very proud to have him with us." (laughter) Well Bouma and Green looked at each other, you know, and they didn't know what to do. So we went and we picked the jury and after we picked the jury we made opening statements. Then the judge recessed. We went into chambers and Bouma stood up and he said, "We object to the statement you made before we picked the jury, voir dired the jury, because you prejudiced the jury's mind about this venerable nice gentleman J. Early Craig. We're not saying anything bad about him, but you kind of showed a prejudice for him." So Tang looked at them and said, "Well, don't you think it's a little late for the objection? We've picked the jury, we've made opening statements and now you're beginning to feel like you should object?" He said, "Not seasonable. You waived your rights." But he turned to J. Early and he said, "Well what do you think about that?" And J. Early said, "You know, I've never found that being old is objectionable, but now maybe it is."

Struckmeyer: (laughing) What a statement. He was pretty keen all as long as he lived, wasn't he?

- Mitten: Yes. He was able to stay right on top of things. But for his hearing he could have gone in and tried cases himself. He just had difficulty really clearly understanding every word that was being said.
- Struckmeyer: I didn't know that. If I knew it I had forgotten it.
- Mitten: When I first met him, when he was like eighty-eight or eighty-nine his hearing was fine.
- Struckmeyer: We used to see him up at the Arizona Club then.
- Mitten: And the Lawyer's Club. Most often those two places, yes. So you went completely through then, from the time you left home, around 1929 or 1930, and you got your law degree in what year?
- Struckmeyer: In 1933. No, I'm sorry, in 1936. I went into law school in 1933. It was 1936 that I graduated.
- Mitten: And that's when you started to practice with your dad?
- Struckmeyer: Yes.
- Mitten: You know, I've read a very interesting thing . . .
- Struckmeyer: But I spent a little over two years in the county attorney's office prosecuting. I started to tell you that about Dick Harless, didn't I?
- Mitten: Yes, about Dick Harless. But you were in practice with your dad before you went with the county attorney, weren't you?
- Struckmeyer: Yes.
- Mitten: I remember you saying things to me about when I was writing briefs and trying to help with writing things for you, you said, "Try to keep the language clean and stop—I know you can use big words, but every chance you get to use a big one use a small one so everybody understands. Somehow I think that came from your father, because I'm reading a book that Pablo Jusem here lent to me. It's called *Laws, Courts and Lawyers Through the Years in Arizona* by Jim Murphy. I don't know if you've ever seen this book, but it's got a little article, it refers to, on page seventy-nine it refers to your father having revised the 1928 Code and it said the revision was arduous and exacting and it talks about that the people who prepared it were enemies of complexity and high-toned legalese.
- Then it says, "The colorful Struckmeyer wrote"—and I'm quoting him now—"The craving for new legislation resulting in multiplicity of statute law inevitably leads to confusion. Statute law should be so written that who runs may read. The necessity of simple restatement of the statute law is apparent. Any person of common school education should be enabled to read intelligently the statute law of his state. It is sufficient if the legal profession must welter in a chaos of bewildering and spawning precedence."

So in other words he was saying, for lawyers it might be okay but for the man of common education, you ought to write it so that they all understand it.

And that's the way you always wrote your opinions. I'm sure your father probably made some statements like that to you.

Struckmeyer: I don't recall any specific statements. You know, you just sort of inherit those kind of ideas. They really grow up in your family.

Mitten: He was a man of, would you say that he talked a lot or did he choose his subjects carefully?

Struckmeyer: He didn't talk a lot, but when I got out of law school and went to practice law with him why he took every—they started me out by drafting complaints, and he took every complaint I drafted and red-lined it and scribbled on it and sent it back to me.

Mitten: There were others in practice with you at that time?

Struckmeyer: Well, at that time he was, well I spent a couple of summers. I guess Irv [Irving A.] Jennings had gone off as city attorney. That was in the middle of the depression. Irv got a job as, yes, just before I graduated I think he got a job, he and my father were partners. Irv Jennings.

Mitten: Who was the Jennings, Strouss Jennings?

Struckmeyer: Yes. He got a job as city attorney. Practice of law was kind of tough during the depression, that depression. I went with my father and he said to me, "Son, I will pay you fifty dollars a month." He said, "You look around. If you can do better, take it." I looked around and then I thought that was pretty good because I could live at home. (laughter) A lot of them were getting ten dollars a week.

Mitten: And had to live by themselves.

Struckmeyer: Young lawyers with bigger firms. With larger firms.

Mitten: Well, I guess I didn't realize that your dad and Irv Jennings—there's an interesting family—were in practice together and then broke up.

Struckmeyer: At the time of the First World War. Irv came back and went to practice with my father.

Mitten: When did he form Jennings, Strouss?

Struckmeyer: Well, I'm not—I think, I may be incorrect, they may have gone, he and, the timing may have been before the First World War or maybe, I think it was probably afterwards. They got jobs as assistants to the attorney general of Arizona. Irv left there and went with my father. They eventually formed a partnership and eventually he, when the depression came along in 1929, well it was about 1934 or 1935, he took a job as city attorney of Phoenix.

It was a lucrative job. Eventually he, then he stayed a few years then he took out and formed his own partnership, formed his own firm. And he started with Strouss, Charlie [Charles L.] Strouss who had also been with my father then gone to the attorney general's office and he, Charlie left the attorney general's office and they formed a partnership and formed a firm.

Mitten: Then later Ozell [M.] Trask joined them?

Struckmeyer: Then later Ozell Trask, quite a bit later actually.

Mitten: Riney [B.] Salmon?

Struckmeyer: Oh, Riney Salmon it was, yes, at the start it was Riney Salmon, as I remember. No, that wasn't right. Riney Salmon practiced for the, didn't Riney practice with—oh, what's his name? They've got the big firm. Oh, the guy that represents the power company, electric.

Mitten: [Frank L.] Snell or [Mark B.] Wilmer?

Struckmeyer: Yes, Snell and Wilmer. I think it was, I think it was Snell, Salmon and Wilmer.

Mitten: Oh, really?

Struckmeyer: If I'm correct. Then he went back with Strouss and Jennings. Wasn't it Snell, Strouss and. . . . No, Jennings, Strouss and. . . . Wilmer. No, it wasn't Wilmer.

Mitten: Well, it was called Jennings, Strouss, Salmon and Trask.

Struckmeyer: Salmon. Yes, it was Riney Salmon. The reason I think that's right is because Riney Salmon was a fraternity brother of mine, but he was quite a number of years ahead of me. We belonged to the same fraternity. His brother Button Salmon, they used to call him, when he was in the university he went down to Mexico and he was in an automobile coming back and was killed. And that's, he was asked in the hospital, there was a game coming up and he was on the team and he of course couldn't play. That's where the phrase "Bear Down" comes from. He said, "Bear down."

Mitten: Oh, really. So it doesn't come from Notre Dame or Alabama or . . .

Struckmeyer: No, it came from Riney Salmon's brother.

Mitten: Oh, for heaven's sake.

Struckmeyer: Well, I just mentioned that to you.

Mitten: So you go into practice with your dad.

Jusem: Let's take a break.

Mitten: Sure, let's take a short break.

Struckmeyer: I wanted to make one correction. It was Charlie Strouss, I think, but Riney Salmon I don't think ever practiced with Snell. I think he was always with Jennings.

Mitten: All right. You are starting your practice in 1936 with your dad. Your brother hadn't gotten out of law school yet had he?

Struckmeyer: No.

Mitten: When did he graduate from law school?

Struckmeyer: I think he was two years behind me.

Mitten: Did you ever practice with him?

Struckmeyer: No.

Mitten: By the time he got out you had started with the county attorney?

Struckmeyer: Yes, that's correct.

Mitten: And then Jim went with your dad?

Struckmeyer: Yes. Then when I left the county attorney office then I practiced by myself for just a few months, I knew my number was coming up. And I . . .

Mitten: Went in the service.

Struckmeyer: Yes, I went in the service.

Mitten: Now you have a son that became a lawyer, Kent.

Struckmeyer: Yes.

Mitten: He's practicing here in Phoenix?

Struckmeyer: Yes.

Mitten: Who is Kent with?

Struckmeyer: Kent is with the Industrial Commission. He's an attorney with the Industrial Commission. He's assistant chief counsel there now.

Mitten: And he enjoys that kind of work?

Struckmeyer: Well, yes.

Mitten: Do you think he'll be a judge someday?

Struckmeyer: Well, I don't know what his aspirations are as far as that part is concerned.

Mitten: Then that's the only one in your family that's followed in you and your dad's footsteps?

Struckmeyer: That's right.

Mitten: The other boys are doing different things?

Struckmeyer: Well, one of the them, yes.

Mitten: What are they doing?

Struckmeyer: Well I have two sons. One is an engineer down in Tucson. That is Chris. Karl is with a construction firm.

Mitten: In Arizona.

- Struckmeyer: They are a New Jersey construction company and they develop subdivisions. He started out as just a clean-up ground crew and he's their manager out here now.
- Mitten: For the whole state?
- Struckmeyer: Yes, for the whole operation.
- Mitten: When did you marry Margaret? 1948, does that sound about right?
- Struckmeyer: Yes.
- Mitten: What was her maiden name?
- Struckmeyer: Mills.
- Mitten: She lived in Tempe?
- Struckmeyer: Yes.
- Mitten: As I recall Margaret was a legal secretary, wasn't she?
- Struckmeyer: Yes, she was.
- Mitten: You met her in that capacity, didn't you?
- Struckmeyer: Yes.
- Mitten: Tell us about that.
- Struckmeyer: Well, she was just one of the legal secretaries around town and I ran into her because, became acquainted with her and took her out a few times and I guess we decided to get married.
- Mitten: You were ready to get married then. You were by then, I would suspicion, in your thirties.
- Struckmeyer: Well I was close to thirty-five, yes. I was thirty-five.
- Mitten: Were you a judge then or not?
- Struckmeyer: No.
- Mitten: Oh, 1948 no. You were a year or two away from being a judge by then.
- Struckmeyer: Yes.
- Mitten: What do you think during those first thirty years were the most critical things that impacted your life, Fred? The Depression, the First, Second World War?
- Struckmeyer: That was part of it. I remember the hardships of the Depression and we were, like I told you, getting in line and no jobs available.
- Mitten: Of course the war had its personal effect on you because of your inability to be a trial lawyer thereafter.
- Struckmeyer: Well I felt that I would be, I'd just be, or I would not do trial work. As it turned out my throat gradually over a period of years got stronger. I couldn't hardly, even today I can't hardly make you hear me across--if I raised my voice and tried to shout, this is about what I have. It would just completely go out on me.

- Mitten: So you really couldn't get up in court and project your voice from a table or stand twenty feet . . .
- Struckmeyer: Well now I could, probably. But if I had to do it to over there it would be very difficult for me.
- Mitten: Well, I've seen you give a number of speeches and you use microphone and things like that.
- Struckmeyer: Yes.
- Mitten: No problem.
- Struckmeyer: As long as there's a microphone there's no problem.
- Mitten: What do you think has affected Arizona more than anything else? Probably the Second World War, as we were talking about, when all the people came out from different places in America.
- Struckmeyer: That's when so many young men realized there was a better place to live than New York City and some of the other areas that were. . . .
- Mitten: Who did you like the best of your law college professors?
- Struckmeyer: I liked [Chester H.] Smith best.
- Mitten: Smith who gave the bar review course?
- Struckmeyer: Yes. Chet Smith, Chester Smith. He could get down, he could communicate on the level of the student.
- Mitten: He had those wonderful expressions: you've got to take the bitter with the better, describing, and it just kind of stuck with everyone.
- Struckmeyer: I don't remember in particular that expression but I'm sure there were some that I must have at the time known. That's going back quite a ways though.
- Mitten: When I took his review course he was getting on in years and he held it in his home in Tucson.
- Struckmeyer: Yes. He always did.
- Mitten: He opened up his home so that his family room, living room and dining room became a big, like hallway, and he had those bridge chairs that you fold up and he had a little kind of rostrum and he spoke from the rostrum, during those hot summer days and he just had the windows open and the fan. I don't remember him even having air conditioning back in the early sixties.
- Struckmeyer: He may not have had it.
- Mitten: Yes. But it was never too bad, and he sure covered the material.
- Struckmeyer: See, I built this house in 1955 and we put in a refrigeration unit outside where you could get into it from outside. So it was—they were putting refrigeration into the houses at that time.
- Mitten: His house might have had it. I thought it was evap, what his house had.

- Struckmeyer: Probably.
- Mitten: He was an interesting teacher. He had come to Arizona a long time ago, probably in the twenties would be my guess. Do you remember when he started?
- Struckmeyer: No, it wasn't that early. Chet Smith—I'll give you the history of it.
- Mitten: Sure.
- Struckmeyer: Chet Smith came to the law college either one or two years before I entered the college. He came from, I think it was Montana. He was hired and he was told he was, the dean of the college was leaving, the law college was leaving and he was to be dean. He would become dean. He left—I think it was Montana—he left and relocated here in Arizona. The then dean was Sam Fegtly. God, he was a student of Wigmore, Northwestern University.
- Mitten: Where I went to law school.
- Struckmeyer: Yes, well you know of Wigmore.
- Mitten: I guess.
- Struckmeyer: Well, he wrote the text on torts and everything else. On evidence.
- He got somehow off wrong with Fegtly and Fegtly didn't like him. Fegtly was going to retire, he had announced he was going to retire. That's why they brought Smith. And Fegtly refused to retire and there was no mandatory retirement and he just stayed on as dean. And by god, Smith never did become dean of the law school. He just stayed on there, by god, until there was a change of administration or something, long after I left, and they hired somebody else for dean or something. I don't know what. Smith never became dean of the law school. That's an actual story.
- Mitten: As I recall, he died in the late seventies or the early eighties.
- Struckmeyer: Yes, he should have lived that long. Smith was a much younger man than Fegtly. Fegtly was an old man when I was there. They had no mandatory retirement. He just refused to retire. (laughs) Very funny. I probably shouldn't have dragged this up at this time.
- Mitten: Do you remember anybody else who was in law school with you?
- Struckmeyer: Well really, nobody ever became famous.
- Mitten: Really? You were the most famous in your class?
- Struckmeyer: I guess maybe the one that made the most money was a kid that went up to Las Vegas, located in Las Vegas, and he got in up there. When I ran into him years later he was flying high, making a lot of money. I can't even remember his name now.
- Mitten: No other judges from your class or starting of major firms or. . . .

- Struckmeyer: No. Lloyd [C.] Helm might have been a freshman. Lloyd became a judge in Bisbee for a while. I don't know what's happened to Lloyd. I don't remember if Lloyd's still alive or not. I just can't remember, I don't know.
- Mitten: What led you to go to law school? You said it was just kind of an accepted thing in your family you were going to become a lawyer. Why was it accepted even though they weren't trying to lead you to do it.
- Struckmeyer: Well I had to have some way of making a living.
- Mitten: (laughs) And that was as good as any other?
- Struckmeyer: That's right. (laughing) After I'd been in law school, I wasn't as sure it was as good or not.
- Mitten: That first year was pretty hard?
- Struckmeyer: Oh, like I said, the dean said, "Look to your right and look to your left," and it was true.
- Mitten: But you made it.
- Struckmeyer: Well.
- Mitten: So you were studying pretty hard then, that first year, I guess.
- Struckmeyer: Oh, listen, about the end of the first six weeks I looked around and saw these kids, we had guys from Stanford and colleges all over the, you know, the graduates of good schools. Out here they, you know, come into law school at the University of Arizona, then was a little something. And gosh, they knew what studying was and so I just adopted their habits. You had to recite. In those days they called on you to recite. If you hadn't studied, why the prof knew it too.
- Mitten: I think they still do.
- Struckmeyer: I think they do some.
- Mitten: That's the Socratic method, I think is what they call it, where you get called on to recite the case. You study cases, you don't study black-letter law.
- Struckmeyer: And the prof could teach it and maybe ask the class to critique it and that type of thing.
- Mitten: I think they still do.
- Struckmeyer: It was not too bad a system, actually.
- Mitten: Well that's the best, really, when you think of it.
- Struckmeyer: Yes.
- Mitten: Make you stand up.
- Struckmeyer: A pure lecture system is not very good training to be a lawyer. It doesn't give you really practical training. I guess that's why they keep the classes small at most law schools. Places like Stanford I guess they can't, and

- Harvard and Michigan and a few places like that. I guess they just can't keep them small.
- Mitten: Yes. They're up into the thousand kids.
- Struckmeyer: Yes. I don't know whether they do that or call on the students still or not.
- Mitten: Well of course they break the classes down and they have many more professors. Instead of like you and I probably just had one, there was only one person teaching torts in law school, they might have four. See? So they'll divide the class of four hundred into . . .
- Struckmeyer: Yes. A hundred each.
- Mitten: That kind of thing, so they get it down that way, with many, many more faculty members.
- Struckmeyer: Yes.
- Mitten: But they have to.
- Struckmeyer: Sure.
- Mitten: So it's still the same basic education. You probably don't know everybody in your class whereas when we all went to law school we got to know . . .
- Struckmeyer: Got acquainted with most of them. At least the ones we chose to become acquainted with.
- Mitten: (laughs) Well, that's true.
- Struckmeyer: No, there were always some dogs, obvious dogs, that you didn't like anyway.
- Mitten: Yes, and some of those became pretty good lawyers though.
- Struckmeyer: Well I don't like to say so, but maybe they did. (laughs)
- Mitten: I know I was surprised by it. The fellows that seemed to say the most in my law school class have really done the least with the law. One writes books about travelling now and he was popping his mouth off all the time. He was a coif and law review type, you know, but he didn't like the practice of law.
- Struckmeyer: And he really doesn't make a living on the practice of law?
- Mitten: No, he doesn't.
- Struckmeyer: Is that right? That's kind of surprising.
- Mitten: A lot of them kind of fell into that category that they're people that like to take courses and repeat back what they've learned, but when it comes to solving people's problems they're not with that . . .
- Struckmeyer: And they don't really like it either. They don't care for it particularly. Yes. I can understand that. I never thought of it that way, but I think that's probably true.

- Mitten: Of course the ultimate for lawyers who care are the few lawyers who are judges, because there you've really got to decide what the truth is. You're not an advocate anymore.
- Struckmeyer: Yes.
- Mitten: How did you feel about going on the bench, Fred? All the accolades aside and the fact that you're now a judge.
- Struckmeyer: Well, you know the funny thing is, at that time being a trial judge was kind of fun. Let's see, the most they had was seven divisions when I was a trial judge. First there was five and then there were six or seven. There weren't so many lawyers that you couldn't become acquainted with most of them, even if very casual. And the practice of law was fun. It's not that way now. As much, at least.
- Mitten: Well, you know, I've given a couple of lectures this year and I conclude, because everybody's younger than me now it seems, that I stand up and give seminars to, and I say, "You've chosen a wonderful profession." And I think of people like you and others in the past of my life and I talk about that a little bit. And I say, "Keep the profession's standards up. It's a joy to practice law, even with the difficulties that we have today and all the procedural requirements and everything. But it's when you become negative about it and everything is a problem, that's when the practice of law is not fun anymore."
- Struckmeyer: Yes.
- Mitten: I just love to get up and go to work. I must be a nut, you know. But I know when you came to the courthouse you used to feel that way.
- Struckmeyer: Yes, I used to feel that way.
- Mitten: Well, you know I'm very interested in getting you to tell me about your overall philosophy. You served on the bench longer than anyone else in modern-day on the Arizona Supreme Court. You served twenty-seven years. The other person was Henry [D.] Ross, but he served from 1912 to 1945, before Arizona became anything more than a little baby state.
- Struckmeyer: That's right. A country state.
- Mitten: You saw what happened from the late forties up through the eighties and you saw all the transitions occurring. Tell me, what was going on in your mind when you saw all these things and the complexities of the law suits. Did your philosophy change?
- Struckmeyer: Well, I was a judge and I saw the change of trial judges when they didn't have the same intimacy that they had with the lawyers. When I started to practice law there was two hundred lawyers and you could get to know

them all. There were a few that were just plain, you disliked and you had as little to do with them as possible and the rest of them it was all right. If you went to a Bar luncheon or--we used to have State Bar functions and there would be dances and the County Bar too, and you knew everybody and it was kind of family. But it's not that way now at all. Everybody keeps to themselves and his own little group. Well it isn't the same thing whatsoever. I, in the practice of law, I would miss that.

Mitten: Yes, I think we all do.

Struckmeyer: And I just, you know, after I was a judge I made this association with Don [Donald R.] Wilson and for about a year I went down at eight in the morning and then I said, "Why am I doing this? I don't need the money." To go down to a courtroom and they've got so damned many stupid judges it's incredible. Maybe I shouldn't say. It really is incredible! There are guys that are judges I don't think could have gotten through law school when I was there. And I don't know why that is.

Mitten: Well, it seems many are appointed now, Fred, without practical experience, without ever trying, having tried any cases. Or maybe having tried just a few cases. They don't have much experience and all of a sudden they're thrown in and they're expected to now be experts on extraordinarily difficult matters like very, very pricey malpractice cases or extremely difficult condemnation cases.

Struckmeyer: Yes.

Mitten: And they're not ready for it. If they were still practicing law they wouldn't dream of trying that case themselves, they would get another lawyer in. And that's where I think. So then, you know, that and we're seeing people with some preconceived notions.

Struckmeyer: That's very unfortunate. I know that. That's one of the things that . . .

Mitten: The judiciary, if someone was to ask me, is changing because they're becoming activists.

Struckmeyer: Yes. Good way to put it.

Mitten: Have you seen that?

Struckmeyer: Good way to put it. Absolutely.

Mitten: They're not taking the case law that they saw, studied in law school. They're saying, well there's a new twist on that, a new turn.

Struckmeyer: And they look for it in every case.

Mitten: Precisely. How can I turn this case to fit this new situation that we're looking for to propagate a certain theory or whatever.

Struckmeyer: It's the wrong idea. I used to tell my law clerks, "Look, we're going to write something that we, hopefully five hundred years from now will be just as good then as it is now." I don't know whether I ever mentioned it, said it that way to you, but later, as I—you were one of my earlier ones—but later I used to tell my law clerks that.

Mitten: I never felt you had a mission. I think people that have a mission . . .

Struckmeyer: Let's not change it according to our philosophy. Let's write it like we think it should be, like it is now. Because that's the way it grew up over our Anglo-Saxon history and wars and struggles and blood-letting and everything else.

Mitten: You had a historical sense of where you were and who you were. You were a Supreme Court justice who was writing at a certain period of time in the history of Arizona, the history of the United States. A lot of things came before, a lot of things are going to come after. You didn't have an agenda, kind of I've got to check off and decide twenty-five of these certain cases so that my name will go down in posterity as a certain type of judge.

Struckmeyer: Yes.

Mitten: You never gave me the feeling that you were going to contort the facts to fit any decision.

Struckmeyer: I don't think we tried, the law clerks and I tried not to do that.

Mitten: We're sitting in a house that you built many years ago, isn't that right?

Struckmeyer: Yes.

Mitten: Was this built in the middle fifties?

Struckmeyer: In 1955.

Mitten: The year you went up on the Supreme Court.

Struckmeyer: Yes.

Mitten: This is the kind of thing you enjoyed when you were up on the court too, build a house or to have those citrus yards and farms that you had to get you away from the stress. Is that right, Fred?

Struckmeyer: Well, you know, strangely enough I had a court reporter and his name was Henry Larson. He's been dead quite a while now. Henry, at that time, lived out on Twenty-fourth Street and he had twenty acres of land and he had a citrus grove that he had planted—he had come from California originally—and raised citrus. He planted a twenty-acre citrus grove and he made money out of it. I got the idea, "Well, why didn't I own a citrus grove?" I really didn't have the resources to just hire everything done so I did a lot of it myself. Weekends. I've even gone out in the middle of the night and irrigated and gone back up to the Supreme Court and polished off

an opinion or two. But it was kind of a sense of really getting more out of life in the way of doing something rather than just sitting in the courtroom all your life. If that sort of makes any sense to you.

Mitten: Yes. You wanted to be more than just a jurist, you wanted to have other aspects to your life.

Struckmeyer: And you know, I have this three-quarter acres and about half of it is citrus and I love to go out there. I get guys to hoe weeds, and I go out and check them. I don't do much hoeing myself anymore, but I'd irrigate the place up until this year when I've been hiring somebody to do it. I could still do it, but. . . .

So it's just a sort of a second—there's something about being a farmer, the raising things, some people just like it and I was one of them.

Mitten: There's a gratification to it.

Struckmeyer: Yes. Lot's of women just raise a few flowers and it's a gratification to them, housewives. They may just have one pot that they move every morning into the sun and bring it in at night. It's the same thing, I think. Just something growing. I think human beings to a great extent have that.

Mitten: And you can see it actually develop, whereas when you write a book or something it not necessarily . . .

Struckmeyer: It can be sort of a transfer type of thing too. The creation of something becomes important.

Mitten: Well, you created this house.

Struckmeyer: Well, it was important because I was having children. (laughs) I had to have a place to raise them.

Mitten: As I recall you telling me in the early sixties, that you had done a lot of the work around here yourself.

Struckmeyer: Yes.

Mitten: Did you have an architect design this for you?

Struckmeyer: Yes. I had an architect. He wasn't admitted to the practice, he wasn't licensed as an architect, but they give themselves the title of—what do they call themselves if they're not licensed. Anyway, he just drew some rough plans. He made it to scale, he could do that, and we approved the plans and I took it over to the—was it the FHA [Federal Housing Administration]

Mitten: Sure. To get your loan?

Struckmeyer: And got a loan. When I got my loan I had the biggest loan in Arizona, for a house, not for businesses.

Mitten: But this fireplace here with these very slender rocks, what do you call the stone here?

- Struckmeyer: That comes out of the, north of the Grand Canyon. That's laid down over the many, many millions of years.
- Mitten: But it comes as thin as this is, and in sheets like that?
- Struckmeyer: Well, no. It's solid all the way down, but they mine it and they break it off in sheets like this. They did then. I don't see much of that now. I guess it's gone a little out of style, maybe. At least it isn't used very much. Maybe the sources of it are not very good any more. Maybe they've kind of worked them out. I know they used to ship it to Honolulu and New York.
- Mitten: But it has a southwestern flavor to it.
- Struckmeyer: Yes.
- Mitten: I forget the name of this stone, but it's . . .
- Struckmeyer: Sandstone. It's sandstone.
- Mitten: It's a form of sandstone and kind of has the autumn colors to it and the tans and browns and oranges.
- Struckmeyer: This isn't right because it's got some smoke from the fireplace up the front and if it's smooth you can get it off and if not why it stays there forever.
- Mitten: You raised your family essentially here.
- Struckmeyer: Yes.
- Mitten: And they all went to Central High School? Your children.
- Struckmeyer: Yes.
- Mitten: Moving up north to Glendale like where you are now, in 1955 that was going really far north, wasn't it?
- Struckmeyer: I was out in the country. In this area from here to Glendale Avenue I was the second house built. Between here and—I'm on Third Street—between here and Seventh Street I was the first house.
- Mitten: Really. This was all citrus here?
- Struckmeyer: Yes, this was a citrus grove. I bought from Henry Liem, he was superintendent of this school district here. I knew him and I bought an acre and a half off of a ten-acre plot. I paid him thirty-five hundred dollars for the acre and a half. He sold the next acre next to me for forty-five hundred dollars, and the next acre he sold, half-acre, these were three-quarter acres, I guess, he sold for fifty-five hundred dollars and the next one he sold for sixty-five hundred dollars. And the last one he sold for ten thousand dollars. And I could have had them all for fifteen hundred dollars an acre. (laughs) But I was building a house. I didn't have any money to invest left. I put everything I had into that house.

- Mitten: Well you've seen a lot of that happen in Arizona. If I only had invested on Camelback I'd be a multi-millionaire today.
- Struckmeyer: Oh, go out, anywhere north of here. And go out east along—what's the main road that goes out toward the mountains there?
- Mitten: Dreamy Draw?
- Struckmeyer: Yes, go out Dreamy Draw and when once you get out past Dreamy Draw you could have bought desert land out there, I don't know, probably three or four dollars an acre. Five dollars an acre maybe, at the time I bought this. Later of course, as civilization encroached on that area, why of course prices started going up.
- Mitten: Five dollars an acre.
- Struckmeyer: Oh, yes, I could have bought land in the heart of Scottsdale for five hundred dollars an acre. When I was raising that grove I used to go through there. The money I spent on that grove, although I got it back many, many times over because of the-- if I had put it in desert land around Scottsdale I would have been one of the wealthiest men in Arizona. That stuff became unbelievable. It was just desert land and in then just a few years, ten years or so, it was just unbelievable how the prices were.
- Mitten: You might have been a rich man but you wouldn't have had that experience of growing the citrus or working all those hours.
- Struckmeyer: Well, I just mentioned. . . . (laughs) Of course I was there when the city limits, like I said, were at McDowell Road and if I had bought out north of there any time, why. . . .
- Mitten: Tell me about some of your cases, when you tried cases, when you first practiced.
- Struckmeyer: I don't know any stories to tell you.
- Mitten: I know that your father, for instance, when he first came he represented the governor, didn't he?
- Struckmeyer: Yes, he became a very good friend of Governor [George W.P.] Hunt and he appointed my father to the superior court to finish out a term of somebody's. I've forgotten who it was. He spent two years on the superior court of Maricopa County, but he was, as I told you, raising a family of four and he felt he couldn't afford that salary, because he was making a whole lot more practicing law.
- Mitten: But before that, before Hunt appointed him Hunt was in an election in 1917 or 1918.
- Struckmeyer: Yes.
- Mitten: And your father, there was some dispute wasn't there?

- Struckmeyer: A fellow by the name of Campbell was the Republican nominee and George W.P. Hunt was the Democratic nominee. They had a recount and it was a long, since it involved the whole state of Arizona, it was a long trial. That was one, my father was one of the lawyers, just one of them. The chief counsel was a person by the name of Ives, who died a few years later. You wouldn't know him, nobody would know him. A fellow by the name of Ives, and my father was assistant to Ives, really. They won that election and that put dad in a pretty solid position politically for a number of years because the old governor, what did he serve, seven terms or six terms, or gosh I don't know how many.
- Mitten: Yes. Longer than I think anybody else.
- Struckmeyer: Six or seven. Seven I think, but I could be wrong.
- Mitten: Well your father was a Democrat, and you've been a lifelong Democrat.
- Struckmeyer: Yes.
- Mitten: Have you seen any changes in the party, anything that you disagree with?
- Struckmeyer: Well, I don't like people who, you know, switch back and forth with the parties because I think there's a certain loyalty you owe to your party. If you every time you disagree you join some other party, I think you ought to work in your, I believe in the philosophy of working within your party differences. Assert your views. But I don't know how much of, I'm born in the Democratic Party and I guess I'll die a registered Democrat, but philosophically I don't always find myself in agreement with the party. I won't name any particular things, but . . .
- Mitten: No. You're a fairly conservative Democrat, aren't you?
- Struckmeyer: Well, I would call myself a conservative Democrat. A person who might today be inclined, if they came out of school, would register as a Republican.
- Mitten: Yes. You've never been one to change things unless they should be changed, there's a reason.
- Struckmeyer: Yes.
- Mitten: If I was to say, describe Fred Struckmeyer, I would start it off by saying he was a man of reason. He didn't make decisions without having reasons for them. A lot of times, as a Republican, as you know I am, I find that some of my Democratic colleagues want to change things because their reason is that theoretically it would be better to have something else. But they haven't shown me that what we have is not good. So the reason is . . .

Struckmeyer: It's what I call a five-hundred year outlook. Look at it and if you're in a position where you can change things, you should measure it by saying to yourself, well is this going to be just as good five hundred years from now.

Mitten: That's a tough test.

Struckmeyer: Well, it helps a lot when you think of it that way. It keeps you from doing a lot of things that you might do if you didn't think about it that way.

Mitten: I know that your opinions never seemed to touch political lines. They cut across all lines, it seems, over the years as I read them.

Struckmeyer: Well, I hope that's true.

Mitten: Well, it hasn't been true for all judges, obviously.

Struckmeyer: Well, it's a matter of being an activist I guess. I don't think judges should be activists. That's one of the things I most firmly believe in. It's a little hard, the philosophy changes and you can see it. It's easiest, of course, to see it in the United States Supreme Court. A few years back they had very strong activists. Before that they were men that weren't. The tide comes and goes. I just never was an activist in the law, I don't think, in that sense. I don't know whether a man's day can plan on what's, make a law is really going to be.

A new law, just create a new law and make it suitable to live under five hundred years from now. That's sort of the kind of the test. If you're going to change a law as a judge, you ought to think, well how is this going to look in the light of the history of civilization, of men and women, how they have lived the two thousand years that we've had history, that we've had a history we know of, from the Roman Empire.

Mitten: Is there anything that you feel that you would have liked to have done, Fred, that you didn't get to do in your eighty years?

Struckmeyer: Well, not really. Right now I can't think of it.

Mitten: If you were to live it over again you'd pretty much do the same kind of thing?

Struckmeyer: Well, if I were to live it over in the light of what I know now, I don't know whether I would or not. (laughs)

Mitten: You might have become a judge and maybe not?

Struckmeyer: If I were a young man I don't know what I would—I might look at things a little different, as a young man, today, looking at today's events.

Mitten: But looking at it through your own eyes you probably would have done . . .

Struckmeyer: Well, I've had a very satisfactory life and there would be no reason, or I wouldn't, as far as I'm concerned, that I wouldn't want to pursue a path that would lead in that direction.

- Mitten: Well I remember one time you and I talked about whether you would like to become a federal district judge as opposed to staying on the Supreme Court. You said, "Well I've done my trial work and I'd really like to stay with writing the opinions as opposed to trying cases." Do you remember that?
- Struckmeyer: I don't remember that, but that's very true.
- Mitten: You had no ambition to go through the federal judiciary?
- Struckmeyer: That's right. None whatsoever. I know some of our judges in Maricopa County have been selected by United States Senators to go to become Ninth Circuit judges, both district judges and appellate judges. If somebody had offered me an appellate judge, for example, of the Ninth Circuit, at one time I might have taken it. But I never sought it out and I was happy where I was. So just looking back, if it had been there to have, I think those are jobs that are definitely more influential in the course of history so far as the country is concerned.
- Mitten: Do you think a Ninth Circuit appellate judge has more of an effect on people than a Supreme Court judge in a strong state like Arizona?
- Struckmeyer: Oh, much more, much more.
- Mitten: Do you really? Why is that?
- Struckmeyer: Well, because in the first place, a state judge can write an opinion and if there's any kind of a way that it can become a federal question turned out of it through the Fourteenth Amendment in anyway or something of that sort, why . . .
- Mitten: Very few times that happens, right?
- Struckmeyer: Why, they'll go and it will go up to a circuit court. When you consider how many circuit courts there are, though. Are there eleven circuits?
- Mitten: Yes.
- Struckmeyer: Why, they are turning out a lot of law.
- Mitten: Well, I know, but what I was thinking of Fred, is that a person who is writing decisions like you wrote for twenty-seven years in one state, you would have a greater impact on that state and that community than would any federal judge.
- Struckmeyer: Well, I think that's true.
- Mitten: When you think of how few Supreme Court decisions affect the everyday life of an Arizonan, but think of how many Supreme Court decisions in Arizona affect everybody every day.
- Struckmeyer: Well, yes. Except, the Supreme Court opinions of effect are those that put restraint on, that protect you every day from unlawful police activity and

that type of thing. You don't see that working but it's working all the time anyway.

Mitten: Yes, but that's working in the criminal element and there are very few people who are committing crimes.

Struckmeyer: Well I know, but that's true in the civil where the Congress has passed enactments at least.

Mitten: Well, that's true. I see what you're saying. And those would all be federal questions.

Struckmeyer: Yes, that's true.

Mitten: What I was thinking of more is that the, you know the Arizona Supreme Court is the final arbiter of all cases that are filed in Arizona. They could go into the federal judiciary, but chances are very few will.

Struckmeyer: Well, that's right, very few really are affected by a federal question.

Mitten: I mean, think of how many cases cert has been asked for and how many times it's given. I think they've got it down now to about like one out of every three thousand or something.

Struckmeyer: Yes, but you're only looking at one, you're only looking at the Supreme Court of the United States. They are also setting down the guidelines for jurisdiction for the . . .

Mitten: Circuit courts..

Struckmeyer: Yes, the circuit courts. And district courts, trials in district courts. And they handle, oh, that's a whole lot of federal courts. So there's a tremendous volume of. . . .

Mitten: Well, I know. It just seems like the federal questions aren't as involved with the everyday workings of a state as are the state . . .

Struckmeyer: Or the citizens of a state. Well, when you drive an automobile and somebody runs into you, there's no federal question there.

Mitten: Yes.

Struckmeyer: That's the practical kind of things that can happen to you every day.

Mitten: So philosophically, I guess I feel that a Supreme Court judge in a state like in Arizona has a greater impact than the Ninth Circuit would have.

Struckmeyer: On the local citizens, yes, I guess that's right.

Mitten: You know, if you're on the Ninth Circuit some big questions you might be able to write a little bit more about than you would on the Supreme Court. But think of how many times that you had the identical issue going up before the Supreme Court of the United States and the Supreme Court of Arizona and often you would wait in Arizona to decide your case . . .

Struckmeyer: Knowing there's going to be a decision.

Mitten: . . . knowing the Supreme Court's going to decide, so why decide and be reversed or why try to steal their thunder. So often you would wait and get the guidance from them.

Struckmeyer: Well, once in a while, I guess.

Mitten: I know sometimes you tried to influence them with decisions.

Struckmeyer: I don't remember that. Your memory's too good.

Mitten: You know, I've been reviewing some of the newspaper articles about you and your family and what seems to stand out the most, and it certainly is obvious to me during our conversation even though we're old friends and we've known each other many, many years, is your unwillingness, really, to do anything more than to say the very least about your accomplishments.

It's best expressed, I think, in this Phoenix, *Arizona Republic* article of 1944 or 1945 when you returned from the service. It said, "Lieutenant Struckmeyer home from front," and it talks about you receiving a silver star and a bronze star and serving with valor, and then it says, "Minimizing his part in the war Struckmeyer, an assistant Maricopa County prosecutor from 1939 to 1941, declared, 'I didn't do anything spectacular. I was just lucky. There are lots of boys who did much more than I who won't come back.'"

And I guess that best says it for Fred Struckmeyer. You've always given the other man most of the credit and you've never tooted your own horn very loudly. Is that something that you kind of got from your father?

Struckmeyer: Well, I don't remember saying that, but it could be true.

Mitten: Well, they quote it so I assume that they . . .

Struckmeyer: Well, I just think I'm not, I'm reluctant to, I've never really cared for limelight and I don't get any great satisfaction out of being in the limelight particularly.

Mitten: Even though you held a position of chief justice of our Supreme Court from 1959, you held that for three or four years, which is certainly the highest judicial position you could hold in the state of Arizona. You never used it to promote your own position in any way.

Struckmeyer: It sort of goes along with, I think it goes along with the idea that I don't think a judge, or let's say I think a judge ought to look at what he's doing and asking the question as to how, is this going to be good next year and the year after and the year after and the year after. If he did that he might not do some of the things he does.

Mitten: As I recall Levi [S.] Udall was on the court when you first started.

Struckmeyer: Yes, he was.

Mitten: And M.T. Phelps, he was there.

Struckmeyer: Yes.

Mitten: Dudley [W.] Windes.

Struckmeyer: Dudley Windes.

Mitten: He was on the court from 1952 to 1959. He also wrote opinions for the court after he retired. Do you remember, did you call him back in and . . .

Struckmeyer: Occasionally, I think. Not too often, because Dudley just got tired of writing opinions. He got old and he just got tired of writing opinions.

Mitten: I remember him as sort of a Lincolnesque kind of figure, very slender, very tall.

Struckmeyer: Very slender and very—he did farming where he lived, over on the south side there, and he was a kind of a farmer's lawyer type.

Mitten: But he had a good legal mind, didn't he?

Struckmeyer: Oh, I don't mean his mind was set on farmers as opposed to some other class. He was just a . . .

Mitten: You enjoyed working with him?

Struckmeyer: Yes, indeed. He had a keen legal mind.

Mitten: [J.] Mercer Johnson is another one I always hear you talk about.

Struckmeyer: Mercer Johnson had a good legal mind.

Mitten: And Bob [Robert O.] Leshner, of course.

Struckmeyer: And Bob is an extraordinarily able person, as far as the court is concerned.

Mitten: Then Jess [Jesse A. Udall] took Levi Udall's place when Levi died.

Struckmeyer: Why yes, when Levi passed away, why Jess his brother took it.

Mitten: These were workman-like people, I gather.

Struckmeyer: Yes.

Mitten: What did you think of Renz Jennings when he served with you?

Struckmeyer: Well, Renz was a, I liked Renz and what I say is not, in any way running him down. Renz was more of the politician-type than the lawyer-type judge. He was, and I say I liked him, but he was kind of a disturbing element as far as the court was concerned.

Mitten: He really wanted to be outside of the court, is that a fair statement to make?

Struckmeyer: Yes, that is. That's right.

Mitten: He would have preferred to have been a senator or even a member of the house?

Struckmeyer: That's exactly right. And the fact is, all his tendencies and his thinking was along those kind of lines.

Mitten: I can recall, as your clerk, Renz would come up to me every day, shake my hand and say, "I'm Renz Jennings. I'm justice on the Supreme Court."

And I would say, "I'm Fred Struckmeyer's clerk. We did this yesterday." (laughter) He'd always turn away and walk away from me, you know. But he was the consummate politician, I thought. He always was saying hello and seemed to know most people and was able to make easy conversation with everyone. Was that your observation?

Struckmeyer: Sure. Oh, yes, Renz.

Mitten: But he was on the superior court as a trial judge for a few years. Wasn't that. . . .

Struckmeyer: Yes, before he came on the Supreme Court. He was a trial judge.

Mitten: He used to scare all the women in the elevator, as I remember . . .

Struckmeyer: Well, he ruled by the seat of his pants. (laughter) Law books weren't written for him.

Mitten: When [Ernest W.] McFarland came on, now there's a man with a lot of background to him. He had been governor of the state, had been senator. Wasn't Goldwater elected in McFarland's chair originally?

Struckmeyer: He unseated McFarland in the United States Senate. Mac had had two terms, twelve years, and Goldwater beat him by just a few votes.

Mitten: Back in, what was that, 1952 or 1954?

Struckmeyer: Yes, it would be right along in that era.

Mitten: [Dwight David] Eisenhower's beginnings.

Struckmeyer: Yes, right at that time.

Mitten: Would you say that that carried, his landslide of the country carried Goldwater in?

Struckmeyer: That's right.

Mitten: Not to take anything from Barry.

Struckmeyer: No, that's true. Well, Barry was a very friendly person and he had spent his life in Arizona and there was hardly an inch of Arizona that he hadn't walked on. And people knew Barry and they liked him. And he was very likeable.

Mitten: And a lot of what he said then has come out to be true today.

Struckmeyer: McFarland was, well, Barry was conservative and McFarland, as—what was his job in the Senate?

Mitten: Was he the whip? I can't remember. The president, no, he was not the president of the Senate

Struckmeyer: No. But I think he was majority whip. He was. And because of that he had to do some things which McFarland really didn't, wouldn't probably have done from a left-wing standpoint.

Mitten: That was in the [Joseph] McCarthy era, wasn't it?

- Struckmeyer: Yes, it was. And he was beaten by Barry in a conservative Arizona state because of that, when Mac was really quite conservative himself.
- Mitten: I remember there used to be an expression about a "pinto" Democrat, persons that were registered Democrats but they really . . .
- Struckmeyer: Voted Republican.
- Mitten: Well, they thought like Republicans and they wound up electing Democrats who were extremely conservative. You've heard of that expression, I'm sure.
- Struckmeyer: Yes.
- Mitten: Because I know when I arrived in Arizona in the early sixties I was a Rockefeller Republican and I felt that I was more liberal than most Democrats in the state.
- Struckmeyer: Sure.
- Mitten: It was a farm state, copper state.
- Struckmeyer: Mac was on our court. He was pretty much a down-to-earth person.
- Mitten: A pragmatist?
- Struckmeyer: Yes. He lived in Florence and he was a farmer at heart.
- Mitten: He had practiced in Gila County, didn't he?
- Struckmeyer: Yes.
- Mitten: A long, long time ago.
- Struckmeyer: Yes. He'd been county attorney and . . .
- Mitten: Yes, and when he left the Senate he went back.
- Struckmeyer: He became judge. He ran as judge down in that county and then he used to sit, because he had plenty of time and the county didn't have a lot of business, he used to sit all over the state. And he kind of used it to, you know, campaign. When he got ready to run for the United States Senate, he did. And he was elected.
- Mitten: Was he a senator before, yes he was a senator before he was governor, wasn't he?
- Struckmeyer: Yes. He served two terms and he ran for a third term is when Barry Goldwater beat him.
- Mitten: Then he ran for governor after that?
- Struckmeyer: Then two years later he ran for governor.
- Mitten: He won that?
- Struckmeyer: He was elected governor and he served two terms, didn't he?
- Mitten: I'm not sure of that.
- Struckmeyer: He served two terms and then he ran for the Supreme Court. He ran for the Supreme Court then.

Mitten: Yes. Now that was a big difference. Golly, I remember we had some things that Joe Contreras, who's on the court of appeals, had kept, and it was the last time he ran for election in nineteen—was this in 1972, Fred, that we all . . .

Struckmeyer: I think.

Mitten: . . . helped? One was in Spanish and it says, "Pase su decision," and the other is, "Weigh your decision."

Struckmeyer: That's the card they handed out.

Mitten: Yes. You were running against a fellow by the name of [Harold] Riddel, whose wife [Marilyn A. Riddel] is a superior court judge.

Struckmeyer: Yes. It gives a lot of your history and background as to what you'd done. But that was the last time you ran.

What do you think of judges not running? How do you feel about the plan now that it's been in effect, oh, golly, twenty years or so?

Struckmeyer: I don't think there's any perfect way of selecting judges. But I think the system of having to go out and campaign and shake hands and walk around the community and . . .

Mitten: Get contributions.

Struckmeyer: Well, that's the worst part. I should have put that first. But the system of having to go to the lawyers because nobody else, you wouldn't take their campaign contribution from a corporation or a company or anything of that kind, going to the lawyers and getting your campaign contributions. Because in a sense it looked as if you were going to repay that with a favor on the Supreme Court. Judges didn't and lawyers didn't try to do that, but there's some, there's a little bit of . . .

Mitten: The appearance?

Struckmeyer: Yes, but not only the appearance but there's a little pressure on a judge who has a lawyer in front of him that has made a campaign contribution, too. There's a little bit of feeling of, I don't know exactly what to call it. It puts a little pressure on a judge, let's put it like that. And for that reason I think it's a terrible system to have to run. Any system is better than having to run, a judge run for office.

Mitten: In other words, if you didn't have to campaign, and you didn't have to get contributions, but you could just run on your record and go around and make speeches . . .

Struckmeyer: The person that you were, actually were . . .

Mitten: . . . and talk to different groups about who you are and what you've done.

Struckmeyer: . . . there was some way of . . .

- Mitten: . . . If it wasn't legal to give . . .
- Struckmeyer: . . . the cost being put up. The cost being expensive, you know. A guy like that running against you and you drove down Central Avenue and here's a big old billboard with his picture on it.
- Mitten: Yes. Like when Howard [V.] Peterson ran against Charlie Bernstein?
- Struckmeyer: Yes.
- Mitten: At the end. There were billboards all over the state, which really demeans the office.
- Struckmeyer: Well then how are you going to do it? Here's a campaign that's going to cost you thousands and thousands of dollars, maybe fifty thousand, who knows, in the number of people there are now.
- Mitten: In today's world it's going to cost a lot more than that.
- Struckmeyer: Yes.
- Mitten: So would you prefer to have the judge elected in a true election, where he has an opposition but where he didn't have to collect contributions? In fact where it would be illegal, let's say.
- Struckmeyer: If there were some way of doing it I think the election of judges would be fine.
- Mitten: Because you know, three quarters of our state still elects their judges, and they're not having any problems.
- Struckmeyer: In the smaller communities where they become acquainted with the lawyers and the word of mouth spreads around, fine, and it does in smaller communities. But in Phoenix, Arizona, a judge can be the worst person in the world, and nobody knows it. But that's not true in smaller communities. The word gets out.
- Mitten: Yes, if a judge in a smaller community starts to give decisions that they feel are improper, then they'll take him out of office.
- Struckmeyer: Sure.
- Mitten: Of course the other side of that is that the federal judiciary, they're appointed for life and they say that they have no pressures on them at all but to do anything but to be a jurist in its completest sense.
- Struckmeyer: Absolutely impartial.
- Mitten: That's what they say.
- Struckmeyer: Well that's good for the smart ones. But if you're a dumb judge and appointed for life it's really hard on the public. (laughter) Well, we're being practical here.
- Mitten: Sure.
- Struckmeyer: And those kind of views, I don't care who knows.

- Mitten: While you watch the court from 1955, when you had [Arthur T.] LaPrade and Udall and Phelps and [Evo] DeConcini and Windes, to a time when you had [William A.] Holohan and [Jack D.H.] Hays and [Frank X.] Gordon and [James Duke] Cameron and people like that, what would you say the change was? If there were any changes between the two courts, the court you started with and the court you ended with?
- Struckmeyer: (pause) Well, I'm really not inclined to answer that question. If I can beg off.
- Mitten: Okay, sure.
- Struckmeyer: I can't, you know, if I commit myself to a viewpoint then I really have to justify it and it's comparison of men then.
- Mitten: Oh, I didn't mean for you to evaluate the people.
- Struckmeyer: Yes, I know.
- Mitten: I just meant the court and how the court was running from—you were just a new court because you were five people when you joined it. That was only a few years before they had passed from three to five.
- Struckmeyer: That's right.
- Mitten: And during your tenure, in fact you were instrumental in getting the court of appeals to come into position so that we had a second appellate court, a buffer for the Supreme Court, and to the point where we now have a number divisions of appellate courts. When you retired there were, as I recall, at least two divisions in District One alone.
- Struckmeyer: I think more than that, I think there were two down in Tucson.
- Mitten: And two in Tucson. So those kinds of changes. I wasn't asking, Fred, for you to compare Dudley Windes to Judge Gordon or anything like that. Just those changes and how that affected things. Would you comment on that for us?
- Struckmeyer: (pause) Well, I don't know exactly how to answer that question.
- Mitten: Do you feel that the court of appeals has been successful or do you feel that we could have done without it?
- Struckmeyer: Oh, I don't think that we could get along without it.
- Mitten: Why?
- Struckmeyer: The volume of business is just too great to, you know, there's no possible way for five men to handle that much work. I don't know, they have more than three panels. Don't they have more than three panels out there now? Maybe five?
- Mitten: Yes. In Maricopa, you're talking about? Right.
- Struckmeyer: Yes.

- Mitten: The alternative, I suppose, was to increase the size of the Supreme Court. Remember, that was being discussed.
- Struckmeyer: That's right, that was considered, what, it would be increased from five to seven.
- Mitten: Right.
- Struckmeyer: But that would have been temporary only, the way the state was growing. As it turned out the legislature went the right way, they just created an intermediate court of appeals and limited the jurisdiction of the Supreme Court to what it wanted to take, practically. Other than death sentences . . .
- Mitten: Capital punishment.
- Struckmeyer: Yes, capital punishment and death sentence cases, and a few areas possibly.
- Mitten: There is some original jurisdiction area that's original and a few other—industrial commission cases, I think, was included.
- Struckmeyer: For a while. Then they managed to change that. I don't know whether it took a constitutional amendment or not. I've forgotten. I know at one time we were just so filled with industrial commission cases we just couldn't handle anything else.
- Mitten: I remember right at the end of my year in 1964, clerking for you, you were then getting into the mode where you and Charlie Bernstein were trying to put together the paperwork necessary to assist the legislature in enacting the, in giving the enabling statutes for the court of appeals. You were helping them.
- Struckmeyer: Yes.
- Mitten: Charlie was one of your really good friends on the court, wasn't he?
- Struckmeyer: Charlie was my good friend. One of the reasons was when I got back from the service and I was appointed judge by the governor, the governor was very close to Charlie and he was one of the governor's advisors in Maricopa County.
- Mitten: Who was the governor?
- Struckmeyer: [Dan E.] Garvey, and he was from Pima County. He relied on Charlie and Charlie went out there and told him he wanted him to appoint me and he did. I would have never run for it.
- Mitten: Whose chair did you take on the superior court?
- Struckmeyer: A fellow by the name of Tom [J.] Croaff [Jr.], who died in office. Tom Croaff.
- Mitten: Croaff? Didn't he have a brother or something who practiced law?
- Struckmeyer: Yes. He had a brother named Vernon Croaff.

- Mitten: I remember Vernon Croaff. Vernon had a small private general practice, kind of. Okay, I remember Vernon Croaff, yes.
- But Charlie, I remember you and he, in fact there was talk about "the Fred and Charlie show." Do you remember words like that?
- Struckmeyer: Yes.
- Mitten: The two of you were writing a lot of decisions back in the early sixties.
- Struckmeyer: Yes. They thought, the lawyers in Maricopa County thought that we ran the court, which we didn't. Five judges and each one of them had their own opinion.
- Mitten: Well, good. (laughing) Wouldn't you agree that you and Charlie really, when things were important, that the two of you made the decisions?
- Struckmeyer: Oh, the others could see important decisions too.
- Mitten: Certainly the two of you were the spirit of the court?
- Struckmeyer: Well, let's say that the other judges could see the light after we talked to them in conference.
- Mitten: Okay.
- Struckmeyer: Well, that was always true. When you go into an appellate court you have to defend your opinions. Somebody else has a different view of it, why. . . .
- Mitten: You and Charlie saw a lot of things alike though, didn't you?
- Struckmeyer: Charlie was a solid, conservative person.
- Mitten: Bernstein was a man of multiple ideas, wasn't he?
- Struckmeyer: Well, when you sat down with Charlie and say, "Now listen to me, Charlie," he would listen and he could understand what you said . . .
- Mitten: Yes. But if you had . . .
- Struckmeyer: . . . and it would influence him, let's put it like that. Once in a while he'd go off on his own, he'd go in and say, "Let's go sit down," and say, "Now listen to me. I want to talk to you about this."
- Mitten: Do you think that the philosophy of the court changed from 1955 to 1982 when you left? Did you see any changes? Talking in a broad, general sweep, Fred.
- Struckmeyer: The Supreme Court of the United States was making a lot of changes and these kind of things happen over years. There will be a period of where the changes that a court has made, actually the changes in the law—maybe this is the way it should operate, I don't know. They go out and they sort of, where I think they're sort of tested for twenty, twenty-five years and then that will be a period where there is a conservative essentially and basically, not anything very radically done, and the opinions tend to be conservative

in application of the law. And then they'll, after a quarter of a century or so, why you get a court, courts will all of a sudden just, it seems like they're competing for new ideas. If you're a judge, you should ought to be conscious of that, but I don't think most judges ever think in those kind of terms. Because it will tend to, I think, make you look at what you're doing a little more carefully. Things become more basic to you. That's just a personal observation of my own. And I think that's true of the Supreme Court of the United States, too.

Mitten: When you started out, the court was pretty conservative in 1955, would you say?

Struckmeyer: Yes.

Mitten: Would you say by 1982 it was making a turn into becoming more activist?

Struckmeyer: Yes. And then I think it slowed down and changed about the time I left. But it changed for a few years and then it, I think, a little more activist now.

Mitten: There were a number of wonderful judges on the Supreme Court of the United States. Was there any one that you specifically felt you sort of emulated or that you would have liked to have been like?

Struckmeyer: Well, you know, you're asking me a pretty tough question there, because when I was a young man there were men like [Oliver Wendell] Holmes and [Benjamin Nathan] Cardozo who were still on the courts and every lawyer admired them. But they were activists. They saw things in the way they ought to be, as far as they were concerned, but they were subtle about it.

Mitten: So maybe it's subtlety that we're looking for in the activist judiciary.

Struckmeyer: Well, maybe it is. Maybe you do things but it doesn't look like you're doing them, too, sometimes.

Mitten: So they don't just slap you in the face with it. They bring you to the trough and . . .

Struckmeyer: And it looks good so you . . .

Mitten: So you drink out of it.

Struckmeyer: Yes. (laughter) You have breakfast.

Mitten: Well, a person like [William O.] Douglas, he was certainly an activist judge.

Struckmeyer: Well, there's a true activist, and everybody recognized him and he made no apologies for it and everybody knew when they came into his courtroom which side he was going to take in advance.

Mitten: Whereas [Hugo L.] Black, he wasn't really an activist, was he?

Struckmeyer: Not in that sense.

- Mitten: Well, some areas, like we talked about the Indians . . .
- Struckmeyer: Yes, he had some strong feelings on those, for example. Black had some strong feelings in some areas, but they didn't bubble over like Douglas. And to a lesser extent we, a lesser and lesser way the Supreme Court judges get it too. And you get it in trial judges, one will be thinking one way and if you present the same case you might get a different view, simply from a philosophical viewpoint. You get a different result because he had philosophical viewpoint.
- Mitten: And that's not bad, is it?
- Struckmeyer: Well, I think that's the only way, really, you can have progress and civilization.
- Mitten: To allow people those freedoms to express themselves and to have different views. To take a chance on reversal. If everything was cut and dried there would never be any lawsuits. You'd know the result before you filed it.
- Struckmeyer: Well, more than that. There would be no progress. The world would be the same today as it was five thousand years ago.
- Mitten: Well let's talk a minute about your clerks.
- Struckmeyer: All right.
- Mitten: Because they in a way are your image now in the system, because as a former clerk, I feel that a lot of my life has been, in a way, comes out of what I learned with you. I had practiced a few years in Illinois and came out and kind of got a master's degree in the law when I sat down and started to research again instead of just taking depositions. The tendency is not to be as academic when starting a trial practice. So we'll exclude me from the list, but you've had some very successful ones. One comes to mind, the fellow that put the party on last Saturday, Joe Contreras is on our court of appeals, was your clerk back in the early sixties, as I recall.
- Struckmeyer: He's a very stable judge.
- Mitten: Very stable judge, has been on the court a long time. Lee Hoffman is kind of running a law firm. He primarily does plaintiff's work at this time, but he's done defense work. He's been a stable influence among a lot of lawyers in the state.
- Jerry Butler joined Lewis and Roca, golly, thirty, thirty-two years ago and has done a whale of a job doing domestic relations and pursued other areas.
- Struckmeyer: I guess Jerry is getting to be one of the senior lawyers there now.
- Mitten: Yes, in fact he may be with Lewis' death last year and a number of the people who have resigned. [Walter] Cheifetz left and I forget the, there

are two—oh, it just escapes me—left, he was about sixty-six. So Jerry's right up there. He might be the oldest or very close to the oldest lawyer they've got. But Jerry no longer is doing domestic work. He's doing other things.

Of course we have Gary [K.] Nelson, who was attorney general, who presently works for the court as a research analyst?

Struckmeyer: Yes, he's the top staff assistant.

Mitten: He was on the court of appeals, as I recall.

Struckmeyer: Yes.

Mitten: And then kind of got a bad rap from the newspaper, is my best memory of it. I'm not even sure of the question.

Struckmeyer: Oh, that's right. That's exactly what happened.

Mitten: But I think the newspaper was very unfair to Gary and it's been extremely difficult for him.

Struckmeyer: Well, they reported that the Internal Revenue was investigating for non-payment of income taxes and in the way they wrote the article left the impression that there was truth in it. Well, nothing was further from the truth.

Mitten: And they never went back and clarified it and he was left with the mud on his face.

Struckmeyer: That's right.

Mitten: And a very bright lawyer, a very capable man.

Struckmeyer: That was a very sad thing to have happen.

Mitten: But he's picked his career up and he's had a good career with the court. This is where he really loves to be. He would have been a good judge if he had been able to stay on. That's for sure.

Struckmeyer: Well, he's pretty solid. He's a churchgoer and—he goes to the Lutheran Church.

Mitten: And of course Toby [M. Gerst] and her husband [Stephen A. Gerst] both are judges in superior court. Now that's got to be a first for the state of Arizona to have a husband and a wife serving at the same time.

Struckmeyer: Well, she's not an appointed judge, though. She's, what do they call them. They have a . . .

Mitten: She's not pro tem, is she?

Struckmeyer: She's a pro tem judge.

Mitten: I thought she was. . . .

Struckmeyer: But they keep her working every day.

Mitten: Yes, I seem to see her.

- Struckmeyer: She could hardly be called a pro tem, but they do. She would like, very much, if some governor would really appoint her a judge. And maybe the next opening I may just write a letter to the governor. I don't have any influence with the governor, but. . . .
- Mitten: Well, you don't know that.
- Struckmeyer: Yes, you can't tell whether it may help or not.
- Mitten: A new governor . . .
- Struckmeyer: I'd sort of like to see her—she's pretty capable and her family's grown up now and practically away in college and that sort of thing.
- Mitten: Well, I don't mean to single out my fellow clerks, but I was just talking about the few who were my vintage and who were very successful. It seems like most of them have stayed in private practice.
- Struckmeyer: Yes.
- Mitten: With the exception of Toby. Well, different times people have had different public service type positions, but most of them have stayed in private practice. And as I said at that clerks' meeting, most of them are in trial work, which is the cutting edge of the law, at least I think so, Fred. How do you feel about that?
- Struckmeyer: Oh, I'm sure it is. If you're going to be . . .
- Mitten: It's where the decisions are being made.
- Struckmeyer: Well, not only that. It's more than that. If you're a successful trial lawyer you have to have a feel for what's going on in the world, because you have to communicate to the jurors because they're going to be communicating back to you.
- Mitten: I remember an article I was reading and there was an attack being made on our system back in the fifties and early sixties about automobiles and how a commission should take over the decision making for automobile accidents. You were very opposed to that and you said "the jury system is the best system." What's your feeling about that now?
- Struckmeyer: Well, I think it's the best system. It has its problems, that's not to be denied, but other systems have their problems too. And if it's between something different and the jury system, I think the jury system is, hands down, the system. That's simply because you can have some weird jury verdicts at times and some funny things influence a jury. When I was trial judge I found that out. I always wouldn't have decided the case the way they did. But I think in the long run, over the long haul, it's a much safer thing to have, because in the end, the jury is going to be the arbiter of what is justice and that's really what you want, somebody that's going to not be

prejudged on the basic lines. With a jury you have a chance of getting somebody that's open-minded in that area. If the lawyers are smart when they select the jury, this will be the outcome.

Mitten: You know, the cases I've tried and, fortunately, the few I've lost, in some instances lost in a big way, the clients seem to accept the fact that a jury decided it as opposed to a single individual like a judge. If it's a judge then they're mad at him individually, but against the jury they feel like their friends and neighbors have said something to them.

Struckmeyer: It's hard to be mad at them collectively. You can say, well they're stupid. And sometimes they come out with, like I say, with the kind of thing you wouldn't want them to do.

Mitten: Fred, I'd like to ask you one last point. What do you think makes for a good appellate court judge. You've spent twenty-seven years of your life being an appellate judge. I imagine that you more than anyone in this state knows what the ingredients are. What would you tell us?

Struckmeyer: Well, this may be an odd way to answer it but you've put it pretty bluntly. My biggest problems in my lifetime was with stupid judges and I simply say that a first-class judge has got to be an intelligent, intellectual person. The dumber he is the worse he is. The worst judge is the one that never really understands the question you put to him. I have seen a lot of those in my lifetime. I won't ask you to comment on that.

Mitten: I'm still practicing. (laughter) I don't want to lose my ticket.

Struckmeyer: Well I honestly believe that the average intelligent person who has conscience, who has scruples, built-in scruples and honesty and . . .

Mitten: Morality.

Struckmeyer: . . . and morality will make a good judge. The judges that I have thought were the worst judges were the judges that just weren't very smart. In ordinary society they looked and acted smart but they just weren't really smart. And maybe there is a difference between being bright in the community, your community activities, and being a judge. Not everybody is really equipped mentally to handle a judge's job. That may be the answer.

Mitten: I think your definition is probably the definition that the general public has of a judge, that he's a smarter lawyer than the average lawyer. That's the way they think of judges. Lawyers I don't think necessarily think that way about judges. They have all kinds of ideas about judges, such as, well he really didn't do well in practice so he wants to be a judge, or he really wanted to be a professor but he never got an appointment and he has to live in Arizona so he. . . . I mean just a myriad of excuses that lawyers have,

when the reality is that chances are the guy who's a judge or the gal who's a judge didn't seek it out. Somebody suggested it.

Struckmeyer: Yes.

Mitten: At least that's what I've seen.

Struckmeyer: Pushed them at the start.

Mitten: You'd be a good judge. Why don't I call up the governor, or something, or call up the committee and see if we can? What would you say? You know, that kind of thing.

Struckmeyer: Sure.

Mitten: That's been my experience with the judiciary.

Struckmeyer: I think judges have to be temperamentally fitted for it too, in some ways. I have seen judges that are just not temperamentally fitted, suited to sitting hour after hour or in listening to somebody else's problems.

Mitten: And sitting listening to the lawyers advocate when they're advocating things that the judge knows they can't really prove.

Struckmeyer: Well, not every case comes to that.

Mitten: Oh, I know.

Struckmeyer: There are cases, of course, that try your patience when that goes on, when that happens.

Mitten: Thanks, Fred, very much for the interview.

Struckmeyer: All right.

End of interview.

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