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MARK WILMER
1903-1994

Honored as a Historymaker 1995
Dean of Arizona's Trial Lawyers and
C.A.P. Proponent



Mark Wilmer photograph by
Al Abrams
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The following is an oral history interview with Mark Wilmer (**MW**) conducted by Zona Davis Lorig (**ZL**) for Historical League, Inc. on September 8, 1994 at his home in Phoenix.

Transcripts for website edited by members of Historical League, Inc.

Original tapes are in the collection of the Arizona Historical Society Museum Library at Papago Park, Tempe, Arizona.

ZL: Thank you, Mr. Wilmer, for this interview. Let's start with where you were born and where you grew up.

MW: I was born in East Troy, Wisconsin, and I grew up in the general area. My parents had acquired a farm about five to seven miles east of East Troy which was more or less a family home area. They moved there when I was one year old. And from that point forward I was generally in the area of a little place called Honey Creek. It had a small population of 304, mostly Baptists. The Baptist Church was quite prominent and the schoolhouse was there. My family went to church, however, in the little town of Waterford which was probably five miles to the east. We went there to mass on Sunday and that's why I mentioned that the group in Honey Creek was mostly Baptist because that was a strong Baptist community.

ZL: Your family was Catholic?

MW: My family was Catholic, yes.

ZL: What kind of crops did your family raise?

MW: My father was a farmer. He had a good size dairy, however. He milked probably forty-five or fifty cows. Then he grew corn, grain, hay and miscellaneous things. It was mostly a farming operation with my father growing as much of the feed as he could for the animals.



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ZL: So he didn't sell that much?

MW: No, many of the farmers around him did sell, but he didn't. He raised cows, pigs, sheep, and he grew his own grain, created his own crop to the extent he could, and was quite successful in that respect.

ZL: And then where did you go to school?

MW: I started at the public school at Honey Creek. I was then, for three years, required to go to a Catholic parochial school at the church at Waterford except that it was too far away. There was a train that ran from Waukesha, a pretty good size little town, to Chicago in the morning at 7:30 and came back at night at 4-4:30. It carried the dairy milk. It was a dairying area and was called the milk train, but it also carried passengers. For the third and fourth year of school I went, via the train to Burlington, to the Catholic parochial school.

ZL: How long a ride was that?

MW: It was probably seven or eight minutes and cost ten cents. It was a short run, probably five or six miles. In those days, my father would have had to hitch up a horse and drive me to Waterford to go to the parochial school there which was not practical. I could take this little train, the milk train, to Burlington and come back at night. Whatever was needed, I guess, to satisfy the preacher.

ZL: Where did you go to high school?

MW: I went to high school at Burlington, Wisconsin which was about seven miles or so, a fairly good size little town.

ZL: And then when you were ready for college?

MW: I left home when I graduated from high school. I was gone for maybe a year or two and then I went to Milwaukee and worked. I started to college at Marquette in Milwaukee.

ZL: When did you decide you wanted to be an attorney?

MW: I really don't have any idea. (chuckle) There was no attorney in our family. I had a brother who was a little older than I who went to high school but that was not me. While I was at Marquette I decided to become a lawyer. Why, I don't know. I'm quite sure though that I did evidence some considerable interest in law for some reason. I don't know what it was.

ZL: After you finished law school you went to Texas.



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MW: Yes, I went to Marquette for two years for pre-law, then I went to law school at Georgetown University, College of Law. When I graduated from that, I went running around.

ZL: Why did you decide to go to Texas?

MW: It was a chance mostly, but not really. When I was at law school, that's a pretty good size school, I got acquainted with a lawyer who was working at the Department of Justice. Another fella, who was from Texas, and I decided that when we graduated from Georgetown we'd go to Texas, or go west anyway. And we did.

ZL: Where were you in Texas?

MW: I started out at San Angelo, which is West Texas about thirty-five miles or so west of San Angelo. It was true West Texas, the county seat of Tom Green County. But it was quite a ways to the border.

ZL: How long were you there?

MW: In West Texas I was there two years.

ZL: You decided that wasn't the place for you?

MW: No. Well that's partly true and partly not true. I did quite well in West Texas in the sense that I settled and all that. I wasn't too satisfied because it was not much civilization and I decided then to go on. I met another guy and he persuaded me that I should to go to Arizona.

ZL: And the two of you came together?

MW: I mentioned the fact that this lawyer I had visited with in law school actually was quite conversant with the entire West. He had recommended that we go west but he recommended strongly that we either go to Phoenix or to San Angelo. He said those are the two places. Both have great futures. I remember very well. He told us that we'd find it was a little different country. He said, "In fact you'll find that if you go to Phoenix, it's a fine place but it's pretty hot there." They tell the story about the fella who was in San Angelo for a while. When he left he was asked why he hadn't stayed there. He said the reason was that San Angelo was a very nice place, but he said Phoenix is a place where you have a choice between there and hell, and you'll probably pick hell instead of Phoenix. (Laughter) I always remember that and it ain't so.

ZL: You don't agree with that?

MW: No.



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ZL: When you came to Arizona, you started practice in Mesa with Jim Walsh and Frank Beer.

MW: Jim Walsh had been in law school with me. He came to Phoenix ahead of me. He graduated a year ahead of me and he came to Phoenix and became a practicing lawyer. That was one of the reasons I came to Phoenix. I came to see Walsh and visit with him. I liked the place and I stayed here.

ZL: What year was that when you came?

MW: I graduated from Georgetown in 1929. I came to Arizona in 1931.

ZL: How was the economic climate then?

MW: Phoenix was much like it is now. The farmers did pretty well then. There was cotton and so on. Phoenix and the area did not suffer in the depression like many other places did because they had water and they grew crops. They had a good economy, cattle and sheep and pigs and tourists. So it was not prime here but it was not too bad.

ZL: Was this a general practice you had in Mesa?

MW: In Mesa, yes.

ZL: What kind of cases did you have?

MW: It was just about like it is now except it was smaller but quite active, and there was a strong Mormon community. Instead of Baptist, there were Mormons. But they had cotton and that sort of thing. Of course they had their winter tourist trade. It was about like it is now except it was smaller and a pretty nice place. All the Mormon girls tried to catch me. (Laughter)

ZL: In 1937, you were the Assistant Attorney General.

MW: Joe Conway was the Attorney General.

ZL: Were you appointed by him?

MW: Yes. At that time I was practicing law and I was located in Phoenix. I was a deputy county attorney. There were some problems then with the politics and with the gamblers. There were a lot of slot machines in the Phoenix area and there was a little messin' around. I was actually a deputy county attorney and did quite a lot of work in the Phoenix area. Like I said, there was a lot of gambling.



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ZL: Where were the slot machines?

MW: They were everywhere they could find a place to set 'em down, like Las Vegas is.

ZL: So they were in hotels?

MW: They were in hotels, they were in service stations, and they were in grocery stores.

ZL: So it wasn't hidden, obscured?

MW: It was not legal but it was ignored. The politics were such that the county attorney and the sheriff were elected every election by the support of the gambling element and on the basis that they weren't going to be disturbed. Now there were problems about that and I was appointed a deputy county attorney while that was going on. I was there observing the illegality itself and so on. There were quite a lot of Baptist people, a lot of good people that didn't like it. So when the election came around, the guys that had the most money to spend were the county attorney and the sheriff because that's where the gambling was. I didn't like it. Anyway I worked around it where the county attorney got scared and left. I was working as an advisor to the supervisor in the county attorney's office. They offered me the job and I didn't want to take it because I knew what would happen. I wasn't going to have that gambling going on. One of the people in it was the guy who would have been the chief of police in Mesa who had become a good friend of mine, but he was one of the fellas that was a gambler. He was elected to be the sheriff.

ZL: This was Roy Merrill.

MW: Roy Merrill. I said no. That's when they got me an appointment with Joe Conway, an assistant United States attorney so I wouldn't give them any trouble, they thought. That was, I guess, to get me to shut up. Anyway, that's when I became an assistant attorney general. Then the thing got worked around and the good men got their people in charge and wound up with the county attorney being supplanted. He got the undercover guy who came in and got the deadwood on the gamblers. That was quite a deal at the time. Then the county attorney, who had been taking the place of the one who had been there, came to me.

ZL: Now wait, he was appointed?

MW: He was appointed by the supervisors. They had offered me the job, and I told them I couldn't take it because there was no way I could justify it with the guy that I ran around with. I'd set him up and catch him and then I'd let him go. So I told him I would take the job as prosecutor of the gambling, provided I didn't have to prosecute this guy, Roy Merrill and his buddy. So that's what was agreed and that's what happened. We arrested them, charged them and we tried three or four of them and convicted



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two or three of them. Then the gamblers began coalescing together, resulting in hung juries. That ended the gambling but it also ended those people that were involved in it. The time came when we had convicted as many as we thought we could and had the thing pretty well cleaned up. Then I left the county attorney's office and went to work for Frank Snell.

ZL: What year was that when you finally got this gambling out of the county? Was it before the war or after the war?

MW: It was after the war.

ZL: You went to work for Frank Snell in 1938?

MW: Approximately right. Probably 1943 or 1944, somewhere along there.

ZL: So there was gambling in Maricopa County during World War II?

MW: Yes there was. Slot machines mostly, but also liquor board gambling. There were slot machines all over the state not just Maricopa County. But they were closed down because of the reaction of what happened in Maricopa County. It was quite a time.

ZL: According to that article on Mr. Snell, around 1950 they were going to try to bring gambling back into the state on an initiative.

MW: That's what they're doing right now, aren't they? Yeah. Frank was not a man that supported gambling.

ZL: Were you involved in that effort in 1950?

MW: No. No when I got out of there, as I say, I went with Frank and we didn't have any gambling but we had another ruckus when we arrested the sheriff. I was in on that

ZL: This was a different sheriff?

MW: That's a different sheriff. It was a big deal. We had the people in from the coast. It was in the newspapers. All you have to do is go look in the newspapers. You'll find the headlines about the sheriff being arrested, the judge being arrested and a lot of people being prosecuted, and convicted and sent to prison. There was a lot of publicity. The first people got wind of it, and then they sent people over from the coast and arrested the sheriff. They arrested twenty some people to break up this gambling ring that was established.



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ZL: So this was a second gambling operation?

MW: Second gambling operation, yeah. There hadn't been any slot machines at that point for a year or two or three years. I don't remember how long. There were some slot machines but not gambling in the sense that we're talking about.

ZL: Was the Mafia connected with any of this?

MW: Not to my knowledge.

ZL: It was more just locally done?

MW: Well no, there were local gamblers. For instance, when Merrill was elected sheriff, he threw the other gamblers out, but sent city gamblers in. It was demonstrated a gambler from El Paso had bankrolled him for his election, maybe twenty-five, thirty thousand dollars that helped to get him elected sheriff. But it was the gambling element from El Paso and I guess locally in Phoenix too. But the gambling that was involved first off were mostly the local people, the local gamblers. Some guy would have twenty or thirty machines and he'd set them out at different places. Then he went around and the people would get a payoff, and he'd get a payoff. In fact this undercover guy who came in and broke the machine collected, I think, twenty-five, thirty thousand dollars in a week just by going around pretending he was a payoff man for the new county attorney. He would ask how things were going and actually collected the bribe money, around twenty thousand dollars in ten days. That's how wide spread the gambling was. It had been going on for so long. When I came to Phoenix there were slot machines everywhere, almost all over the state. It sort of became like if you're getting to be elected county attorney or sheriff, you had a right to collect so much bribe money or whatever you want to call it.

ZL: In a lot of the Phoenix History project oral histories that were done in the 1970s, people spoke about earlier days in Phoenix. They give you the idea that things weren't just right in the city, but they don't ever spell it out. They were people who had been in Phoenix for a long time and they talk about earlier that Phoenix wasn't that clean. Do you think they were referring to the gambling?

MW: I think that's true. By the time I got there, it had been there long enough and had become profitable enough that it was recognized that it was one of the ways you made money. But it wasn't until we arrested the sheriff that it got to be where it looked like it was unpopular.

ZL: Now who was that sheriff?

MW: That was Roy Merrill. There's been a sheriff before him for two, four, six years anyway that had run loose entirely. He had his gamblers and they had their slot machines. So then Merrill ran, Roy



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Merrill was Chief of Police in Mesa and Mesa did not have gambling at that time. He ran against the sheriff and lost the first time and I supported him, helped him to get a little money and I campaigned for him. That's why when he came up the second time and he changed his loyalties and was then involved in the gambling, I couldn't do it. They used to have gambling in the winter time when the tourists came out here, and quite often, they'd have some other gambling, cards and so on. But not as much. They always had the slot machines until this thing came along.

ZL: In 1938 when you joined Frank Snell, apparently he was looking for a trial lawyer and when he spoke with Superior Court judges and a Probate Court judge, your name was always the one that came up.

MW: They were smart people in those days! (They both chuckle)

ZL: What did you like about being a trial lawyer?

MW: I enjoyed it. It's a little exciting at times trying to beat the other guy.

ZL: You like that competition?

MW: Yes.

ZL: Did you like being "on stage" so to speak?

MW: No. I never participated of any consequence in any stage or what have you. I was successful. I guess that maybe always helps. It was about this time that I got involved with the Colorado River and that pushed this stuff out of the office.

ZL: When did you meet Frank Snell? Had you met him before he asked you to come to his firm?

MW: Yes. Jim Walsh and I started in Mesa. We were working for a lawyer in Mesa, both of us, and that's where I went to work when I went to Mesa.

ZL: Was that for Frank Beer?

MW: No, that was for a fella by the name of Daugherty. An old time lawyer. Beer was a guy our age. We were together for a brief time, but I didn't have too much to do with him. I had sort of a half agreement with this lawyer Daugherty, who was City Attorney of Mesa, that when I came out and passed the Bar in Phoenix, he would give me a job. So I came back out and passed the Bar and he gave me a job. Frank Beer was another lawyer. Jim Walsh had a job and was working for Daugherty. In fact, I was living with Jim. When Jim and I left these attorneys, we had to establish a law firm so we had



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picked out one particular place to try to rent. It was an available store.

ZL: Was this in Phoenix?

MW: This was in Mesa.

MW: We were told to go and see Frank Snell because he was the lawyer for the people who owned this place that we wanted to rent. For some reason Jim went, rather than me, to talk to Frank and visit with him. He came back and said that Frank had been very nice and that he did represent these people that owned it. He thought that they'd be happy and he gave us the lease. It wasn't too much money. That's where Jim and I started practicing law in Mesa. Frank wasn't being particularly favorable to us except that we were apparently alive, had some prospects, and the store was empty. That's how we met Frank Snell.

ZL: What was he like from your perspective?

MW: Frank was a very sharp fella. He was very successful. He did trial work but mostly he did a lot of corporate work. He was probably the best lawyer not only in Mesa but in Phoenix, or at least in the Mesa portion of Phoenix. Frank was quiet, a hard worker and friendly, but he was honest. He was very concerned about his clients. He was just a fine person. As time went on, we got better acquainted and it wasn't too long before we became partners.

ZL: When he got so involved with community situations, did you and he confer a lot about that?

MW: Very often I didn't get involved in the sense of "Come on. Let's go put a stop to this thing." But Frank always discussed it with me and I backed him up. Many of the things that he did, I did as much as he did, except he was the leader. Frank was very fair; he was very decent, and a very good guy. We never had a quarrel, never had a disagreement. We got along just fine.

ZL: Did you and he ever work on cases together or were your practices so different?

MW: No. Many times he'd take a case, get involved in a case and he'd turn it completely over to me. I did more trial work than he did, and I was more successful at it. So the client would come to him and it would wind up them coming to me to actually handle their work. We got along very well that way.

ZL: How did you hire new attorneys for your firm?

MW: To begin with, we didn't have so many attorneys. Now we have a lot of them. People would come to us, or we would go visiting law schools on the East Coast and here to find lawyers who were going to graduate that sounded good. We'd tell them we might give them a job if they'd come see us. It would be



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a matter of a lawyer coming to us, or actually going to the schools and saying “We’re looking for lawyers, come talk to us.”

ZL: And did some of them come and work for you as clerk in the summer?

MW: That’s right. In fact every summer we’ll have twenty to thirty lawyers probably. In fact, some of the other larger firms do the same thing. Like they go to Harvard, for instance, and put a notice on the bulletin board. Then on a certain date people from the Snell and Wilmer Firm or the O’Connor Firm will be here for the purpose of interviewing. Any of the lawyers that were interested would look you up and talk about it. Every summer we’d have in the area of twenty-five or thirty new people. Maybe some would stay, maybe only two or three would stay. But that was one of the established ways that all law firms practiced; simply to go to existing law schools of people that are coming to the end of their term to see if they’d like to work for us. We’d interview them and if they looked dependable and the right kind of people, we’d hire them. When they got through the law school, they’d come and go to work for us.

ZL: Were there any outstanding attorneys that you hired early in your firm that you can remember?

MW: No. It’s pretty hard to do that. Maybe you get two or three and turn down three or four more and they’d raise hell of the fact that you didn’t hire them.

ZL: Did you ever imagine in the early days that you would end up with such a big firm? When did you start thinking about expansion?

MW: As our firm grew, the time would come when we’d say, “We’ve got to get a couple more lawyers.” In the matter of expansion, we’d grown quite a bit by needing a few more lawyers. Then people that were employed themselves would suggest a little enlargement. I guess the time came when it looked like we had all the lawyers we really needed, or would want, or were reasonable to have. That was how we decided to go to Tucson and California and also Salt Lake City.

ZL: When did you branch out to California and Utah?

MW: We branched out to California from Tucson. Tucson was, of course, pretty much like us. They grew except that we got a little bigger than they were and then we finally decided to coalesce. That’s how we came together.

ZL: That was in 1989?

MW: That could be about right. That sounds a little late. Well it wouldn’t make any difference. With respect to California, which was at Irvine, for some reason people said, “Why don’t you come here?” Like with Salt Lake City, in our firm here in Phoenix, we had a number of good Mormon lawyers.



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They're the ones really that said, "Why don't you open an office in Salt Lake City?" I haven't been too happy with it myself really. I felt we would do better by just concentrating at home. But I haven't insisted on that.

ZL: It gets very complicated doesn't it?

MW: Yes it is, and it's not only complicated, but lawyers are competitive, and somehow you have to be very careful that you retain and develop coherence. The lawyers that are in Phoenix and the lawyers that are in Tucson, if they get crossways with each other, things are bad. Or the same thing like with Salt Lake City because the Mormon people are quite a little different, and that's a strong Mormon community. We had to be very careful how we handled them. How we recognized their ability and were fair with them. And so far, we've had no problem.

ZL: Well I suppose a lot of this is because your firm was apparently one of the first in Phoenix who went into the separate areas where you had tax law, corporate, finance and trial.

MW: Well, no, not really. Some did it smaller. In other words, they'd have one or two people that would open an office just maybe for the hell of it, and things would go well. Gradually more people would go there and naturally you'd take them in. The advertising and all that complicated things considerably.

ZL: What do you think about lawyers advertising?

MW: I don't like it. I don't like it for a number of reasons. First of all, I don't think it's proper. I don't think it's the right way to get people. I think they should like to think of themselves as a lawyer or a professional person, not like someone that's gone out and put their big sign up. I think it deprives a lot of young lawyers of fair opportunity. In other words, before it was proper to advertise, a lawyer would come out of law school and he had several opportunities. He might open his own shop or he could scout around and find somebody who wanted to hire him. The thing that's wrong with advertising with these big billboards and all is it costs an awful lot of money. A young lawyer that comes out of law school today doesn't have the opportunity to start for himself because he'd go broke, or he'll have to have mama or papa or someone, or marry a rich widow. It certainly makes it much more difficult for a young lawyer to get started and accepted. It's more temptation to take a little.

ZL: When you went to Snell's firm, the law offices were located in the Heard Building. Where was that building?

MW: Yeah, you know where the Adams Hotel was? It was right straight across the street from the Adams Hotel to the west. It's got a restaurant on the ground floor and the rest is office building. I think the top floor is the seventh floor. That was our floor at 703 Heard Building.



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ZL: In the mid 1960s you moved to the Security Building and where was that?

MW: That's on the corner of Central and Van Buren. The Security Building is on the south west corner. We had the top floor or two more floors, I'm not sure.

ZL: In 1973 you moved to the Valley Bank Center and you started off with one floor and expanded to six and a half?

MW: In the Valley Bank? We probably had more than that.

ZL: One of the most important cases in which you were involved centered on the water rights of Arizona for the Colorado River water. Can you give some background and history of the Colorado River and the Upper Basin and the Lower Basin states?

MW: The upper Basin, the Grand Canyon, is the dividing line from the bottom of the Lower Basin to the top of the Upper Basin. The Colorado River extends from quite a ways up in the Upper Basin clear down to Mexico and has always been recognized as being tied together by the Colorado River. But it's different. To begin with, it's much more uneven, much colder, much less availability for growing crops and so on from the Upper to the Lower Basin. The Upper Basin is always behind the Lower Basin, not as successful because the ground is hillier, it's colder, and it's rocky.

ZL: What states were involved in it?

MW: Oh, the states that were involved? The Lower Basin is the Grand Canyon. In the Upper Basin there's Colorado, most of California, there's Wyoming, Utah, New Mexico. I would say, of the entire basin, it comprises probably a third and two-thirds constitutes the Lower Basin. The productivity and all the rest of it, the Lower Basin is simply more mining. There's always been the competition between them. Water in the Lower Basin has to come from the Upper Basin so the Upper Basin is jealous of the Lower Basin. They have the doctrine that the first person that uses the water of a river has a right to keep it and to use it for the future. There was a confrontation between the Upper and Lower Basin. The Upper Basin was concerned that because the Lower Basin had a longer growing season, had more usable land, and many other things and, because the water came down and went through it, it would take all the water and put it to use. As the Upper Basin developed, and the ground did develop some, they were concerned that the Lower Basin would say, "Come on, let that water down, we've been using that for fifty years." The big thing between them was the fact that (inaudible word) might solidify, would be achieved by their opponent and the water would be gone. They'd have to continue that again and come down to them.

ZL: In the 1940s and/or the 1950s, the Arizona Legislature was opposed to signing compacts with other



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states regarding the water rights. When did those other states begin to sign compacts, do you know?

MW: That isn't quite right. The Upper Basin, Utah, New Mexico, Colorado, signed the compacts between themselves. The compact that was mainly involved, as far as Arizona was concerned, was called the Santa Fe Compact in 1922 between the Upper Basin and Lower Basin. The dividing line of the Colorado was the Grand Canyon and where the river came into the Grand Canyon was the dividing line between the Upper and Lower Basin. In other words, the compact that was adopted in 1922 with the approval of Congress was called the Santa Fe Compact because it was arrived at in Santa Fe, New Mexico. It was arrived at by the people for the Upper Basin who were authorized to act by the Congress and for the people in the Lower Basin who were authorized to get together with the Upper Basin and agree on a division between the Upper and the Lower Basin to prevent this business of acquiring a right. The Secretary, Herbert Hoover, was the Chairman of that. Arizona, California and New Mexico sent delegates to the Santa Fe Compact. The other Upper Basin states, Colorado, etc., had to send delegates to this compact. They met that summer and spent the entire summer, along with engineers, trying to find out how much water there was.

They prepared and signed a Santa Fe Compact which was between the Upper Basin and the Lower Basin. They agreed that the Upper Basin had to release to the Lower Basin 750 million feet of water and the Lower Basin couldn't demand any more than that. It was some kind of understanding that would prevent rights from accruing that would protect the future. That was the Santa Fe Compact and that's the one that is most meaningful and most governing between the Upper Basin and the Lower Basin.

ZL: How involved were you in water rights in the 1940s?

MW: Well, somewhat maybe. We handled quite a bit in the Lower Basin in and of itself. Salt River Project for instance is the entity that controls the water of the Gila River and the incidental (inaudible word) to that. When I came to work with Frank Snell, he represented the Water Conservation District. That was the group who took their rights from the Gila. There are a lot of rights in the Gila. The Gila begins in Northern New Mexico, up high in the next door neighbor. The Salt River comes down in the central part of the state and then there's a couple of other rivers. There's quite a lot of water involvement above and beyond the Santa Fe Compact. The reason I got involved in the Santa Fe Compact and the Colorado River was because I'd done quite a bit of water work for other areas in the state, and I knew the people that were involved. I'd say I did as much water work probably as any other local lawyer.

ZL: I figured you had a lot of background in that when you got really involved in the 1950s.

MW: It was undoubtedly a factor when they decided to discharge the lawyers they had and get another one and the people involved in that turned to me.



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ZL: Arizona wanted some definite rights about water and when California wouldn't settle the matter, they filed petitions with the U.S. Supreme Court four different times and the Supreme Court threw it out.

MW: That is correct.

ZL: And that was in 1931 and then in 1934 and again in 1936. And then finally in 1952, Arizona wanted quiet title to water rights in the Colorado River.

MW: Well that was the same thing as the ones that filed before that, except maybe they put a little different name on it.

ZL: Right. So they sued California again because Congress was refusing to fund the Central Arizona Project until California and Arizona had this water matter settled. So the original position that Arizona had before you got involved was what?

MW: Well, the Court accepted the filing and authorized it. Arizona had filed its written claim which was the basis of our right to the Supreme Court. The thing that the Arizona people claimed was that they had a lot more people and a lot of other things involved that they deserved and had a right for it. That was a case that we put on, the number of people we had and all the rest of that.

ZL: We were growing, right? To sustain our economy, we needed more water.

MW: We were going to be desperate for water and that, first of all, wasn't true really. Secondly, California could put a bigger claim than we could to the water. It was in my judgment, when I took over the case, that the court would refuse to favor either side on the ground that each had about as big a claim as the other. That is where we were going to lose.

ZL: But a lot of this testimony had been presented for hours and hours and then the judge died.

MW: No, he didn't die.

ZL: Judge Haight?

MW: He was originally assigned the case and if he had lived, he would have cited it.

ZL: That's what I wanted to ask you. If he had lived, would that case have been decided very differently?

MW: I don't think so. Well, I don't know because the question that was before him at that time had



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more of a technical question of rights and things like that, and not really down to the guts of it. So what he would or wouldn't have done is speculation.

ZL: Well you just wonder if Arizona could have changed their position if he had lived.

MW: Well no, because Arizona did change its position after he died. The petition that Arizona had before it went into the case was quite different from what was decided.

ZL: But I mean if he had lived, would the case have gone forward? Wouldn't there have been time to regroup?

MW: When he died, as it was, the court did name someone else. When Haight died, the one who tried the case was appointed, and he just said, "Give me all your books and papers and all your filings and we'll go right ahead."

ZL: But in the meantime when Haight died isn't that when Arizona fired the people who were representing them?

MW: No, Arizona fired the people after Rifkind had taken over and held a hearing. Rifkind was appointed and a ruling was made. He had at least two or three weeks of hearings up in San Francisco. I was not in the case at that time. And then when Arizona said, "We're through. We've said all we're going to say." Then California said, "All right," and they put their witnesses on. The claim was that California had superior rights because so many people in California in the Imperial Valley had taken the Colorado River water and had carried it through Mexico into California and then put it to proper use. Therefore they had right to prior claim for a hundred million acre feet or ten million acres, I don't know, but in any event they had the prior right to it. Like I said earlier, the basic thought of Western Water Law: the first in time, the first in right. California said they were first in time so they're first in right. The hearing went on and Rifkind didn't rule. Before the end of that little session, California offered some evidence to prove the fact they had a prior right because they were first in right. Rifkind took it under advisement. He said, "I'll think about it. I don't know. California had a right to present that evidence." And that was when the people in Arizona said to their lawyers, "You don't know what you're doing, (chuckle) and can't possibly win it. We can't win. We probably couldn't win." And that was when they decided to change lawyers. So the fact that Rifkind had ruled it was acceptable was only a ruling for a preliminary, a limited ruling. In other words, if that had ended the case, Arizona would have won, but it didn't end the case because there was more evidence. He reexamined it and it eventually went to the Supreme Court and the Supreme Court said he was wrong. Arizona had certain rights that they could defend and they could prove.

ZL: Were you apprehensive about taking that position?



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MW: Taking the case?

ZL: Yes.

MW: Me? (they both chuckle) I guess you'd say that certain types of cases you really don't have a lock on it one way or the other, because of the soundness of your views. I had some pretty good knowledge of it because one or two of the lawyers who were then working for the state in the case were friends of mine. They talked to me about it from time to time and I had a pretty good idea. I sure didn't think I had a lock on it that was for sure. On the other hand, I had a pretty strong feeling that at least part of what the state had tried to prove wasn't provable, wasn't usable. I had a good feeling I could win it. But I wasn't betting any money on it.

ZL: Who called you into the case?

MW: The Governor.

ZL: Ernest McFarland.

MW: Yeah. He called me and told me to come out and see him. Bring my partner along with me. What had happened was that when Rifkind had put it in recess and had handed this ruling that we thought was bad, quite a number of the Arizona lawyers were unhappy. They didn't like the guy who was running the case. They didn't think he was doing it. And when that ruling came out, then a number of their better lawyers simply went to the Interstate Stream Commission that was running the case and said, "We're quitting. We don't want Mr. John P. Frank handling the case. We don't think he knows what's happened and so on." So McFarland called the people of the Salt River Project, and a couple of others, and they called some of the lawyers who ran the state Bar Association. They said, "The lawyers we've got one way or the other we don't think have done so hot. You recommend to us a lawyer." And they recommended me. So it was kicked around and I guess they agreed I was the guy if I'd do it. So they went to the Governor who was a pretty good lawyer, and knew quite a bit of water law, and he agreed with them. So the question then was how to go about it. So McFarland called a meeting of the State Bar, and they recommended to him that he appoint me for the position. So he called me and asked me to come out there with Frank. I knew something about what was going on, so Frank and I went out there. There were only ten permanent lawyers. They talked about it and McFarland asked me if we'd take the case, and I said yes. They didn't ask me, "Can you win it?" They just wanted to know if I'd take it. If it couldn't be won, there would be no hard words. So we could handle it any way we wanted.

ZL: How long did you have to prepare?

MW: Well, first of all the next thing was to set up for the hearing. In other words, Arizona had sent me all we had to offer, but California still had the opportunity to offer anything they wanted to offer. So it



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was reset for a month or two months or something, I don't remember what it was. There were, I think, eleven volumes of testimony to that. So I sat down and read all eleven of them until midnight. I did a lot of other recent research in getting ready to go ahead and decide how to handle the California case.

ZL: Did you have people helping you do research?

MW: I had Charlie Reed who was a good lawyer. He had been in the case and I had Hal Udall who was a good Mormon lawyer. I had one or two other pretty good lawyers. So I'd get together with them. The first thing I had to do was to find out what all had gone on and I couldn't sit down and have someone tell me because it didn't work out that way. I simply had the obligation, from my standpoint, to read the whole damn thing and see what was there, what was said, who had said it and all the rest of it. And that's what I did. I read till midnight sometimes.

ZL: I'll bet.

MW: It's no big deal. By the time I got through with it and did a lot of thinking, I decided I could win it, because we had to do some changes.

ZL: So you totally changed the approach?

MW: We totally changed the approach.

ZL: How did you come up with that?

MW: (Chuckle) Thinking, thinking, thinking, thinking, thinking. Really. That's the toughest job I ever had.

ZL: Is it?

MW: Yeah because there was so much history, and the question of the Santa Fe Compact, they didn't have a good record of that. After I read the whole damn thing and reread some of it and dug up a lot of other things, I concluded that for the whole this was probably (inaudible word). Then we went back and (inaudible word) to California put their case on with a number of people they had and all the other things that they wanted to put in the record. We had a hearing five days a week from nine to four or five and probably for maybe a month, six weeks. California just put out all their cases; their experts said this and they said that. The court recessed again and I've forgotten how it went now. I kind of didn't like the guy that was on the other side.

ZL: Now that was Northcutt?



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MW: No, Northcutt was California's lawyer. Northcutt Ely was raised in Phoenix.

ZL: Had you known him?

MW: Oh yes. Not real well, but I knew him as a good lawyer. Sharp lawyer but, of course, some lawyers are. You have so much you can do and the mere fact that you may or may not be a good lawyer does not necessarily mean you're going to win because some things you can't win. If things had been different, I would have lost.

ZL: Tell in your words what your position for Arizona became. What was your position for Arizona on the Colorado River rights?

MW: Why they won?

ZL: No, what did you decide should be Arizona's position?

MW: We changed it. We filed and we changed pleadings and then we filed with the court a Change of Position. After we'd agreed among ourselves what we were going to say, we then went again to McFarland and got his approval of it. Then we came back and talked to a lot of the water lawyers that we regarded as being intelligent and pretty good people, and what it was and what we proposed to do. Then we went back and prepared a Notice of Change of Position, I think we called it, there's a copy of it somewhere here. In it I said that Arizona concluded it was mistaken about some things it had claimed and was therefore giving notice that it was withdrawing from them, and giving notice that Arizona contended as filed which it was. Then under the Santa Fe Compact, and the legislation that California had adopted in relationship to it, California was precluded to obtaining more than two million, eight hundred thousand or whatever it was, and that Arizona was entitled to the difference. Arizona was not obliged to accept certain other positions that California claimed, and that previously had been admitted which we denied them. We said that the Gila River was not included. In any event, it was a substantial change of decision. The Supreme Court agreed with us that California was not entitled to the full amount that they claimed and that this particular river was not involved.

ZL: California wanted Arizona to subtract their Gila River water.

MW: That's correct. A million acres or something like that and Arizona had agreed to that. We said don't agree to it, it's no longer there. It was quite a job.

ZL: That was pretty bold, wasn't it to totally switch that position?

MW: If we were wrong, if I was wrong, I'm the guy that told it at our meeting. We had these other lawyers with us and they weren't backing off. But I'm the guy that would have been hit the hardest in



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the eye because we would have lost, but we didn't.

ZL: What about the rights of Indians to the water in that whole situation?

MW: Well Indian water or Indian rights were not involved in this piece of litigation.

ZL: Oh really? Some place I read that it was.

MW: No, the Indians were involved in a different litigation.

ZL: Okay, but not in that one. Let me ask you this. I also read that in 1928, Congress passed an act which allowed Hoover Dam to be built and they had allocated water to California and to Arizona.

MW: Well the Boulder Canyon Project Act was action to build Boulder Dam and that caught all of the Colorado River water and to that extent involved the water that was already under control. But the Hoover Dam or the Colorado River Dam did not have anything to do with the division of the water. It was storage for the water and it was out of that storage that California got her water and we got our water and so on. The water that's released from Hoover Dam is released back into the Colorado River. After it's been stored and taken out of the river, so to speak, it's put back in the river. That gives it the status of stored water rather than water that's originally in the river and came down the river.

ZL: And Congress had the right to allocate the stored water?

MW: Because Congress had stored it, Congress had a right to allocate it. Plus the fact that Congress has a right under the Commerce Clause to control all rivers in the United States because it's under a different situation. The same thing with respect to the Gila River. The Gila River rises in New Mexico and never gets to the Colorado River until it gets down to Yuma and then it becomes part of the Colorado River. Under the Commerce Clause, I think, is the proper answer, the Congress has the right to direct what shall be done and how it shall be done. That's all water.

ZL: Was that the first case that you tried before the Supreme Court?

MW: No. It's probably the fourth or fifth or sixth or seventh. It's the first case of that size, of course, before the Supreme Court.

ZL: I was reading in the paper recently that Nevada is now very concerned about their lack of water.

MW: That's very true.

ZL: How do you foresee that situation?



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MW: Nevada is one of the states that was in this Santa Fe Compact and was one of those that participated in the division. They were represented in that compact, that agreement of the states. It was kind of a struggle with their representative. He didn't ask for more than three hundred on a thousand acre feet. He said that's enough for us. Las Vegas was there but it was a little old diddly place. You never foresee, ever, the kind of water that's required. Right now, of course, Nevada is saying that ain't so. Right now Arizona is not using all of its water that was allocated by that compact. Whether it ever will be is unclear. Part of it is not being used because the farmers say that the water costs them more and they can get the same water by digging in the ground, ground water. There's some movement under foot to reallocate it, etc. How that will turn out I don't know, but if Arizona doesn't in the foreseeable future take some steps to use it, they'll probably lose part of it to Nevada. It isn't right really. The water should flow on down to Mexico, run down to the river. But from the standpoint of the illegal question, no one knows what's going to happen.

ZL: Were you the city Attorney for Scottsdale when the city incorporated?

MW: I was the attorney for Scottsdale for a number of years. I don't really remember how that went. Really that incorporation wasn't any big deal.

ZL: It wasn't?

MW: No. The thing that I was representing Scottsdale in was some annexation problems but with respect to their incorporation, I don't even know when it was incorporated.

ZL: That was a very smooth transition?

MW: It must have been, yeah.

ZL: I want to go back to this Indian law. I read that you were involved in some cases.

MW: We represented the Arizona Public Service company and they've had litigation with the Navajo Indians over water rights taxation in New Mexico. That did not involve the Colorado River. It involves the Indians' right to tax and what the Indian rights are. We've had some lawsuits up there with them over can they tax Arizona because Arizona has built a generation plant up in Nevada.

ZL: The Four Corners area?

MW: Four Corners area. And they're proposing to tax the amount of income from that.

ZL: The Navajo Reservation wants to tax.



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MW: The Navajo Nation wants to tax and claims the right to tax and we said we don't have the right but that's sort of a different issue. I really don't know what the final angle is going to be on that.

ZL: It's not settled.

MW: No.

ZL: Then there was a landmark litigation between Del Webb and Spur Feeding.

MW: (Chuckle) Yes, I remember that.

ZL: Can you tell me about that case?

MW: Well Dell Webb has Sun City you know. You know where that is?

ZL: Yes, West Phoenix.

MW: We represented Spur Feeding for a long time, personal friends of ours. They established or built a feeding lot over by Sun City. I forgot all the details of it now. But Webb sued Spur Feeding which was a large feed lot where cattle are kept and they're fed every day.

ZL: Now I assume that Spur was there before Sun City was built.

MW: Sun City was built after Spur Feeding was there and that was really the thing that turned the lawsuit on (inaudible word). Webb sued Spur Feeding to require them to stop feeding cattle because of the odors. They had built quite a lot of houses there and people who bought them lived there. They were beating on Del Webb saying that he didn't have any business selling them land like that.

ZL: Who was the gentleman who owned Spur Feeding?

MW: There were three or four farmers, ranchers, Cliff Clements, Ray Cowden, large farmers, large ranchers.

ZL: So they had gone together and developed this feed yard.

MW: Yeah to feed their cattle that they acquired and were feeding to fatten to send to America. The people that bought their houses there, said they didn't see it or they didn't know it was there.

ZL: And so the eventual outcome was?



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MW: The Supreme Court held that Del Webb could not win because Webb had built the homes that invited the people there when they knew very well that this feeding lot was there. I guess you'd say you can't invite people to a nuisance and then complain about the nuisance.

ZL: For novices to the legal profession, would you go through some steps of what kinds of things would happen when you took a case? For people who aren't familiar and don't deal with the legal profession all the time, what kind of things do you do? You meet with a client and you decide whether you're going to take the case or not.

MW: You mean the lawyer?

ZL: Yes.

MW: Of course to begin with, you're not completely stupid. There's certain things you know or don't know but you do have to do a lot of thinking sometimes. First of all, you want to know who your client is, who your plaintiff is, who the opponents are. What kind of people are they. That's not necessarily determinative of how the lawsuit comes out, but you need to know that to know what problems are going to arise, and who's going to say this, that, and the other thing. I suppose you could say you have to decide if they've got the money to pay you. I mean by that, a lawsuit like that Webb case, probably involved \$50,000 in out-of-pocket money. Can they pay it, and if they can't pay it, is there any other reason why you should pay it? I guess my answer would be the first thing I would want to find out is are they honest people and have they got a case that they ought to win. Whether everyone thinks the same or not, I'm sure our firm, and I'm sure my partner, Frank, would want to know if the people were really entitled to win. Are they entitled to prevail? It's rather hard to answer a question like that, really. I guess my honest answer is should you win? And if you should win, that means you believe the case is justified.

ZL: Was there a Bar Association in Arizona when you came here?

MW: Yeah. Not as well organized as it is now. Back then, I can remember when probably once a month the Bar Association, as it was then called would have a meeting generally in the Arizona Club. A dinner meeting at which they'd have a speaker and it would be a discussion of miscellaneous things. You didn't have to join it and it was a self-help, let's get together and behave ourselves situation. Since then the Supreme Court has ordered the requirement that everyone that's going to practice law has to join the Bar Association, has to be invited, and is asked to abide by and be controlled by its regulations which is a necessary thing. I don't know how many lawyers there are, seven hundred, eight hundred. Back then we'd have two or three hundred at a meeting.

ZL: What kinds of changes have you seen in the practice of law?



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MW: Well, advertising manifestly. There are the regulations that the court adopts by regulations and rules, but that's not really what you're talking about. I don't know other than the advertising that there are so many changes that are really outstanding. I don't think so.

ZL: Do you think standards have changed any?

MW: Well, the Supreme Court has adopted certain regulations about what you have to do and how you have to do them; how you have to go to law school and what you have to do when you get out of law school. I think, other than from the advertising standpoint, that the changes really have not been earthshaking.

ZL: You were a member of the State Bar Board of Governors. Were you appointed or elected?

MW: That's an appointed. It's elected under regulations by the Supreme Court.

ZL: By the State Supreme Court?

MW: Yes. In other words, I was elected by all the lawyers in a certain area. All the lawyers in the state are divided up into segments--five, six, maybe seven districts. And each of those districts has a lawyer who is a member of the Board of Governors. They meet with the other members of the Board of Governors and legislate with respect to what goes on in the state. That's the size of it. I think the term is three or six, four years, five years, I don't know. It's for a term of years. Then there's a president and two or three, maybe five or six active people in the Bar that meet to decide what should or shouldn't be done. Then they have this meeting when the State Bar Convention occurs. Otherwise, when there's a meeting of all the lawyers; then they meet members of the Board of Governors and they elect what should and shouldn't be done.

ZL: You were elected to the International Academy of Trial Lawyers in 1958. What different countries does that involve?

MW: That involves Germany, France, and America.

ZL: United Kingdom?

MW: Probably. I'm quite sure, yes.

ZL: And then in 1987 you were presented with the Arizona State Bar's first annual Walter E. Craig Distinguished Service Award.

MW: Yes.



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ZL: Is that award for service to the profession as well as to the community?

MW: As well as to the community? I don't think it would include interest to the community that did not involve the legal profession.

ZL: You must have tried many cases with and without juries.

MW: I have.

ZL: Which did you prefer?

MW: It depends on the case. It really would. It would depend on the case and that says enough. I think that personally I tried a lot of cases before the women were on the jury.

ZL: I was going to ask about changes of juries.

MW: I'm of the opinion that it was a good thing to remove the disqualification of women from serving on a jury. I think they're better jurors and . . .

ZL: Really?

MW: (in a whisper) Nice looking. (they both laugh) No, most women are more conscientious really. I mean you'll get, of course once in a while probably not, but I think generally speaking, they are more conscientious, they're intelligent, they want to do what's right. Every so often, too often people on the jury play with it, they just don't have the conscientious obligation that they recognize to be a good juror and to understand what it means to be a good juror. I'm quite strong in that opinion. I don't know how much I'd be right or wrong, but I would say things being equal, by that I don't mean sex involved or what have you, I think that women generally are more conscientious, I think most of the time they're intelligent and they're willing to make enough sacrifices that (inaudible word) inconvenienced or lie about being on the jury. I don't think it's a big deal, I think the thing that is worse, or is bad anyway, is reducing the number of jurors. I think that reducing the jurors to two or three or four is wrong. I think the merits of the jury system are a cross section of human intelligence. You have women and men and boys and girls and so on. You will get from ten people, I think, a far better appraisal of what's right and wrong just on the merits, than four or five people. And that's true of, I'd say anything below eight on a jury is bad. And I think anything below twelve is questionable.

ZL: Where there any outstanding trial lawyers against whom you've tried cases that you can remember that stand out in your mind?



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MW: Since I've been practicing law?

ZL: That you've tried cases against and that you remember that you were very impressed with.

MW: Yeah, I have to think a little bit. I've known some good lawyers, yes. That's hard to pull those names. I'd have to think about it.

ZL: That's fine. We talked about women jurors. How about women attorneys?

MW: I like them. I think women are just as good lawyers as anyone else. And I don't see any difference. Once in a while it's just like any other situation. You'll come across some women that's got a gripe, but you'll find that with men just the same as women. I don't see any difference.

ZL: Was that a hard adjustment in your firm when you started hiring women?

MW: No. I don't remember when we did. It's been a long time and I'm sure we don't intend to change it.

ZL: Do you feel good about the justice system today?

MW: Yeah. I would say that knowing the human nature as I do, I don't think it's perfect by a long ways, but I don't even know of any way you could improve it that would really come anything close to abstract justice. I just don't.

ZL: Now you were here throughout World War II. Were there big changes in Phoenix during the war? They built Williams Air Force Base and Luke Air Force Base.

MW: I don't remember those creating any great things. We had some more or less minor things. We had a little trouble with the black people particularly . . .

ZL: Service people?

MW: Service people, but not bad. I don't think so. It's bad enough to really try to analyze whether it was really bad or not. I don't remember ever it bringing any real outlandish riots or what have you.

ZL: And then after World War II it changed dramatically because that's when evaporative air first came in and then air conditioning and a lot of the service men returned.

MW: Yes. There's no question in my mind but what air conditioning probably was a major reason for the (inaudible word) astounding as the change has been because there's a lot of difference. Of course if



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everywhere else it was just as bad as it is here, maybe the change wouldn't be so drastic. But I think air transportation and air conditioning are the two major reasons for the growth of Phoenix. I think there's no question about that.

ZL: Of course air transportation also started In World War II.

MW: That's true. Yeah.

ZL: You were involved in a number of community activities. In 1958 you were president of the Phoenix Chamber of Commerce. Do you remember what kind of things you did during your term of office?

MW: It's been a long time.

ZL: Yes, it has.

MW: I don't believe there's anything that I could say as dramatic enough of sufficient momentum.

ZL: You were also involved in the Valley Beautiful Council.

MW: Yes, I was.

ZL: What did that do?

MW: Well, it stopped the development of Camelback Mountain. That was the one thing I can think of. I don't think that it exists anymore, does it?

ZL: I don't think so.

MW: I know I was on it. I went to meetings. And I know there was a considerable hazard at the time that the Camelback Mountain top would be chopped open. I think I paid a hundred dollars to some group that bought some of the land or something to stop it.

ZL: When did you officially retire?

MW: I haven't.

ZL: Good!

MW: No, I haven't.



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ZL: I think that's wonderful.

MW: Well, I still pay my dues.

ZL: Well I know for many years you still went to the office every single day.

MW: Yes, well I don't anymore, but I do try to go at least once a week and sometimes a couple times a week, or if something comes up, I'll go down anyway.

ZL: Now do you still consult?

MW: Yeah, but I would not be telling you the truth if I hold myself out as being equally alert as I was ten years ago. That's not true. I know certain things, certain areas that I would probably be just as efficient or more so even than twenty years ago or ten years ago, but not otherwise. I also say that I think that my continued going to the office and so on am a matter of egotism as much as anything else. (Chuckle)

ZL: What do you enjoy about this stage of your life?

MW: Well I can't say that I dis-enjoy anything, but I'm pretty philosophical about everything. I lost my wife two years ago but I've got two wonderful daughters. And I've got two nice sons and I've got some wonderful grandchildren and great grandchildren. I think you just have to recognize the fact that changes are changes and that human beings are human beings that change like everyone does. I try not to pay much attention to that but I think I enjoy going to visit with my kids. I think I enjoy going fishing or hunting once in a while but not like I used to. In fact I used to take a beer once in a while, course I don't now.

ZL: Of all that you've accomplished . . .

MW: All, now draw back the windows.

ZL: Of what are you the most proud?

MW: Of the children that might grow up. That's right. That's what I'm the most proud of.

ZL: What a wonderful tribute.

MW: You shouldn't be here to hear me say that because you'll keep bothering me of it now. (he refers to his daughter in the background)



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ZL: You've lived in Arizona for about sixty-three years or thereabout and you've seen a lot of changes. What do you think makes Arizona unique?

MW: Unique? I don't know that I'm willing to raise a run at that based on the forty-eight states in the Union. I think Arizona is in some ways, of course, somewhat better, but I don't think Arizona is unique in the sense of the word that there's nothing else like it.

ZL: Well, let me phrase it another way. What do you like about Arizona?

MW: I like its climate. I like the kind of people we have here. Even the government we have here in some respects because you know it can be so much worse

ZL: Did you get involved in politics?

MW: No, I never have and I don't intend to. Well I really am not of a temperament – patience and so on that would be meaningful. I don't think so. We don't have such a bad government. We have things that are wrong of course, but really from our standpoint, at least in Phoenix, or in Arizona, we could have a lot of improvements and it wouldn't be too much trouble if you could get people to really settle down and do it. I'm not critical in the sense that I think that any government would be better. I don't think so.

ZL: If you were talking to young people today, from your perspective and experiences, what would you like to tell them?

MW: I don't know, I don't know whether I'd want to answer that or not. I'd want to tell them to be decent people. I'd want to tell them to live a good life. I'd want to tell them to not to make fools out of themselves. I'd want to tell them to pay attention to their government. I'd want to tell them that they ought to recognize what this world is, is largely what they make it and leave them go at that. I don't think that would help them too much.

ZL: Sound like pretty good answers to me. Mr. Wilmer, thank you very much for this interview.

MW: It's been a pleasure young lady, it's been a pleasure.

