

ALFREDO C. MARQUEZ INTERVIEW

Jusem: Please tell us where we are.

Maynard: This is an oral interview with the Honorable Alfredo C. Marquez, U.S. District Court judge. [Interviewer is Deo Maynard. Also present is Pablo Jusem, from the Arizona Historical Society. The date is October 29, 1991.]

Let's start with Winkleman where you were born. So tell me about your parents.

Marquez: Well, my father had come to that area when he was a very young man, about fifteen years old. He had an older brother living there who had gone into business and was doing very well. His brother was married. My father had grown up just south of Douglas, about seventy-four miles south of Douglas, a little farming community. His father had a small ranch. I mean, they lived off the land.

My father used to tell me the story of how he decided to come live with his brother. He had been communicating with his brother and he got on horseback, took a horse one day and came to the border and slapped the horse on the back and sent him back to the ranch.

He worked at the mine there at Bisbee, got a job. He became acquainted with another young man there and shortly after he had saved a couple of dollars, he and this other friend hopped a train to Tucson. They took the, well he was going to, the two of them, from here to Winkleman and had to take the old horse--I'm searching for the word--the wagon, you know, with horses, the stagecoach.

_____ They slept on the yards in front of the railroad station that night. He used to like to come down, when we came to Tucson in his later years, we would drive around downtown and he would try to point out to me where he had slept.

He always used to laugh because his brother, the friend of his, another young man too, had bought this fancy cowboy hat and they had slept just laying on the grass and his friend had put this hat over his eyes so he could sleep and somebody stole it during the night. Then he took the stagecoach from here to Winkleman.

My mother--my mother's maiden name was Chavez and that's my middle name. As you know we have all these hyphenated names. In Mexico they put the mother's name last. Here they, to keep it, they put it in the middle, because otherwise they'd be calling me Chavez. But anyway, they had come from another part of Sonora [Mexico]. They met in Winkleman and eventually married and here I am.

Maynard: All right. Are you an only child?

Marquez: No, I have one sister.

Maynard: One sister. Is she older or younger?

Marquez: An older sister. Yes, she's a couple of years older.

Maynard: And your parents names?

Marquez: My father's name was Alfredo Marquez. When he became a naturalized citizen, everybody had always called him Fred, which is what everybody always calls me. So anyway, he changed his name officially to Fred since everybody knew him by that name. My mother's name was Rosario Chavez. My sister's name is Flora.

Maynard: What was your childhood like in Winkleman?

Marquez: Well they were very happy days. The Gila River at that time carried a lot of water. The Coolidge Dam, which now holds the water up above, up on the San Carlos Reservation, was built in the late twenties or early thirties. I forget when it was. I was born in 1922. In the summertime we were down at the river swimming all the

time. It was just a lot of fun. We used to, there were some areas there where the river narrowed and there were some rapids and we'd find a board somewhere and an old automobile spring, the old springs, and make a diving board on it, put on it. We used to spend a lot of time on the river all summer long. We had a grammar school in Winkleman and Hayden is basically right next to it, but Hayden was a company town, owned by Kennecott Mining Company, and that's where the high school was. So we used to go to high school at Hayden. Winkleman was not a company town, so people could, you know, whatever they could afford, could buy a lot and live where we wanted to. Hayden was where the movie theater was.

You've got to realize this was during the depression and everything else. Jobs were very scarce and town of Hayden, things have changed a lot, and I guess, _____ for the good. But Hayden was kept as a segregated town by the company. They had what was called San Pedro where the Mexican people lived and Hayden is where the Anglos lived. They had a theater, owned by the company of course, and the Mexican people had to sit on the left hand side and the Anglos sat on the right hand side. If the right hand side got full the Anglos could sit on the left hand side, but if the left hand side got full the Mexicans couldn't sit on the right hand side. But that was just one part of the, as I say, things have gotten a lot better and that doesn't exist there anymore.

I went to grammar school in Winkleman and then high school in Hayden, graduated from high school there.

Maynard: What kind of activities were you involved in in school?

Marquez: Well, sports mainly. I played, being a small school--I think the whole school had something like a hundred fifty, sixty students. I was very fortunate, I had some very

good teachers both in grammar school and high school. I always wanted to fly and get into engineering, aeronautical engineering, and in high school we had the school principal even put on some special classes for, there were three of us, two other boys, who were also very interested in math and we took, just the three of us, he would give us advanced math classes, which was a great advantage. They were very small classes too and we had some very dedicated teachers, I think. I think we got a real solid education.

Maynard: So they really encouraged you?

Marquez: Yes, they did.

Maynard: Well, you graduated from high school then and what did you do after that?

Marquez: Okay, at that point, when I graduated from high school I wasn't, I couldn't afford to go to college so I had a relative in Los Angeles, he was my godfather actually, and I got a, it wasn't a scholarship really. There was a technical school, it was called Curtis Wright Tech and it was located at the Glendale [California] airport at that time. It was like a technical school where you could become either an airplane mechanic, they had a course on mechanics, or engineering, they had an engineering course which would be comparable to a junior college. You could work, they would give you a job at the airport, kind of just custodial or cleaning up at the airport. At that time it was one of the main airports in the Los Angeles area. It was in 1940, 1941 when I went there. I completed that, I took the engineering part of it, and I got a job at Douglas Aircraft working in the engineering department.

About that time, the war started, December seventh, the war started and the draft board thought I was pretty valuable and that I should go into the service. So I enlisted. Since I wanted to fly I enlisted in the navy air corps and eventually

became a pilot in the navy.

Maynard: So you joined the navy with the intention of flying?

Marquez: Oh, yes.

Maynard: Now, how did you spend your navy career?

Marquez: Well, I got my wings and I was made an instructor instead of going out to the fleet, which everybody wanted to do. Everybody got their wings thought they were the hottest pilots in the world, they were going to win the war by themselves. But I was made an instructor, instrument flight instructor. I went to Atlanta to take instrument flight instructor school. Came back to Texas, which was where I had gotten my wings, and I thought I was never going to get out of Texas. I spent the rest of the war in Texas instructing as an instrument flight instructor then in advanced flight training, which is, the students just before they get their wings. I was at Kingsville, Texas.

The month that I got released, the war had ended, but the month I got released a bunch of us were scheduled to go out to the fleet. So I fought the war in Texas.

Maynard: Texas. Well, a good place to stay.

Marquez: No it wasn't. No it wasn't. I can think of a lot better places to tell you the truth.
(laughter)

Maynard: So after the war ended then you got out of the navy and you decided to go to college.

Marquez: Yes, my sister was living in Phoenix at the time and my mother was fairly sick. I decided to go back to school and I signed up at Arizona State and started in January of 1946. I got out in November of 1945 and signed up at Arizona State. I only stayed there one semester. My mother passed away in January of 1946, right after I got out of the service. I had a lot of family, relatives in Tucson because this

is where we used to come from Winkleman when you came Christmas shopping or something like that. So I came to the University of Arizona that summer of 1946. I got my degree in economics in 1948 and went into law school and got my law degree in 1950.

At that time they had a two-year course for GI's in law school. You went, you took exams on Saturday and started the next semester on Monday for two solid years. I went through on that accelerated program and got my degree in 1950.

Maynard: When you started with your degree in economics, did you always have law school in your mind, or did you have an idea of it?

Marquez: Yes, it was in the back of my mind. I was going to see what you could do with a degree in economics and I found out that unless you had a master's or a doctor's in economics you weren't going to do much besides become a bank teller or something like that, which is all right but that's not what I wanted to do. So after looking around for jobs with a degree in economics I decided to go back to law school.

I might say that one of the things that was very helpful at that time, of course, was the GI Bill. The government had passed the GI Bill and I think that's one of the greatest programs that this country ever came up with because not only myself but a lot of my friends were there in school only because of the GI Bill. They could not have afforded to go to school. They would have gone to work in the mines or things like that. I have a couple of friends that I grew up with at Winkleman who with the GI Bill became, one of them became a professor at Arizona State and everything and you know. It was a great bill, I thought. I went through school on the GI Bill.

Maynard: What stands out in your accelerated course in law school? I mean, some

professors that stood out in your mind or anything like that?

Marquez: Well, it was, at that time, I guess compared to now, the classes were not that big, but actually compared to what they had been during the war they had gotten kind of big. So they were fairly big classes. Nothing particularly stands out except that it was a heck of a lot tougher than going through undergraduate school. It was a whole different ball game. Particularly the first year of law school, I think that's when you make your big adjustment. You're either going to kind of make it or not make it your first year. Once you get through your first year you learn how to write exams and how your professors, particular professors, want you to write and all that and it got a little bit easier. It still requires a lot of work.

Maynard: So you graduated, 1950, now you go looking for a job.

Marquez: Graduated, go looking for a job. The attorney general's office had a opening that was going to occur later on in the year and I had a friend, an attorney in Phoenix, Ralph [Raphael C.] Estrada and I went and worked with him for about six months I think it was. It was just general practice. I went into the attorney general's office and . . .

Maynard: Ralph Estrada's office, was that up in Phoenix?

Marquez: In Phoenix, yes, in Phoenix. By this time I'm married and got a couple of kids and I went to work for the attorney general's office at something like two hundred fifty dollars a month was what the salary was. I was there--you lose track of time--but 1951 into early 1952. I didn't stay very long because Morris [K.] Udall was the county attorney down here in Tucson and I wanted to come back to Tucson anyway and practice here and Morris Udall offered me a part-time job. At that time they had two or three part-time positions in the county attorney's office. Raúl [H.] Castro was another part-time deputy. I'm trying to remember who the

others were. You could practice privately, in other words, handle civil, try to build up your practice, your civil practice. You obviously couldn't do any criminal work but you worked part time. I can't remember what I was getting at the county attorney's office. It wasn't very much. I was there until the end of 1954.

Morris Udall's brother Stewart [L. Udall] ran for Congress and got elected to Congress and he asked me if I wanted to be his administrative assistant. I figured, "Why not? I've never been to Washington [D.C.]. Maybe I'll get Potomac fever or something." And I wanted to see it. So I went to Washington the year of 1955. I had two children at the time. My son got sick almost the day we got to Washington. He couldn't stand the humidity, you know, he had like an allergy problem. We took him to Johns Hopkins Hospital over there and they said, "Take him back to Arizona to the dry climate."

So I just finished that one session and came back and got appointed city prosecutor in 1956, I think. That also was a part time job, if you can imagine how the city has grown. But the prosecutor's job was part time, the magistrate's job was part time. They had one magistrate and he worked part time and the prosecutor worked part time.

Maynard: And they still had private practices?

Marquez: They could still have private practice, yes. If you had to be out of town for some reason somebody in the city attorney's office would handle the prosecuting work. I stayed there just a couple of years, I think 1956 and 1957. Then at that time--of course I, at the same time, had an office and was practicing privately civil work. In 1957 I got to go with Lowell [E.] Rothschild and John [K.] Mesch and we formed our partnership which was in existence up to the time I came on the bench, until 1980.

Maynard: What kind of law did the law firm practice?

Marquez: Well, by the time I came on the bench we were doing a lot of, you know, Rothschild specialized in bankruptcy, a lot of business law. We represented a couple of banks, did insurance work, defense work. I always did quite a bit of plaintiff's work, personal injury and defense work. At the beginning when I first, in the late fifties and sixties, I did some criminal work. I enjoyed the trial work. I always did have a good trial work. But I basically worked out of the criminal practice. By the seventies I was out of it almost completely. And that's basically what we did. It was a general practice. Like I say, Rothschild specialized in bankruptcy and business law and Mesch did business. I did, well John and I did most of the trial work, defense work for insurance companies and personal injury plaintiff's work. So that was basically . . .

Maynard: Then in 1980 you were appointed by President [Jimmy] Carter.

Marquez: In 1980 I was appointed by Jimmy Carter and Senator [Dennis] DeConcini was the one that nominated me and I got appointed by the president, President Carter at that time.

Maynard: Okay. What about, in the light of everything we're hearing today, the confirmation hearings? How was that for you? I mean, was it a . . .

Marquez: Down on those district and court of appeals level you don't have the controversy and the interest that a Supreme Court nomination has. Obviously the whole country is interested in a nominee to the Supreme Court. A lot of special interest groups are interested in it of course, as we just saw with [Clarence] Thomas. But in the district level, actually by the time the senator sends your name to the justice department he pretty well has analyzed it to decide whether you're going to be controversial or not and if there's going to be any strong opposition and as a

result you don't really have any problems. You have a hearing. The only time it get's close is on an election year, which my nomination was on an election year and I got a hearing in, well my, I started on July the 26th but my nomination was in June and by that time the party that's not in power, in that case the Democrats were in power and the Republicans were dragging their feet and they were not going to approve any judgeships unless they absolutely had to or had made a deal with the other side. So if you're in an election year and you haven't gotten approved by the Senate by June or July, regardless of how good a candidate you are, you're in trouble. You're going to--it's just politics. That's the way it works. We were sweating it out because it was getting to that point. In fact I went to Washington at the invitation of Congress, or the Senate, and I get there and for no reason at all it's cancelled, "Come back two weeks from now." It was the political, the Republicans were trying to delay all the nominations. Not even a word of apology.

Maynard: Just come back later?

Marquez: Just come back later.

Maynard: What was your first day on the bench like? I mean how. . . . Big changes.

Marquez: Oh, I suppose a little bit of nervousness. Of course, if you had plenty of trial experience it really isn't going to be too tough. I was handed a bunch of files--well, when you come on, of course, what we did, I started taking criminal cases right off the bat and took my share of the civil case load that were already pending from the other judges, so I had . . .

Maynard: What judges were on the bench when you came?

Marquez: Judge [Mary Anne Reimann] Richey and Judge [Richard M.] Bilby were on the bench when I came on. My position was a new position under the omnibus bill

which created new positions. I didn't replace anybody. So we had those two judges.

Maynard: What's the most difficult part of being a judge?

Marquez: Well, I guess it depends on what phases you're talking about or what parts of the job. One of them, here in Tucson, of course, is I think our criminal case load. Of course lately with the sentencing guidelines. I guess it's no secret the way I feel about them, and I'm not in a minority. Most of the judges feel that complete discretion has been taken away from the judges and given to the prosecutors, and this is all over the country. I think that everybody recognizes that.

In Tucson, well, any drug case, for example, which is my big gripe, everything, the penalties are based on amounts of drugs. You get into the mandatory amounts and the prosecutors can decide either to charge a person with the mandatory amount or under a mandatory amount. Or even if they charge a person with a mandatory amount, which would call for a mandatory minimum sentence, they can make their plea agreements, which they do all the time here, to a lesser amount whereby the defendant is not exposed to a mandatory amount.

My big criticism, and there's some decisions on it that I published and they're up on appeal, my big complaint is that the U.S. Attorney's office here in Tucson, and I suspect all over the country, has no formula that you can look at. Say two defendants, one who is, say both of them are charged with a mandatory amount and they make a deal with one of them--except for cooperation, cooperation is an exception and I don't have any argument with that--but they can let one person plead to say twenty months maximum and the other guy is stuck with five year minimum with similar conduct and same facts, same background and everything else. And the judges don't have anything to say about it. And there's

no basis for the discrepancy, the discrimination against the defendant who's getting stuck with five years.

I have refused to impose mandatory sentences on some defendants, those are the ones that are up on appeal, just on the basis that there's no rational basis for it and it's discriminatory against the, a violation of their constitutional rights to subject you to five years when somebody else is getting off with eighteen months and you're guilty of the same conduct. It's very difficult to deal with that day in and day out and try to be fair to the defendants. I'm not saying that they shouldn't be punished. I think if you're going to impose punishment it should be on an equal scale with everybody for similar conduct.

That part of it, I'm not going to regret getting off the criminal calendar. It's just--you get burned out after a while. We have so many cases here. We always have between forty and sixty cases pending all the time. You have, I think the last list I saw, the great computer puts out all these statistics now, I have I think forty-five people awaiting sentence. They're all basically the same thing, they're drug offenses. We're so close to the border. And here we have the typical mule or courier. And again, it isn't a matter of saying that they shouldn't be punished, it's just that the guidelines basing everything on amount I think creates some very unfair sentences.

For example, two mules who are offered some money to drive a car across the border and leave it at Safeway or someplace, which is the typical thing, tell them to leave the keys there and they'll be paid later, if one car happens to have a hundred kilos or more, that defendant is facing five years minimum. If the other one happens to have fifty pounds in it he's facing a much less sentence, strictly based on the amount. And as far as I see it, the conduct is exactly the same.

They don't know even what kind of drug is in there. They know there's drugs, so I'm not saying they should not be punished, but the disparity in the sentences they can get based strictly on amounts when the conduct really is similar, I think is just very unjust.

And the mandatory sentencing, even the sentencing commission has just put out their two-inch thick report to Congress asking them at least not to pass any mandatory sentences and if possible do away with the ones that they have now, in the drug cases.

That is, at least for the last couple of years or three years, has been, I think, the most difficult part of it. And you can't get to your civil calendar the way you should and you don't do the job you should because you're so crowded with the criminal case load.

Maynard: Significant cases?

Marquez: I see you're smiling. (laughter) I'm sure you're thinking of the squirrels, aren't you?

Maynard: I think everybody thinks of the squirrels.

Marquez: Well, that's always been an interesting case. I think there are very well-intentioned people on both sides. The conservationists, the Sierra Club and so forth, I think are genuinely concerned. I don't think it's just a frivolous complaint that they have. One of the problems was that so little was known about the squirrel, this little animal. They've learned a lot since this has been going on, I think.

Maynard: I think maybe for the record we should just say that this having to do with the Mount Graham red squirrel.

Marquez: Okay. We're talking about the Mount Graham squirrel and the University of Arizona telescopes. The university has had this project, I guess they're in

partnership with the Vatican and up to recently Ohio University was involved. Ohio University recently withdrew. The project calls for the building of three telescopes in the initial stage and to have a study of the effect on the red squirrel. Then, if the construction has no adverse effect on the population of the red squirrel then the other four or six, I forget, the second stage of the telescopes will take place.

At this point, what happened is the squirrel, of course, is in the endangered species list and the usual procedure for getting a project such as this approved is to go through the Forest Service and the other agency which is the one that oversees or enforces that Endangered Species Act, which is the Fish and Wildlife. That's the national, the federal which is part of the Interior Department. But you go through these agencies and try to get a permit. The university, I guess, got tired of trying to get a permit and they went right through Congress. They used their political power and got Congress to enact a statute authorizing the building of the initial stage of the three telescopes and then a second stage, with certain guidelines and so forth. And that's really what started the whole litigation, after the Congress passed that statute authorizing it.

Maynard: Then the conservationists came to you? Is that how the first case was . . .

Marquez: Well, they filed a lawsuit. I happened to draw the case. It could have gone to Judge [William D.] Browning or Bilby but I drew it. The first one wanted an injunction to stop it and it's up on the court of appeals now for the second time. I denied the injunction at the last hearing here, in my last decision and I . . .

Maynard: Tell us what happened at the first one.

Marquez: Well, the first one, I took a look at it and the record is voluminous, a couple of cardboard boxes, the administrative record which came up through the

agencies, because the agencies are still involved, they still have to oversee the construction and they're the ones that monitor the effects on the squirrel. So I took a look at it and I thought that Congress ought to take another look at it. I really did. I think there are some serious issues raised and I thought maybe Congress ought to take a look at it. So I granted a ninety day stay on the project. A couple of the senators or congressmen, I can't remember which, actually did want to take a look at it, but Congress never did do anything about it. There was a lot of talk.

It was appealed to the Ninth Circuit and the Ninth Circuit set aside my injunction. I still had the lawsuit as far as the merits of it are concerned. They had nine claims is what the Sierra Club had filed, nine claims, all basically dealing with the construction of course, but different allegations that the university wasn't following the plan that had been approved, they weren't doing the monitoring right and so forth. So I had thrown out seven of their claims and that's up on appeal. The Ninth Circuit set aside my injunction but they still haven't decided those seven claims.

That left two claims and here recently, well after that the Sierra Club came back and asked for an injunction again and we had a hearing, heard testimony on the monitoring and what was going on up there. I denied--well, in the meantime, I have to tell you that the Ninth Circuit for some reason gave an injunction. After it set mine aside they gave an injunction and had an injunction in effect for about nine months. Then sometime after that they withdrew the injunction so that the construction could proceed. So the construction on the first three telescopes is proceeding.

I have denied the, after the hearing we had I denied the injunction and also

ruled against the remaining two claims which dealt with the monitoring and the closing of some roads and some, a sewage plant or something like that which is part of the plan. And that's up on appeal, of course. So we'll have to see what the Ninth Circuit says on it now.

In the meantime, the last report I read, the little squirrels are happy, the population has doubled, we had a lot of rain. I guess time will tell what the effect of the construction will be on it, on the squirrel.

Maynard: In my research I found a lot of other interesting cases that you've had. I saw a lot of newspaper articles with you out measuring a trunk. (laughter) Tell us about that case.

Marquez: Well, that was an alien smuggling case. It got publicity, I think mainly because of who the defendants were. The defendants were three people, as I recall it, two or three people who were affiliated with a church that was later on part of the sanctuary trial. In fact I think at least one of the defendants was in on the sanctuary trial, Conger? I can't remember the name.

This arrest happened between Nogales and Patagonia and at night. It was a station wagon. One of the problems with all these stops near the border, of course, is the question of whether the officers have a founded suspicion or a reasonable basis for even making the stop. Not just because some Hispanic is driving or something like that. They had said that the station wagon looked like it was riding low. I got curious, I just wanted to see, because this is the typical testimony when they stop a car, that it was riding low, and I decided to see for myself.

So I think the picture you're talking about is I asked the government to produce the station wagon which they had seized and to put the actual people that were

involved or people of the same weight and so forth, put them in the same location in the car and drive it across the street here behind the court house so I could see. We measured it with the people in and with the people out to see if it really was riding low. I guess you read the result. I suppressed the evidence, ruled that the government had not . . .

Maynard: That it wasn't . . .

Marquez: It was not a good stop. That there was no basis for the stop. And of course we have those kind of questions every day here with the drug cases. They're stopping people coming up from Nogales, from Douglas and so forth and the question, of course, always is, "Was there founded suspicion in order to make the stop." In some cases it's a close question. Obviously you can't stop a car just because some Hispanic is driving it. You've got to have some legitimate reasons for stopping a car and asking questions and checking up on it.

Maynard: One of the other cases I read about was the Phelps Dodge. The strikers.

Marquez: Oh, yes.

Maynard: Tell us a little bit about that case.

Marquez: Well that case came about, it was a very emotional case for the people involved. You probably recall the strikes, the copper strikes that occurred in Arizona. Both at Clifton and in Ajo emotions ran pretty high because the company decided to hire replacements and keep the mines going. It created rifts in family members who I think to this day probably don't even talk to each other because some of the workers decided that they were going to stay with the company. They felt that financially they could not afford to go on strike and the company offered some other, had made an offer which they decided to accept. There were shootings, there were assaults, there were all kinds of emotional things

happening.

In Ajo the same thing happened. The strikers had assembled at the entrances to the mine, which they had a right to do as long as they followed the guidelines that had been set by the court. In other words, they were not supposed to obstruct the entrance into the mines because the mines of course had a right to continue to operate. Every time there was a shift change when the miners were coming out or going in, of course all the strikers with their families would be out there hollering. As I say, emotions were very high.

In that case, the lawsuit was filed by a bunch of the strikers and some of the families and the unions claiming some civil rights violations by the, well a whole slew of defendants, Phelps Dodge, they claimed a conspiracy between Phelps Dodge and the sheriff's office. They sued the magistrate or the j.p. [justice of the peace]. They sued a bunch of deputies, and Pima County, of course. What happened was, it eventually went to trial and the jury awarded damages to--I can't remember the number, there were twelve or thirteen, I can't remember how many there were--gave them some damages.

What happened is, they claimed that the sheriff's office had abused their rights by arresting them without just cause and that the j.p. had set excessive bonds as part of a conspiracy with everybody. I thought they were excessive, there wasn't any question about it, but I had to dismiss the j.p. because of judicial immunity. I mean, they arrested these people for violating, supposedly, the court order or for disturbing the peace or something like that and the j.p. set something like twenty-five thousand dollar bonds on them and which they couldn't post. So they remained in jail five or six days until the union finally came up with the monies and got these people out.

I ruled in favor of Phelps Dodge and I still think I was right. It finally went in bank on the court of appeals. The panel originally ruled that I was right. I granted summary judgment to Phelps Dodge. After all of the testimony, pre-trial discovery and all that, there was no question that Phelps Dodge was talking to the sheriff's department. I mean, they admitted that. But all of the testimony showed that Phelps Dodge was saying, you know, "You're lousy law enforcement officers. You can't even keep our mine open and we want you to do something about these people that are blocking the gates." The sheriff's office . . .

Maynard: Judge, can you wait just one minute?

Marquez: Sure.

Tape 1, Side 2

Marquez: The sheriff's office basically agreed with this, that the Phelps Dodge people had never asked them to, well they did ask them to arrest the people, you know, and get them off the streets so that we could continue to operate our mine, but that it was not any conspiracy to violate their rights. They were just saying, they're complaining like any citizen saying, "Look, give me some protection." I granted summary judgment because I just felt that there was no evidence that there had been a conspiracy to violate and I let Phelps Dodge out.

The Ninth Circuit on the embank on a split decision held that that should have gone to the jury because they had met. I think down the road that is going to raise some real problems and I think that is going to be reversed or changed some day down the road, because you've got to be able to show that more than that two people met. In fact, our instructions in criminal conspiracy cases tell the

jury that the mere fact that two people met and discussed common aims and goals does not prove a conspiracy. That was pointed out in the dissent quite clearly. I think down the road that that case is going to create some unfair and unjust results.

Maynard: Are there any cases that stand out in your mind, other than some of these that we've talked about?

Marquez: Oh, that's what I was going to do some reminiscing about. I got busy and I never got around to it.

Maynard: Okay,

Marquez: Well, we have the garnishment laws which we declared unconstitutional. Nobody argued about that one. Everybody agreed that. The debtor was not getting the proper notice in order to claim his or her exemption. There are certain wages that are exempt and you can't leave a person completely destitute without money for food and clothes and so forth. There was no hearing procedure set up where a person could ask for a hearing within a reasonable time so that he could appear and say, look this money is exempt or part of it is exempt and so forth. The legislature went to work on it with the committee of attorneys who did a lot of that kind of work and they came up with the new statutes which, I think, give adequate notice and . . .

Maynard: To the debtor?

Marquez: Yes.

Maynard: You had a case where a couple were selling secrets to China, IBM secrets. Do you remember that case?

Marquez: I don't think that's my case.

Maynard: Maybe that's something wrong there.

Marquez: Did you find it as being one of my cases?

Maynard: I thought I did, but maybe not, Judge, maybe not. We talked about the most typical kind of cases that you have.

Marquez: Yes.

Maynard: Just drug cases. What about leadership qualities of judges? What do you think makes a good judge?

Marquez: Well I suppose you'd have to ask, you can get different answers from everybody. I suppose it's like asking me if I think I do a good job or not. It depends on who you ask. Well, I think you've got to be, obviously firstly, have a good understanding of the law, be well versed in the area of the law that your case is dealing with and if you aren't you need to do some work. I know, obviously you can't be well versed in everything, you have all kinds of different cases. You have to be willing to work and prepare.

I think you've got to be able to be fair. Some attorneys can really, fortunately a very small minority, can by their attitude and so forth almost make you want to rule against them, which is not fair to the client. But you have to be able to set that aside and, you know, know that you're, got to be fair and look at the case without any feeling of prejudice or sympathy for one side or the other.

And you've got to make tough decisions sometimes. Sometimes the decisions aren't, I shouldn't say not fair, but some are tough decisions and create some hardships for some people and they're just on the losing side.

I think you've got to have some understanding of human behavior, particularly in the criminal cases, when you're passing sentences, I think you've got to have some compassion. I've never been one of these advocates of lock them up and throw the key away. Even most wardens will agree with you that it's a mistake to

just warehouse defendants. I think you've got to, on the criminal side, believe in some rehabilitation and I think one of the most satisfying things, that under the old guidelines we used to be able to impose a split sentence. You had these first offenders and you could impose a real stiff sentence, give five years for some first offender and you could order that they spend up to six months in custody and suspend the rest of the sentence and put them on probation for up to five years. You could say, "Okay, I'm going to give you five years, and on condition that you spend ninety days in custody I'll suspend the rest of it and then you're on probation and uphold certain conditions." And they'd do ninety days and it gives them a taste of the prison. You'll hear many wardens and people say that the first time the shock really sets in is when they hear those doors clang behind them. One of the satisfying parts of the job is that when, maybe two or three years down the road, the probation officer gives you a report and says, "Recommend that you terminate probation, that that young man has gotten a job, he's completed his education. He's married, he's become a useful citizen in the community and he just doesn't need any more supervision." That's satisfying that you made that kind of a decision instead of saying, "You've know, you committed this drug offense. Five years and you're off forever." I think in some cases you do more harm than you do good when you give a young offender that kind of a sentence.

Maynard: You have law clerks each year. Can you think of some of your more outstanding law clerks that you've had, or how do you use law clerks and what do they do?

Marquez: Well, it might be unfair for me to single out any one of them. They're all very bright kids and I enjoy working with them a lot. It's fun to watch them come in here and learn what the real world's all about, because all they've been doing is reading

about the law and everything else, and watch them develop. They normally stay for two years, and then watch them get out into practice like John [L.] Leiber who is over at the U.S. Attorney's office, Judy Rosenberg's at the public defender's now. I see Figueroa, who used to be my law clerk, now doing a lot of defense work here. He's in court a lot, does a good job. It's enjoyable to have--they're all, like I say, very bright kids. You have to be pretty bright to even get into law school anymore. When I got in you didn't have those requirements. I don't think I could make it today. (laughs)

Maynard: What kind of impact do you think your career as a lawyer has had on your family, on your community?

Marquez: Well, I think one of the greatest compliments I ever had was totally unexpected. I went out to play golf with two friends of mine. There were only three of us, so this one young man joined us. I say young relatively, compared to me. In the fifties, when I had first gotten out of law school and was practicing I used to play a lot of golf at El Rio Golf Course. It was, at that time, a private club and we used to have caddies, most of them young men who caddied and ninety-nine percent of them were Mexican kids who spoke Spanish and I used to speak Spanish to them a lot at the course.

On this day when we were playing golf, this fellow joined us and he turned out to be a school teacher who now, and I can't remember his name, is now an administrative official with the school system, Tucson Unified School District. We got to visiting and it turned out that he had caddied during those years in the fifties when he was a young man, a young kid, out at El Rio. Out of the clear blue sky he tells me, he said, "You know, I credit the progress that I made to the fact that I used to caddy for you. I used to go home and tell my mother who you

were and that you spoke Spanish and that I wanted to get an education." He said I was kind of a role figure for him and I thought that was an awful good compliment.

So I guess that it has an affect on, for being an attorney or a judge, being a member of a minority group. You hope that you are a role model and help other kids aspire to get an education and get ahead in the world. So that's about it.

Maynard: Sounds good. Sounds like a good way to end the interview.

Marquez: Sounds good. Okay.

Maynard: Thank you very much.

Marquez: I get to audit this and edit it and add or detract?

Maynard: Yes.

End of interview.