

HARRY A. STEWART, JR., INTERVIEW

Duncan: This afternoon we are interviewing, on behalf of the Arizona Bar Foundation and the Arizona Historical Society, Harry Alexander Stewart, Junior. Conducting the interview are Pablo Jusem and David Duncan. It is the tenth of September 1991.

Thank you very, Mr. Stewart, or may I call you Harry?

Stewart: Call me Harry, please.

Duncan: Thank you very much. When did you first come to Arizona?

Stewart: I was born here. I was born in Tempe.

Duncan: In what year?

Stewart: In 1926, on the fourteenth of February. I was a Valentine's gift, so to speak.

Duncan: Just like the state. You share a common history. Did you grow up in Tempe?

Stewart: No. My folks, my dad was a county agent and worked in the Agriculture Department and we went to Prescott for about three years and he was the county agent of Yavapai. Then he came down to Maricopa County and became the county agent here and was in that capacity until about 1937, when he then went out on farming for himself. He and Mr. Pickrell, who was the head of the Arizona experimental situation, were classmates and had

been raised together in Tempe. Mr. Pickrell was the Yavapai County Agent first and then the Maricopa County Agent, then my dad just followed him down here. Then when Mr. Pickrell became the head of the whole Experimental Agricultural Agency in the state, why my dad was in Maricopa County for about seven years and that, went off on his own, hopefully to farm and make--he actually worked for a large farming company out west of town. They were the original owners of the Dam at Carl Pleasant and then they farmed about ten thousand acres below it. So he didn't really go out to farm on his own until 1945, I think.

Duncan: when you came back to Maricopa County, how old were you?

Stewart: Five or six.

Duncan: Then you stayed in Maricopa county, then, through high school?

Stewart: Yes. I lived on 930 West Portland and lived there until I went to the service in 1943.

Duncan: When the time came for you to go to war, had you already graduated from high school?

Stewart: I graduated that year and went a month later.

Duncan: Okay. Not an uncommon experience for folks on the way to induction centers. Where did you serve?

Stewart: I was very lucky. I was in a naval training program.

I went first to a little college called Park College, which is about ten miles southwest of Kansas City, right on the river. I was there for two semesters and then I got transferred to the NROTC [Naval Reserve Officers' Training Corps] unit at UCLA [University of California, Los Angeles] and was there until the fall of 1945. I got my degree there and I also got my commission at the same time. Then the war was over the following year and I was released.

I went to New Orleans [Louisiana]. I was in the Eighth Naval District there. I don't know why, but for some reason they assigned me to an admiral's staff in New Orleans. I was the head of the motor vehicle department. I had all the motor vehicles in the Eighth Naval District were under my command. I knew nothing about motor vehicles, I'll tell you. Except to drive them.

I got married before I went down there and my wife and I were there for that eight or nine months. Then I got discharged in New Orleans. I came back and I've been here ever since.

Duncan: Was your wife from Phoenix?

Stewart: Yes.

Duncan: So you both came back to Phoenix. Then what did you do?

Stewart: I farmed for--let's see, that was in 1946--I farmed until fall of 1948. In fact, I got so hot out in the field there that summer that didn't even tell my wife, she was up at Whiteriver at the time--I left and got in my pickup truck and drove to Tucson and stood in line and I enrolled in the law school. Then I told her.

(laughter)

Duncan: Why law school?

Stewart: I'd always been told, before I was knee high, that I should be a lawyer because I talked so much. Either a lawyer or a preacher. As a matter of fact Howard [C.] Speakman, who was a superior court judge here, lived right behind us on Portland, and he's the one that used to make that comment all the time. I was fortunate in that way. On the block I lived in was Howard Speakman who was, as I say, a superior court judge. He died while he was a superior court judge. Two houses from him was a fellow by the name of Frank [E.] Flynn, who was a U.S. attorney at that time, and he was a U.S. attorney for a long time, I mean ten or twelve years, maybe longer than that. Then next to him was Dudley [W.] Windes who at that time was a superior court judge and then was on the Supreme Court. I was fortunate enough to be able to try three or four cases in front of Dudley before he went out to the Supreme Court, that

I lost.

Why law school, I can't really tell you because all my training at UCLA had been in engineering and navigation and that kind of stuff and my degree was in naval science, which is an unusual degree.

Duncan: What do you recall about the U. of A. [University of Arizona] law college in 1948?

Stewart: Well it was small and _____. I would say there were probably thirty of us in the class, maybe. When I got down there there were two or three other fellows that I had known pretty well that were in the same class. Harry [J.] Cavanaugh. I didn't know Cavanaugh well until I got to law school, but he and I were two of the only married ones that were there and he had children and I had children and a child coming. So we used to study together and got together pretty well. Earl [H.] Carroll was there. I had gone to school with Earl in high school and then he had gotten assigned to the same unit in UCLA. He was a year behind me at that time. He had been transferred, when he got through at UCLA they transferred him to Harvard. He did a year there in some kind of an accounting school and or some _____ like that and then was released. Then he came back and went to law school in that first year. In those days you could get admitted if you had only

two years of undergraduate school, although I had a degree so I didn't have to worry about that. They also had a two-year plan that you could go through law school, so I went in 1948, I graduated in September 1950. I'd been going through school for several years before that, because I'd gotten my degree at UCLA in about twenty-seven months, something like that, and all we had to do was study anyway, and I was pretty well used to that. I wasn't used to working out in that hot sun like that.

Duncan: Do you recall any of the faculty with any particularity?

Stewart: Yes, the dean was Dean [John D.] Lyons, I think his name was Charles Lyons. He had been a superior court judge in Pima County and then was appointed as dean. There was fellow by the name of [William S.] Barnes who was the, he was known as the tough one of the group and he had all the kinds of things like pleading and code pleading. Anything that was a tough course you could count that Barnes was going to be teaching it. There was a torts professor by the name of [Lester W.] Feezer who also had a son in the same class I was in and he graduated the same time I did. He was a smart old guy.

It escapes my name but I know I remember, the criminal

law professor was a guy that I got along with well. A man by the name of Thomas, Charles Thomas who was the, he primarily taught trial practice and things like that. You know, we never got to see a superior court when I was in law school. The only time I had seen a superior court, frankly, was when I had gone down to Judge Windes' when I was in high school and gone with his son and gone down and been introduced to everybody and so forth.

Duncan: Was it the custom for students to work during law school?

Stewart: Not in law work, no. I worked all the time as a, oh, the first year I was there I caddied at the Tucson Country Club every weekend.

Duncan: You just hankered for the sun. (laughs)

Stewart: Well, every weekend, and well, it paid twenty dollars for two, you would carry two bags eighteen holes and if you could get to go morning and afternoon I'd get back quite a bit of money, make enough money to almost spoil my family along with the, I think we got a hundred and twenty dollars on the G.I. bill.

Cavanaugh and I became salesmen and we sold a thing called a baby tender. It's just a square table where the child sits in the middle with a, he's hooked into it and you can stand on the edge of that table and it

wouldn't tip over and it rolls and everything else. In those days I was active enough to be able to just get up and demonstrate that to people. We used to cut the birth announcements out of the paper. Three days later one or the other of us was banging on the door of that guy. We could make, you know they had extra things that went on it, but we could make up to twenty or thirty dollars each time we made a sale.

As a matter of fact the guy that had the distributorship in Tucson wanted either Cavanaugh or I to take over the Phoenix distributorship when we came down here. But we both decided we were not going to sell baby tenders any longer. It was fun but it was not a, and it was something you could do at night or you could do in the afternoon. It wasn't a, and you didn't have to do it all the time. You know, when study time came up why, we'd go study.

Practically all the students down there at that time were what I call crammers. I mean you'd not do very much except for read your cases during the week to be sure some professor didn't call on you and catch you unprepared. But about three weeks before finals I'd send my wife from Tucson back to Phoenix and so Cavanaugh and maybe four or five of us would just move into my house and study for the finals. And we'd be

there day and night, and we didn't do any work during that time except to try to pass. And it was a fairly successful way to go through. I know both of us made pretty good grades.

I remember one time, it must have been our first year, I came down--we came to Phoenix, we didn't stay up here--and Earl Carroll said he really didn't understand torts. So he and I spent about a week at my wife's grandmother's place and worked on torts. We went and took the exam, he got a two, I got the only four I've ever gotten in my life, in either high school, college, or much less in . . .

Duncan: A one being the best?

Stewart: Yes.

Duncan: So what you did, you just leaked everything you knew to him out of your head and he just sucked it up like a sponge.

Stewart: What it was is that Carroll writes better than I do. In terms of, when I say writes better, his speech is more organized and it's true, he can sop up. I mean, he's like a sponge when it comes to reading something or to understanding something. And he retains a long time.

Duncan: So did you study in a similar fashion for the bar exam?
Or was that different?

Stewart: Well it was a little different. We had a professor who had one of those bar schools. I should mention, Chester [H.] Smith, I think, was his name. I'd had several classes with Professor Smith and then the way you did it at that time, we were still in summer school when we took the bar. We didn't graduate until after the bar had been taken. So we had to study both for regular courses and for the bar and it was just a matter, by that time it was just a matter of reading, I thought, in order to prepare for an exam or for the bar. We usually had outlines. One of the other guys, somebody would always make an outline of the _____ pack that studied with me. There'd be one guy outline, let's say, torts, another one do criminal law and another one do something else and he'd keep a good running outline so that when the end of the year came, why you could rely on it. And we'd check on each other, as a matter of a fact, to be sure that it was being done.

Duncan: In law school did you know what kind of lawyer you wanted to be?

Stewart: Not really, no. I had two uncles that were here, that were lawyers here, J.H. Moeur, M-O-E-U-R, and William A. Moeur, M-O-E-U-R. They had told me that when I graduated come in and see them. So I did and I went to

work for them at a hundred dollars a month.

Duncan: This was in Phoenix?

Stewart: Yes. Their office then was at the old First National Bank Building, which was right where First National Bank Building is now.

Duncan: Oh, really?

Stewart: Yes. They tore the old one down, on that corner of Washington and First there and built the big one. Well, I guess they had to tear the whole block down to build the new one. But that was a small branch bank there and probably three or four floors of just lawyers, I think. I remember the Phillips were on our same floor, Jack [John P.] Phillips, who's with Snell and Wilmer now, and his father and one of his father's brothers, and Jack practiced there. I think Jack was a year behind me in graduating. I've forgotten, really.

I'm pretty sure he wasn't there the first year.

I was with my uncles there for just less than a year and then I went into the county attorney's office.

Duncan: At your uncle's office do you remember what your first case was?

Stewart: Yes. I remember the first--well, the first one I remember that impressed me, because I got what I thought was a fairly good settlement on it. A fellow who was in his seventies had a grandchild that he was

walking around with and the grandchild happened to hit him in the eye. It broke a blood vessel and as a result of it he got blind in that one eye. He had a policy with Omaha Mutual, is that the name of it? Yes, I think that's the name of it. They wouldn't pay. So I sued Omaha Mutual and then we settled it for around twelve thousand dollars. Because I remember I was at the bulk of a three thousand fee on it. I used to get to keep half of what I brought in besides that hundred dollars a month. So to me it was a, it got being able to build a house, almost. As a matter of fact, we did move out of a small house that we were in to a larger place with that money.

I think most of the rest of my time I worked on research for them. Hub Moeur, J.H. Moeur, was the first one involved in the CAP [Central Arizona Project], and he represented a lot of the water companies. Not SRP [Salt River Project], but there are several small water companies around, one over in Mesa, RCWD [_____ Water District] I think and I know the Buckeye one that he represented. So they were doing an awful lot of that work, background and filing the lawsuit in--I don't know whether it was heard by the Supreme Court or by a, I think it was referred to a fellow by the name of Rifkind, who was a lawyer in New

York.

But I did a lot of research on that trying to find law to prove that California didn't have any right to that water. Of course it was ingrained in me as a kid in the agricultural business. My dad always was raving about where all the water was going and the fact that we never got any water out of Boulder Dam and by that time there was, probably Boulder Dam was the only one that was built then on the Colorado [River]. But none of that water came to Arizona. It all went into California.

So I found it interesting even though it was very dry in terms of reading the law. I thought water law was something I wasn't going to specialize in later on.

(laughter) I knew that.

Duncan: Is that one of the reasons that you went to the county attorney's office? You thought it would be a more interesting practice?

Stewart: No, I went to the county attorney's office, one, because I'd been appointed on three or four criminal cases and had tried them and sort of liked it, and . . .

Duncan: But you wanted to be a prosecutor.

Stewart: Really, I wanted the experience. And I wanted the money. They paid better. It paid four hundred and

eighty dollars a month, which was about four times what I was used to making.

It was a funny deal. When--the county attorney was Warren [L.] McCarthy--and Warren's salary and his chief deputy were both set by law, so that in fact all the assistants were making more money than either he or the chief deputy. So when he'd hire somebody, the last one that would come in would become the chief deputy. So I became the chief deputy and made the four-eighty and then was just waiting for somebody to leave and come under me and I'd start making the five hundred and forty a month.

We had a really interesting group of attorneys in the county attorneys office downtown. There was John [J.] Flynn, Art van Haren [Jr.], Jack Anderson, Doug [Douglas H.] Clark, who's now dead. Bob [J. Robert] Stark came in not long after that. In fact Stark came in and promoted me to where I could start getting five hundred and forty a month, when Stark was brought in. I don't know whether you're acquainted with any of them, but they're all fine lawyers. Flynn was probably the best trail lawyer that we, he's one of the two best that I've ever seen in Arizona.

Duncan: And you first met him at the county attorney's office?

Stewart: Yes. Then when we, in 1952, he ran for county attorney

and McCarthy ran for judge. They both lost. So Flynn and van Haren and I went out opened up our own practice. We borrowed a thousand dollars apiece from the bank, at the First National Bank, and got enough money to pay the first months rent and hire a secretary from the Industrial Commission, by the name of Truman, Hazel Truman. She was an ex-wife of a dentist in Mesa and the dentist in Mesa was the brother of the judge in Pinal County, at that time. Hazel was our only secretary for a couple of years, or for let's say a year at least, before we got things going pretty well. But we started getting an awful lot of criminal cases and we did, I would say that we would try them, defensively, a case a month apiece, at that time. Now you couldn't do that.

But in those days, well, for instance, the first case I ever tried, which was in front of Windes, as a prosecutor, was about a week after I had been appointed to the county attorney's office. When McCarthy came in and handed me the file, which was about a quarter of an inch thick, and said, "Go down and try that case in Judge Windes' court," he didn't even know what, or didn't tell me, what it was or anything else. It was a burglary. So I did. One of the guys I'd gone to law school with was defending the, had been appointed to

defend the person. So fortunately we were on about equal basis in terms of experience and Windes just tore us up and down in terms of a few things that we did or tried to do every once in a while. But that's the way, in those days at least, that's the only way you could learn. And I learned an awful lot by trying cases in front of him and all the other. . . .

The other judges that were on the bench then were Renz Jennings, who was later a Supreme Court judge. Let's see. A fellow by the name of Walter [[A.] Thalheimer, who died. Stewart Myer before I got out of the county attorney's office. I know there were a couple of others. There were some others that I have tried cases in front of they got within the next year or two:

Judge [Lorna E.] Lockwood, Judge [Charles C.] Bernstein. As a matter of fact, Bernstein was appointed while I was still at the county attorney's office.

Which brings me to another story that I probably ought to tell. Somebody had gotten the idea that there ought to be a grand jury called in Maricopa County. So Bernstein issued a call for the grand jury and Warren assigned John and myself to the grand jury to present the cases to them and then when the cases came up for trial, to try them. And of course, we still had our

load going on. We had a couple of investigators from the police department and they returned some fairly good indictments. There were a couple of police officers who were taking money and a couple of them that had beaten up some prisoners, you know, and there had been at least an attempt to cover up some of those things. We tried them and tried. . . .

Somebody decided they had to look into the Winnie Ruth Judd case again, because there was a, there was supposedly a prominent Phoenix business man that helped her bury that and somebody was supposed to have some evidence about him, enough to return an indictment. So we, actually Flynn presented most of that. I got some of the witnesses lined up, but they never did get enough evidence to return an indictment. But they had everybody running and scrabbling and going back and forth.

We, probably towards the end of that, at that time there was a, well I'll call it a grand jury secrecy law that was a little different from what it is now. They didn't give anybody a copy of the grand jury transcript or anything. As a matter of fact, it was not supposed to be disclosed to anyone. One day they called my secretary. I'll never forget her, I don't know what her last name was, but her first name was Prudence. I

wondered why they wanted to talk to Prudence. Of course you're not supposed to talk to anybody about grand jury testimony when you come back, so I couldn't get from her what it was that they had asked her. But I did get from another one of the grand jury members the fact that they were looking into the fact that Flynn and I were studying the transcripts and leaving them on our desks so that anybody, if they were cleaning up, could come in and look at them. And they were thinking about indicting John Flynn and myself. Bernstein, when he found that out, Judge Bernstein, got furious and he--at that time they were meeting in the old courthouse and it was just up from the, in the fourth floor there was a jury room and ordinarily a big jury deliberation room and it had been converted into a place for them. He went flying up those stairs and discharged the grand jury, just like that and entered an order that they were gone, there was no more grand jury.

Later on we found out that the woman who was the chairwoman of the grand jury had been going out and consulting with both the attorney general and the governor and getting ideas about things they ought to do. Fortunately we didn't find out beforehand because I think Bernstein would probably have put her in jail,

which she didn't, she was a nice lady, she didn't deserve to go to jail. She just thought she was doing what was right, I think. But it was an experience. When you think that the grand jury that you're handling is investigating you, why it gives you a little start. But it's something that made me realize how dangerous grand juries can be. And I still consider them to be dangerous. I think a prosecutor can take anything he wants in there and get it, get somebody charged. I've been used to the complaint in front of a justice of the peace and then having a preliminary hearing and then if there's enough evidence, at least we have somebody that knows a little something about it passing on it. It sure was a, as I say, I learned a lot from it. During that period of time was probably a learning experience for all of us. When I say all of us in that county attorney's office, all of us lawyers that were in there were good trial lawyers. I mean they, there are some of them that were probably the best in the state during their time. We also had an awful lot of fun while we were doing it. There were no rigid rules or anything else. The only rule that Warren McCarthy had was, "If you file it, you try it." So if somebody came in there and made you believe them and you filed a complaint, then you had to handle the preliminary, you

had to handle the trial, etc. And, if possible, why that's the way it always operated. And I think that was very good at that time. I don't think they could do it with the number of cases they've got now. It's just too, they'd have to change the whole system, the way they did it.

Duncan: How long were you in practice, you all together?

Stewart: Well, let's see. Flynn and Art and I were partners, well, from 1952 to 1958. Art left and went out on his own and Bob Allen came in with us, Robert H. Allen, with Allen , Kimerer and the rest of them over there, LaVelle. Bob and I had been friends in high school. He was actually went to a different high school than I, but I had known him for years. I went to grammar school with him, he was, for a year or two he was at Emerson and for a year or two he was at Kennilworth, where I went to grammar school. Bob was then with his father's firm, which was, let's see, Fennemore, Craig, Allen and Bledsoe, at that time. He was the lower Allen, I mean, it was his father that was the Allen in that firm. and he just got tired of working for his dad. At least that's what he said. He'd been practicing maybe five or six years, but not in criminal law. So when he came down, why he did practically all the civil law that we had and John and I did the

criminal work. Let me say that all during this period of time I was a very heavy drinker. I drank until 1965, when I quit. I haven't had a drink since. But I didn't quit that easy. But that was a problem all during that. Flynn was a heavy drinker but he didn't have the problem. At least I don't think he did. When I say problem, there are people who are problem drinkers and there are people who can drink and not have the same problem, not have to have a drink the next day. I wasn't that way. I never drank when I was in court or anything like that, but I, as soon as I got out why I'd be at the local bistro and I might be there all night. I know two or three times that I left the file that I was trying then on a bar stool and I had to go back the next morning and get it before I went down to the court house. I can even remember one case that Flynn and I were trying. We couldn't remember which of the bars we'd left the file in. So we'd start out at seven in the morning hitting them and we finally found it at one of them.

Duncan: Did you try many cases together, the two of you?

Stewart: Yes, we tried a lot of cases. A lot of them. That was sort of the system we had with Flynn down there and myself, was that ordinarily John would be the lead counsel in trying a case and either Art would help him

or I would. Sometimes either Art or I might be the lead counsel, but rarely. If we could get the case where John could try it, why frankly, that was a better result. but we tried the difficult cases together. We had probably one of the first kidnap cases in, it must have been 1956 or 1957. A fellow kidnaped the wife of one of the Smith Pipe and Steel brothers and held her for fifty thousand dollar ransom. His name was Marsin, M-A-R-S-I-N. They caught him or found him out in the desert. He took her someplace up in the Superstitions [Mountains] and sent messages about where to leave the money, under what tree and all this kind of business, which they did. They left fifty thousand dollars out there under a mesquite tree for three days.

The first two days they had people around trying to observe on it, but nobody came to pick it up. When they finally pulled everybody back and went back the next day to look, well it was gone. He had released the Smith woman the day before. When they actually put the money down, he released her.

It was in, it must have been 1954 that we tried him, because it was the first time that we had tried a case against Bill [William P. Jr.] Mahoney and, at that time Tom [Thomas] Tang was his assistant. Mahoney had beaten Flynn in the election by about sixty votes.

Duncan: Oh, really.

Stewart: Yes, it got very close, the election. And there was bitterness then. Not now, but I mean, I see Bill Mahoney all the time and it's been a long time since we've had any bitterness.

Duncan: It was a contested primary? Is that right?

Stewart: Yes. Yes, the primary was all that counted in those days. The Democratic primary is what you got elected in. There weren't enough Republicans around then to count and that's just the way Arizona was. But the Smith case was an interesting trial. Actually van Haren and I both substituted from day to day, working with Flynn on it down there. One of the main things that occurred was that there had been a rumor circulated and had been written about in the papers and everything else that there was some tax advantage for the Smith boys to have to pay this fifty thousand ransom, that they in fact were the ones that got the fifty thousand dollars back. (laughter) Of course we played that as much as we could to the jury. The state rested their case. The next day we were going to put Marsin on the stand and he was going to testify as to what his story was. They had had a handwriting expert, who at that time was the coroner in Los Angeles County. I can't think of his name--Ray

Pinkerton was his name. He had made a handwriting comparison of the notes and some of known Marsin writings. He had made a typewritten analysis of some--what they did was sift his garbage and they got a bunch of carbons and from those carbons they got the story that Marsin had typed up to give to us to study from, to help prepare us. He testified about the handwritings but didn't talk about the carbons and then was excused by them and as far as we knew, left town. He was staying at the then Adams Hotel, which was right across from our office. But what he did was just check out of the Adams and go to the San Carlos, because we checked. We wanted to be sure he was out of town. So we thought he was out of town.

We were upstairs in our office studying and he went into a cafe that we could see from our office and John spotted him and said, "That's got to be Ray Pinkerton."

So van Haren went down and walked across and just went in and ordered a cup of coffee and sure enough he was in there sitting at the counter. So they were keeping him in town for some reason. So we made a decision not to put Marsin on the stand because we figured they've got something they're going to unload on us. So we didn't put him on the stand.

I think we put one or two other witnesses that had--we

had an old rancher out there that had testified that he'd been under that tree the day before and the money wasn't there then either, that these guys were just sitting around with the, they had the men watching but it was really already gone, somebody had really already picked it up. I forget who the other witness was, but we had at least a couple of witnesses that we put on for Marsin. Then we rested. Of course, I'm sure that the prosecution was surprised that we didn't put on Marsin. Of course later on was when we found out about the carbons that they had. And not only that, but they had found the actual typewriter that he had used. He had apparently thrown that away somewhere.

Duncan: For the notes?

Stewart: Yes, that he'd typed the note on. So they were prepared to show that this typewriter was in his possession and had been his and it was enough that a jury was going to. . . . As it was, why they acquitted him. This is unusual when you don't put a defendant on the stand, but in those days we used to do that fairly often. They believed a lot more in, well they listened to the argument about burden of proof and proof beyond a reasonable doubt, at least I thought they did, than they do now.

Tape 1, Side 2

Duncan: Were you surprised at the acquittal?

Stewart: Well, yes and no. I don't think we ever went into a case that we didn't think we were going to win. I mean, that was my attitude and John's attitude and van Haren's attitude the whole time was that . . .

Duncan: What do you think raised the biggest doubt in the jury's mind?

Stewart: Oh, I think they really doubted that she was up in the Superstitions with Marsin. There had been another story that had been circulated around which--you know we made use of all these stories on cross, just to find out. Of course they'd deny them, about she and Marsin going together and them having been seen in a local cafe and so forth like this, while the ransom money was being paid. So there was a lot of doubt that was raised primarily through cross examination. And probably through their decision not to put on that evidence in the direct case. If they had put on those carbon sheets of what he had to say about the . . .

Duncan: Case?

Stewart: Because he obviously had changed his mind, his story I mean, two or times because they had two or three different versions of it from the carbons, and he

brought us only the one and so that's the one that he used.

Duncan: And no grounds then to assert that that was an illegal search.

Stewart: No, not in those days. No, as a matter of fact when I was in the county attorney's office, _____ versus Colorado hadn't even been decided. They must have busted into a hundred clubs around town and taken their slot machines out while I was in the county attorney's office, without a warrant. Without a warrant to arrest or to search needed. If the evidence was there, it was admissable.

Duncan: When you were defending the kidnapping case did it occur to you in those days to try to start to, maybe by motion, to raise the notion that there was prosecutorial misconduct or that the defendant had a right to not have his garbage searched? Would you make motions like that or was that not. . . .

Stewart: We would have, I imagine, but we didn't even know his garbage had been searched.

Duncan: Oh.

Stewart: See, we didn't know that until after the trial. But I don't know that we would have raised it because at that time you didn't even have standing to object to somebody that came right into your house and grabbed

the evidence, much less just take it out of your garbage. I don't. . . .

Duncan: So in the fifties, then, in your office, it was pretty much a defense based on the facts of the case and not so much directed at trying to extend the law to make the case harder for the state?

Stewart: Yes. It was argument on the facts and to try to know the facts and make them see your side of it rather than the other side. It was a, the fifties was a lot easier practicing criminal law than it is now. I mean, it's comparably criminal law is just about as hard as doing civil law, now, in terms of motions, dates, times and so on. And it isn't near as much fun, because there's some cases you can win, but when you win them now you win them on the motions, you don't win them in trial. People are ready to convict ninety-eight percent of the people that go to trial. I think the acquittal percentage is probably even less than that altogether.

Duncan: What do you think that the jurors, though, the basic disposition of jurors is then and now, toward the view of the defendant sitting by counsel at table?

Stewart: Oh, I think they were a lot more sympathetic to the defendant in the fifties and sixties than they are now.

Duncan: And why do you think the change?

Stewart: I think because of the crime rate and all the things

that are going on now. Everybody has a little bit of fear in the back of them, plus, you know, you have a narcotics case and John Doe will say this guy's guilty because he had some narcotics even close to him. When John Doe's son gets caught with them though, that's when we see them here and you would be surprised how quickly they can change their mind. But there haven't been that many yet, at least in Arizona. We get a large Mexican and an large Sun City group of jurors and that's, in my view, tough to begin with.

Stewart: Yes.

Duncan: I had a friend who was--well, I'll tell you who it is because he's dead now. Paul [W.] LaPrade. He called me up one day and he had been picked up and arrested for something and there had been something in paper about it. He called me up and we were talking and he said, "Well," he says, "I guess I lost Sun City," he said, "but I got Scottsdale." (laughter) Oh, I know what it was. He had been picked up, oh, the paper had printed at least in the paper a story about him and some other people skinny-dipping in his pool, these guys, and they'd all been, men and women, they'd been raising hell out there. So it was printed in the paper. The paper was not very pro-Paul LaPrade when he was first appointed. They later switched a little bit.

But at that time, that was still standing for election of judges then, so it was before the Missouri Act came in.

Duncan: Would your office take appointments in defense cases as well?

Stewart: Not then. There just wasn't enough money. And you know, it's just like now, there's just too much overhead to. . . .

Duncan: And the judges couldn't coerce you to, or they didn't?

Stewart: Well, they didn't. Federal court judges did and we took them and we did them primarily because pretty soon we were going to be back before that judge with a case that we had been paid on and you at least weren't in his disfavor.

Of course, there was only one federal judge in those days. It was Judge [Dave W.] Ling. I don't remember when Ling died, but he was on the bench until the mid-sixties, I'm sure. Maybe even, no, it was the mid-sixties, because Bob Allen married his clerk while we were in partnership together and I think about eight or nine year later he passed away.

Duncan: But nowadays new lawyers have a very different experience than lawyers when you were entering the profession and just finished law school, because you could pretty much count on doing some defense work as

part of your obligation as a lawyer to the Bar.

Stewart: Right.

Duncan: And also an opportunity to make money. But now with the public defender's offices that doesn't happen so much. Do you think that's a change for the worse or just part of the, a necessary change because the defense of criminal cases has become more complex?

Stewart: Oh, I think it's a necessary change and I, for a long time I was critical of the public defender's office because I didn't think they worked at anything. I didn't think they studied their cases. But I don't believe that. I think they do now. I think the biggest problem is that they've got such a big caseload that nobody can really expect to--you've got to be able to make the county attorney think you're going to go to trial or believe that you're going to go to trial. And no public defender can really say that. He just, it's just not in the cards for him to go to trial. If he goes to trial and is in that trial for a month then he's behind twenty of his cases and he's got to do something on all them. And it's just too much to do. But I think they do a good job with what they've got. I think they need more public defenders if they're going to do a better job.

Duncan: I think we've worked our way up to 1958 when you were

still in the triumvirate of the practice.

Stewart: Right.

Duncan: Were there any other experiences or particular personalities that you recall that you would like to relate?

Stewart: After 1958 then I, it was just before 1960 I got in an argument with John about something, I can't even remember what it was now, and decided to leave the office, and did. So then it was Flynn and Allen. I went over and opened up my own office in Luhrs Tower. I had, at that time, two assistant attorney generals that I--in those days assistant attorney general could practice. I had Ed [Edmond J.] Brash and Bill [William S.] Andrews both in my office there. I tried a case against Marvin Johnson for alienation of affections and beat him and got a pretty good verdict. As a matter of fact, Allen was the one that had perfected the, what I called the alienation of affection lawsuits. He had tried probably three or four of them, which is unusual for you to get that many, but once you get one and are successful then people send them to you. So we probably had a half a dozen over in the office and I took two or three of them with me. One of the ones I took with me I tried against Johnson, and beat him. The day after that case was decided, why he called me

up and said, "You know, I'd like to talk to you. Let's talk about forming a partnership." So over the next couple of months why we decided to form a partnership and we hired Neal [T.] Roberts, Les [Lester L.] Penterman, Bill Andrews and, well there were ten all together. I can't remember who all they were. We took a floor in the Luhrs Tower Building and practiced there for about two years.

Frankly I finally one day looked at the--I was still drinking _____ and so I was sometimes there and a lot of times not there, and I'm sure that that wasn't the best way to practice law with a partner or at least a, and I think they resented it. But I was still bringing in money. One of the things we did at that time which just need to mention is we had a lawsuit then against the then superintendent of liquor licenses and control Duncan. I should have asked if you were--because Clarence Duncan is his son . . .

Duncan: I see.

Stewart: . . . and he's a lawyer the district hired from Jennings Salmon. Anyway. We sued him. We applied for and at the end of--in 1960 there was a new census so there were a lot more people in Arizona so there were a lot more licenses to be issued, but not many people had really thought about that. So we filed sixty-four

applications and asked him to issue them. He didn't issue them. He said, "I'm going to wait until everybody else has applied and I'm going to decide on the"--his theory was whether or not they were needed in that particular area and so forth. So we sued him on a special action in front of Henry [S.] Stevens. We subpoenaed Duncan himself. You have to know, the history of liquor licenses at that time was that Duncan himself never ever went to court. He had an associate who was, I guess his right-hand man who was Charlie Marshall, who was Charlie [Charles E.] Marshall's, his son, we hired. So we didn't want Marshall to be the witness because of the problems we'd have. Besides that we knew that we could get the squeeze really on Mr. Duncan.

Duncan: Pretty clever.

Stewart: We were going to get something. He hired Frank [W.] Beer as his lawyer, who was Paul Beer's father. A great lawyer, a good lawyer.

Ultimately we reached a settlement with them and took I think thirty-one licenses. We had a contract from these people to either take the license or pay us I think it was fifteen thousand dollars, something like that, but it was good money. So we ended up with a bunch of liquor licenses and a bunch of money, which I

was spending as fast as I could get hold of it. Shortly after that the legislature passed an act and shut down on them, which again, was good for us because we already had thirty in the oven. In those days they were, when we first started they were worth sixty thousand dollars a piece. Well we broke that market without any question, you know, and it was down around twenty. But it was building back up pretty quickly. I was partners with Stark and--Bob Stark is another one I didn't mention _____ got back into the, with Johnson and Stewart--but we tried that lawsuit and the day that Mr. Duncan was supposed to get on the stand, why we settled. We were to get costs and we settled it up right then. As a matter of fact we settled it on the phone. Frank said, "I can get you thirty licenses." I said, "We can't do just thirty licenses because we've got other people we've got to, you know we represent sixty people." I said, "We have to have some fair way to get them and we can't just take thirty." So we did just take thirty-one. But then we decided that they would be picked out of a hat.

Duncan: Because you really did have sixty people . . .

Stewart: Yes, we had . . .

Duncan: . . . who were hoping . . .

Stewart: Yes, a lot of them were people who were friends of ours

that really probably could have washed out, maybe fifteen of them. But most of them, the biggest bulk of them was the Chinese community. I represented Walter Ong who owns this building and who's been my, I've been his lawyer and he's been my landlord since 1959. I haven't been here that long, but I was his lawyer then and in 1964 I came out here.

At any rate, we got those licenses issued in what I thought was a _____. Actually, Jay [James A.] Yankee, who was a lawyer that was in our office too that I forgot to mention, it was the brainchild of he and, he's the one that had read a case in Florida where it had happened in 1950, when he was in the attorney general's office representing the liquor department. So we were just sitting around . . .

Duncan: Pretty good. Pretty good deal.

Stewart: . . . putting everything on and we just thought, well, you know, that ought to work out. So we really did. There was one lady that was in charge of the census and when the census becomes final is when they present it to the Board of Supervisors. So we had a guy that was following her around to see when she was going to go present that to the Board of Supervisors. The day she presented it to the Board of Supervisors we dropped our lawsuit on Duncan. That very same day.

Of course, they raised that question again, but we had several cases that said that's how you determine when it's final for purposes of most things and Henry Stevens upheld that all the way through. I might say I always thought that he was, not just because of that, but I tried a lot of cases in front of him, a lot of civil cases and several criminal cases, and I'd always thought that he was one of the best judges that there was. He's retired now, but he's still very bright and very up on things and does things quite well.

I need to digress for a moment. The first appeal that I had in the county attorney's office was against Henry Stevens. He was then with Jennings, Salmon, Trask and I was out there at the Supreme Court arguing some question on _____, I'm not sure. It doesn't really make much difference. But I got to know Henry pretty well at that time and probably four or five years later was when he got appointed to the bench.

Then he started--you had to in those days had to run every two years, I think. So he was re-elected.

Almost all of them, you had to get up a major effort to defeat somebody at that time.

Duncan: So your practice in this period of time was broad, across the board?

Stewart: Yes. I'd always had a theory that if they've got the

money in their hand, take the case and we'll figure out how to handle it later on. When we got over, when it was Johnson and Stewart with ten lawyers altogether, maybe eleven I think at one time, why we had plenty of people that we could put on to start it and work it up.

I had never done that before. I had basically worked my own case up and did all the research or whatever had to be done on it. I didn't really, and I don't now, mind research. I've always. . . . And I remember Henry Stevens was the one that probably that. The ones, those blue books that are behind your desk there are to turn around and open up and read. I never tried a criminal case that I didn't read the constitution all the way through, the state constitution, and see if there wasn't something that came to my mind.

Duncan: Really? And do you recall any times when something did come to your mind that you raised and it made a difference in the case?

Stewart: Yes. I don't remember the case though. I remember the instance. There was a proviso in there about persons who testify if they're called as a witness to the grand jury being exempt for any, they're just automatically granted immunity if you call them to a grand jury or call them for any purpose, compulsory, from any corruption or bribery.

I represented a Chinese fellow in Tucson who had taken an envelope out to the State Land Department. He was leasing a lot of land down there and he was having troubles with them. So he took an envelope down there with about two thousand dollars in it and handed it to this guy, just to make everything right. Well, instead of that he got indicted for bribery. For some reason they had, they either called Bing to the, his name was Bing K. Wok, they either called him to the grand jury or required him to testify in connection with this somewhere. I filed a--in those days we still would file writs of certiorari. I can remember, it was about an inch thick. Probably the most research I'd ever done on anything. Again in front of Henry Stevens in superior court. I actually convinced the county attorney that it was right before I did Henry, so he dismissed the case. In my mind that's the outstanding one.

There's a case, State versus Chitwood that was sort of like that. Chitwood used to be the gambler in Tucson when I was in law school down there. He had a gambling place and he obviously had some kind of an arrangement with law enforcement. Whenever I had an extra forty or fifty dollars, and I had a cousin that was down there that was really gung ho on shooting dice, well we'd go

out to Chitwood's place and lose our forty or fifty real quick.

Duncan: Where was this place? Was it down on the Old Nogales Highway?

Stewart: No. It was up in the, do you know where Grace Ranch is up there?

Duncan: Yes.

Stewart: It's up near the, not quite to the end of Speedway and then up in the Catalinas from there. He had the big arch in front of the place where they had it. They had a man out there that, when you came driving up he'd check you to see if you were old enough and check you to see if he didn't think you were police officers and then they'd let you in there. There was probably forty or fifty people in there all the time. When the indictments came down they indicted Chitwood and they indicted the sheriff of the county and the attorney general and the county attorney general.

Duncan: Really?

Stewart: Yes.

Duncan: What year was that?

Stewart: That's got to be while I was still with Flynn. Probably 1956, 1957, in there, I'm pretty sure. Tommy [Thomas] Chandler represented and defended Fred [O.] Wilson who was then the attorney general. He actually

went to trial and got him acquitted in Yuma. I don't know how he ever got it moved down to Yuma. That's where they tried it anyway. I'm trying to think of whether [_____] DeConcini was the county attorney then or not. I don't think he was the county attorney yet.

It probably was Raúl [H.] Castro or, no, the county attorney that got indicted, his name was Bryce [H.] Wilson [Jr.] and I don't know who represented him. He got . . .

Duncan: Did they get him?

Stewart: They convicted Bryce.

Duncan: And how about the sheriff?

Stewart: The sheriff got acquitted. I don't remember now exactly how. And Chitwood got on a motion because they called him as a witness and didn't realize that they had an Arizona constitutional section that gave him complete immunity when they did.

Duncan: That was your argument, but were you defending him in that case?

Stewart: No.

Duncan: No. Did the counsel in that case raise the argument because you had first raised it, do you think?

Stewart: No. I think I raised it because I knew of the Chitwood case from when I saw that, and at the same time it was easy to find. You just got into the books and it was

right on point as far as . . .

Duncan: That's interesting.

Stewart: But I've done that up until the last probably three or four years. I haven't tried a criminal case in its entirety for about six years. That's because of the strain and pain that you go through. I never tried cases that could be tried in a week. I've always tried, when I tried a case it was a two-week or longer type trial. I had a stroke in 1983 right after I had tried about a six-week case. I was defending a lawyer and didn't defend him successfully, which, I take that as the beginning of the stroke too. I'm convinced that he was innocent in that case.

Duncan: Is that a risk that a defense attorney runs sometimes? Getting too committed to the case emotionally?

Stewart: Oh, I think so. With me, I represented a lot of lawyers in a lot of different things, both criminally and down at the Bar Association. I still do a lot of Bar work, because that doesn't require a jury and usually you can at least accommodate the time and rarely are those hearings more than two days, maybe three days. But a criminal trial. . . . And I've defended lawyers in federal court, both successfully and unsuccessfully. Lawyers are prime meat for a jury, I think. I think you need to try to win the case every

other way but try it. And then when you, you go down there and there's nothing else to do but try it why then you go try it and do the best you can with the facts.

But in general all the criminal agencies have gotten a lot more sophisticated too. They prepare a lot better case and give it to the attorney general or to the district attorney or the county attorney. It used to be that you'd get a one-page D.R. [_____] and that was the whole thing. That's all you ever got until you talked to the officers just about a half hour before the trial. You can't do that anymore. But at any rate, let me get on with the history part of it a little bit.

I left Mike Johnson's in 1953, just about the beginning of 1953, and Bob Stark and I opened an office in the Luhrs Building. Then I left there and came out here.

Duncan: And that was about when?

Stewart: It was 1964, just before I stopped drinking. Then when I got out here I opened an office just for myself to begin with and then Bob [Robert W.] Pickrell was my first partner. I suppose I should tell you a story about that.

Pickrell and I had been friends. His father was the Pickrell that had been the county agent ahead of my

father, and they had been raised as children by my grandmother and grandfather. So I didn't know Bob wasn't a cousin of mine until I was ten or twelve years old. I mean, I thought he was one of the cousins running around but he really wasn't any kin. I hadn't had a lot of experience and hadn't seen him very much after we started practicing law. But he was the attorney general and got in his mind he wanted to run for governor. He ran against [Richard G.] Kleindienst in the primary for governor and was beaten. After that, well then Bob and I formed a partnership here. I guess we were partners probably for, probably seven or eight years.

Bob then had some difficulties with his wife and got involved in a divorce with her in which he represented himself. He wouldn't take any help from anybody and he made a very bad property settlement in it, one that she got practically everything he made over forty thousand dollars. At that time we were really doing fairly well and I finally made him go hire a fellow by the name of Jim Flynn, who is, he's no kin to John. His name was James [E.] Flynn. He was a solo practitioner here all of his life, but he's one of those kind of guys who maybe took two or three or four cases a year and when he took them he took them and did a bang up job of

them. I'd been associated with him, he'd asked me to come in on two or three of his criminal cases because he didn't really like criminal cases. But he represented him on trial. He cut the alimony and child support down, in front of [Judge Charles L.] Hardy as a matter of fact.

They weren't really too successful so we came back here and batted around--the way the property settlement agreement read was that she got fifty percent of any money that he made as a result of practicing law.

That's when we realized that if you're a judge you're not practicing law. At that time Bob was real good friends with Governor [John R.] Williams and he knew there was an appointment coming up and made a call out there and he appointed Bob to the next one. And he never paid his wife a dime of alimony after that again.

You know, just sitting around the three of us. Actually Pickrell didn't participate in that very much.

It was Jim and myself and we just suddenly came up with it. He did a little bit of research, that's one thing that Jim Flynn can really do it get in the books.

He never failed to do that. And we decided we could make it fly and did and he. . . . I think Mickey LaVelle, representing his wife, tried to get a different ruling out of another superior court judge

and couldn't get one. They thought a long time about getting it on appeal but then decided not too. So I don't really know whether that's the law for sure, but it's the law in that case at least.

Of course, in the meantime, why, I asked Pickrell to represent one of my clients in a divorce action. She was flying over from San Diego. I had never met her and I had something else going on. So he took her down to the hearing. Then I began to notice that he was going back and forth to San Diego every once in a while. She'd been divorced quite a while. It was a post-divorce action. Then he told me that he and Letty were getting married and they are still happily married. I told him that that was the only client that he stole from me that I didn't really regret.

Duncan: So then what? You all stayed in practice together?

Stewart: Well we stayed in practice and then when Bob went on the bench I had to, Bill [William H.] McLean had worked for us as a law clerk when he was in school at the U. of A. for both his second year and third year. Then he had gone out with Judge Lockwood and had been a clerk for her and had gone back to the county attorney's office.

After a couple of years at the county attorney's office I asked him if he wanted to come out and come back to

work for us and he did. So he was here and had probably been here a couple of years before Bob actually left. So we just moved McLean up and then hired somebody else.

I've hired, off and on, different people, including my son [Scott A. Stewart] and daughter-in-law [Deirdre O. Stewart], who were here for about eight or nine years, until they got in an unfortunate dispute and she's gone back to New Jersey and is practicing law back there and Scott is practicing with Gary Peter Klahr. He's doing a lot of criminal work down there.

He worked here with Bill McLean on the criminal work. By then I pretty much was doing mostly civil work except for a large criminal case. We had a murder case, we've had a couple of them in the last ten years or so and each of them came to me. So I worked on them. But we worked then to the point where both of us knew enough about them that either one could go try them.

But anyway, the way we split the work was that they did the criminal work and some of the civil and maybe an occasional case that would come in that they'd go ahead and file and Deirdre, his wife, did all the domestic relations except the large ones that came in also. Again, if somebody comes in and pays you a substantial

fee for representing them in a domestic relations case, you've got to go ahead and remain in it, which I did. But I'd rely on her to do a great deal of the legwork on it and she got to be a very good domestic relations attorney. As a matter of fact, she's a bright attorney.

Right now we don't have a _____. We've been looking but we just haven't made a decision about bringing in another associate, which we probably should get in. Trial work gets pretty tough about this, from now on. There are a lot of cases that are set in September, October. Everybody continued while it was hot. So we'll be going to trial then. I expect to try a case in about two weeks, and I may do one every two or three months where I actually have to go to try the case. I don't count a one-day argument on motions or things of that nature as a trial. Except I can tell you that they get harder on you as you get older.

Duncan: We've spent a long time, some forty years that you've been a member of the Bar. Any thoughts about particular changes that you've seen, either for the better or for the worse? Quality of justice, administered quality of the Bar's dealings with one another, with clients?

Stewart: I think the assignment of cases is probably the most

difficult thing I've ever had to deal with. I don't like the assignment system where you just file a case and it gets sent to most anybody and gets transferred to most anybody whether you like it or whether you don't. They change whole calendars, you know. You'll be on one guy's calendar maybe for a year and have tried several motions to him. All of a sudden they put him over on domestic relations or a criminal calendar and put somebody else on your case that doesn't know anything about it. And that's been going on for, oh, since Gordon Allison became the court administrator. I can't tell you how long ago that was. When I tried the, when they first. . . . It all resulted in Gordon Allison being appointed. But the first case that they, the first thing they did was, they had the county government plan, which is to have a county person who is sort of in charge of everything and have a, instead of being elected officials. And then they have a number of assistants to him and they called themselves the Better Government Association, if I remember right. We challenged them in superior court. I remember Harold [R.] Scoville was representing the Better Government Association. We tried it in front of, I want to say Nick [John Nicholas] Udall, but I don't think it was Nick . . . (someone knocks on door)

Tape 2, Side 1

Duncan: . . . stopping you from practicing your profession.
But maybe, it sounds, from what you've said that if you had to identify someone that you could comment on who wasn't around anymore, a significant figure in Arizona legal history, that would be John Flynn?

Stewart: Yes, I didn't think there's any question about that.

Duncan: Why?

Stewart: He and Jack [C.] Cavness were the two best lawyers, just on their feet, that I ever saw. I saw them many times, both on the same side and on the case and against them. I've tried cases against Flynn, after I got out. He won some, I won some. The same way with Cavness.

Duncan: What made Flynn's that way?

Stewart: He had a sense of feeling about a witness. He could take a witness and make him do most anything, and he was imaginative. We tried a case one time where, when I say "we" I was second _____, it was a negligent homicide. The guy was obviously drunk. Also he had one eye, one eye was glass. But the officer made the mistake of describing him as glassy-eyed. (laughter)
Flynn in his closing argument--we never put that guy on

the stand--Flynn in his closing argument had him, he just reached over and had him take his eye out, hand it to him and he put it right in front of the jury. He said, "That's how glassy-eyed he was." You know, he said, "You can't believe that guy, anything he tells you." And they didn't. They turned him loose and it was just fifteen or twenty minutes that that jury was out.

I can tell you, you know, there are several other things that he just had a feeling for it, both in preparation and in finally trying the case itself, he just, I guess he understood people better than most. I don't think he understood that he did. He was not a boastful person or anything of that nature. He was one those that--I think John, I don't think he died broke, but he died as close to broke as you can get and be a very successful lawyer. But every good lawyer you talk to that ever was in a case with him I think would tell you the same thing. Phil [Philip T.] Goldstein, he was with Phil at the very last. Phil's a great lawyer himself and he knows, I mean, he just will tell you the minute that he had a criminal case that that's who he would get to defend him.

Duncan: Well, it's been a pleasure to get to talk with you this afternoon. If when you review this transcript, if

other things come to mind, maybe there'll be a chance that we can add that to the tape by a telephonic conference or something, since we need to release you to your clients.

Stewart: Yes. Well, I'm sorry to cut it off that quickly, but if it is, well I'll be glad to call.

End of interview.