

An Oral History Interview

with

Archibald Cox (part 1)

Cambridge, Massachusetts

conducted by
Julie Ferdon

October 18, 1999

The Morris K. Udall Oral History Project
University of Arizona Library, Special Collections

transcribed by
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JF: This is Tape 39 of the Morris K. Udall Oral History Project. Good morning, it's Wednesday, October 20, 1999, and we're in the Harvard University office of Professor Archibald Cox. My name is Julie Ferdon, and I would like to welcome you, Professor Cox, and thank you for participating in this project.

AC: Well, I hope I can help.

JF: I'm sure you can. Professor, you are probably best known in this country for your role as special prosecutor during the Watergate scandal, and as a chief victim of the Saturday Night Massacre, which may have been the last straw in the collapse of the Nixon administration. Today, however, I would like to explore in that lesser-known part of your life, your relationship with Congressman Morris K. Udall, and his brother, former Interior secretary, Stewart Udall. But I'd like to begin, if I could, just with a brief biographical background. You were born in Plainfield, New Jersey, in 1912?

AC: Yes.

JF: Where were you educated?

AC: Well, I was educated in Plainfield, up to the third form, as it was called, in private schools in Plainfield. Then I went to St. Paul's School. The third form is equivalent to freshman year at high school. St. Paul's School is in Concord, New Hampshire. I was there for four years, then came to Harvard, to college, and Harvard Law School.

JF: Am I correct that both your father and grandfather were Harvard law graduates?

AC: Yes.

JF: That's a long tradition.

AC: Well, yes, on both sides of the family--strongly legal tradition.

JF: And did one of your sons go here as well?

AC: He wouldn't have any part of being a lawyer. (both chuckle) I have a daughter who became a member of the bar.

JF: Mo's children were the same. After law school, you clerked for Judge Learned Hand of the Court of Appeals in New York. Eventually, in, I think, 1946, you became a full professor here at your alma mater, at Harvard, specializing in labor law. In 1954, when you were, I think, also advising Senator John Kennedy in labor issues, Stewart Udall ran for and was elected to Congress from Arizona. Did you know Stewart as a congressman?

AC: Yes. I was almost commuting to Washington in 1957 or 1958--I'm not sure, but in the late fifties--and the Senate passed a labor bill sponsored by Senator John F. Kennedy, then it came out of the House. Stewart Udall was one of the people in the House who was supportive of the legislation. And I met him and became slightly familiar with him, on that series of occasions. Eventually the

bill didn't go anywhere in that session of Congress in the House. But the following winter I delivered a series of lectures. I guess I was on sabbatical here. I delivered a series of lectures at UCLA. It's possible I was also teaching there, as a visiting professor. But I got sufficiently acquainted with Stewart that he invited us to come back by way of Tucson and stop off and spend the night with him and his wife, which I and my wife did.

JF: Would you have any idea when that was? That was while he was still a congressman?

AC: Oh, yes. And that was before the Labor Management Relations Act of... I've forgotten the title, it wasn't Labor Management Relations Act, but before the 1959 act was enacted. I expect it was sometime in 1959.

JF: Do you recall conducting a series of seminars in Stewart Udall's congressional office on that bill?

AC: Not specifically.

JF: He mentioned something to that effect.

AC: It could be. (pause to answer telephone) ... the expert--[the drafter?] really--of the bill. Stewart Udall was a leading proponent in the House. I think it might be a step too much to say the leading proponent, but one of the two or three. And it may well be that we had small meetings in his office.

JF: Backing up just a little bit, when you mentioned visiting Stewart Udall in his home in Tucson, did you have occasion, when in Tucson, to meet his brother, Morris Udall?

AC: I don't think so. I met his wife, we talked about--it may even have been very early 1960--either December 1959 or early 1960, I think it was. I remember very much talking with Stewart and his wife about Kennedy for president, and rather succeeded in persuading her, whereas he was more doubtful.

JF: Well, he became a Kennedy....

AC: He became critical. He was critical, I think, at the convention--at least very important.

JF: I know he chaired the Arizona delegation and worked in the delegate count at the convention. I think maybe he even seconded the nomination.

AC: Could be, could be.

JF: After Kennedy was elected, he appointed you as solicitor general.

AC: Yes.

JF: A little sidelight: a later solicitor general, Rex Lee, was a first cousin of Mo's and Stewart's

(AC: Oh, really?!) and in fact grew up in their home. Were you aware of that at all?

AC: No.

JF: I wondered about that connection. I'm not sure how many people were aware of that.

AC: No, no. (chuckles) That's very interesting.

JF: There's a long line of Republican Udalls.

AC: I see.

JF: In 1961, Stewart became secretary of the Interior while you were solicitor general. Did you have any contact with each other during that time?

AC: Yes, most of it was.... By the way, there were cases in the Supreme Court that Interior was interested in. Most of them wouldn't have been of importance to the secretary, but occasionally some were. We didn't see each other regularly socially. That would have been more likely to be encountering him at some common thing. I don't know about him, he may have been the same way I was, and not a great one for going to social functions.

JF: In 1961, after Stewart was appointed secretary of Interior, Mo was elected in a special election to replace his brother in Congress. Do you recall when you first met Mo Udall?

AC: I'm afraid I really don't.

JF: You and Mo were involved in a couple of issues at the same time, but the extent to which you were aware of this is unclear to me. For example, in civil rights: In 1964, Mo was the floor whip on the civil rights legislation at the same that you were arguing civil rights before the Supreme Court. Were you aware of his work at all during that time on civil rights?

AC: Well, I certainly would have been casually aware. My role on civil rights legislation was chiefly advisory, chiefly with respect to constitutional questions, or questions of draftsmanship, which really involved which is the stronger of constitutional theories that would support the legislation? I did a little more, I did some little lobbying [of] individual congressmen I one way or another knew, or that somebody thought if I talked to them, it would be important. And it's entirely possible that I saw Mo in that connection. What I would say is I got to know him not intimately, but enough to have confidence in him beyond just the confidence one has from following a man in the newspaper, during those years he was in Congress.

JF: Another area where your paths seemed to have paralleled was the issue of campaign finance reform. When did you first become interested in campaign reform legislation?

AC: (pause) Well, it would have been before the 1972 bill.

JF: That was the bill that Mo sponsored, the Federal Election Campaign Act of 1971, I think it was

called. It was signed by President Nixon in 1972.

AC: I think it was of 1972.

JF: It may have been. It was signed by President Nixon in 1972.

AC: Most of my connection was with Ted Kennedy, and some with Senator Scott of Pennsylvania. I wouldn't have said that I had a broad connection with members of Congress on the subject at that time. I was back here, of course.

JF: You were back teaching at Harvard then?

AC: Yes.

JF: Mo was a chief sponsor of the Federal Election Campaign Act of 1974, which was signed into law by President Ford. After its passage, it very soon came under attack, and in 1975, as I understand it, you defended the Act before the U.S. Supreme Court in a case called *Buckley v. Valeo*?

AC: Well, I was one of those who defended it. Again, my role started out as quite peripheral. Senator Kennedy and Senator Scott, bipartisan, asked me to file a amicus brief on their behalf in the Supreme Court. I was sufficiently interested to undertake the work and do it. Then the matter came down to oral argument. There were a tremendous number of issues. The court heard the arguments. Well, the only case that I know that took more time on the docket was a water rights case.

JF: Was this the California water rights case?

AC: It was the one involving the Colorado River.

JF: *California versus Arizona*?

AC: I've forgotten the name. And I, incidentally, might well have seen both Udalls in that connection.

JF: So you weren't aware at the time you were defending the law--in your role as solicitor general, you weren't really aware at that time of Mo's connection with the bill?

AC: Only as a newspaper reader, if anything. But I don't think there was any bill at the time I was solicitor general--remember, I resigned in sixty-five, as solicitor general. Now, I was explaining my role in the oral argument in *Buckley v. Valeo*. There were, as I say, a whole series of major constitutional issues, and an even longer series of minor questions. So the court heard argument not for an hour a side, as was the custom in those days, but over two or three days. One question that was argued specifically was whether the restriction of freedom to spend, and freedom to contribute without limit, were constitutional. I was not connected with Common Cause at the time. I was aware of Common Cause, John Gardner [phonetic spelling] had been very helpful when I was sweating it out the last week of my tenure as special prosecutor, so I wasn't a stranger to them.

Lloyd Cutler, who was their counsel, rather questioned the constitutionality of those restrictions; wasn't very keen on arguing that they were, those provisions were constitutional. So it ended with Common Cause asking me to argue on their behalf in the oral argument. Council for amicus ordinarily have no standing to present oral argument. But that was how I got involved in it.

JF: And that was the beginning of your relationship with Common Cause?

AC: That made it a great deal closer, yes--made it close. It was shortly later [when I] went on the governing board and so forth.

JF: Also in 1974, the year of the Campaign Finance Act, Mo Udall went to New Hampshire, a state where you spent a lot of your youth, and announced his candidacy for the Democratic nomination for president. In those early stages of the campaign, were you aware of his running for president?

AC: (pause) Well, again, I... I should have been. I certainly was aware of any step like his going to New Hampshire, which would have been written up in the newspapers. Now, as somebody who followed national political events in the newspapers, and who knew Udalls, I, for both reasons, would have been aware of it. I can't recall when I first sat down with Mo Udall and talked about the campaign. At some point, we did talk, conversation began, sort of with reference to the role that I played vis-a-vis John F. Kennedy, where the newspaper phrase, radio phrase, I was the head of the "brain trust." We talked about whether there was room for something similar, need for something similar. I rather urged that there was. Mo, except for Stewart's role--Stewart may have been present, for all I know, now--was rather cool to the notion. I remember being a little disappointed, to feeling it was a mistake.

JF: So Mo was actually for the idea, and Stewart was [not]?

AC: Well, no, I wouldn't say that. No, that wasn't the impression I meant to give at all. I don't think Mo was at all keen about it, because I think he felt Stewart was real close to him, and he didn't want to bring somebody else in.

JF: So perhaps Stewart could fill that role?

AC: Yes. I think I thought--no criticism of Stewart--but I think I thought that a more independent person, not as emotionally wrapped up, was desirable. In that event, it wasn't really done. I did keep in touch about some aspects of the campaign. I did actively campaign--well, not to a great extent.

JF: You endorsed him in 1976.

AC: Oh! I made.... Oh, yes! And I did, I went down to New Jersey, what had been my home state. I hadn't had any contact with it since, well, 1940, roughly.

JF: How did your endorsement come about? Did somebody approach you? Or did Mo call you? Or Ken Galbraith or Stewart? Do you recall at all?

AC: No. No, I'm afraid not. If it didn't come about any other way, it would have come about when,

I think.... The places I remember campaigning were New Jersey and going out to Minnesota, Minneapolis.

JF: I believe you did a fund-raising dinner in Tucson, as well.

AC: Right. And there may have been one or two other things, but those are the ones I recall. Oh! I did a fund raiser here in Boston. Oh, yes, I remember it very well! Tip O'Neill, the Speaker.

JF: Speaker of the House?

AC: Yes, was master of ceremonies, sort of warming the crowd up. I was standing back on the platform, as one who was going to speak, along with Mo and two or three others, maybe eight, ten of us, I don't know. Part of his warming them up, suddenly Tip O'Neill turned around and pointed at me, "Archie! Come up here!" So I went up there. And he pointed out in the audience to a man, "Come up here!" The man was wearing a bow tie. I was wearing a four-in-hand tie. And with successive great yanks, he got our ties off and put them the other way 'round, and delivered himself in words that brought howls of laughter and advice to me. Didn't I know enough to wear my trademark when I... (chuckles) I hadn't been, I was by no means a wear-a-bow-tie-every-day man, until partway through Watergate, then became known by that. And from then on, at least.... I still don't wear one every day, I didn't have one on yesterday. But public appearances, I always put one on. (chuckles)

JF: It's expected of you.

AC: It's expected of me. My wife sees to it that I do it.

JF: That you do what's expected. (chuckles)

AC: Yes.

JF: I have to ask you. You were traditionally independent in political matters. What drew you, a Harvard-educated New Englander with forbearers who signed the Declaration of Independence and Constitution, to a one-eyed basketball player from St. Johns, Arizona? Now, he did arrive in Washington with a bow tie and a crew cut. (chuckles)

AC: One has to use big abstract words, but Mo's ideals, standards, sense of values, looking on holding public office as a public duty--public service carrying duties as well as privileges--all were very much in keeping with my own thinking, and indeed the most important. And I haven't any doubt that they were part of Mo, deeply part of him.

JF: Both you and Mo grew up in families with very strong traditions of civil service, public service, and of law. He came from a long line of lawyers and elected officials, as did you. To what extent do you think family played a role in the making of you and Mo as public servants?

AC: Oh, I think family.... Well, I would be.... assert as a general proposition, and I'm sure it applies to me, personally, I think family plays an enormous role in the make-up of a man--well, any man or

woman, but certainly one that goes into public life. And family, in both senses--immediate family--I don't really mean just father and mother, but grandparents, family around. And then the family traditions. Certainly with me, they weighed very, very strongly. I don't think we ever talked about it, but I feel sure they did with Mo.

JF: Getting back to the 1976 campaign, at some point a full-page ad appeared in *The New York Times*, featuring you and stating, quote, "If we act now, a man of uncommon moral strength can become our president." Did you write that?

AC: (pause) I don't know. (tape paused.) I know that until we moved to Maine, my wife always kept horses or a horse. That's always been in the barn.

JF: I read that in your biography, *Archibald Cox, Conscience of a Nation*.

AC: Oh! (unclear, laughing while talking)

JF: [Your biography] mentions that it [the New York Times] ad was tacked up in the horse stall in Wayland [Mass.] for years.

AC: Well, I don't think it was actually in the stall, but it was in the part of the shed where he was stabled, yes.

JF: In addition to being on the stump during the campaign, did you end up advising on labor issues, or any of the issues that were dealt with in that campaign?

AC: Well, I can't say that I specifically remember either way--I'm sorry. I suspect we talked about some issues. I don't think that we did it anything like regularly.

JF: Mo ultimately lost Massachusetts--traditionally a very liberal state--to the more conservative Scoop Jackson. What went wrong?

AC: Oh, I don't know. (pause) I don't know.

JF: You worked on John F. Kennedy's campaign, as you mentioned. You were sort of the core person of his brain trust. From that perspective, if you're comfortable doing so, how would you compare or contrast the two men--the men and their campaigns.

AC: Well, the difference that would come to mind immediately was that Kennedy.... No, wait, I'm thinking election rather than nomination--and that's not a proper comparison. I think Kennedy had more people actively campaigning for him than I would think that Mo did. I phrase that "I would think that Mo did," because I recognize that I knew more about what was going on with Kennedy than I did with Mo Udall, although even with Kennedy I didn't--in supplying speech material and an occasional draft of a speech that a fair part of which went through, yes, I was well aware of that. But the work for the politicians, I knew only occasionally. After all, I was at that stage still here at Harvard, and once the labor legislation had gone through, was not going to Washington all the time. But I did know a little more about it, and I think Kennedy's was bigger and a little more organized--

maybe a lot more organized.

JF: On, I think it was July 14, 1976, you got up before the Democratic convention in New York and nominated Mo. How did that come about, did Mo ask you to?

AC: Yes. Oh, yes, that was all planned.

JF: According to your biography, you had exactly one minute and fifty-six seconds.

AC: (chuckles) Is that right? Maybe I had two minutes.

JF: A copy of your speech is in the archives. Did you author the speech, did you write that, or did one of Mo's staff people write it? Do you recall at all?

AC: No, I think it would have been left to me. He, perhaps one or two others, might have read it and made editorial suggestions, but I don't think it would have been something that was given me to deliver.

JF: When it became apparent that Jimmy Carter was going to get the nomination, all the other Democratic candidates dropped out. Mo decided, however, to go ahead and go to the convention and have his name placed in nomination. Why do you think he did that?

AC: I haven't any idea. Sorry.

JF: Twenty-twenty hindsight, what kind of a president do you think Mo would have made?

AC: Well, one's tempted to say first, a damned sight better president than Jimmy Carter. No, I think.... I think Mo would have been a first-rate president; depending on events, perhaps a great president.

JF: In 1979, you were recommended by both a panel appointed by President Carter and by Senator Ted Kennedy to fill a vacancy at the First Circuit Court of Appeals. Ultimately Carter refused to nominate you. To what extent do you think Carter's refusal to nominate you had something to do with you having nominated Mo at the Democratic convention?

AC: I assumed, from the moment Senator Kennedy, and more specifically, his staff--most specifically Steve Bryer, now Mr. Justice Bryer--broached the subject. I said, "Carter will never name me." And I had in mind the fact that I had nominated Mo Udall, and that even if President Carter would not hold that against me, that Ham Jordan would, and that would be enough. I was perfectly--in my own mind--was perfectly sure. I did want that judgeship earlier. On this occasion, one, I was totally sure I wouldn't get it, which, of course, affects your attitude all the way around. (both chuckle) And two, life had taken turns, I was heavily engaged in Common Cause--I guess I'd just become chair. I was back, having a certain influence on state events here, so that I never fully committed myself that I would take it if I was offered it by President Carter. Now, in retrospect, I don't say I wouldn't, because I was perfectly sure I wouldn't be, so that affects everything else. (chuckles) You can toss off the other answers without worrying about them. I don't know that this

made a difference, because they were able to cite that I was overage, and others were able to cite examples of people who had been named who were overage.

JF: It is interesting that neither you nor Mo got quite to the pinnacle of what the rest of us would have liked to see you as: you as a Supreme Court Justice, and in Mo's case, president.

AC: Well I sure would have liked to see him president.

JF: In 1979, Mo was officially diagnosed with Parkinson's disease. Some felt that the effects were present or noticeable as early as the 1976 campaign. When did you first become aware of his affliction?

AC: Oh, I certainly didn't become aware of any problem in 1976.

JF: From 1980, I believe it was, until 1992, you served as chair of Common Cause, a nonprofit lobbying organization that focuses on campaign finance reform. In fact, you still work with them. Did you continue to have any contact with either Mo or Stewart Udall after the 1976 presidential campaign, and after you went to Common Cause?

AC: A little bit with Stewart--less with Mo. I wouldn't say we didn't exchange a letter or two. I wouldn't say, if you told me none had been found, I wouldn't say they'd been lost, because I'm not that sure, but it would have been casual.

JF: This is a question I ask everybody. We tend to talk a lot about Mo's strengths during these interviews. What do you think his weaknesses were?

AC: (long pause) Well, if I were writing a biography, I would be thinking I must investigate his sense of putting an organization together, because I had some misgivings about the lack of that during the campaign. That's the only....

JF: Would that include selection of personnel?

AC: Well, might or might not. I certainly wouldn't say affirmatively that I knew of any instances of bad judgment about personnel. On the other hand, an aspect of personnel is, hey, he's a great fellow, but will he fit in this niche or that niche? And if one is a bit weak on the sense of putting an organization together, the importance of putting an organization together for some things, one wonders about judgment as to appropriateness of a person for a niche. I feel sure Mo must have been able to judge the qualities that we stressed a few moments ago in talking about his strengths, the things I admired and attracted me.

JF: What do you think his legacy will be?

AC: Well.... I think you have to ask that question in Tucson. In other words, there's a certain negative implied there. I don't think it could be said that he left a strong national legacy, I'm afraid. It will leave people he influenced, and people they may influence, and with them, like Mo, are important in their lives for the examples they set to others.

