

— legends of the law



Serving Client and Country

1922–1998

Morris Udall's Arizona Roots

By **Donald W. Carson** and **James W. Johnson**

MORRIS K. UDALL LIKED to tell the story of the lawyer-politician intent on obtaining the endorsement of an elderly, small-town editor. After an hour-long chat, the candidate heard the almost-magic words: "Son, I like you and I think we're going to endorse you, but one thing first—I hope you're not one of those goddamned lawyers." The candidate hardly paused before responding: "Well, sir, yes, I am. But if it helps, I'm not much of one."

Mo Udall did not fit that description. Even before he won national fame—as one of the 20th century's leading environmentalists, as a major governmental reformer, as runner-up for the 1976 Democratic presidential nomination, and as a political humorist—he was a top-notch lawyer.

Udall's service in the U.S. House of Representatives spanned 30 years. It began when he won a special election to choose a successor to his brother, Stewart L. Udall, who had been named Secretary of the Interior by President John F. Kennedy. Mo Udall retired in 1991, the victim of Parkinson's disease. That disease and a fall left him hospitalized and silent until his death on December 12, 1998.

Stewart, too, was a lawyer. He once said that both brothers stood on the shoulders of their father, Levi S. Udall. Levi learned the law through correspondence school, and he served as the superior court judge in Apache County from 1930 to 1946 and on the Arizona Supreme Court from 1946 until his 1960 death. It was Levi Udall who wrote the 1948 opinion that gave the right to vote to Native Americans in Arizona.

Mo's love and respect for the law began in his native St. Johns, when he and Stewart watched their father preside over court trials and then set up their own kids' court in the family garage. They used coal-

oil lamps to light their nighttime sessions, during which a frequent sentence was to serve time in a chicken coop. At one point, a "Udall, Udall & Greer" shingle was posted by their bedroom door; friend Dick L. Greer later served as superior court judge in Apache County.

Mo was drafted for limited military service in 1942 after two years at the University of Arizona. In the Fort Douglas, Utah, adjutant general's office, he used the legal knowledge acquired from his father, plus basic shorthand skills, to work as an investigator, primarily of base vehicle accidents. After graduation from Officer Candidate School in Fargo, North Dakota, Udall ended up as commander of a black squadron at Lake Charles, Louisiana, and again drew additional legal duty.

He was 21 years old, the greenest of the green among second lieutenants. His courtroom foes were experienced attorneys. In one case, Udall, the grandson of a polygamist, successfully prosecuted a soldier for polygamy. Udall estimated that he handled 200 cases, winning all but two of them. One of his clients was convicted of murder and executed by firing squad. Mo later wrote brother Stewart: "There is something basically incongruous in taking a man's life from him because he hasn't been properly instructed in its use." For many years, Udall carried in his wallet a clipping about the death of his client.

Udall tried to receive law college credit for his military legal experience, but Dean J. Byron McCormick of the University of Arizona Law College turned him down, stating that, like anyone else, Udall was eligible for admission with a minimum of two years of college and a C average. Udall enrolled in fall 1946. It was Arizona's only law school, and he joined an all-star class that included Robert W. Pickrell, a Republican, who became a superior court judge and attorney general; Raul H.

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Castro, a Democrat, who later succeeded Udall as county attorney and went on to serve as a superior court judge, governor, and U.S. ambassador to El Salvador, Bolivia, and Argentina; Samuel P. Goddard, a Democrat, who served one term as governor; Robert O. Leshner, who served as a state Supreme Court justice; and Estes D. "Bud" McBryde, who served as a superior court judge. Leshner and Udall ranked first and second in the class of 45 members, but Morris took a hurried schedule, finishing in time to take the bar in January 1949. He finished first among 25 applicants; Leshner took the exam in July and placed first among 60.

Udall earned six units through the University of Denver to complete the requirements for the UA law degree so that he could play a season with the Denver Nuggets, then part of the two-year-old National Basketball League. He joined brother Stewart in his Tucson law practice at the end of the 1948-1949 season.

Together, Stewart and Morris took any case that came along.

They represented Tucson-area service station operators in an effort to shut off

the city's first self-service gas station, arguing that drunken drivers would be unable to pump their own gas and that employees might fail to look for smokers in incoming cars.

They won \$16,000 for a Winkelman miner who lost an eye to a tear-gas pellet when a Gila County deputy broke up a fight among World War II veterans. The unknowing defense attorney opened the door to defeat when he questioned whether the plaintiff's attorneys even knew the value of an eye. Morris, who lost his right eye in a childhood accident, gave the closing argument and removed his artificial eye to show the jury that he did, indeed, understand the worth of an eye.

They won a price-fixing case against the State Board of Barber Examiners, which had tried to shut down the one-chair shop operated by one-legged Charlie Love. Love was an Osage Indian who had been working without a state license and who charged 50 cents rather than the state-mandated \$1. The 52-year-old man was illiterate and unable even to take the state test. He had been a barber since the age of 16 and had been cutting hair in Tucson

for 13 years, supporting a wife and two children on the income. It was a sweet victory for Mo, who had cut the family hair and had operated his own below-scale university barbershop to help finance his education.

Mo subsequently joined the Pima County attorney's office part time to prosecute grand jury indictments against a former county attorney and a former sheriff. He ended up with hung juries in cases that involved allegations of a prostitute's \$50 and \$200 bribes.

When his boss, Robert D. Morrison, decided to run for attorney general, Udall easily won election to replace him as county attorney. He sought to create a first-rate staff and then allowed them the freedom to act independently. His deputies included Charles E. Ares, who had been a clerk for U.S. Supreme Court Justice William O. Douglas and who later served as dean of the UA Law College; Alfredo C. Marquez, who later was named a U.S. district court judge; and Morrison holdovers Raul Castro and Mary Anne Reimann Richey, who went on to serve as a superior court judge and a U.S. district court judge.

Udall carried his own caseload, and early on he learned the value of a bit of humor.

“One of the first cases I prosecuted involved a man accused of drunk driving,” he wrote in his book *Too Funny To Be President*. “The defendant surprised me by hauling in five of his drinking buddies to attest to his sobriety on the night in question. In my summation, I told the jury that the defense’s argument reminded me of the bartender who shoved the last five patrons out the door at closing time. When the group reached their car, the leader turned to one of the men and said, ‘Simpson, you drive, you’re too drunk to sing.’” He won the case, won praise from the judge for his humor, and, “from that moment on, I began to collect funny stories and use them regularly in opening and closing arguments.”

Tucson attorney James F. McNulty, Jr., a longtime friend and a one-term Democratic House colleague, recalled this story. During Mo’s first case at the appellate court level, he used an ancient legal maxim, *de minimis lex non curat*, which translates to “concerning trifles in which this court will not deal.” One of the

judges, taking a look at this relatively young whippersnapper lawyer, said, “Mr. Udall, are those folks of St. Johns familiar [with the maxim]?” “Indeed they are,” Udall replied. “They speak of little else.”

After one term as county attorney, Udall decided to seek a superior court judgeship. He was thought to be a shoo-in, but he finished third in the Democratic primary, a situation most people blamed on a voting machine order that virtually hid his name from potential voters.

Stewart was elected to the House of Representatives in that same 1954 election. Mo returned to private practice and taught a class in labor law at the university.

“I got to where I was getting recognition as one of the good personal injury people in the Southwest,” he told McNulty in an Arizona Bar Foundation interview. “I broke the record three times with the highest verdict in a personal injury case.” He cited verdicts of \$148,000 and \$125,000, sizable sums for the 1950s.

One of his smaller victories—\$42,000—helped launch the judicial career of client Alice N. Truman. Truman, her husband, and two children had been seriously



The young congressman meets President John F. Kennedy in 1962.

injured in a vehicle accident. Her husband used some of the money to open a hardware store, and he thus “was able to furnish [campaign] signs for me to put up along the road,” she told Bar Foundation interviewer Virginia Kelly. Subsequently, Truman was elected justice of the peace and then superior court judge.

Mo used his airplane as a tool of his personal injury practice, hiring photogra-

pher Tunney Wong to snap aerial photos. On at least one occasion, an aerial photo backfired. S. Thomas Chandler, his friend and frequent courtroom opponent, recounted how a Udall client sought damages for a broken hip, claiming she was unable to see a poorly marked hotel step. Udall presented the aerial photo to the jury, and the supposedly invisible step was quite clear from 800 feet up, Chandler said.

Tucson attorney J. Daniel O'Neill, who managed Udall's Tucson congressional office for 10 years, recalled that Udall put the flights to double duty, charging fellow attorneys to scatter the ashes of deceased clients over the Catalina Mountains.

Udall undertook some criminal cases, including that of Sheriff's Sergeant Norman C. Simmers. The 59-year-old man was accused of first-degree murder in the gunshot slaying of his 41-year-old girlfriend. Simmers claimed she was shot five times as he struggled to take the gun from her and prevent a suicide.

Marvin S. Cohen was fresh out of law school when the summer 1957 slaying occurred. Now a Phoenix attorney whom President Jimmy Carter named to the Civil Aeronautics Board as a favor to Udall, Cohen aided in the defense.

The final witness was a surprise, testifying that he heard someone yell, "I'll kill you, I'll kill you." Udall dispatched Cohen to the death scene to interrogate neighbors, one of whom said he had been watching a movie on television in which the identical lines were uttered. Udall and Cohen determined the movie was *Roadhouse*, with Ida Lupino, Cornel Wilde, Richard Widmark and Celeste Holm. The discovery occurred too late to be used, but Udall still brought back a hung jury (10 to 2 for acquittal). Simmers was unhappy about a retrial, so he fired Udall, and the replacement attorney used the movie as evidence, which did not persuade the jury. Simmers was convicted of manslaughter, an outcome Cohen called "the difference between Morris Udall and anyone else trying the case."

Attorneys who watched Udall practice called him a master.

"He was an extraordinary trial lawyer," Cohen said.

Stanley G. Feldman, who became chief justice of the Arizona Supreme Court, said,

"I learned to practice law in a way by watching Morris."

"Morris was born to it," former dean Ares told Udall Oral History Project interviewer Julie Ferdon. "He taught me a lot, but he couldn't teach self-confidence. He was instinctive. He was a wonderful trial lawyer. He had an ability to talk sense to juries. He had an ability to make things understandable to juries and to make connections with them."

Said Udall's friend Tom Chandler, "Morris would seek a maximum dollar in settlement of cases; we'd go to trial and the judgment would be higher. The jury trial is a theatrical production, and, from beginning to end, Morris played them to the hilt. He walked in right on time—not early—raring to go." He was "a master at deciding the order of witnesses, was never petty, small, sarcastic; he was open and straightforward. He was charitable, tolerant of everybody and their ideas," Chandler told Ferdon.

Tucson was still a small city in the 1950s, starting the decade with a population of about 50,000 and ending it with about 235,000 in the metropolitan area. Almost all lawyers maintained downtown offices within walking distance of the courthouse. A special collegiality existed among the attorneys, and Stanley Feldman recalled sitting with others in the Udall office, 222 North Court Avenue, celebrating a victory by Mo. The office window provided a clear view of the street. "Morris got the whiskey bottle out, ... then he saw the old man arriving" and quickly started clearing away the glasses, cigarettes, and ashtrays." The cleanup was complete by the time father Levi Udall, a justice of the state supreme court and former Mormon stake president, arrived to visit his son.

Mo continued his trademark workaholic ways. He decided to write a definitive work on evidence, so he rented space in a building across the street from his primary office. He would arrive about 7 a.m. and remain until midmorning. "Morris never did just the job given or that he undertook," Ares said. The effort resulted in *Arizona Law of Evidence*, a book that now bears his name and that of Joseph M. Livermore, the UA law faculty member, former dean, and former Arizona appellate court judge who updated the work. Udall's work extended to chairing the

successful 1960 modern courts initiative, which gave the Arizona Supreme Court power over the state system.

Chandler said Udall "never wasted a minute. He used his time better than anyone I ever knew. If he stopped to talk to you on the street, it was about something specific. Chitchat was not his style."

All was not success for Udall, however. He was a candidate for the bar presidency, and friend McNulty was one of 12 board members. Several times over three or four months, McNulty recalled, the board voted 6-6 in a secret ballot. Mo finally withdrew, McNulty told interviewer Ferdon. He quoted Udall as saying, "To hell with it, it's consuming too much of our energy; we've got better things to do."

"All those talents in one person," McNulty said. "It's hard to believe. That generates some envy and jealousy, perhaps even anger. Mo was suspected of being too vain by some."

Udall had grown to accept his judicial defeat and the fact that his brother was in Congress, apparently planning to make it his life's work. He turned his eyes back toward the bench, when his father decided to retire early so Mo could be appointed to his Supreme Court seat. Then, his father died from a stroke on Memorial Day in 1960, and Republican Governor Paul J. Fannin appointed Mo's uncle, Jesse Udall, a Republican.

"So here I was," Udall told journalist and historian Abraham S. Chanin. "Couldn't go to Congress, my brother's blocking the way; couldn't be a judge, my uncle's blocking the way. It looked like I was through. So I accepted it, a rather bitter pill."

One year later, Morris K. Udall would be a member of the U.S. House of Representatives, chosen in a special election to replace brother Stewart, who had been appointed to President Kennedy's cabinet. ❧

Donald W. Carson is a professor emeritus of journalism at the University of Arizona. He served as department head and was a newspaper and wire service reporter/editor and a Fulbright scholar. James W. Johnson is a professor of journalism at the University. He was a newspaper reporter/editor and is the coauthor of a biography of former U.S. Senator William F. Knowland.