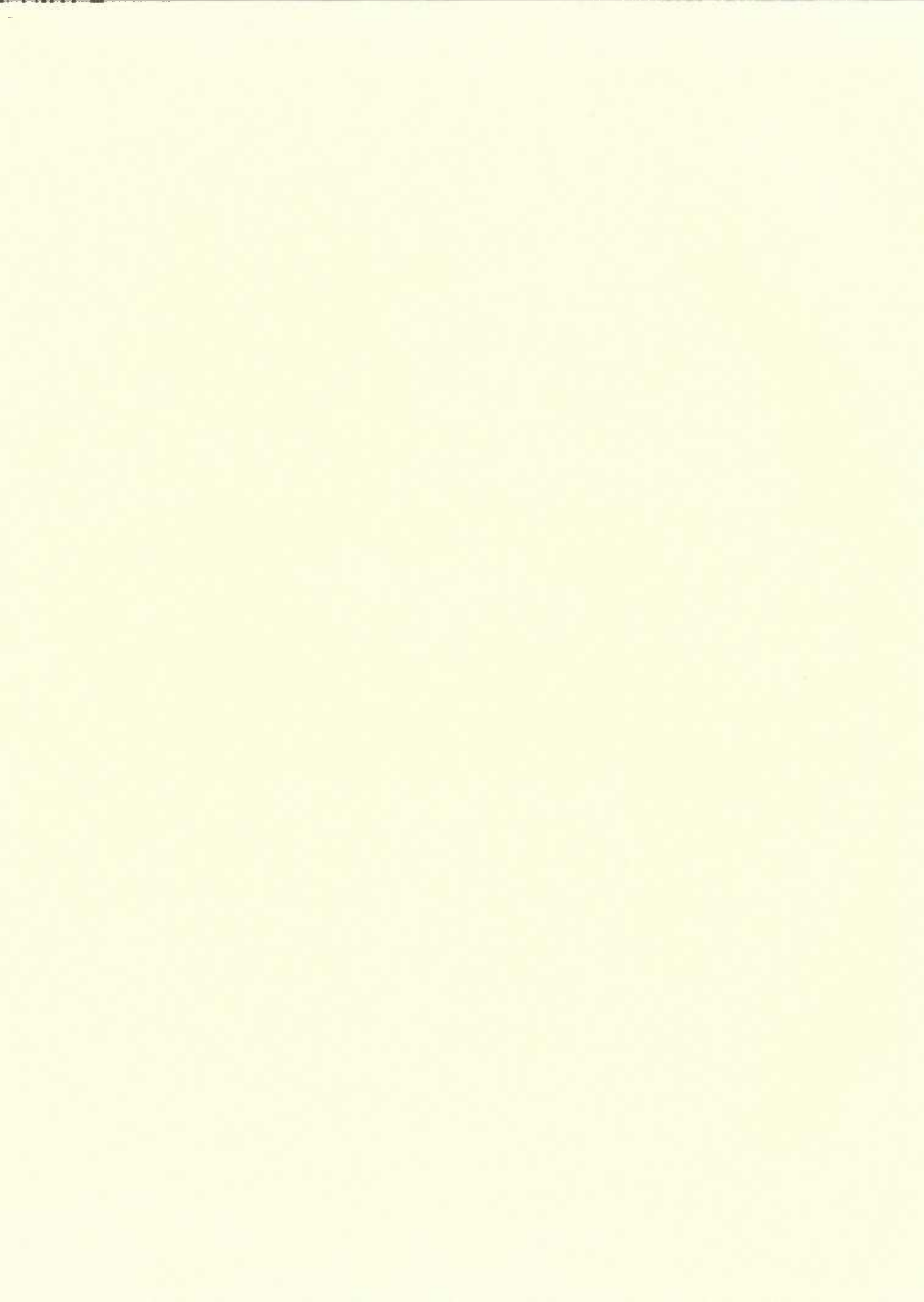


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The Law Firm of Bronson, Bronson and McKinnon: 1942 - 1975

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The Law Firm of Bronson, Bronson and McKinnon: 1942 - 1975

John H. Painter	<i>Additional Reflections of a Corporate Lawyer</i>
George K. Hartwick	<i>Office Boy to Insurance Coverage Lawyer</i>
Jean McCabe Ross	<i>Notes of A Legal Secretary</i>
Mary Mathes	<i>Reflections on the Business of Law</i>
Richard K. Dilley	<i>Brief Recollections</i>
Max Weingarten	<i>A Career in Tax Law</i>
Vernon L. Goodin	<i>Practice and Administration at Bronsons'</i>
Charles A. Legge	<i>A Career in Business Litigation</i>
Victor H. Hampton	<i>Bronsons' First Administrative Manager</i>

Interviews conducted by
Sarah L. Sharp

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Introduction

The history of the law firm of Bronson, Bronson and McKinnon from its founding in 1918 until the present day, which was begun in Volume I, is continued in this second group of oral histories. Here the primary focus is from 1942 to 1975. As with Volume I the story is told collectively by several of the attorneys and non-attorney staff who have been with Bronsons' the longest. Many factors help to explain the enormous growth which this firm has experienced between 1942 and 1975, but two themes drawn from the oral histories stand out boldly: the melding of expertise of certain lawyers with their enthusiasm about meeting the expanding needs of old and new clients alike; and, the increasingly effective office administration which attorneys and other personnel have developed to meet the firm's growth. After 1970 when Bronsons' moved to the Bank of America Center on California Street, its present location, the firm grew rapidly to number over one hundred attorneys and many more supporting staff. As benchmarks before 1970, when Bronsons' was in the Mills Tower building in 1950, the firm had thirty-seven people total. In 1964, when Bronsons' was located in the John Hancock building, there were fifty-seven attorneys. During the period which this volume covers, Bronsons' expansion was generally slower than in the period after 1975, though critical in terms of the new directions in legal specialties practiced and changes in office organization and procedures.

Each of the interviewees for this volume presents a unique past in his or her oral history, yet the recollections weave together an especially personal perspective on a very successful general law firm. The interviews follow chronologically in the volume, according to when the interviewee came to the firm.

In "Additional Reflections of a Corporate Lawyer," John Painter continues his reminiscences, which he began in Volume I, of his tenure as an attorney at Bronsons' since 1932. When the interviewer met with Painter on 16 July and 16 October 1980, he had been retired for several years. He comments on changes in the role of the lawyer, emphasizing increases in federal regulation, the lawyer's part in interpreting the regulations for clients, increases in numbers of mergers in American business, and the growth of the committee structure at Bronsons'.

George K. Hartwick followed Painter into Bronsons' in 1939, but as a young office boy rather than as an attorney. Interviews were held on 28 August, 16 September, and 2 October 1980. Hartwick retired shortly after the interviewing was completed. His oral history, "Office Boy to Insurance Coverage Lawyer," details a long career at the firm. In his interview he characterizes the early years at Bronsons' after he had become a lawyer as having "a community of activity," a description he remarks no longer fits because of the widening variety of legal specialties. Hartwick, as do the other interviewees, describes the firm's namesakes, Roy and Ed Bronson and Harold McKinnon, by anecdote. From McKinnon, Hartwick learned brief writing; from Ed Bronson, cross-examining. Hartwick has become well known in the area of insurance coverage law. He discusses a sample of

such cases as well as cases from other areas, most notably those involving regulation of the alcoholic beverage industry in California.

Jean McCabe Ross actually came to Bronson, Bronson, and McKinnon twice, initially in 1941, returning in 1957. As a secretary for Harold Ropers, Kirke LaShelle, Wesley Dickenson, and Roy Bronson, she brings a varied perspective in discussing her first years at the firm. Now also retired, Mrs. Ross was a secretary for Hartwick and Fred Morgan when the interview took place on 18 September 1980. "Notes of a Legal Secretary" focuses primarily on Hartwick's work as well as on changes in the legal secretary's role over the years and contrasts in work styles and schedules.

In "Reflections on the Business of the Law," Mary Mathes complements Mrs. Ross's comments on the routine activities involved in the office administration of a law firm. She notes the specialization of the non-attorney staff. She speaks in unison with the attorneys in placing the client first, above other concerns. As with Mrs. Ross, Miss Mathes has been the secretary for several attorneys. When she came to Bronsons' in 1944, Miss Mathes worked for Frederick Potruch. Later she also worked for Ed Bronson, Sr., and Lawrason Driscoll. She learned much about the products liability area of insurance law which was Driscoll's specialty. By the time of the interview, 27 May 1980, Miss Mathes had shifted to the accounting department, a position which she said she was qualified for because of her "naturally irascible disposition."

The interviewer recorded Richard K. Dilley's "Brief Recollections" on 13 April 1981, a few years after his retirement from Bronsons'. The session was conducted in Dilley's apartment which overlooks the Embarcadero Center area of San Francisco's financial district, an area which Dilley watched grow up along with Bronsons'. Dilley came to the firm in 1946, advancing to office manager in 1950. While his interview covers his work as manager generally, the annual manager's reports which Dilley prepared for the partners' meetings, and which he allowed the interviewer to read, reveal the daily tasks which Dilley handled for the firm in great detail. Dilley's reports include notes on changes in the use of office space, issues of office maintenance, and the general status of the business for each year. Dilley assisted the interviewer on several occasions during the course of this project, especially in the awkward early stages.

"A Career in Tax Law" is Max Weingarten's story of his own work at Bronsons' since coming to the firm in 1949. Weingarten's perspective is unique as his law school experiences began in Vienna, Austria and continued in the Bay Area after World War II at Boalt Hall and Stanford University. Along with the other attorney interviewees for this second volume, Weingarten developed a legal specialty, in his case tax law. His own interests and talents met a specific need which the firm had; there was no real tax department at Bronsons' before Weingarten formed it. His interviews took place on 20 February and 17 March 1981.

Vernon L. Goodin came to Bronsons' in 1951 from intriguing work with the Federal Bureau of Investigation in Peru during World War II, as well as from a position in the Alameda County district attorney's office soon after the war. While Goodin conversed with the interviewer about his work in architects' malpractice and other areas, it is clear that another of his major interests, especially in terms of the firm's history, has been the administration of Bronsons' as it has been conducted by both attorney and non-attorney staff. Not only has Bronsons' grown from fifteen attorneys to one hundred and fifteen during Goodin's tenure, but the administration grew accordingly—as all the other interviewees concur. Goodin arranged with the management committee for the interviewer to have copies of the minutes of the partners' semi-annual and annual meetings covering the period 1945-1967. These documents along with Goodin's personal records of the firm

formed the basis for an engaging discussion of many issues including the switch from percentage to point system in partners' distributions, initiation of application of the computer to routine law office tasks, and increased responsibilities of the management committee in the 1960s. Forming an oral history entitled "Practice and Administration at Bronsons'," Goodin's interviews were conducted on 2 June and 17 September 1981.

Interviews with distinctly transitional figures Charles A. Legge and Victor H. Hampton complete this second volume of the history of Bronson, Bronson, and McKinnon. Legge came to Bronsons' in 1956, early enough to learn a great deal from Roy Bronson, Harold McKinnon, and Jack Painter, but late enough to provide leadership for the firm through the 1980s. At the time of the interviews, 12 November and 9 December 1981, Legge chaired the management committee. In "A Career in Business Litigation," Legge stresses the importance of the concept of management of the firm's future growth as he had learned it from Roy Bronson, and as he has been dealing with that same issue on the management committee since 1970. Legge's superb anecdotes about the founding partners complement those which accompany other interviews. Shortly after Legge came to Bronsons', the business litigation increased dramatically and this has been his specialty since that time. He assesses the importance of the private lawyer in solving some practical problems for the businessman, and discusses some of the more interesting procedures and progress of a few of his business litigation cases.

Victor Hampton came to Bronsons' in 1975, the most recently of any of the interviewees for this volume. As "Bronsons' First Administrative Manager," and Richard Dilley's successor, Hampton pushed forward additional applications of the IBM computer to law office administration. He discusses these changes in detail along with the specialization and delegation of other elements of administration and management at Bronsons', as well as some plans for the future. His interview occurred on 6 October 1981.

The interviewer examined a variety of books, photographs, reports, cases, and other materials in her research for these interviews. Bronsons' holds a small number of scrapbooks and photo albums which help to document the period when the founding partners and Harold McKinnon were most active. These are located in the firm's own library. A LEXIS printout of Bronsons' state and federal appellate cases from the 1940s through the 1960s was provided privately, and is available in The Bancroft Library as a document supporting this volume. (LEXIS is a computer system for legal research.) Each of the attorney interviewees selected a small number of his own cases from this list to discuss in the interviews. Several references have been made to the office manual which Roy Bronson initiated. It has evolved over the years and its current version prompted some of the interviewer's questions. As mentioned earlier, the office manager's annual reports and the minutes of the partners' meetings were invaluable in giving the interviewer a fuller sense of the many issues with which the firm grappled as an ongoing business in this period. The firm has given permission for both sets of reports to be deposited in The Bancroft Library to accompany this volume. In addition, there is a growing bibliography of books and articles which cover both the theory and actual history of American law firms and lawyers. All these readings and other sources suggested many topics which the interviewer pursued with the interviewees.

The anonymous caricatures of John Painter, Jean Ross, and George Hartwick add a special dimension to this volume. Richard Dilley suggested that they might have been drawn by either Phyllis Wright Mullally who had been Roy Bronson's secretary, or by Wesley Dickenson, an attorney with the firm in the 1940s.

A note about the appendix, Vernon Goodin compiled selected lists of Bronsons' insurance and corporate clients, 1930-1964, for the first volume. With assistance from George Hartwick, Jean Ross updated these lists at the interviewer's request.

There are several processes which went into the creation of this volume. As with Volume I, the interviews were taped and then transcribed in the Regional Oral History Office. The transcribers included Beverly Butcher, Matthew Schneider, Michelle Stafford, and Steven Wartofsky. The interviewer edited the transcripts and they were then sent to the interviewees for their review. In each case interviewees carefully polished phrases and clarified passages. The final manuscript was formatted and typeset on the UNIX computer operating system at the University of California, Berkeley's Computer Center. The format program was written and executed by Marie Herold, Cheryl Ishida, and Maggie Johnson, all of whom also did the computer editing.

The Regional Oral History Office is under the administrative supervision of Dr. James D. Hart, Director of The Bancroft Library. Willa Baum is department head. We would like to thank Bronson, Bronson, and McKinnon for their support on this project and to especially thank senior partner Vernon L. Goodin for serving as liaison.

Sarah Sharp
Interviewer-Editor

12 October 1982
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JOHN H. PAINTER
Bohemian Club, ca. late 1960s

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John H. Painter

Additional Reflections of a Corporate Lawyer

An Interview Conducted by
Sarah L. Sharp

San Francisco Chronicle
January 18, 1997

John Henry Painter, a longtime managing partner at the San Francisco law firm of Bronson, Bronson & McKinnon, died at his home in Ross on Monday after a brief illness. He was 88.

He was born in Holyoke, Colo., the son of Senator Joseph Harold Painter and Sarah Richards. He received his undergraduate degree from the University of California at Berkeley in 1929 and his law degree from the school's Boalt Hall in 1932.

Mr. Painter spent five years at Bronson before moving on to become a partner at Rogers and Clark in San Francisco.

After serving in the U.S. Navy during World War II, he returned to Bronson and eventually became managing partner, a position he held for 20 years. A specialist in corporate law, he was known for his stalwart leadership and high standards, as well as his ability to transform seemingly indecipherable legalese into clear, understandable English.

"One of the things I've always insisted on is that contracts be easily read and intelligible to a nonlawyer," he was quoted as saying in a historical publication of the firm compiled by Bancroft Library. He retired from the firm in 1974.

While he devoted his professional career to the law, Mr. Painter pursued a lifetime love of music. Performing was almost second nature to him, and he played a variety of instruments, including the piano, the recorder and the trombone.

As a member of the Bohemian Club for many years, he often joined in jam sessions and was a regular in the Bohemian Club Band, playing bass clarinet.

He was active in state and national politics for many years and was a member of the Republican National Committee and the Ross Town Council and was mayor in 1952.

He was president of the Commercial Club and a member of the Bankers Club, Family Club and Lagunitas Club.

He is survived by two children, John H. Painter Jr. and Brooke Passano, both of Marin County; and five grandchildren, Eric Painter of Kayneta, Ariz., Kirsten Painter of New York City, Dyer Passano-Manning of Fairfax, Paige Passano of New Delhi and Mac Passano of Bellingham, Wash.

No services are planned. Contributions may be sent to Hospice of Marin.

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1

Balancing Theories About Lawyers With Real Practice

[Date of Interview: July 16, 1980]##

Opening the Discussion: Changes in the San Francisco Business Community

SHARP: As I wrote you in the letter, I divided up what I thought we could talk about into two one-hour sessions. We can do one part now, and then one part when you come back from your vacation, if that sounds okay.

Mr. [Vernon] Goodin asked us to stick with the 1945-1965 period, if we could. Those are the years that he would like to focus on for the second volume.

I thought we might try, at first, to get at some of the changes you might have seen in the San Francisco business community after World War II, and then after you came back to the firm. Does anything strike you about how the business community has changed?

PAINTER: Well, of course, it expanded terrifically in that period. The number of companies that have brought their headquarters to San Francisco has increased. Just by looking at the physical set up of the city, you can see it has changed drastically.

The building of big office buildings took place, most of it, since the war. Naturally, those changes brought increased activity in the legal profession. They brought some changes, of course, in the type of business that was available to the legal profession in San Francisco.

SHARP: So the kind of business has broadened?

This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 290

PAINTER: Oh my, yes.

SHARP: Having companies move their headquarters, say from New York to San Francisco, does that bring special kinds of tasks, then, for lawyers?

PAINTER: Yes. For example, suppose a lawyer represents a large corporation in San Francisco, but its head office is in Wilmington, Delaware, or someplace like that. The main activity of the corporation is back in its head office. It would *usually* have its general counsel at its head office and most of its legal work would be done there.

The corporation moves its head office to San Francisco, it would probably look for a San Francisco firm of attorneys to represent it. That changes an attorney's role, when he represents a company at the head office, rather than as a state representative at some other place.

SHARP: I understand it is during this period, 1945 to 1965 that more corporations began to have their own law departments within the corporation, as opposed to before the war, when this wasn't quite so common. Did that make special kinds of duties for a private law firm like your own?

PAINTER: It probably relieved private law firms from a lot of small, daily, legal questions. One of the purposes of having house counsel employed by a business is to get day to day advice at a reduced cost.

With the great increase in government regulations, it has become more and more necessary for businesses to have someone available daily, usually on the payroll.

It has taken that function away from law firms, but I don't think that it is necessarily a detriment to law firms, and I think it can be a benefit to them.

SHARP: There is a theory of Beryl Levy, that the role of the lawyer in American society changed in this period from that of a trial advocate to that of a counselor, especially as a counselor to corporations.¹ I wondered if you agreed with him.

PAINTER: It is hard for me to see that that is correct. As a matter of fact, the necessity of a trial advocate has increased during that period, rather than decreased.

SHARP: Why do you think that?

PAINTER: Well, the terrific growth in government and its functions has brought many attempts by the government, to regulate individual businesses which had been pretty free of regulation before.

There are lots of things to fight about. They all aren't in court; some of them may be before administrative boards and commissions. But, I would say that the need of trial advocates is probably greater today than it was immediately after [World War II].

1. Beryl Harold Levy, *Corporation Lawyer: Saint or Sinner*, Philadelphia and New York: Chilton Company, Book Division, 1961, p. 31.

The function of a lawyer, I think, during all of the time I have practiced law is to be a counselor. It seems to me that in the early part of that period, a larger proportion of time was spent on acting as a counselor than it was in the courtroom, or in commissions or hearings.

I don't know just what the writer you mentioned had in mind, but that wouldn't be my experience.

SHARP: I think he was concerned with the problem of interpreting government regulations, that there is a whole lot more of that done than there is time spent in court. That is the counseling, I think, he had in mind.

PAINTER: Well, there's certainly a good deal more of both kinds of work. As a matter of fact, the most startling thing that I have seen is the terrific growth in the regulation of the average business by the government, mainly the federal government.

When I first started to practice law, the federal government was concerned with things like antitrust cases, which involved, at that time, mainly the large corporations, and not so much the individual business man. The federal government didn't try to tell people what was good for them all the time; it didn't try to protect the consumer from the producer so much.

So, there has been a great deal of growth in the regulations, and that has brought an increase in the need for lawyers. There is a great growth in that function, all right.

SHARP: There is another theory, also of Levy's, that the larger law firms tend to handle the more important kinds of cases, and also tend to be a lot more creative, even to the point of formulating new definitions of law.²

PAINTER: I don't know, that is a hard one to answer. I think he's right, in part at least. Obviously, the big transactions are, in most cases, handled by the larger firms, because they are equipped to handle them. If it is a big transaction, the firm and the lawyers can devote a lot of time to it.

When you devote a lot of time to a problem, you obviously become more creative than if you're working on it on a more or less routine basis.

SHARP: What sort of special equipment do you consider large law firms as having? Do you mean special experts?

PAINTER: The fundamental difference, I suppose, between a large firm and a single practitioner, or a group of three or four practitioners, is that the large law firm is able to have people who devote all, or substantially all of their time to a given field, so they become very proficient in that field.

They might not be outstanding in any other field, because they haven't spent the time on it. So the firm, by means of having people specializing in tax work or other specialties, can call on people who are very proficient in their given line.

2. Beryl Harold Levy, *Corporation Lawyer: Saint or Sinner*, Philadelphia and New York: Chilton Company, Book Division, 1961, p. 7.

SHARP: There is a famous biography of the Cravath law firm in New York.³ Robert Swaine is the man who wrote it. He said that when he was looking at the Cravath firm, and interviewing the lawyers in that firm, he found that the lawyers told him a client would really want to know what the political and social implications were of a legal problem that he had. He wanted to know more than just the answer to his legal problem. I wondered if you had encountered that, as a lawyer?

PAINTER: I think, to a certain extent, that everybody would encounter it. Not having read Mr. Swaine's book, I don't know just what he had in mind, but it's certainly true that a client's course of action may be governed by political, social, and other considerations in addition to the answer to his particular legal question. The client may be very much interested, not only in what the courts have decided in the past, but also in changes they can reasonably be expected to make in the future as well as political and social changes which can be expected to affect the client's business.

SHARP: Does that take a certain amount of crystal ball gazing on your part, or how do you decide what to tell him?

PAINTER: The only advice you can give is based on the judgment you form from the experience you have had. You can't do much in the way of crystal ball gazing. An attorney who follows the appellate decisions in a given field can detect certain tendencies of the courts and the direction in which they appear to be going. Consequently he can, at times, make an informed guess as to how they will eventually pass on a question when it comes before them.

SHARP: That means a lot of extra homework for you, doesn't it?

PAINTER: I don't think it's *extra* homework. It is part of the business. A lawyer in his field is studying all the time, to keep on top of it.

SHARP: So it means that if your specialty is corporate law, then you have to keep in mind, and continue to learn, all the different changes in laws that would deal with your clients?

PAINTER: That would be the goal, yes. It would be pretty hard.

SHARP: Are there special periodicals for corporate law, or journals?

PAINTER: Oh, there are all kinds of literature. There are, of course law review articles, books and periodicals that deal with these problems. A person, when he is actively working in a given field, should, as a routine matter, try to keep up on as much of the literature covering that field as he can.

SHARP: In the post-World War II period, were there as many journals that would help you as there are now, or has that whole field opened up?

3. Robert T. Swaine, *The Cravath Firm and Its Predecessors*, 3 volumes, New York: Ad Press, privately printed, 1946 and 1948, p. 205.

PAINTER: Oh, the literature has been increasing as governmental regulations increase. Also the number of cases that are decided by the courts has increased. So, it's a growing thing. I don't know where it will ever end.

SHARP: Sounds like more reading all the time.

PAINTER: The California appellate courts have made some attempt to limit the number of court decisions to be reviewed by ordering that certain opinions rendered by them are not to be printed.

SHARP: What kind of skills did you think were the most important skills you had? Negotiating skills, or draftsmanship?

PAINTER: Both are important in all kinds of law practice. It's hard to speak of corporate work and isolate it within a narrow field.

If you are representing a corporation, or any business, you're involved in all of the legal problems that arise in that particular type of business. Of course a corporate lawyer might narrowly confine himself to the issuance of securities, or something like that, but the more general representation of corporations covers a wide field. Obviously, negotiation is a big part of the law practice. Draftsmanship is also important. An attorney must be able to write something which is clear, easily readable, and means what it is intended to mean. That is true whether it is a brief, an opinion or an ordinary letter.

SHARP: If you were working with a client you would have to do a lot of careful choosing of words, just to be sure that everybody understood what you really meant.

PAINTER: That's exactly right. I think that's inherent to the law practice. If you are a good attorney, I'm sure that you have spent a lot of time fighting over the way a document is written. You are sure that it's not susceptible to two or three different meanings.

SHARP: I have seen in reading decisions that the legal reasoning used is very exacting. I'm just wondering how you practice being exacting, how do you do all that?

PAINTER: [chuckles] I can't give you the exact words, but it has been stated many times, that to draw a short document, to draw or write a short letter, is far more difficult than to write a verbose document or lengthy letter

So that part of it, obviously, is to work hard on the way it's expressed. I think some people have more talent than others in that respect. You need to try it out with a pencil, and change it until you finally get it the way that you think that it's clear and definite.

SHARP: I guess, in the early part of your career, that was probably very much more difficult for you.

PAINTER: Yes. Every young lawyer is confronted with that problem.

By the way, I don't know whether I mentioned it in my previous discussion, but I remember once when I had written my first brief, I took it to Harold McKinnon to approve, or disapprove, or change. He said, "Jack, that's a good

job on the statement of facts. Let's look at it and see if we can shorten it."

Well, he just literally tore it to shreds, and condensed it. He would take out six or eight words and put in two or three that were much better.

That was an eye opener to me, at the start. That's the kind of training that a young lawyer gets, if he has people advising him.

SHARP: How did that make you feel, when he took it apart?

PAINTER: Well, I just couldn't understand why I hadn't thought of it myself!

A Note on Mergers

SHARP: I wanted to talk a little bit more about business in San Francisco and in this period. I wondered why mergers became so attractive on the American business scene?

PAINTER: You are speaking nationally, now. Of course, in the last few years, there have been many mergers, and takeovers resulting in mergers.

##

One reason for a takeover is that the acquired corporation owns valuable plants and facilities and all of its stock can be purchased for less than the cost of replacing its assets. Consequently the acquiring corporation can get those assets for less than their replacement value.

Sometimes a reason for a desire to merge is that the corporation to be acquired has a lot of cash on hand and the acquiring corporation would like to get the use of that cash.

Sometimes a corporation wants to diversify its business. That has been particularly true in the last ten or fifteen years. Many corporations have decided that it would be advisable to diversify their activities in order to make their earnings more uniform and to avoid, or tend to avoid, the seasonal drops in the market for some of their products.

It's a fairly logical thing. It has been overdone, of course, as those things often are. Many corporations have acquired businesses that they can't digest, and they have to dispose of them later on. However there are many successful corporations that have engaged in very diverse fields.

SHARP: That sounds like any given corporation might spend a lot of its business year conducting mergers, accounting for its own future. That would seem to take up a lot of time, from what you have just described.

PAINTER: Well, I'm sure that is the way some of them have proceeded. You can read about them daily. Their main business seems to be acquiring and disposing of other companies.

SHARP: You are talking about a much more complicated business scene than seemed to have existed in the early post-World War II period. Does it seem that way to you?

PAINTER: Many mergers have gone into effect because both corporations want to merge. They are, sometimes, in the same or related businesses, and they figure it is to the advantage to both of them to merge.

Many mergers occurred in the past in that way. My experience with business would indicate to me that the more or less involuntary type of merger, which has become so common in the last few years, has increased since the world war.

There are some companies that make it a practice. That's the way they build. They don't want to go out and build from scratch. They find it is more advantageous if they can find a good corporation and purchase it.

SHARP: I have a few questions about some of the things that I sent you to read, I don't know if you had a chance to look at them or not, but—

PAINTER: — Yes, I looked at them.

Antitrust and Increases in Regulation

SHARP: I have a few questions about the materials I sent to you to read. The article by Keith Pugh on antitrust talks about the duty of a lawyer who has business clients, to know, to keep really informed about changes in antitrust laws.⁴ He related the story of a 1964 federal case involving four small Bay Area floor covering contractors, who collided with some antitrust laws, and spent time in prison as a result.⁵

I wondered what you thought about that article, and the kinds of things that he was talking about?

PAINTER: In general I think that I would agree, that there has been a terrific increase in the antitrust activity, by the federal government and some state governments, during the period that I have witnessed.

As I have mentioned earlier, the antitrust activity that took place when I first started to practice law usually involved tremendous corporations which were claimed to be taking over the whole market and becoming a monopoly.

The average small client wasn't very concerned with the problem.

##

With the increase in the activity of the Federal Trade Commission and the Justice Department on antitrust matters, the field has broadened so that it covers almost everyone. Almost everyone has to be aware of the fact that there are

4. See Keith E. Pugh, Jr., "Antitrust: Duty to Protect Business Clients," *Brief Case*, September 1965, p. 16.

5. *United States v. Brookman Co.* (No. Dist. Cal., 1964) 1964 Federal Trade Cases, 45,064.

some things he can't do.

For example, I suppose the thing that, when I first started to practice, would seem almost as far removed as anything from a possible antitrust violation, would be just an ordinary lease. However, today even a shopping center lease containing an agreement by the owner that he will not lease to other persons competing with the tenant may create a serious problem.

Agreements granting the exclusive right to represent a company and its products in a given area, presents problems today which were not considered dangerous in the past.

Suggested retail prices and things of that nature are troublesome today, but when I first started to practice law there was very little thought given those matters by the small, average business man.

SHARP: That's very interesting. I tend to think of antitrust involving really big corporations. I don't think of all the nuances of antitrust that might occur. They must be increasing all the time.

PAINTER: Oh, they obviously are. Of course I am not up to date on it, I haven't practiced for five years. I have no doubt they have increased in a lot of ways unknown to me.

SHARP: I wondered why this article was written in *Brief Case*? Was this issue of people not knowing enough about antitrust law a big concern, in the fifties and sixties, do you think?

PAINTER: I would say it wasn't as big a concern as it is today.

SHARP: Was that article meant to be a caveat?

PAINTER: I suppose so. I suppose it was to warn people that they should always be thinking about it. An antitrust investigation of a business, by the Federal Trade Commission for example, can be very costly to a client, even though the client is absolutely free from any violation. It may take months, or even years, to dispose of such an investigation. So obviously, if a little advice by an attorney can ward off such an investigation, he is doing his client a good turn.

SHARP: Were there other areas of law changes as important as antitrust?

PAINTER: Yes. I think there have been many areas of changes that have affected the legal profession.

For instance, the regulations which I have mentioned before. Until a few years ago the federal government had not assumed the task of telling the automobile companies how to manufacture an automobile. Now it is, or at least is trying to, adopt regulations requiring air bags and other safety devices to protect the purchasers of automobiles. The same thing is true of many other manufactured products.

Also, the increase of the liabilities of a seller has been drastic in the last fifteen or twenty years. At one time, there was a more "buyer beware" attitude. If the seller sold something that wasn't appropriate or wasn't safe, he might be

sued if it caused injuries, but solid proof was required to establish liability. Now, the philosophy has swung around the other way, where every consideration is for the protection of the consumer. It is pretty obvious that the law has gone too far in that direction. There are now liabilities that never were dreamed of a few years back. At one time, a person might manufacture something and sell it, and in his contract of sale limit the warranties extended by him. Later certain warranties were implied by law and liability was imposed if such implied warranties were breached. Now liability has been increased to the extent that in certain cases liability can be imposed without a breach of any specific warranty and without proof of any negligence, if an object sold could be hazardous.

This has just been an ongoing thing, and not so much by legislation, but by court decisions. You wouldn't think that a piece of furniture is a dangerous object. However, today a person starting to manufacture furniture would probably be unwise to do that without carrying substantial public liability insurance.

SHARP: Lawrason Driscoll and I had a long talk about products liability, and the changes after World War II.

PAINTER: He probably went into it much more fully, and would be better qualified to do it, because he was handling a lot of those cases.

SHARP: Well it is interesting to hear you talk about that change, too. From what he described to me, the law now has become much more consumer oriented than it ever was, and doesn't seem to be turning back around, either.

The Role of the Private Lawyer

Opening Thoughts

SHARP: Mr. Tondel, in his article, talked about the role of the private lawyer.⁶ That might have seemed a really abstract, esoteric kind of article to you; it did to me. What I thought he was saying was that lawyers, while they are supposed to protect the common person and his liberty, there also had to be some sort of moral guidelines for the lawyer, in his act of protecting the common person.

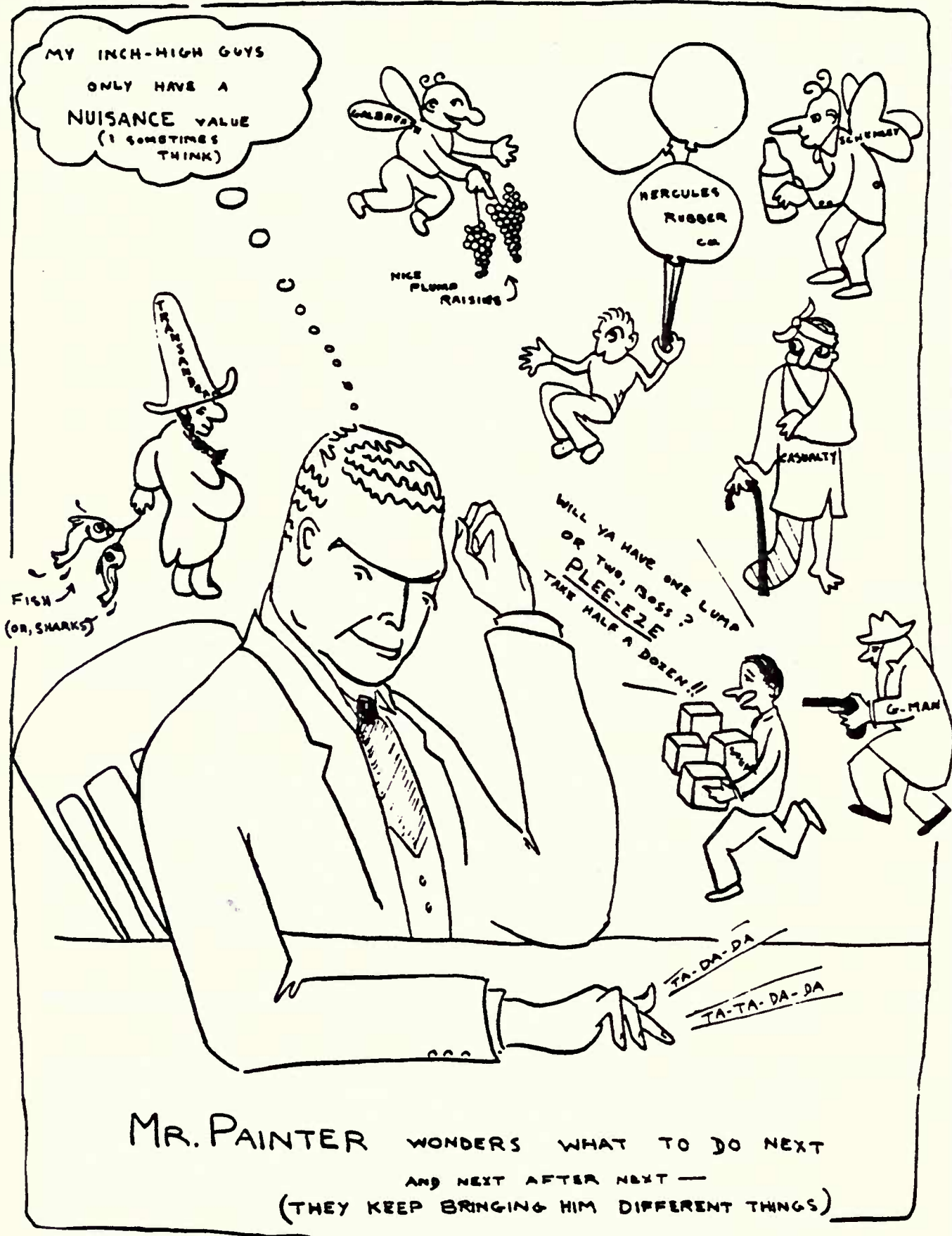
I wondered what you thought about that concept.

PAINTER: I don't know. I was puzzled with that article, because, obviously, a lawyer can't play the role of God. You have to realize that a lawyer is called in to advise on a given subject. If a lawyer is going to impose his moral ideas on every client, I don't imagine that advice is going to be very much appreciated. That is a role that I don't think a lawyer should have to play. Obviously a lawyer should not advise a client to violate the law or to do something that is wrong per se. But, to put the burden on the lawyer, to review the morals of his client in other respects is too heavy a responsibility to place on him.

SHARP: Have you been in situations where you thought that a client was asking you to do something that you didn't think was right to do?

PAINTER: Yes, in a sense. I haven't been asked by a client to do something that was illegal, or anything of that nature. But many times, a client has come in on some particular transaction, and I would think, in my own mind, that I wouldn't do what he wants to do. However, if he is legally entitled to do what he intends to do, it isn't my duty to tell him that he shouldn't do it. For example, I might think that I wouldn't want to be quite as rough on the adverse party, but as long

6. See Lyman M. Tondel, Jr., "The Role of the Private Lawyer," in Murray L. Schwartz (ed.), *Law and the American Future*, Englewood Cliffs: Prentice-Hall, Inc., 1976, pp. 158-166.



as I am advising him on his legal rights, it seems to me that's the lawyer's function. It is not to act as a moral advisor.

SHARP: In your definition of counseling, it is informing on the rights, and on the legal parameters of behavior, rather than the moral parameters of behavior?

PAINTER: That would be my idea of what a lawyer should do. If you carry it further, it becomes almost an intolerable task, because you are not just considering what his legal rights and responsibilities are, but what you think is a nice thing for him to do.

Lawyers, the Courtroom, and the Pretrial Conference

SHARP: I have just a few questions about lawyers and the courtroom. I know that after 1953 the use of the pretrial conference was an important innovation of the superior court in San Francisco. But, according to the Caspar Weinberger essay that I sent you, it didn't really get full use at all.⁷ I wondered if you knew very much about that?

PAINTER: To a certain extent, I think he is right that it came about slowly. In the federal courts, the pretrial developed before it was used extensively in the state courts. That's only part of a big subject, I think. Pretrial and the discovery process have to be almost considered together, and there have been drastic changes in that, of course, during the time I practiced law.

SHARP: What use of the pretrial conference did you make?

PAINTER: I suppose at first I thought it was kind of a nuisance, and it can be. But, it can also simplify trials and narrow the issues and sometimes, it's almost a necessity.

For instance, in the electrical antitrust cases documents produced in discovery became so voluminous throughout the whole United States, that the courts set up a master plan where the discovery in one case could be used in another case.⁸ There were many volumes of documents, and these were on file in Philadelphia, I believe. It would have been a physical impossibility for any human being to have read all them, let alone to study them. Pretrial in that kind of case, just had to be carried out in order to narrow the issues, and make it more manageable.

Of course the discovery process has grown from almost nothing to almost too much, now. It has gone to the extent where preparation of a case sometimes requires years.

SHARP: I guess what you are saying, then, is that there are some civil cases that can use a pretrial conference better than other kinds of cases.

7. See Caspar W. Weinberger, "More Justice in Civil Cases," *Brief Case*, January, 1954, pp. 22-23.

8. For additional information on this set of cases, see *Application of State of California to Inspect Grand Jury Subpoenas*, 195 F. Supp. 37 (1961).

PAINTER: Oh, yes. I don't like the extensive discovery and pretrial that is carried on today, but I suppose that is just because it is sort of distasteful to me.

I can see that it's very beneficial some of the time, but in some cases the time and cost of discovery proceedings can become very costly to the client. I am afraid that sometimes, the discovery and pretrial proceedings can make litigation so expensive that the average person can't afford to have a case tried.

SHARP: So the discovery process and the pretrial conferencing become sort of an end in themselves? As opposed to an aid?

PAINTER: Yes, it seems to me so, that they can be. They can be abused.

SHARP: Do you remember your first trial?

PAINTER: Yes, I do.

SHARP: Were you working with Roy Bronson, or Harold McKinnon, or were you pretty much on your own in the courtroom?

PAINTER: The first trial I ever had was by myself, but of course I had worked with various partners in many cases before that. The municipal courts were a good place to get experience. I think the jurisdiction of the municipal courts when I started practicing was \$2,000. Consequently young lawyers could be sent out to handle a municipal court trial and everybody knew that the extent of the risk was \$2,000, so it wasn't quite so bad. It gave young lawyers an opportunity to start out on your own a little bit easier.

I can remember the first jury trial I had, and I can remember the first court trial. I can't give you the facts of them, now, but I remember them.

SHARP: What impression did they make on you?

PAINTER: Oh, I loved them, I thought they were great.

SHARP: Did it seem an awesome responsibility?

PAINTER: No, because I had worked with partners on trials, and learned a little about them. I felt very green. I felt that I didn't know very much about trying cases, which I didn't, but I worked hard.

SHARP: It's about the way I feel right now! How did you learn all the courtroom techniques?

PAINTER: There's only a few ways you can learn about them, I suppose. You can learn by watching others, by reading or you can learn it the hard way by trying cases and profiting by your mistakes.

Of course, I think there probably isn't a young lawyer in existence who doesn't some time or other stop in to listen to some trial in process, because he or she is interested in it.

By watching, listening, reading and trying it, you finally learn a fair amount of it, somehow.

The Press and the Use of Amicus Briefs

SHARP: I just have two last questions, and then we are finished for today. I wondered if you had ever been in a situation in which a case you were involved with was recorded incorrectly or prematurely, in the press or on the television, and how you thought about it.

PAINTER: I guess the most graphic example of that with me was the hearings held by the La Follette Senate committee⁹ which I mentioned in the last go around. That was really one of the few experiences I had with any substantial use of the press. The La Follette committee staff were experts at that. Many times after having heard the testimony then reading about it in the paper you would find very little resemblance between the two.

I don't know how the papers could have gotten it so wrong. It may be that the wrong information was handed out by the investigators. It seemed to me that there were many mistakes and of course, there's nothing you can do about it.

SHARP: That seems very frustrating.

PAINTER: I haven't had much experience with that in the trial of cases, or the handling of legal matters, because the things that get most of the publicity are the criminal cases, of course. I have never been involved in them.

SHARP: The last question, then, is the amicus curiae briefs. I understand that a law firm would write the brief on behalf of a party in a case. I wondered how one goes about writing an amicus curiae brief.

PAINTER: The way it probably happens more often than any other way, is that you have a client who is involved in a transaction that is very similar, or identical to, one that is before the court.

Usually, I suppose, the lawyer discovers the case that is before the courts, and calls his client's attention to the fact that if the decision is adverse to his position, it's going to be detrimental to him. The client will authorize you to prepare a brief in support of the person in that case, who has a similar position to your client.

Sometimes, the client himself knows of the case. If he's a sophisticated client, he might suggest that something should be done to present his point of view.

9. See Mr. Painter's first interview, in *The Law Firm of Bronson, Bronson, and McKinnon: 1919-1941*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1978, pp. 211-214.

I don't know just what you had in mind but there are cases in which your client is very vitally interested in how another case is decided, and wants to be sure that the arguments are well presented. The attorney will then attempt to write a good brief on it, present it to the court, and ask permission to file it.

SHARP: The amicus curiae brief is just for the eyes of the judge?

PAINTER: Well, they are usually filed in appellate cases. Of course, it's for the eyes of the judges who are going to decide it. I don't know just what you mean.

I haven't had any experience with amicus briefs filed in trial courts. I suppose they could be filed, but I haven't ever done it.

SHARP: That's all the questions I have for today. You're probably ready for lunch.

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Changes in Bronson, Bronson and McKinnon

[Date of Interview: October 16, 1980]##

Another Look at the Growth of the Committee Structure

SHARP: When I had written to you about the changes that had gone into the firm, I had looked over what Joan Annett had asked you about, and what you had said. You talked about the partnership agreement, and how that developed, changes in the recruitment and hiring practices as the firm got bigger, and your role in administration. I thought we could pick up on how you worked in the administration because you were doing that about the time that the firm was really growing. That would be a pretty unique vantage point.

I thought we might start with how you saw the roles of Ed and Roy Bronson and Harold McKinnon changing over the years.

PAINTER: Well, Ed Bronson really was not very much interested in the administrative work in the firm. He was cooperative, and would do whatever he could do, but he was pretty well wrapped up in his trial work and he did a lot of state bar work. Ed's role continued about the same. He didn't participate in the active management of the firm by his own choice, except to attend partners' meetings and to do whatever he felt he should do to help the firm.

Harold McKinnon didn't ever really get into the administrative end. I suppose partially because of his health, he didn't take on any more than he felt that he should. He was very active in civic matters. He was also very willing to do whatever would help the firm, and participated in everything of that nature. But, he didn't ever serve on the management committee, and again, it was his choice. It wasn't for any other reason.

Roy Bronson, of course, had been the head of the firm for many years. I should back up a little bit. In 1946 we were still in the Mills Tower building. He was still quite dominant, and was pretty well running the firm as head of it. That's when we started having a managing partner, so to speak. I mentioned

before how it would rotate every year, and that didn't prove very satisfactory.

About the time that we moved out of the Mills Tower into what was then the John Hancock building (now the Industrial Indemnity building), we formed the management committee. From then on, Roy Bronson sat as sort of an ex officio member of the committee, and always gave his opinions on everything, which, of course, were given great weight. But, he didn't consider himself to be a voting member. He was there, in his opinion, just to give his ideas and whatever thoughts he might have.

He really continued in that role as long as he was able to come to meetings, until he got sick later on, after quite a number of years. He didn't assume the duties of the head of the firm, except that his influence was felt. I have forgotten just when it occurred, but at some point during this period, the chairman of the management committee started to preside over the partners' meetings. Roy Bronson had always done it up to that time. There wasn't any great event that brought that about. It worked out that way probably because of Roy's absence from some of the meetings. He was absent from more partners' meetings as he grew older, but he was remarkably active in spite of what I'm telling you.

SHARP: That's what I understand.

PAINTER: We moved into the Hancock building in 1960, I believe. We moved into this building, the Bank of America building, in 1970.

SHARP: Once the management committee got itself organized and under way, did Mr. McKinnon or Mr. Ed Bronson give their input into that committee, or did they stay as much out of administration as they had been?

PAINTER: Both of them gave the committee the benefit of their advice from time to time, but they didn't take any active part in the committee.

The theory of the management committee was really to reduce the number of partners' meetings. In about 1946 we were having a partners' meeting once a week. Of course, they were time consuming. As we got bigger, it became more costly to have these meetings. The theory of creating the management committee was to have the committee do a lot of the things that the partners had been doing. Then we would have a partners' meeting about once a month.

Now, Roy, Ed, and Harold McKinnon would come to the partners' meetings quite religiously. The partners would review the minutes of the management committee, and, of course, could overrule it in so far as its actions hadn't already been consummated. They could overrule anything in the future. They had their participation in management, but it was usually in the partners' meetings.

SHARP: I am interested in the kinds of activities that the management committee might find itself in, in terms of the growing firm.

PAINTER: Well, we covered about everything. It was just about the way the term implies. We had the office manager, Dick [Richard K.] Dilley in with us all the time. Sometimes we would have other people come in, for example the secretarial manager to discuss secretaries or something that applied to secretaries. Of course, we were always in a state of expansion. We grew out of the Mills Tower

and when we needed more space than we could get in the John Hancock building, we moved over here. There were always problems relating to office moves and many routine things that a manager would ordinarily do such as determining employment policies, handling of associates and handling of secretaries.

At the start, we would review all the proposed salary raises, and recommend them to the partners. Later, we had a personnel committee that took that over, because it was a quite burdensome job. The committee handled almost everything for quite a few years.

SHARP: Why was it likely that you and Mr. Driscoll and Edgar Rowe would have been the people to be on the management committee in the beginning?

PAINTER: Well, I think it just happened that the committee was formed because we weren't exactly happy with the way we had been handling management in the past. The idea was to get three fairly senior partners, but not necessarily the founders. We were all roughly in about the same general era, and we worked very well together. We had just three of us at that time.

SHARP: Do you remember when you became chairman?

PAINTER: I imagine that a year or so after we set up the management committee. I don't think we had any chairman at first. Then we later on provided for the management committee in the partners' agreement, and provided for a chairman.

The chairman's position didn't mean anything particularly, except that he was sort of a presiding officer. When I was a chairman, my vote didn't mean any more than the vote of anybody else. I had more continuity, because I stayed on the committee longer than the others. Except for that, the chairman wasn't of any particular importance but acted as a presiding officer.

SHARP: Did you have certain goals in mind for yourself about the kind of administrator that you wanted to be?

PAINTER: Well, I wasn't thinking so much about what I was doing. I was thinking a lot about what the firm was doing. I had goals for the firm, and I think everybody probably had goals for the firm.

SHARP: What were your goals like?

PAINTER: Of course, we were a growing firm. We were trying to grow in the proper way, get good clients, handle them properly, and get good personnel to handle them. Those were big orders.

SHARP: They were. With the growth of the firm during this period of 1945 to 1965 did that put increased responsibilities on the management committee then, and new tasks that you had to handle?

PAINTER: Yes, it did. We got to a point where it was a pretty burdensome task. Because I continued on, it was taking a lot of my time.

SHARP: Out of any given work week, how many hours do you think you spent?

PAINTER: I suppose many times I spent half of my time, and so it was difficult to carry on with the practice that I had formerly done.

SHARP: I know that there were some other committees that also came into existence to help all the responsibilities in the firm. I wondered if you could tell me a bit about some of those.

PAINTER: I have mentioned the personnel committee, which turned out to be quite an important committee. Eventually, of course, its functions grew. Its job was really to consider everybody, principally the associates. They finally started actually reviewing the associates on a routine basis every so often and rating them. They would send out questionnaires to the partners who had these associates working for them to get their opinions. So the personnel committee really put in a lot of time, and was very good in furnishing the basis for consideration of these associates.

The personnel committee's work was important when we had an annual or semi-annual meeting when we were deciding, in the long run, whether the associates looked like they belonged with us and had partnership capacity. The personnel committee's recommendations were valuable in assisting the partners in determining whether an associate was doing a good job, whether he should be raised in pay, or whether he should be talked with to try and spur him on and get him on the right track and, things like that.

Now we have a hiring committee, and the hiring committee is also very important and very active. It handles the interviews. Originally we had the theory that every new applicant should be interviewed by every partner if possible. Of course, that was all right when we had seven or eight partners, but when we got many more, it was very impractical and couldn't be done.

SHARP: It would take a long time.

PAINTER: Yes. We couldn't expect an applicant to be here that long. We couldn't locate all of the partners anyhow. It gradually worked into a more reasonable thing, where we had on the hiring committee a few partners and some associates. We felt that the opinion of the associates was extremely important insofar as new men and women employees being brought in, because they eventually would be passing on these same people.

That turned out to be very good idea. The hiring committee handled the recruiting in the East, the recruiting in the schools out here, and the many, many interviews in the office when people came to apply for a job. The hiring committee would make their recommendations. Usually their recommendations were how many, not what ones, because most of us hadn't met the applicants at all. This committee would interview them and decide which ones would be given job offers. Then the new associates would come in, and they either made it or they didn't, but it took over that function entirely and relieved the rest of us from a great amount of work.

We had special committees. We moved a couple of times. That's a big job of planning the floor plans, the amount of space needed and all the rest of it.



JOHN H. PAINTER

Taken on office fishing trip,
outside of San Francisco Bay, ca. 1952

We had committees that would do things like that.

SHARP: You are talking about a lot of new people coming into the firm over the years. I wondered how the increased numbers changed the ways people interact in the firm. I wondered if you had any anecdotes that might tell me a bit about how that changed.

PAINTER: Well, in 1946, I suppose we had in the neighborhood of fifteen lawyers. I don't know, I haven't gone back to look at it. It's hard to remember. We grew in that period of time, or almost that period of time, to over seventy lawyers. Now, of course, there are over a hundred lawyers.

Of course, one of the major things that you could notice was the fact that it was becoming harder and harder to get to know all the associates. Originally, and for many years, I had always made it a point to entertain in my home sometime during the year, every new associate. As a matter of fact, I had always entertained the partners, so I felt I knew them all pretty well. It eventually got so that that just couldn't be done. It was a nice idea, but it wouldn't work.

I think that up to the time I left most partners were trying to make it a point to take associates out to lunch and get to know them a little bit better. I knew everybody in the firm when I left. I don't know whether the partners do now. It's a pretty big firm. Those are some of the problems.

We also thought as we got bigger that we were having difficulty even having the proper relationship with the partners. So we set up a monthly partners' lunch—to sit down and talk and not necessarily talk about business. In the earlier days, we saw the other partners every day and ran into them all over the place. As we got more partners, some of them would be spread all over the country, and we didn't always know what they were doing.

The same problem existed with the associates. So we had an associates' lunch once a month. That gave us a chance to talk to them on things other than business and it was helpful.

Those are the kinds of problems we tried to solve that were difficult. They are not unusual; they are no different here than they would be at any other large firm.

SHARP: I saw in the scrapbooks photographs of some fishing trips.¹⁰

PAINTER: Oh, we used to do that. We used to have some wonderful times. We would rent a fishing boat and go out for a day. Whoever wanted to go could go. We would take all those who were the slightest bit interested at that time. We had a lot of fun out there. And, of course, we got to know people very well.

SHARP: I saw a couple of poker games going on. [Painter laughs] I wasn't sure who was playing, but it looked like pretty good hands.

PAINTER: Before that, of course going back into ancient history, Roy Bronson used to have a ranch out in Alameda County. Probably someone else has covered this.

10. There are a small number of scrapbooks containing photographs of members of the firm, newspaper articles on clients, and other documents. These scrapbooks were very helpful in the research for these interviews.

SHARP: No.

PAINTER: He used to have a picnic out there probably once or twice a year. He would invite everybody, and we would go out there, ride horses, have fun for a day, and things like that. These are not unusual; I think you find them in almost any firm of any size.

SHARP: Were the fishing trips in this early post-World War II period, do you think?

PAINTER: Well, I guess it was after the war, yes.

I remember taking my son [John H. Painter, Jr.] once. He brought his camera and took all kinds of pictures. I think he took a lot of those that were in the scrapbook.

SHARP: I will get them out, and you can look through them in a minute, and just see. That's great.

What Accounts for the Growth of the Firm?

SHARP: What do you think accounts for the great growth that Bronsons' had in this period, 1945 to 1965?

PAINTER: Well, I don't really know whether our growth was a lot larger than other firms or not. I think lots of San Francisco firms were growing at approximately the same rate. Part of it was, of course, the growth of business in San Francisco, the development of many more home offices, or offices at least, of eastern corporations. Business did increase. We got our share of the growth, but I wouldn't think it would be much different than some other firms.

SHARP: I was talking with George Hartwick in our last interview about the specialization of the law. He is a good one to talk to about that.

PAINTER: Yes, he is.

SHARP: The insurance coverage law that he has done is so specialized. He was telling me how that came about, how American business has changed so much that you now need specialized lawyers, and quite a wide variety of them within any one firm to handle the referrals and clients that you get.

PAINTER: Yes, I agree with him entirely. I think the larger your firm gets, the more the necessity of quite a bit of specialization.

SHARP: Does it mean then that a young associate just coming in might specialize right away, or would he or she be more likely to be more generalized for a while?

PAINTER: We tried originally to avoid that specialization of young associates, because we felt that the more of different types of work they could do, the better they would be later on. We tried having every associate who came in start in the trial department, with the idea in mind that a certain number of them would eventually be

taken out of the trial department and placed in some other department. We felt that the experience was worthwhile in the trial department, which I still think is true.

We ran into several difficulties. One of them was, we would have some good associates who didn't want to be a trial lawyer or didn't look as though he would be a good trial lawyer, but was doing a very workmanlike job in the trial department. It was hard getting him loose from the trial men—getting him moved to some other place.

Secondly, we often had the case of an associate who may have been very well cut out to be a trial lawyer and should be one, who would start in the trial department and never be exposed to anything except trial work. So it wasn't as satisfactory as we hoped it would be.

We did, however, try as long as we could to leave them loose for a while to get them so that they could get other types of work. We would do that by assigning an associate to one partner for a while, then shifting him or her to another partner in another type of work. I doubt that that has proven quite as successful as we hoped.

SHARP: What do you think is the best way to handle new associates?

PAINTER: Well, it would be ideal if you could keep them as just a group that might do anything for a year or two, and then move them where you think they should be. Somehow practically, that's very difficult to do.

SHARP: I guess just the demands of your clients and their needs must determine where somebody goes, whether the specialties develop.

PAINTER: In a way, that is true. A young man or lady who starts working on a big case with some partner or partners, may be occupied on that case for three or four years or more. You hesitate to take the associate off that case in the middle of it, if you can help it. So that is one problem.

The same way on the other types of business. If a person is doing tax work with a tax partner and he is doing a good job, you become reluctant to say, "All right, now we're going to move you over to the trial department," because it just doesn't work that way very well.

SHARP: Why do some of the cases last so long?

PAINTER: Well, if they are big cases, it can be several years before they even get to trial. Discovery work, you see, depositions, interrogatories and so forth, and then in almost any case—I don't know what the delay between filing and trial is in San Francisco now—it is always a year or two before it can get to trial anyhow.

SHARP: Just because the calendar is so crowded?

PAINTER: Usually, yes.

SHARP: That's amazing.

I did have some general questions about your practice. I went to the scrapbooks again, and I found some notes on Pacific Coast Company. There was an article snipped from the *San Francisco Chronicle* in 1960 which talked about the Pacific Coast Company going into the realty development business here in San Francisco after selling out most of its timberlands in the summer to Union Lumber Company.¹¹

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PAINTER: Well, we assisted the company in some real estate transactions, but I don't know what brought on the newspaper article. The company did join in the financing of a large condominium here in town. It was the Fontana.

SHARP: That's it. It was 1960.

PAINTER: I don't think they continued doing a lot of that type of business.

SHARP: Then I noticed another note in the scrapbook about Pacific Coast Company and its merger with Bell Company in 1962. You mentioned that at that point Bronsons' became more the counsel for Pacific Coast Transport than for the other firm.

PAINTER: Well, it's kind of a long story, but one of the early presidents of the Pacific Coast Company was a very fine man by the name of [William] Tudor Gardiner, who was the governor of Maine. He was killed flying his plane one time, and his heirs became the owners of a large block of stock of Pacific Coast Company. Someplace along the line—this was toward the latter part of our representation of Pacific Coast Company—this block of stock was purchased by a man in Chicago.

I guess the reason why the purchaser wanted to buy it was because Pacific Coast Company at that time had a large accumulation of cash, and I think he felt that he could use the cash in some of his other companies. So he bought the stock, came out to a director's meeting with a representative, and announced that he was going to take over the company and hoped that the company would surrender peaceably, which it didn't do.

It resulted in some litigation. At that time, the purchaser of the stock and his associates were soliciting proxies to try and defeat the directors, or some of them. The company got a court order, an injunction, stopping them from their solicitation on the grounds that they weren't representing the facts fairly. In the process we finally worked an amicable arrangement, whereby they abandoned their proxy fight and ultimately this principal purchaser was placed on the Pacific Coast board. Pacific Coast Transport Company, which was a subsidiary of Pacific Coast Company was then acquired by some of the major shareholders of the Pacific Coast Company.

11. See *San Francisco Chronicle*, 23 November 1960.

The Pacific Coast Company withdrew its listing on the New York Stock Exchange because it could no longer qualify for that listing. Eventually, it merged with the Bell Company and the office was moved to Cleveland or someplace in the East. Really, it ceased to exist as far as the West Coast was concerned. I don't know what ever became of it.

SHARP: I had seen that note, and knew that you had talked about it in the last interview. I thought I might ask if you knew how the whole thing ended up.

PAINTER: The company continued for some time, but I think the nature of its business was completely changed.¹²

SHARP: Mr. Hartwick told me about how complicated insurance coverage law is, and seemed to really like it. I wondered which area of law seemed most complicated to you?

PAINTER: Well, there's no doubt about it—insurance coverage questions are very complicated and require a great deal of expertise. Tax work of course, is another specialty which is very technical and requires specialized training. There are many fields of specialization in the law practice and I guess you could say the same thing about any of them.

A Glimpse at State and Local Bar Activities

SHARP: I have some additional questions, mostly about the State Bar Association and the Bar Association of San Francisco. That will take up most about the rest of our time. I read that the state bar had been reorganized in the 1930s and became, for instance, actively interested in legislation passed in Sacramento.

I wondered if you were particularly aware of the special activities that the state bar was getting into in this 1945 to 1965 period.

PAINTER: Yes, I think the state bar became quite active, and its still active in legislation that affects lawyers in general. It should be in that activity and I think the bar has done a good job.

For instance, many legislative proposals involve technical additions or amendments of code section. It is very difficult for the legislators to know whether they are good or bad. The State Bar Association has a real function to recommend which amendments are serving a purpose and the reasons for its recommendation. Other people can argue with them, but that's a very important function of the state bar, and the association does it quite well.

SHARP: They did that quite a bit in this period?

PAINTER: Oh, yes. As far back as I can remember in my experience, the state bar has been quite active in legislative matters.

12. For a few additional notes on Pacific Coast Company's history, see Mr. Painter's first interview, in *The Law Firm of Bronson, Bronson, and McKinnon: 1919-1941*, pp. 206-210.

SHARP: I found one note, and I wonder if this is an example of what you are talking about. In 1951, a Conference of Bar Delegates voted in favor of the principle of comparative negligence. Since Bronsons' had so many insurance clients, was this something that you might have noticed?

PAINTER: Yes. I have had a certain amount of experience with it. The Conference of Bar Delegates is a large group of delegates that goes to the State Bar conventions and passes upon various proposed resolutions. The delegates are not elected by the membership at large and they do not necessarily represent the thinking of the majority of lawyers. The delegates are usually appointed by the local bar associations. It is not particularly difficult to become a delegate.

Many of the proposed resolutions relate to legal questions and are proper subjects for the delegates to consider. However, there are always quite a few proposed resolutions relating to broad social questions such as the legality of abortions or the use of marijuana and things of that type. These subjects may be of great interest to the public at large, but the delegates are not authorized or necessarily qualified to decide questions on such subjects. When the delegates adopt a resolution of that type it is usually given publicity and is represented to be the opinion of the lawyers of the state and that may not be true.

I think that the bar associations have a real function in connection with the administration of justice in the courts and the discipline and ethics of lawyers, but not in passing upon broad social problems.

SHARP: Let's contrast that with the San Francisco bar, then. Do you remember some of the things that the San Francisco bar was into during this same period? Were they also getting more active?

PAINTER: As long as I have been practicing, the San Francisco Bar Association has been quite active. It performs some of the same functions as the State Bar Association, but with more emphasis on San Francisco courts and lawyers.

SHARP: Tell me about this judiciary committee, then, you mentioned to me over the phone.

PAINTER: I have always thought that the judiciary committee of the San Francisco Bar Association was a pretty good committee. I think the members were appointed for a term of three years, and I was on for a term. I was a member of the committee for two years, and then chairman the last year.

Its function was to try to help the governor in the selection of persons to be appointed to vacancies in the local courts. I guess, for some time, most governors have referred names of possible appointees to local courts to the San Francisco bar committee. The committee would review them and pass their opinions on to the governor.

How often the recommendations were followed, I just can't say. But, during the three years I was on the committee, I thought that the members by and large were very diligent in trying to do a top-grade job. In the last year, when I was chairman, I believe it was about the commencement of Governor Ronald Reagan's first term, if I'm not mistaken.

SHARP: Nineteen sixty-six.

PAINTER: There was a move on at that time to adopt what was commonly called the merit system for the selection of judges. A bill to that effect was introduced in the legislature and I think it was sponsored by the [State] Bar Association at one time. The form of the bill varied as amendments were added, so it wasn't uniform all the time. At one time, it provided for a committee made up of some lawyers, some judges and some public members appointed usually by the governor, but by no one governor. In other words, there would be staggered terms so that it wouldn't be controlled by the governor.

At one time, it was proposed to have this committee select a group of people that it had reviewed and recommended for vacancies and the governor would be limited in his appointment to persons in that group.

Later on, I believe it was proposed that the governor should refer names of persons that he was considering to the committee, and the committee would rate them and report to the governor. The governor could then appoint anyone from that same group, but he had the benefit of the committees.

The legislation became a very hot political issue and it never was adopted, because there were various—I'll call them special interests—who wanted to be represented. For instance, the labor unions and various minority groups wanted to be represented. It got so that it just wasn't feasible to represent every segment of our society.

However, when Mr. Reagan took office this type legislation was still pending, and he was very much in favor of some form of a merit plan. He decided to put the plan in effect, even though the legislature had not passed it. In other words, he voluntarily submitted to local committees the names of the people he was considering for appointment. By reason of the fact that I was chairman of the San Francisco bar committee at the time, he named me as one of the lawyers on his committee. There was at least one judge, and two or three public members. I know there was at least one other lawyer. I have just forgotten the number of people.

After that he would refer to this committee the names of persons being considered by him for vacancies in the San Francisco courts. We would take them up in our bar committee, review them and make our recommendations. As a practical matter, my participation in the governor's committee was merely to pass on to the governor the bar committee's recommendations. To the best of my knowledge the governor's committee never met together, but each of the members would separately send his or her recommendations to the governor.

During that year, everyone appointed by the governor to fill vacancies on our superior and municipal courts was someone who had been approved as qualified by the San Francisco bar committee. Consequently, I felt that it worked very well.

I think that the informal governor's committee lasted only a short time, but the bar committee has continued to exist up to the present time. I am sure they are doing very much the same thing now, except perhaps some governors don't follow the bar committee's recommendations.

SHARP: No, depending on what the governors need to get done.

PAINTER: Yes.

SHARP: I had just one last question, and then we will close. You had mentioned the discipline area of the State Bar Association and that that was an important area of concern for the state bar. I noticed in 1975 there was a really interesting controversy about advertising. I don't know if you recall this at all. I was going to send this to you, but I didn't get it in time. It was this case of the state bar bringing disciplinary charges against Leonard Jacoby and Stephen Meyers, because they had opened a legal clinic in Los Angeles.¹³ Do you remember this at all?

PAINTER: I can't remember the case. What was decided? Did they stop them, or were they successful?

SHARP: The state bar committee did stop them temporarily. They gave them a penalty of stopping their business of forty-five days, and said that they should cease calling themselves a legal clinic. One person on the state bar committee dissented.¹⁴

PAINTER: I'm sorry. I didn't have the chance to read it. It's too long for me to read now.

I remember that there was a controversy, but I can't remember this particular case.

SHARP: There may have been more cases.

PAINTER: This was 1976. I had really stopped active practice at that time, so that I wasn't following things of this sort as much as I might have otherwise.

I never thought that lawyers should advertise, and I don't now, regardless of the opinions of the Federal Trade Commission. I think it doesn't serve the purpose that it is supposed to serve, and it destroys some of the real attorney-client relationship that should exist. I don't think anybody gets a better lawyer, or a cheaper lawyer because of advertising. If it gets carried to the extent that you are selling lawyers' services like boxes of soap, you can see it would be kind of ridiculous.

SHARP: Do most lawyers feel pretty strongly one way or the other about advertising?

PAINTER: Although I don't know, I rather think the majority of the lawyers would be opposed to advertising. I think you will notice that even though it is now legal up to a certain extent, only a very few lawyers advertise.

SHARP: Yes. Those are all the questions that I have. Thank you for spending the time with me.

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13. See *Brief Case*, Winter 1976, pp. 19-27.

14. The members of this committee were David A. Kidney, Henry G. Bodkin, and Mitchell Levy, the chairman. Levy dissented. This committee was called, Local Administrative Committee No. Thirty-five for the County of Los Angeles, of the State Bar of California.



GEORGE AND FLORENCE HARTWICK
Ca. Late 1960s

Regional Oral History Office
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University of California
Berkeley, California

George K. Hartwick

Office Boy to Insurance Coverage Lawyer

An Interview Conducted by
Sarah L. Sharp

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1

Youth in Richmond and San Francisco

[Date of Interview: September 16, 1980]##

SHARP: I thought I would just begin by asking you what your full name is.

HARTWICK: George Kennedy (for the middle name) Hartwick. That's all of it. Kennedy is nothing glamorous. My uncle's name was George Kennedy.

SHARP: When were you born?

HARTWICK: December 17, 1916.

SHARP: Where?

HARTWICK: In Richmond, California.

SHARP: What are your parents' full names?

HARTWICK: It was Fred Melvin—Frederick, I guess; and Bertha Theodora.

SHARP: What was her maiden name?

HARTWICK: I don't know if it was s-i-e or s-e-i—Seibert. S-e-i I guess.

SHARP: Did you have brothers and sisters?

HARTWICK: One brother, Fred. Fred Junior.

SHARP: Was he older than you?

HARTWICK: Four and one half years.

SHARP: What is your basic ethnic background?

HARTWICK: German.

SHARP: On both sides of your family?

HARTWICK: Yes.

SHARP: Did you have a religious affiliation when you were growing up?

HARTWICK: Yes, but not very strong. Lutheran. It was strong when we were very young, in the sense that we went to church. But after we got into our teens, neither one of us was very active in the church.

SHARP: But your parents stayed active?

HARTWICK: Not really.

SHARP: Did you then grow up in Richmond?

HARTWICK: No. I grew up in San Francisco, south of Market [Street].

SHARP: Did you come over to this side of the Bay because your parents had—

HARTWICK: My father had been rather successful in the wholesale beer distribution business in the East Bay. He was very successful, as a matter of fact. Prohibition, of course, wiped him out. From want of finding anything better, he bought a general store in what was then called Butchertown—way out near Hunter's Point.

SHARP: So you spent the rest of your childhood in and around Hunter's Point?

HARTWICK: Until I was about twelve or thirteen.

SHARP: Then you moved again?

HARTWICK: Then we moved to I guess what they call the Hayes Valley. Scott and Page, really on Page. Right near the corner of Page and Scott.

SHARP: Did your mother work outside the home?

HARTWICK: After we moved to Page and Scott, because that was the beginning of the very big Depression. Men couldn't get jobs. Women could get a job because then, of course, they worked cheap. It was pretty bad.

SHARP: What sorts of things was she able to do outside the home?

HARTWICK: Oh, she worked at Hale's Department Store, things like that. Most of it wasn't steady. Very few people seemed to have steady jobs during that time. It was a very, very bad time.

SHARP: It must have been for you and your brother and for the whole family.

HARTWICK: Worst for my father, mainly.

SHARP: Did you have a lot of aunts and uncles in the Bay Area to see?

HARTWICK: I had one aunt on my father's side and my mother came from a very large family. There were five sisters and they were very close here in the Bay Area. She also had two brothers here. Others had gone to other parts of the country. Overall, she had thirteen brothers and sisters. But her mother raised some other kids too; so it was a huge family.

SHARP: It sounds like it. So you had *lots* of aunts around.

HARTWICK: Yes.

SHARP: What was your early schooling like?

HARTWICK: Of course the elementary schooling was all out in—what do they call it now?—Bay View. When we moved to Hayes Valley, I went to Crocker and Roosevelt Junior High schools. Then to the Polytechnic High School, which has since been destroyed.

SHARP: Polytechnic. That's a new one. I hadn't heard of that one.

HARTWICK: That is because it was probably torn down before you were born.

SHARP: Probably!

HARTWICK: I don't know when they tore it down. But it was in bad shape when I went there. It was right across from Kezar Stadium.

I was first at Crocker, which was torn down while I was still in junior high school. From there I went to a brand new one, just erected, Roosevelt Junior High. That is still in operation.

SHARP: Where did you go to college?

HARTWICK: I went to the cheapest and quickest one you could go to—junior college. In those days they cost practically nothing. San Mateo was the easiest one for me to get to. I went there until they opened San Francisco Junior College, which is now San Francisco City College. Of course, that was brand new. But it was good because all the people that came there mainly were young and very interested and they did a good job.

In those days you needed only two years of pre-legal to go to Hastings Law School. First I worked for the Bank of America for six or seven months, and then enrolled in Hastings. I was able to do both for a while, but then it got to the point where it was too hard to keep both. So I just stayed at

Hastings and got occasional jobs when I could.

SHARP: Did you live with your parents at this time?

HARTWICK: Yes.

SHARP: What year was it when you started law school?

HARTWICK: Nineteen thirty-seven.

SHARP: Are there any special early experiences in your young adulthood life that you had that you wanted to talk about?

HARTWICK: None that would have any effect upon what has happened to me, if that's what you mean. [laughs] If there were, I don't remember them.

SHARP: Growing up in San Francisco during the Depression and having your parents have somewhat tenuous job situations must have been hard to manage.

HARTWICK: Sure, but almost everyone else was in the same spot. I can remember when we were in high school. In the whole high school, there was only one fellow that had a car. Nobody envied him, they just thought, "Jeez, he's lucky!" [laughter] The envy you probably could find today didn't exist then. Some people were luckier than others, that's all.

SHARP: So you got around on the streetcar and walking.

HARTWICK: Walking mostly.

SHARP: Well, San Francisco is a small enough city that you can do a lot of walking.

HARTWICK: We always had some piece of junk we could drive around in. My brother and I usually had something we would fix for ourselves and keep running.

SHARP: And sort of trade off between the two of you?

HARTWICK: Yes, but he was very generous in that respect. He'd never leave any gas in it, but—

SHARP: Well—at least gas was cheaper then than it is now.

HARTWICK: About eleven cents.

SHARP: Did your brother go to law school too?

HARTWICK: No. My brother almost certainly had more native intelligence than I, but he was never interested in academics. He was more interested in sports and having fun. He quit high school. Again, being young, he was a better candidate for a job than my father was. He could command less in the way of wages than an older man would. He had a variety of jobs.

SHARP: Is he still living?

HARTWICK: Yes.

SHARP: Is he here in the Bay Area?

HARTWICK: Yes.

2

An Early Beginning at Bronson, Bronson and McKinnon

Starting Out as an Office Boy

SHARP: When did you come into the firm?

HARTWICK: I came in July 1 of 1939.

SHARP: Oh, 1939. All right. How did I get 1946?

HARTWICK: I think somebody else in the prior volume said that. It wasn't true.

SHARP: Tell me how you came to work at Bronsons'.

HARTWICK: I was still in law school, of course. I had an uncle who was on the sixteenth floor of Mills Tower. Bronsons' was on the fifteenth floor. My uncle, John Seibert, was a lawyer, but he was an officer of a then small reciprocal insurance exchange. He heard that Bronsons' needed a temporary office boy for two weeks while the then office boy was on vacation. I think one of the associates at Bronsons' owed him a favor. Anyway, he called me and asked me if I was interested. Of course I told him, "Sure."

So I came in and I saw the associate. It was Wes [C.W.] Dickenson. The latter part of World War II, Wes went down to El Centro to practice. He died a year or so ago. In any event, at that time the three partners were Bronson, Bronson and McKinnon. There weren't any other partners. Wes was going to take me in to see Roy [Bronson], but Roy was busy. So Miss Convery, the office manager, decided that she would take a chance and hired me.

SHARP: What sorts of things did you do as an office boy?

HARTWICK: That's the toughest job I ever had! [laughter] I did everything. It turned out not to be for two weeks. At the end of the two weeks, I asked Miss Convery whether I should come back the following Monday. She said, "Well, I really

don't know what their plans are. You had better come back."

The office boy had just been licensed to practice, so I came back, and she said, "Well, just continue doing what you have been doing." The literal fact of the matter is nobody told me to leave. I just kept coming there. The pay for that job at that time was good: \$60 a month. Of course, clerks were lucky to be paid anything. The privilege of being around a law firm was supposed to be enough.

I handled diaries, the file calendar, and did all the filing. Typed my own stipulations—that's to get time to plead. The girls were much too busy to be doing that with me around. Couldn't file until after five o'clock, because it would interfere with their work, but they were working until nine every night anyway. No overtime then, either!

It was after that that I would have to get ready for the next day's schooling, too. It was over a seven-hour job each day. We didn't do any mailing, either. I used to take those stipulations and documents by hand all over to the lawyers to get them signed, and go out to the court every day and do the filing. I'm telling you, here it was busy, very busy.

SHARP: So part of your day was inside the office and part of it was being essentially a messenger, an errand person going out?

HARTWICK: And getting these documents signed and served on the other attorneys, and taking them to court and filing them. Then, seeing all the lawyers, and what they were supposed to do that day, because I had to check up on the diary.

SHARP: You would notify them each morning, say, of what was on the agenda for them?

HARTWICK: They would all get a note each morning as to what went on. If one of them wasn't there, I was supposed to see that somebody was going to do it.

SHARP: I see. Why was everybody so busy? During a depression, you would have thought that a lawyer's business might slow down.

HARTWICK: Well, there were only seven or eight lawyers then, you know. I imagine it wasn't just that business would be the less. I assume that overall, there was less business. The area in which the Depression struck, I would guess, didn't hit lawyers as much as you might expect.

We did litigation work, and litigation was not slowed down. It might even have increased during that time. My job in the office was largely dependent on litigation work.

SHARP: Right, because you were doing the diary.

HARTWICK: And the filing, and all the going around.

SHARP: I guess your work would have been slowed down just because so much of it was done by hand, or done by a few people.

HARTWICK: Oh, yes.

SHARP: I imagine now that the same kind of operation that you did then is done—

HARTWICK: Mostly by mail now. If in the old days, you didn't have a stipulation signed, you would worry. Today, you can get relief if you get in trouble time-wise. It isn't as critical as you might think.

SHARP: Did your coming to work at Bronsons' make you conclude even more strongly that you wanted to be a lawyer?

HARTWICK: I was committed at that time! There was no place to go. Besides, the alternatives—thinking about medicine, dentistry or anything—were so costly and took so long that they were not real alternatives.

SHARP: How many years did you spend in law school then?

HARTWICK: Three.

SHARP: So it was just the last two years that you were in law school that you were working for Bronsons'.

HARTWICK: Yes, I think it was the middle of the second year.

SHARP: Did you automatically come here right after you took the bar, or before you took the bar?

HARTWICK: Well, I was still an office boy. Of course, the bar was only given once a year in those days. I was admitted in December. You normally took a refresher course—you didn't *have* to, but it was wise to take a course before you took the bar, a brush up. I just continued as an office boy. When I passed the bar—this time I think somebody told me that I could stay on. I got a \$15 raise—\$75 a month.

SHARP: That must have seemed like a lot then.

HARTWICK: Not really. [laughter]

SHARP: You always spend up to what you are making anyway.

HARTWICK: Yes. As I say, it was traditional that young lawyers didn't make much in those days. You were lucky to have a job, not just because of the conditions, because things were getting better by that time—1940. Things weren't nearly as tough as they had been during the mid-thirties. But a young lawyer's start was almost like an unnamed internship. You just weren't worth much!

SHARP: Were you married by this time?

HARTWICK: On \$75 a month? No! It was worth more than it is today, but it wasn't worth *that* much.

In fairness to the firm, I want to say that somewhere along the line, I think before the year was up, maybe even within six months, they raised me \$25, so I got \$100.

SHARP: What were your first impressions of your employers?

HARTWICK: I first came as an office boy among gods. They were always very kind to me. They were all three of them very busy, of course.¹⁵ But, before I was licensed, I was doing some research work for some of them. As I say, everybody was busy. There was hardly any evening of the week that you wouldn't find the lights on at Bronsons' office as late as maybe three o'clock in the morning.

Learning How to Practice Law

HARTWICK: One of the things I do remember—Harold McKinnon once had a procedural problem. Of course, in my day you weren't really taught procedure in school. You were taught the substance of the law. You were taught to be a judge, not a practicing lawyer. So Harold asked me to find out about a decision that the supreme court had rendered and had just sent down a remittur saying "reversed." A remittur is a document by which they get the case from supreme court back to trial court with instructions telling the lower court what to do. When they say reversed, you normally just have another trial. This had been an appeal from an order granting a judgment on a special verdict. I won't bore you with what all that is. The trial lawyer, Kirke LaShelle, had also made some motions for a new trial, and for judgment notwithstanding a verdict.

The question was, what about these other motions? Were they still kicking around, or did the flat reversal without any instructions to our court mean that we could have those heard too? I didn't have the vaguest idea where to look for the answer to that.

Among my duties was keeping all the loose leaf services, too. That was one of the first things I had to do in the morning. Besides, I had been out late the night before, I had a hangover, and it was terrible.

I thought, "Where in the hell am I going to find the answer to something like this?" We only had a week or two to ask the supreme court to do something. I said, "There isn't much I can do now except do some of this loose leaf filing." So, in filing the current reports on the Federal Rules Service, I came across a case right on this—boom! In our system—it's even easier now—but then, if you had one case, you practically had them all, because you had your entrance to that, to the index in which they were found.

I got the rest of the cases that I could find on the point, and told Harold what I thought. He said, "That's great! Now draft a petition for a re-hearing." So I did, and I got very enthusiastic about it. I took it to him, and he took it home that night.

15. Here Mr. Hartwick is referring to Roy and Ed Bronson, and Harold McKinnon.

Next morning, he called me in and he said, "George, this is just great!" He said, "It reads like a good court opinion. But now, let's sit down and take a look at this thing." He went through that brief word for word with me, and he would make changes now and then. In the way of conversation we would agree upon that change. Then he would say, "Well, now, you say up here such and such."

I said, "Yes."

"Now, down here, you say such and such."

I said, "Yes."

He said, "Same thing, isn't it? Can't we take it out? It's already said. They may get tired up there. They have to read all these things, and if we can make it a little easier for them, it might redound to our benefit too."

That is the way he helped young people. Particularly in my own case, I got a lot of it because I was the youngest there, and did a lot of the appellate work before I got into the service, and then for some years after I came back. He had a talent for telling you his reasons for doing something that made it possible for you to carry the idea into the next job you did.

SHARP: That is really a good teacher.

HARTWICK: Yes. That was typical of Harold. But by the time we were through, my magnificent seventeen pages were down to three, and everything I had said was in the three.

SHARP: That's amazing!

HARTWICK: He was a very talented man.

SHARP: Most of your learning was like that—was his sitting down with you?

HARTWICK: That was typical of him. With Roy, you learned the difference between what was real and what was just academic. His judgment was just unbelievable. He was a very aggressive personality, but you didn't realize it. He seemed automatically to dominate, without knowing it himself. His voice had the ring of authority. As I say, he was one of the most open-hearted guys I have ever met. His attitude toward law was never that it was a vehicle for making a hell of a lot of money, or even for making a reputation for yourself. Your function was to help people.

SHARP: To give a service.

HARTWICK: Again, it was automatic; it was just part of his nature. Maybe he deserves less credit because that's the way he was born rather than the result of any deliberate decisions that he made. He wasn't a "do gooder"—as that term is used. There was a lot learned from him.

SHARP: You mentioned that when you came out of law school, you learned more to be a judge than to be a lawyer. Was that because of the amount of theory that you learned?

HARTWICK: That's all they taught.

SHARP: So there was a gap?

HARTWICK: Oh, yes. I guess it's still true to some extent, but I think probably less today than it was in my day. In my day, *all* law schools taught their students the law, which means they taught them how to evaluate a case on the basis of a fixed set of facts instead of how to advocate one party's part of the case.

SHARP: You described Harold McKinnon and Roy Bronson—how did they differ in personality from Ed Bronson?

HARTWICK: Ed was a trial lawyer—and he was a brilliant one. I think not one of those three could have done any part of what either of the others did nearly as well. Ed was a little more volatile than either of them, and a little more unpredictable. You never knew precisely what Ed's reaction would be on a given day or to any particular thing. He wasn't much interested in academics. His job was to convince a jury of certain facts and the effect of them. That's what he was interested in. If the law got in his way, it was a damn nuisance.

He had to live within rules, of course, and he knew those rules because he used them for his own purposes when they served his purposes. You were learning from a very practical, real, pragmatic lawyer.

These stories don't mean anything except in the context of the way law was practiced in those days. It was so different. But, I remember we had non-suits that were briefed. If there was an evidence point that came up during the day, you worked that night, and the next morning you submitted a brief on the point to the court. We rarely do that anymore. If we do, it certainly isn't overnight like that.

In the same sense, instructions to the jury were extremely important and highly technical. So Ed had an unusual problem in a case, and he asked me to draft an instruction for him on the point. These days we have form instructions, in those days we didn't. We had instructions that we would use over and over again for certain routine things, but instructions to fit the particular facts of a particular case always had to be specially drafted. So I worked like mad on this instruction. I think it was an early products liability case.

The idea is to, of course, have one that states the law in a favorable light to you, but will withstand a review on appeal. I wrote it out one night so it absolutely would withstand review by an appellate court.

The next morning I took it in to Mr. Ed—and he was in the middle of the trial, of course. Being in the middle of a trial is not one of the times when you are in your most pleasant frame of mind! He looked at it and said, "Do you expect me to read this junk to a jury?"

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HARTWICK: At that point, I learned a little bit about instructions. He then sat down, and I stayed there. He read it again, and dictated one that was a lot more effective

for him in the context of the facts of the case, and would tie in to what he planned to argue to the jury too. That one would have been more difficult to sustain on appeal. I very carefully and cautiously pointed out that to him. His response was, "Well, do you want to be an appellant or a respondent?"

I might have left you with the wrong impression about Ed. He also could be one of the most charming men you ever met. Also, again in the same way, a generous one. That incident, of course, is one that would be typical of when he was busy and under pressure. But he could do the same thing in a courtroom. He would be one of the toughest men that ever lived, or he would be one of the most absolutely captivating characters you have ever met. You would love him, depending upon what kind of case it was, how he'd have to reach the witnesses. Other times he'd be just an ordinary guy, trying hard to do a job for his client. He was equally good at all three of those parts.

SHARP: Mr. Driscoll was telling me about defense—the defense bar—in the courtroom. He told about how he constructed his defenses. I got a better sense of the defense lawyer's role in needing to be agile enough to follow the other lawyer wherever he or she might be going.

HARTWICK: Yes, and you also have a course that you want to steer yourself. You adapt to whatever the circumstances are in a particular case. Ed Bronson was a very strong cross-examiner. Extremely effective, and that's just a matter of true ability plus experience. If you have taken the witness's deposition, you then get a feel as to how you can examine the guy, what he's sensitive to, and what kind of a guy he is. Ed was very good at that.

I was in court a lot with him. I'll tell you, most trials are dull. They were never dull with Ed. No matter what the case was, there was excitement. The jury didn't get tired, didn't get bored; and that's rare.

SHARP: That is interesting, that really is. That sounds like such a dynamic group of people to be working with.

HARTWICK: I assure you it was.

At one time, I had a problem with a partnership dispute. Outside of divorce cases, partnership problems are the worst you can get because there are emotional reactions, and there is less logic brought to bear on the damn thing. I had gotten to the point where I knew I wasn't going to get this thing done right. I hesitated to go to Roy, because Roy at that time was busy, terribly busy, on a number of matters.

But, one morning, I went into Roy's office. He was on the phone. Apparently, he had been on and off the phone on something for most of the morning. He hung up. I started to say to Roy, "I hate to bother you with this, but if you can spare some time, I need your help."

He said, "Well, you know, I've just been on the phone. Our maid didn't show up this morning. I told my wife to find out what the hell happened. She found out that her husband had her put away for alcoholism. That S.O.B," he said, "of course she drinks a little! What's wrong with that?" Then he said, "I've just got her out!"

He had spent the whole morning taking care of that woman's problem, and I *know* that he didn't have time to do it. He was so busy that I hadn't wanted to bring another office matter to him. I guess that was the first order of business that morning for him!

SHARP: He was taking care of what was going on at home.

HARTWICK: This woman, to whom he gave help. He did get her out, too. That was typical of Roy. There weren't any differences among people, as far as status was concerned, to him. I was as much a part of his firm as an office boy as his partners were.

SHARP: Did you sometimes feel as a young lawyer that there was a pretty large gap between what you could do and what you knew that —

HARTWICK: Oh, there is today, between what I can do today and what I could do then. We live in a different society and a different legal system. Our system is very different from what it was when I entered. The talent that those men had in their field! It might not be a match for some of my present partners, but it's a match for me.

SHARP: It sounds like they were as well as skilled, very competent lawyers, also compassionate people. It's a pretty unique combination.

3

A Sample of Cases and Concerns

Two Typical Insurance Cases

SHARP: In terms of your cases, I thought that we might start with the two *Fireman's Fund* insurance cases, both California appeals cases. Fireman's Fund was a long-standing Bronsons' client.

HARTWICK: Yes, it was.

SHARP: I wanted to talk about the two cases in particular, and then ask you a few questions about them. In *Island v. Fireman's Fund*, this appellate court appeal affirmed the lower court's decision.¹⁶

HARTWICK: This is the one where he was at Stanford?

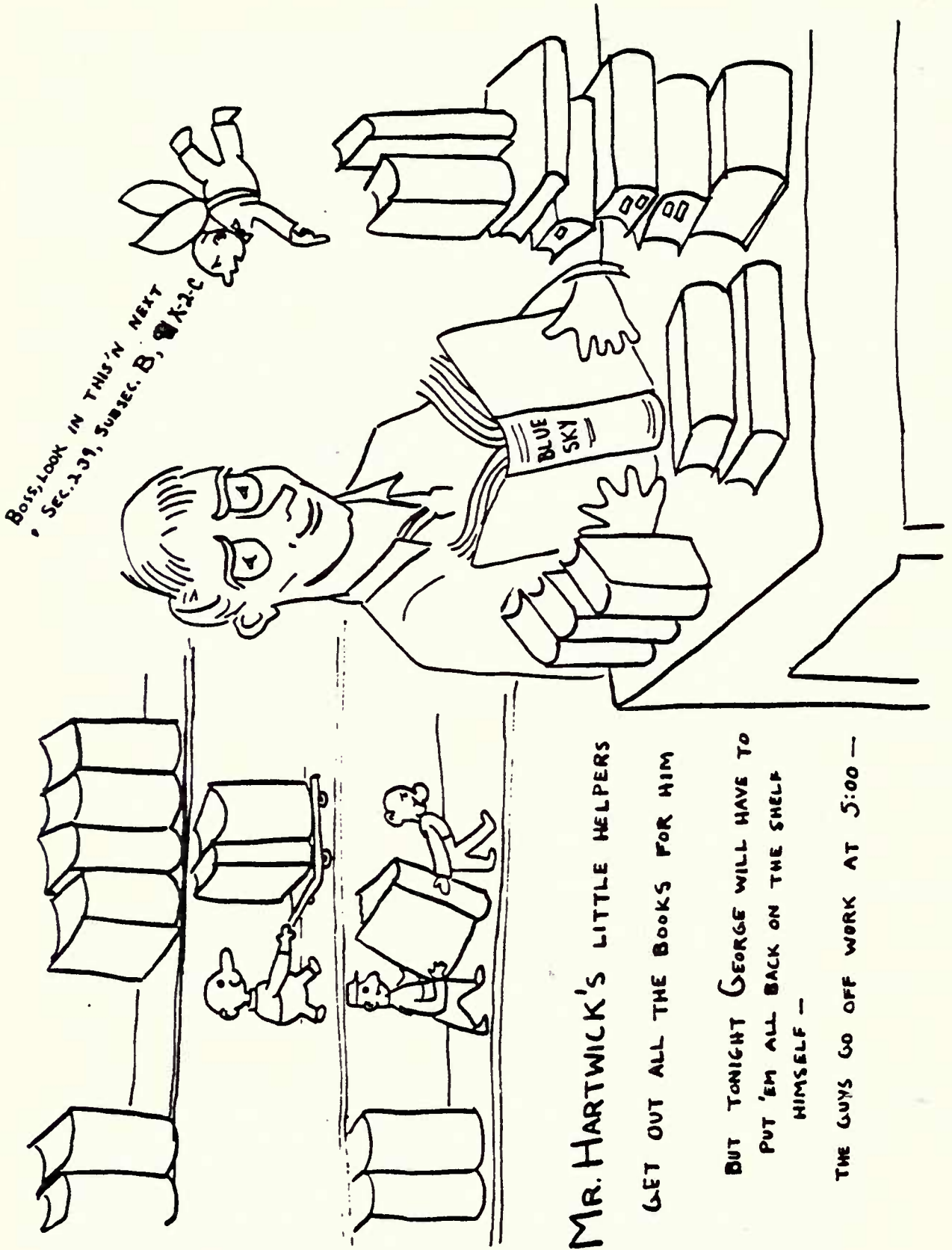
SHARP: No, he was in military service.

HARTWICK: He left his car home and told his father to drive it now and then to keep the battery up. His father actually used it—

SHARP: Quite a bit.

HARTWICK: I think so. I don't know where the opinions are. I don't think the father said that, but of course he had in fact gone to and from work. They hadn't paid a premium on the car, and there were several reasons why it shouldn't be covered if you apply the terms of the policy literally. They decided that while he was in the service, he was not a member of the household and therefore it was a non-owned car. The father's coverage was for his own car under his own policy.

16. This case is *Isaac Island v. Fireman's Fund Indemnity Company*, 30 C. 2d. 541 (1947).



If I drive your car, I'm covered under your policy. I'm also covered under my own. I'm covered for driving not only my own car, but one that's not owned by me. But I'm not covered while driving a non-owned car if it's owned by a member of my household, because if it's owned by a member of my household, the company wants a premium for it. Follow that?

SHARP: Yes.

HARTWICK: If I have two cars that I use, for example, and pay a premium only on one and have an accident with the other, it wouldn't be fair to demand coverage because the insurance company didn't get paid for it. The mere fact that I don't have title to it, if it's in my household and available for my regular use, the risk is the same as if I owned it. So they want a premium for it, or else they don't want to cover it. That's what it was here.

They said that he wasn't a member of the household, he was in the service. He [J.C. Cave, Sr.] wasn't entitled to regular use, because he was only supposed to keep the battery up. So he [J.C. Cave, Sr.] was covered because he was using a non-owned automobile not owned by a member of his household, and not furnished for his regular use. The insurance company has to pay under the non-ownership coverage.

Following this case, there was another. I'll oversimplify this. The young man went to Stanford, and he was driving somebody else's car. Now, if as a serviceman, he was *not* a member of the household, he's not insured under the family auto coverage, while driving a non-owned auto, because the family auto coverage covers as insureds only members of the household. He was living at Stanford. He borrowed somebody's car and got into an accident. He wanted coverage under the family auto policy.

The lawyer for the insurance company said, "Look at *Island v. Fireman's Fund*. The court said a son in the army wasn't a member of the household. The same should be true of a son living at a college.

The court though said, "Well, now, wait a minute. When we decided *Island* against *Fireman's Fund*, we told you that all this stuff was just ambiguous as hell. And if it's ambiguous, we decide against the insurance company. It's still ambiguous in this case. But this time, to decide against the insurance company, we have to say, 'Yes, he is a member of the household.' So since it's ambiguous, we decide against you. We're not married to the result in the *Island* case." That's an oversimplification, but in effect, that's what happened. That is why it is so tough to practice insurance law. [laughs]

SHARP: Have there been changes in laws governing insurance policies that say you must be more explicit in what you write into them?

HARTWICK: Case law. But, it doesn't make any difference how you write it. There's no way that a judge can't say, "I find this ambiguous." And, if he does, he is the man. I can say, "It is not!" He says, "Yes, I think so." And that's the end of it. So what can you do with that? Find "resident of the household" to be ambiguous? Well, in a given context, certainly it can be.

There isn't a single word that you could mention that can't in some context be ambiguous. There is no way of writing a policy that would be free of ambiguity to the extent that a court couldn't find it ambiguous.

SHARP: The other Fireman's Fund case, *Fireman's Fund v. Prudential*, set out the question of the primary insurer.¹⁷ Justice [Mathew] Tobriner had some pretty strong remarks to say about what he called the [reading] "increasingly common situation in which two insurance companies, both having insured against the loss incurred, attempt to construe their respective policies in such a manner that each claims non-liability until the other insurers have paid their full coverage toward the loss."¹⁸ Later on he said that modern insurance law was a "bewildering complexity" of vague clauses.¹⁹

Was there animosity among some of the California Supreme Court justices or in the state supreme court in general against insurance companies because the companies were doing some ambiguous things?

HARTWICK: It's not the ambiguity. The insurance industry, especially in the liability field, had *terrible* public relations, terrible. Everybody was against them, not just judges. When the insurance companies took their own disputes to the courts, particularly for dispute with an insured, it was really an unwise thing to do, because the judges are insureds too. It is going to the enemy to have your case decided. Not uncommonly, a judge would look at a case and say, "Jeez, you mean if this happened to me, I wouldn't be insured?" Necessarily, that is going to have an effect.

Then the idea of public policy was asserted: the idea of having accident victims get compensated. Nine times out of ten, the defendant that is sued doesn't have enough money to pay a judgment, particularly with the large verdicts that come down. The courts seem to feel that it's a matter of public policy and a part of their job to read the policies in a way that gets money over to these people that need it. The idea being to spread the risk through increased premiums among everybody. I think some of the judges even indicated that in some of their opinions. Justice Raymond Peters did, I think. I know that was his attitude.

But to this day, there is a remnant of the old resentment by courts of insurance companies. For example, they don't want to be bothered with disputes between insurers. [The next passage is under seal until 16 September 2005.]

[Transcript resumes] The thing that the *Island* case was important for was what was coverage at all, not the other insurance.

The *Prudential* one, though, was a rather elaborate set of facts. That wasn't just two insurance companies saying who comes in first. It involved an excess policy. The question was whether the excess pays immediately over its primary before the other insurance company comes in.

17. This case is *Fireman's Fund Indemnity Company v. Prudential Assurance Company, Ltd.*, 192 C. A. 2d. 492, 1961.

18. p.493.

19. p.497.

SHARP: The question about who was the primary insurer—was that a typical question to be raised?

HARTWICK: That was really the first of all the liability problems, liability insurance coverage problems, to come up. Initially, when I started practicing, insurance companies never asked lawyers about coverage. They decided that themselves. If they decided it was covered, they sent it to us. They weren't asking our opinions. Then, when these "other insurance" conflicts between companies regarding their "other insurance" problems became common, they weren't able to find in their experience an answer to them.

Actually, there is no logical answer to most of the "other insurance" conflicts except an arbitrary one. You just pick an arbitrary answer and say this is going to be the answer in California. The courts too often didn't do that. They tried to make sense out of them, and they can't. They are in direct conflict. If you enforce one, you're violating the other. If you enforce the other, you're violating the first. What they miss is the fact that the two insurance companies do not agree with each other. They insure two strangers who, under separate policies which policies, fortuitously, wind up both covering the same person being sued.

I mentioned earlier that if I drive your car, your policy covers me when I'm driving it, and my own policy covers me while I'm driving it. Right? But our two insurance companies have had nothing to do with each other. Right? You and I can't say anything that's going to change their policies either, right?

That's where it started, really, because when the business of automobile insurance began, they insured you while you drove your own car, period. Then they thought, "Well, we're really insuring what happens to that car. And besides, there is a new law now that says the owner is going to be liable for the consequences of use by one of his permitted users. So we have to do something to protect the owner there. I guess the simple thing is to insure the permitted user."

So, they offered an endorsement that said, "I'll insure you. If you want this 'omnibus clause' (they called it), for a premium, we'll insure anybody that you permit to use your car."

It wasn't too long before they said, "Well, that's kind of silly. Here we insure somebody that doesn't own the car but drives with the named insured's permission, but we don't insure the named insured when he or she drives somebody else's car."

So, for another premium, you get an endorsement covering you while you drive non-owned cars. We call it a non-ownership coverage now. Those two endorsements became so common that they became part of the standard form.

Right there is where the "other insurance" problem began, because if I were insured in connection with my own car, and I drove yours, I had two policies covering me while I was driving yours: my own non-ownership coverage, and your "permitted user" coverage. So the policies had to contemplate what was going to happen. Now we've expanded coverage. What's going to happen when this situation develops?

So one says, "Well, hell, I'm going to be excess" over the other. The other policy might say, "I don't want to be primary, but I'll pro-rate with other insurance." So you have a pro-rate clause over here, and an excess clause here. If it's excess, the one company doesn't get pro-rate. And if it's pro-rate, the other company doesn't get its excess. So what you really ought to do is pro-rate if the clauses don't fit. That's the logical answer since you can't enforce either clause you should ignore both and wind up with co-insurers.

But the courts tried to come to a more logical solution to this illogical problem. Each state had a different result—that's why I use those two clauses. From them there were a whole variety of clauses developed. Some would say, "We'll be excess, only to the extent that my limits exceed yours. And, if they don't exceed yours, we don't pay anything." All kinds of things were tried. That's where the lawyers started getting into it.

SHARP: I can see why a lot of lawyers wouldn't want to touch insurance coverage questions, just because they are so knotty.

HARTWICK: It has developed now into a very sophisticated field, because the insurance business itself has become sophisticated. It's involved in everything. Coverage questions have just become so varied.

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Notes on Diversity Jurisdiction

SHARP: The *Zellmer v. Acme Brewing Company* case looks like a typical diversity case.²⁰ The facts aren't particularly complicated. I thought we might talk about some of the problems that diversity cases bring. The court has to accept the laws of the state in which the case is tried?

HARTWICK: If it is a pure diversity case, that's right, but there may be two sets of state laws involved. Sometimes there are; sometimes there aren't.

You see, if there is a problem as to which state's law applies, the federal court will apply the law applicable to conflicts of law rule of the state in which it sits—in this case, California. It will use California's rules regarding conflicts of law to resolve the conflict of law issue. But that's not the only issue in the case.

This was one of the few—what year—in fact, 1950. I thought it would be in the forties. This is one of the last of the truly academic issues that I had in an appellate court.

SHARP: Do you mean academic issue because of the law in Nevada?

20. *Zellmer v. Acme Brewing Co.*, 184 F 2d. 940, 1950.

HARTWICK: Pure law—no. This was a problem of pure academic law, which the judges are now kind of restive about. They are more interested in doing justice in the particular case. They don't want to be bound by rules. The old cliché is that ours is a government of laws rather than men. That is, the courts must apply the law, rather than the judges' own attitude toward the case. I think the cliché is better than giving judges freedom to exercise their own conceptions of "justice."

The real issue in this case was recognition of the essential nature of a wrongful death action. At common law, there was no right to sue for wrongful death because whatever such right existed died with the man who died. That was the end of it. The states decided that that was not really right; that his heirs lost something. So they all, by statute, created this right to sue for wrongful death. If I were to strike you, you could sue me for assault and battery. You could sue me for assault and battery by common law back in 1542, based on all these old theories. Those "causes of action" existed, but wrongful death didn't. So it now exists by virtue of statute.

The purpose of a limitations period is to prevent a man from suing after a case becomes stale and it is difficult for a defendant to defend. However, that's a procedural thing. You still have a "cause of action," but the defendant can resist it by raising the defense of the statute of limitations. If he fails to do so, you may go forward to judgment. But, a wrongful death statute often says—I'll oversimplify this, too—"If you bring your lawsuit within a year, then we'll say that you may sue for wrongful death." It's a limitation on the *right*, rather than on the remedy. The former can be waived; the latter cannot.

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That was the issue. You always worry—even in the 1950s—you worried if the court was going to accept something as artificial as this. It was very real when I was in law school—to me it was real.

The plaintiff in this case tried to *extend* the limitations period in California because he argued that the suit could be brought as a *matter of right* in Nevada in two years. The court disagreed. You might be right, Sarah, that if it had been filed in Nevada within two years, it might have gone to trial.

SHARP: This case seemed a pretty clear demonstration of a diversity problem. The state in which the federal court is situated, those laws govern the case that is brought in a diversity situation.

HARTWICK: The law of the forum governs matters of procedure. The law where it happened governs matter of substance. That's the general rule. Now that has gotten a little fuzzy these days. It's just so easy these days to go to Nevada or New York. You don't have the problem that you used to have with jurisdiction and conflicts of law, because it doesn't mean that much. Travel in the United States isn't the burden it used to be.

The old rule was that in tort cases the law of the state in which the accident happened, governs the case. That was almost absolute! But, suppose you have a flight originating in New York to land in California, and the plane

crashes in Wyoming. Obviously, who the hell wants to go all the way to Wyoming for the lawsuit? The plaintiffs weren't even going there! So that started the change in conflicts of law rules.

Now, they say the law of the state in which most "contacts" exist will govern. Heck, but that's up for grabs.

SHARP: So diversity law has gotten just as complicated as all the other kinds of law?

HARTWICK: The conflict of laws rules that are applied by a federal court in a diversity case have become complicated, yes. But, the diversity itself is not a significant issue, if you sit in the different states. They're going to stop that soon, I think.

The reason for permitting lawsuits between citizens of different states to go into the federal court was because they were afraid of the effect on the case of the fact that one guy was a citizen of the state and the other wasn't.

SHARP: The court might be prejudiced against the foreign citizen?

HARTWICK: Or the jury. But that has become practically meaningless. I wouldn't be surprised if before I retire that they don't eliminate that as a basis of federal jurisdiction. There has been talk about it for some time. The federal courts are overloaded anyway, and I would be surprised if they would not be delighted to cut down some of their jurisdiction.

SHARP: Would some corporations be much happier in a federal court? Would they look to find some sort of diversity issue?

HARTWICK: It varies. There are several things you consider. One is if you have a jury, it has to be unanimous in the federal court. In the state court it's nine out of twelve. If you are a defendant and you have got a tough case, that's significant.

The second thing is you are going to take a look at the judges. In any district they vary in competence and in attitude and—prejudice is the wrong word. There isn't a human being alive that doesn't have some degree of—when I say prejudice I'm not talking about racial or sex prejudice, or any of that stuff. Conservative, liberal, or whatever. Or your attitude toward an antitrust problem. You would want to consider that, too. You can't speak about taking a case to the federal court just as though you were any place in the United States. That decision would vary from district to district.

SHARP: That's a myth that you just wiped out.

HARTWICK: It used to be pretty generally accepted that you would consider the federal court to be more conservative. You probably read about the old "blue ribbon" juries. The jury panels were selected from people generally at a higher economic level than the average panel in the state courts. That was eliminated, oh hell, fifteen, twenty years ago. The blue ribbon jury doesn't exist anymore.

SHARP: Was that because of the 1968 Federal Jury Selection and Service Act?²¹

HARTWICK: I honestly can't remember how we did it.

The Issue of the Common Carrier

SHARP: The next case is *Shackelford v. Mission Taxicabs Company*, in which you represented the taxi company.²²

HARTWICK: Yes. That one really wasn't much of a case.

SHARP: It didn't seem that interesting either, but I did wonder about headnote 3, that talked about a California law regarding common carriers and civil negligence cases. As I understood it, the negligence was inferred and that the proof was on the defendant. I wondered about that law and where it came from.

HARTWICK: Well, a common carrier—let me read what the report says. You know, the headnotes are not always as accurate as they might be. A common carrier is subject to a different degree of care than you and I. A common carrier must exercise the highest degree of care, *utmost* care. I don't remember at this time if they used to phrase it in terms of shifting the burden of proof.

SHARP: It seemed like a taxicab driver would be going into court with two or three strikes against him.

HARTWICK: In actual fact, he is anyway. Everybody has the same attitude toward taxicab drivers except taxicab drivers and their families!

SHARP: Do you know where that law came from?

HARTWICK: It comes from the one I just told you, the fact that as to their passengers, they are a common carrier. They, trains, streetcars, airplanes, ski lifts, must exercise the highest degree of care, the utmost care. In effect what they are saying, is that the fact that there was an accident in and of itself gives rise to an inference that he didn't exercise the utmost degree of care. That's how they get that burden of proof thing. By the way, if you have evidence, an inference on something, the inference itself is evidence.

SHARP: Is that an old law?

HARTWICK: The highest degree of care is old, yes. I guess it originated with ships. There is nothing you can do if you are a passenger; you are at their mercy.

SHARP: Why was this case in a district court?

21. The 1968 Federal Jury Selection and Service Act eliminated the key man procedure and required that jurors be randomly selected from voter registration lists.

22. *Shackelford v. Mission Taxicab Company, Inc.*, 224 F. 2d. 857, 1955.

HARTWICK: Mike Roche was the district court judge here. It was a difficult appeal for plaintiff to win. You see, you take only your legal arguments to the appellate court. The facts are all fixed in the trial court. It's just like reading a case in law school. When we write a brief on appeal, we say, "Here are the facts." If we are appellant, we have to recite those facts in the most favorable light, most favorable to the winner, the respondent. On the inferences, we have to say, "Yes. We have to accept that now as fact. It isn't true, but we have to concede it."

The appellate court looks at this fixed set of facts, and applies whatever it decides as to the legal arguments raised. They won't review those facts unless they are so patently wrong that no significant evidence exists to support them.

As a matter of fact, you can see here the court says [quotes from decision], "The question...is not whether we would have drawn from the same inference [if we had seen the taxi driver and heard his testimony]. Certainly the findings of the trial judge are not 'clearly erroneous'

I don't remember the lawyers on the other side.²⁴ But, that was a winner going all the way, I think.

Roy Bronson

SHARP: Is there something else you would like to cover today?

HARTWICK: I thought I would tell you something about Roy [Bronson]. You have asked me about lawyers and business. One of the things we try to teach the younger lawyers in the office is, you don't satisfy yourself that you have accomplished everything if all you have done is made certain that—in a contract, for example—you have preserved your client's "rights." Just to make certain that you can win any litigation over the contract is not enough. The idea is not to do merely that. It is to accomplish his purpose in the deal.

Let me give you a simple example. Suppose you have a large piece of property and you have a loan against it from an individual. You want to be able to pay money in and get release of the lien in five years' time. You should make it possible for the borrower (your client) to make payments into escrow which will release portions of the property from the lien so that he may sell such released portions. It is not enough to give him the "right" to do this; it should be done *automatically* through escrow. The lender agrees in advance with the escrow agent that when you pay the money, it has to give you the release. You make it self-executing.

That's a very simple example of what you should try to accomplish for your client—not get him his legal rights, but fix it so it's self-executing, and it gets him what he wants without problem, without an argument, without equivocation.

23. Opinion of Chief Judge William Denman, p.859.

24. Rockwell and Fulkerson, Harold J. Fulkerson, San Rafael, California.

Now in Roy's day it was a lot easier to do that, because when we told someone what the law was, we knew it was the law. Today, we don't know until some judge finally says, "That's it, Bud."

SHARP: You have talked before about what you call judge-made law.

HARTWICK: There's more judicial legislation now than there is legislation of significance from Sacramento.

The Topic of Antitrust

SHARP: We can get into this later, but I have talked to some other people about anti-trust law. Now there aren't that many antitrust laws that the federal judges have to work with. The Sherman and the Clayton Acts are written vaguely enough that the judge then has quite a bit of freedom in interpreting the specific case within those two laws, and all the precedents that may have come before. I wonder a lot about how lawyers try to understand what is happening.

HARTWICK: Antitrust is a world of its own, and fortunately, I haven't had much to do with it in the last few years. When I was younger, I would get into it, but I haven't had anything to do with it for a long time. When those cases go to trial—and they rarely do because they're usually settled—you are looking at five months to nine, ten years as in the case of IBM. Every one of the rules are applied or not applied, depending upon the government's evaluation. You can even stipulate to a lot of facts and have a decision either way on admitted facts.

A company like IBM has developed a field that probably wouldn't otherwise have been developed except for their strength.

Bigness isn't bad because it is big. A lot of people think it is. But if you don't have bigness, you are not going to have the kind of progress that we have seen certainly in the computer field and in the electronics field. It can't be financed by smaller people. It all comes from pure scientific research, really. It doesn't come so much from "find something to fit this particular problem we have over here." That happens too. But your big advances come from the pure research. At least you see it is a problem that you can argue about.

##

The Law of The Alcoholic Beverage Industry: Sample Cases and General Thoughts

Background on Schenley###

SHARP: Could you give me some background on Schenley? They must have come just before you did.

HARTWICK: Almost about the same time. It was in '41, I think, when our work for Schenley really expanded because they came out heavily into the wine market here and real estate transactions. Alcoholic beverage business is a highly, highly regulated business.

SHARP: That changed quite a bit in the fifties, from what I could tell.

HARTWICK: Yes, there got to be more all the time.

SHARP: Did it change during World War II, too? The regulation of the sale of alcohol?

HARTWICK: I don't know. I was in the service for three to three and a half years, and a lot happened to our legal system during that time. It was almost like starting all over again when I came back in '45 or '46—I've forgotten. I don't think the law has changed so much since.

It was a seller's market during the war, you know. There was very little booze available. Some producers anticipated that their alcohol would be going into industrial alcohol, so there was a shortage of beverage alcohol and they sold all they could make. That's why Schenley went into the wine business. You have to have a tremendous amount of capital to operate a distilled spirits beverage business, because you have to bond against a tax of \$10 a gallon on that stuff. Prior to the war, a gallon of good whiskey was only worth about \$1. They had to bond against \$10.

With that kind of capital, if you are not making whiskey, you had better put it to work. The distillers bought a significant section of the wine production of the state of California, to keep the capital working and provide at least some alcoholic beverages. And we did it fast, too.

SHARP: I would like to ask you more questions about that, because that role of a law firm in assisting in the acquisition of other companies by one company or corporation is a role that really needs to be documented, so that we have a sense of what the lawyer and his firm were doing.

HARTWICK: It was a lot easier then. You made an offer to a company, and you bought it, got your title and everything in. The biggest problem would be the seller's tax problem. Today you have to worry about all kinds of bureaucratic things that just didn't exist then.

Today I wouldn't be handling a matter like that. There are so many things that you now have to consider, that again, it has become a separate area. If you don't work in it, you will have to get assistance [from lawyers].

SHARP: Now, I have two other things to show you, which you can keep. They are listings of Bronson cases, appeals cases, federal and state, off Lexis. I wondered if you could take the time—not now, necessarily—but at some point, go through them and see if you can pick out any of what you know were your cases, so that I can get the record, and we can talk about them.

HARTWICK: I had a habit of not putting my name on the appeals that I handled. I did in the federal court, because they required it. But otherwise I always just put Bronson, Bronson and McKinnon down. So until later when it became almost, if not required practice, a standard practice, I just didn't put my name down. I didn't think it mattered a hell of a lot to the appeal! [laughs]

SHARP: Okay. Do you think you would remember some of those which you handled?

HARTWICK: Oh, sure.

Harris v. Alcoholic Beverage Control Appeals Board

[Date of Interview: October 2, 1980]##

SHARP: When I began to piece together the different Schenley cases—the ones I gave you this morning and the ones I didn't get to ask you about the last time because we ran out of time—²⁵ they gave me some sense of the kinds of legal questions that Schenley got into from the 1950s onward. Yet I realize they're

25. The reader might like to see *Schenley Distillers Corporation v. Compania Engraw Commercial E. Industrial S.A.*, 181 F. 2d 876, 1950; *Anglo California National Bank of San Francisco v. Schenley Industries, Inc.*, 215 F. 2d, 1954 (From *In re Hedgeside Distillery Corp.*, 123 F. Supp. 933, 1952); and, *Monarch Wine Company, Inc. v. Citizens National Trust and Savings Bank of Los Angeles*, 44 C. 2d 401, 1955. These cases, along with the ones discussed in the next few pages, show some of the complexities of the recent law of the alcoholic beverage industry.

certainly only part of the picture that you would be able to give me.

I thought what we might do is just go through these three Schenley cases, and then we'll get on to what you might consider to be more interesting questions.

The first one is the case in 1964, *Harris v. Alcoholic Beverage Control Appeals Board*.²⁶ 26. Could you just maybe briefly tell me what you saw going on in this case?

HARTWICK: From the legal standpoint, as you just said, you see one thing, and, even our job is limited to presenting a case to the court within the framework of the law. The reasons for a law, and the reasons for one member of the industry being in favor of strict enforcement of a law, and another member in the same industry being against it, are all outside of what is talked about and argued about in the case itself, for the most part. Of course, the business reasons were not always known to me as to why a client would want a particular position instead of another, or why Seagram's would want one thing and Schenley another. They had different ways of merchandising. Seagram's, of course, is the biggest seller of distilled spirits in the world. They had established brands and they would use one way of marketing; whereas somebody that was trying to move in to, say, a share of the same market might well use another. Whether that was true in these cases or not, I don't know.

These cases all involved, in one way or another, the problems of how the industry worked within itself, how competition was either to be fostered or restricted, and how trade practices were to be governed.

I read many times that as a result of some intense activity on the part of Arthur Samish, who was a very famous lobbyist, (I don't know that of my own knowledge; I read it) California adopted what they call the three-level system. A distiller of distilled spirits must sell to wholesalers. He may not sell to retailers. A wholesaler may sell only to retailers, he may not sell to consumers, and the retailer can only sell to consumers.

Objectively, it is pretty hard to say why that is good for the public. On the other hand, the law was attacked on a number of occasions, and its constitutionality was upheld. As you probably know, when Prohibition was repealed, the Twenty-first Amendment [to the federal constitution] was worded in a way that gives the states much more control over the business of dealing in alcoholic beverages than the states have in other fields. So this three-level system was put in and, to oversimplify the thing, there were some exceptions to it. The point of them, obviously, was if the legislature was going to vote for this kind of a thing, what about our big California brandy production? Do we want to hamstring our own producers? So there are some exceptions. If distilled spirits were manufactured in California, you could sell them direct to retailers, which, again, makes the whole program look a little unfair.

SHARP: Because of the special situation they were giving to certain distillers?

HARTWICK: Sure. There were some strong wholesalers here who also, I think, had distilled spirits operations outside the state. Park and Tilford [Distillers Corporation] was one of them.

So the second exception was that anybody who had been engaged in the wholesale business for a certain number of years prior to the act, and whose principal business was not necessarily distilled spirits—Park and Tilford, McKesson and Robbins all fitted that—could continue to both distill spirits outside the state and nevertheless hold a wholesale license.

Schenley acquired Park and Tilford, acquired all its stock. For several years, Park and Tilford continued as a subsidiary of Schenley and did business in the same way it always had, with its own Park and Tilford brands. Then Schenley decided it didn't want Park and Tilford as a separate subsidiary, and merged it into Schenley. Then things started happening.

There was a challenge made to the existence of these wholesale licenses which Park and Tilford held. The Department of Alcoholic Beverage Control challenged Schenley's rights to hold the license as the surviving company. Of course, it was unthinkable that big Schenley should have a wholesale license. So the department, which also felt that the law was being avoided if Schenley were to be issued the license, refused to issue the license, and instituted proceedings to revoke it. Bear in mind California was and is a big market for distilled spirits.

I went to a hearing before the hearing officer and was successful. I also won before the Alcoholic Beverage Appeals Board. I don't think we went to the superior court. I think we went direct to the court of appeals. We won it there. We got to the last stop, the state supreme court. My first loss was there, but it was the last one that counted. Oddly enough, it was unanimously my way all the way up there, and there, it was unanimous against me. But if you add them all up, I think I came out on a numerical basis. [laughter]

SHARP: What did this decision mean for Schenley, then?

HARTWICK: Well, they lost the advantage they would have had in selling Park and Tilford products direct to retailers. But, you see, I think the wholesalers wouldn't want that. And, I think the other distillers didn't want us to have it either. That's pretty much self-evident. I'm not saying any group or individual had any responsibility for this proceeding. The Department [of Alcoholic Beverage Control] did it on its own, but it had a lot of sympathy.

SHARP: One of the things I found interesting about the decision was Judge Paul Peek talking about what he saw as the legislative intent. I wondered if that made a lot of problems in terms of the state supreme court saying, "This is what we think the legislature had in mind?"

HARTWICK: Well, of course, that is their job, to determine what the purpose of the legislation is. But, finding legislative intent within the concept of public policy and public welfare for a law like this, becomes pretty unreal.

For example, they used public policy supporting compulsory fair trade laws in sales of alcoholic beverage, the idea that it is supposed to promote temperance. That's ridiculous! But that's the only statement that was ever

made to support that law. It was there because I think certain segments of the industry wanted it. It is as simple as that.

Well, the same thing here. The court has to say something about legislative intent and whether it is acceptable.

SHARP: That has to be part of the decision. That's the only reasoning that they can go on.

HARTWICK: If they are going to rule against you. They have already held the system constitutional. So that part is past them. Now the question is about a merger, which was outside the literal language of the statute, whether or not the intent behind the statute should call for them to withhold a license in order to carry out the legislature's intent in passing the law.

If you're sitting on the state supreme court, and you take a look at this, "Here's Schenley. It's either number two or number three in size. It would be wrong to give them this kind of competitive advantage," just more than they felt was right. Either everybody should have it or none of the three or four big ones should have it—and of course, nobody as big as Schenley up to that time had had it. On the other hand, before the merger, Schenley had exercised the privilege through Park and Tilford for about four or five years, and nothing bad had happened.

SHARP: This case seems to show some conflict between the ideas of the ABC Appeals Board and the department itself. I wondered if this case was typical of the kinds of conflicts that they had, say, in the 1960s?

HARTWICK: I think probably not. Probably not. But the appeals board was an independent group, and they functioned pretty much as independently as a regular court would. They weren't an instrument of the department in any sense of the word. That's pretty much true of the hearing officers, too. The hearing officers were pretty objective. It has been a long time since I have been out there, but in the three or four things that I handled before the hearing officers, I received very objective and fair treatment from them.

SHARP: Did you note any other kinds of conflicts between the department and the appeals board itself?

HARTWICK: The appeals board, of course, came along around halfway through my career in this kind of stuff. The most recent of the Schenley cases you mentioned we won before the appeals board, too.

SHARP: That is the 1971 case?²⁷

HARTWICK: Yes.

SHARP: Let's talk about that. That was a real interesting case.

27. *Schenley Affiliated Brands Corp., et al v. Edward J. Kirby, et al.*, 21 C. A. 3d 177, 1971.

HARTWICK: Well, that was the second time around on that issue.

SHARP: Did it seem to you that the appeals board and the department might have had different goals in mind in terms of regulating the alcoholic beverage industry? Is that what is shown?

HARTWICK: No, I think they were just trying to enforce the law as they saw it.

Schenley v. Munro

SHARP: The next case is the 1965 *Schenley v. Munro* which involved the enforcement of Rule 100 of the ABC.²⁸ This rule regulated the amount of a discount which might be given on quantity sales of distilled spirits—at least that's the understanding that I got. Judge James R. Agee seemed to accept Schenley's argument that as written was an unlawful assumption of legislative power by an administrative agency.

HARTWICK: Right.

SHARP: Tell me how you saw this case. I want to contrast it with the *Schenley v. Kirby*, which also involved Rule 100.

HARTWICK: This rule was a real direct attack on something that the department apparently had long wanted to do, and continued to want to do. At that time, and until very recently, all prices were controlled right on down through, to the consumer, and the control was, in effect, mandated by law. Not the amount, but a price had to be chosen and maintained, and there couldn't be any discrimination between buyers at the various levels. The distiller would sell to its wholesalers, but its wholesalers had to post the price at which they would sell to the retailers. The retailers were subject to a mandatory fair trade contract so the price to consumers for each brand was fixed. All those prices would be fixed by the distillers.

One of the several ways of marketing is to give discounts. It is argued that discounts have to bear some relation to savings in cost of distribution. Discounts of wholesale sales had to be posted also. Discounting became a rather sophisticated practice, because they weren't limited to just one brand. You could get mixed case discounts, too.

In any event, some of the strong producers didn't like discounts. They would rather spend their promotion money for advertising and things like that. Others would like to give deeper discounts in order to get the product moving and get some push at the retail level.

Discounts were particularly critical to bars. Regarding the bar whiskey—if they couldn't buy that cheaper, they had to reduce the size of the drinks or increase the price of a drink. We were getting to the point where if bars were going to stay in business, they couldn't do either. So a discount was to them

28. *Schenley Industries, Inc. et al. v. Russell S. Munro*, 237 C. A. 2d 106, 1965.

very, very important.

Schenley's marketing favored the discount practice, and they didn't want this rule amended either to limit or to prohibit quantity discounts. I think the rule in the *Munro* case (and also in the later *Kirby* case) would have amounted pretty much to a prohibition. In any event, it would have had a very serious effect on the kind of discounting practices you could engage in.

We went directly into superior court to get an injunction to have it determined that the rule was beyond his power. My recollection is that in the *Munro* case we got the injunction in trial court. I can't remember now the history of it. I think we got a final injunction, or the director appealed from the preliminary one. But, it did go up, and we succeeded in the appellate court. The rule really would have harmed some of the little people in the business. I think that had its effect on the court.

SHARP: So the effect of winning this case for Schenley was that it allowed it to continue its discounting practices that it used.

HARTWICK: That marketing tool.

Schenley v. Kirby

SHARP: In this later case, in 1971, in *Schenley v. Kirby*, they refer to the amending of Rule 100 which occurred in 1970. Here it comes again, and Schenley is involved.

HARTWICK: Yes, the department tried to do the same thing in a different way. It was much more complicated, the rule as amended. Actually, it was unintelligible. I wrote the department saying, "I have been asked to give advice as to what this rule is meant to accomplish, and what you can and cannot do under it." I said, "I can't give the advice because I can't understand it!"

The department, I was told, had a big meeting up in Sacramento and the rule was redrafted. It was just as bad when they redrafted it as it had been before.

Yes. [looks through documents] We filed in the superior court in Sacramento. There was a real problem. At the same time we filed there, we prepared also a writ which would be filed in the court of appeals. The reason was that between these two cases (the *Munro* and *Kirby* cases), the legislature had decided that they were going to restrict the superior court in connection with challenges to action taken by the department. Particularly, the reason was at that time, the fair trade law was still in effect. The purpose of direct review by the appellate court was, I think, because fair trade violation cases would take years to be finally determined. The department, I think, got the legislature to just skip superior court and go direct on all these cases to the court of appeals.

There was some problem about whether this new procedural statute applied to what we were doing. The superior court held that it did, and dismissed our petition. The very next day, we filed in the district court of

appeal, which took it on and agreed with the superior court that that was where our case belonged. Even the court didn't understand the damn rule. They didn't say that in their opinion, but they did during argument. Once you got rid of the complexity of the whole thing, all the junk, and saw what the purpose was, you were right back to *Schenley v. Munro* in a more complicated format.

Again, the decision was a help to the little business people too. It would have benefited one part of the industry that didn't like merchandising that way, because it cost too much money. Some would rather spend the money on advertising—I'm guessing now from my function of just witnessing—as against the practice of cutting its margin by discounts.

SHARP: I had trouble understanding the decision in *Schenley v. Kirby* because of the way it was written, I think. As I read the decision, the court restrained enforcement of two subdivisions of (f)(3) and (f)(4) of Rule 100. But (f)(4) referred to the tie-in arrangement. In one part of the decision, on page 190, Judge Leonard Friedman talked about the tie-in agreement and seemed to say that that was bad.²⁹ But at the end, he restrained enforcement of that subdivision anyway. I couldn't figure out why they did that.

HARTWICK: Almost every statute, and certainly any statute or any regulation as complicated as this one, has a severability clause. It says in effect that, "If any part of this regulation or statute is deemed to be invalid, the rest shall be enforced." Those clauses are good only if the overall scheme makes sense with what's left after you have taken the invalid stuff out. As I say, this court had the same problem with that statute that I personally had. It was very difficult to understand what the devil would result from enforcement of the thing. The court took a look at the thing and said, "You have got power to do this one thing, but when this stands alone in the absence of all the rest, it doesn't make much sense, so we are just going to knock out the whole rule." The department did have a severability clause in there, I'm sure.

SHARP: Yes, it did. It was at the end.

Why do you think Rule 100 was written to make it such a problem?

HARTWICK: Because of the prior cases. It was to avoid it being categorized as or deemed to be a price-fixing device.

SHARP: So the impact of this case for *Schenley* was the same as it had been in the earlier cases?

HARTWICK: The same general one, yes.

SHARP: It was interesting to see the amicus brief by the California Grocer's Association. That brief was sent because that was where the liquor would be sold, is that right?

29. 21 C. A. 3d 190.

HARTWICK: Oh, yes. I don't know this, but I think that the wholesalers didn't like discounts either. I suppose because maybe they participated in the reduction of the margin along with the manufacturer—I don't know that. But the wholesalers would just as soon not have discounts, I think. But, the retailers—boy, to some of them, it was life or death. They couldn't buy in the quantities, say, that Safeway could buy. Safeway could buy a 250-case lot. They could buy only in 10-case lots. Schenley discounts might go down to 2-case, but there would be bigger discounts on 250 cases. Since Safeway had to sell at the same price as the little guy had to sell, it didn't make any difference.

The question was, "Am I, the little guy, willing to give up my \$5 discounts for my 2-case purchases just because I can then stop Safeway from getting a \$100 discount (or whatever) on 250 cases?" That's kind of cutting off your nose to spite your face, because Safeway can't legally undersell him anyway.

Another thing that the rule did—this may have been the one before, but I think it was this one, pretty sure—they wanted to prohibit—either prohibit or require, I've forgotten now—the single delivery of the 250 cases to the big buyer. Either make a single delivery out of it and prevent delivery to the various stores, or make delivery to the right source. I've forgotten which way it went. In the case of Safeway, big retailers, I think you delivered to a central place anyway. But with some of the big liquor retailers, I think it was different.

SHARP: A few of these cases also mention Section 22 of Article XX of the California state constitution, especially with respect to what the ABC could and could not do. I wondered if this section seemed to come up in every ABC case that you worked on?

HARTWICK: To some extent. The Department of Alcoholic Beverage Control is a constitutional agency. It's now awfully dim in my mind, but there was a time when the department felt that the language of the constitution was such that there were certainly things it could do that the legislature could not control.

SHARP: Section 22 is written pretty vaguely.

HARTWICK: Yes. But the department long ago took the position that when it did something, whether or not it was beyond the function of the rule-making power of an ordinary administrative agency, it had special constitutional powers which the legislature could not control.

Alcoholic Beverage Industry Law and Government Regulation

SHARP: Did you have similar cases to these three with your other liquor industry clients: Roma, Cresta Blanca, and Pabst?

HARTWICK: Pabst I didn't have—it was Blatz. They were affiliated with Schenley. I didn't do any work for Pabst, but the office might have at one time. They were not a regular client that I can remember. I think Pabst bought Blatz ultimately.

As far as your question goes, I did a lot of work for Roma. It wasn't just liquor-related matters. Fresno, for example, always wanted to include the plant with the city of Fresno limits. It was always considering annexation of the area in which the plant was located. There were always problems with city sewage charges and all kinds of things. The plant used so much water, and the sewage charge is based on the amount of water you buy. Those problems were pretty extensive things. We had a lot of work to do substantively across the board for them.

And, too, they had tremendous vineyards at one time.

SHARP: This is Roma?

HARTWICK: Yes. Toward the end, it got down to 5000 acres, but they had a great deal more than that in the early days. There was always something doing. They had another winery down there at Kingsburg, which was a sizable operation. We finally sold that. I have forgotten who bought it.

The wine industry, as you know, historically has been up and down. Now it's up. It looks now as though it's never going to go down again!

SHARP: Were these cases—the ones that we have talked about today—typical of the legal problems that distillers and other liquor industry participants have?

HARTWICK: My guess is that within the business itself, the kinds of subject matter of these three cases that you brought in, are not day to day matters. These are not usual in administrative law. It's very difficult to knock out a rule adopted by an administrative agency, extremely difficult. It's one of the toughest lawsuits you can have.

As I say, we, as advocates, were helped in these cases by the effect that such a ruling would have on the people who ultimately benefited by discounts as against what would finally be accomplished by the department and be desirable to another segment of the industry. That was very helpful in getting the court to agree with our evaluation of these things.

But normally, a court doesn't like to second-guess an administrative agency. They assume that the expertise is down there, and there may be reasons that they're not even aware of that aren't legal reasons, but yet have significance. They say, "Well, we'll leave this decision where it was made." That's the normal result of attacks on administrative actions.

Someday, I think, it's not going to be that way, because the administrative agencies, state and federal, have taken much too much power upon themselves. They exercise power way beyond any that was contemplated when they were formed. They tend now to forget the ultimate purpose to be served by their existence, and become enforcers of the letter of the thing that created them. Without regard to the consequences of their enforcement, whether it's doing good or bad, they just go ahead blindly and enforce the letter of the statute and rules in disregard of the purpose to be served.

I can remember there was a hell of a battle about whether a liquor retailer could give customers free ice. That was a big, big thing to the department, because there is a law that says a retailer can't give anything of value in connection with the sale of liquor.

SHARP: Because it promotes intemperance?

HARTWICK: Well, whatever. I think the reason really is neither the manufacturers nor the wholesalers wanted to have to do what was done in pre-Prohibition days, that is, set a customer up in business. They didn't want to have to spend all that capital. I think that's why the statute existed. But imagine the lack of understanding of purpose when you talk about giving away free ice! It's different if you give them a bottle of Chivas Regal if he buys a case of Glenlivet. That's bribing somebody; that's selling below the retail price and that's against the substance of the law. That's the purpose of the rule: to prevent evasion of fair trade prices. Actually, people get paid by us to make a big deal of giving ice away!

SHARP: This increasing power that administrative agencies have taken upon themselves may open them up to more attacks by the state courts?

HARTWICK: Yes. You find examples like the ice matter throughout, bureaucracy, just throughout. Without reference to the significance of what they are doing, they just go ahead and—ah, well.

SHARP: I think the public tends perhaps to focus more on the legislature than they do administrative agencies.

HARTWICK: And yet business in general is run by the administrators. That's what runs it and as a result, determines what happens to the public in general. I don't know if I told you this. There was a man who had been a successful farmer. He had been very successful, and he retired with, I don't know, a significant amount of money, maybe \$1,000,000. He had a dream. He was sure that he could make some of the wasteland in Nevada—whether it was northern Nevada I can't remember—productive. He wanted to raise money to put the plan into effect. When we told him what it would cost to do that, he just gave up. I don't mean costs in legal fees only. He had to go to the SEC [Securities and Exchange Commission] and comply with the blue sky laws in every state (except Nevada) in those days, where he wanted to sell anything. He said, "Look, I only want to do a little thing. I want to do something good! I'm not going to make any money out of this."

SHARP: But he was prevented because of all the network that he had to go through?

HARTWICK: Sure. Now, the justification for that is that by making it hard to do these things, we stop the crooks. It looks like they also stop some guys who want to do something good. I realize that you can't pick and choose without being unfair to somebody. But, you get to the point where what you are trying to prevent is less serious than the bad things you are doing in the course of prevention.

Besides, there are a lot of things you can't prevent. You can have your rules and everything, but there's no way you can stop burglaries. You can put them in jail after you catch them. You can have a rule against them, which we have. It doesn't stop them, it just punishes the ones you catch. It would be more effective to punish the manipulators and let the decent guys proceed with their programs. You are not going to stop crooks anyway.

The SEC is becoming a police force in respect to the things that do happen, but with power to prevent good things from going forward. I mean the preventative function of the SEC isn't where the abuse is. The abuse comes after they say, "Okay." Getting an okay is a very costly thing, but it doesn't prevent wrongdoing.

5

Notes on Other Interesting Clients

SHARP: I wanted to ask you about some of the other clients that you mentioned in the first meeting that we had. You said that one of your more interesting clients was First California Company. I wondered if you could just briefly tell me what sort of firm you see them having been.

HARTWICK: They were a very aggressive sales operation in securities. They did some investment banking, too. There were a variety of problems that we were called upon to help with. This was the thing that made it interesting. If they underwrote a given issue, for example, and if the company didn't do well initially, it would be a matter of great concern to them. So they would want to do something to help the company along, and we would get involved in their efforts to do that. As I say, the variety of problems was the thing that made them fun to work for. They were good people, too. Very entertaining personalities.

SHARP: Why was the work so creative? Because it was new work for a lawyer to do?

HARTWICK: Well, no. For me it was. See, that happened after I came back from the army. Prior to that time, I don't know that we had any securities clients, any brokers. Roy Bronson formed First California Company while I was away. So, when I came back, it was one of our good clients. I wound up doing a lot of work for them.

Of course, I have always done a lot of work within the litigation field here. Not that I have litigated myself—I have never done any jury work. My court work has always been non-jury stuff and administrative law. But, I have always been active in the office within the litigation group, on the insurance and financial stuff. In those days, that took, I guess, more of my time, because I did appellate work, too.

You see, prior to my getting into the army, you didn't have the real sophistication in the specialties that you had by the time I got out of the service. I even did tax work before the war [World War II]. I can't do my own tax returns now, and it's not a very difficult one to do.

When Schenley came out here in '42 and bought a significant percentage of California wine production capacity, I wrote the opinion on the tax consequences. Today, I wouldn't be able even to approach that problem. We did labor work. We did a little bit of everything, and you could. But now those things have all become specialties. Even the insurance coverage I did then, and now, is pretty much a specialty.

SHARP: Yes, that is what I thought from what you were telling me last time about the different specialties. What were the most obvious duties for lawyers dealing with investment firms like FCC?

HARTWICK: Of course, you had to know securities law. As I say, in those days it wasn't nearly as complicated as it is now. There would be sales practices. The regulation of the securities business has become a very, very extensive thing too.

There are so many practices within the industry that the company itself is responsible for, even though it is done by one of their people who was violating one of the company rules. They will still be held accountable for failure to exercise adequate supervision even though their own rules were violated. If you have an extensive sales force, there is no way you can supervise every individual man with respect to every individual account that he handles. There's just no way you can do it. But the theory is: somebody responsible has to be made accountable for failure of these people to do what they should be doing.

The most common thing that occurs is a thing called churning. Companies really work hard to avoid having one of their employees churn an account. Churning means to turn over a transaction merely for the purpose of earning a commission. If there's a lot of activity in a particular account, right away you are supposed to look at it and say, "Hey, what the hell goes on here? Why did you sell this and buy this? It's one bond for another, and if they are both rated the same, they will pay the same."

When that happens, if you don't catch it early, you will have a proceeding against the company before the NASD [National Association of Securities Dealers], the SEC can proceed, all kinds of things can happen.

That's only one of a number of trade practices that you get trapped in in that business. Then, too, one of the underlying problems is the tremendous amount of paperwork involved.

SHARP: The lawyer has to interpret SEC regulations as far as underwriting, and monitor the situation so that the company who is doing the underwriting does all the right things at the right time?

HARTWICK: Now the lawyer has some independent responsibility. As far as the SEC is concerned, he's supposed to exercise something called "due diligence" to determine not only that he has done his job well, but that just about everybody else has. For a lawyer to say Arthur Andersen, or Price Waterhouse [and

Company] have or have not made a mistake is ridiculous; most lawyers are not competent to do that. Yet there's some obligation there, in that and in the other matter material to the issue.

SHARP: You also told me that you had done a lot of work for Marsh and McLennan, and you described them as the biggest insurance brokers in the world. What led up to acquiring them as clients?

HARTWICK: Jack Painter knew one of the vice-presidents in the San Francisco offices of Marsh and McLennan, and he and I met through Jack. Just in ordinary conversation, I guess he became aware of the fact that not only I, but the firm was closer to the business of insurance and insurance coverage problems than most firms.

The officer just continued to press for the use of our firm on coverage issues until finally Marsh and McLennan did appoint us as their insurance counsel. Just gradually, we got more and more of their work. They are a great bunch of people to work for, both locally and in New York. I don't have much to do for them directly out of the New York offices. If it's a northern California matter, we would normally handle it.

SHARP: Are there special activities that you help them with because they are so large?

HARTWICK: Anybody that is big can't avoid having a mistake made in the course of their business—that includes law firms, too. [laughter] When it's made, what you do is try to see what you can do to fix the darn thing before it ripens into a loss or into litigation, which is normally unprofitable for both sides. Usually you can come up with something that either ameliorates or solves the problem. The trouble is if the bad thing happens before you are aware of the mistake, then of course you're married to the mistake. The question is often an issue of the right between the insurance company and the broker's client, the insured. Certainly Marsh and McLennan, and I guess most of the big brokers, will pay a lawyer to assist the insured in the insurance fight with the insurance company.

You can imagine the variety of problems that can arise between an insured and an insurance company. So that kind of stuff we see a lot of. It's rare that the issue will arise because of any mistake by Marsh and McLennan. The issue arises simply because the policy is equivocal in respect of where the coverage exists.

It's a unique relationship that an insurance company has with its insureds, in the sense that nobody knows what is going to happen until it happens. You write the policy to presumably cover certain kinds of events, and then something happens that nobody thought of, and the policy isn't written to cover. Usually it is. [laughs] And if it isn't, the courts normally rule that it is. I don't know if I have answered your question or not.

SHARP: You have. I wondered if you could think of the most exciting kind of work you have done for Marsh and McLennan so far.

HARTWICK: I guess the stuff that is the most fun is trying to resolve these disputes between the companies and the insureds. There's such a variety of that.

Some of them are pretty complicated. Often they involve a great deal of money. But, I think those are the ones that are most—fun is the wrong word—the most interesting.

6

Recollections on Changes in the Firm

An Overview

SHARP: I now have several questions asking for different kinds of recollections on your part, because they deal with growth and change within Bronsons'.

First of all, could you give me a general picture of how you see the firm?

##

HARTWICK: Of course, those three fellows, Bronson, Bronson, and McKinnon, were unique, each in his own way. I think each was a genius. Not one of them could do what either of the other two could do, but what they did was just amazingly competent.

Roy, of course, was a very dedicated lawyer. He started by himself, so there were always economic problems, internal economic problems. Roy would sometimes compound them because he would place his clients' interests ahead of the economic problems of the firm.

But, if you had a client who couldn't pay a bill, you didn't quit working for him. He needed help even more then. That was always Roy's attitude, and pretty much the attitude of the firm. Of course, one of the problems is internal economics. I was not a part of that for a long time because I wasn't a partner then.

The corporate work grew mostly on the basis of the ability of Roy and Harold, and the fact that they became known for their competence among professional people. Almost all of our clients were knowledgeable clients who

were able to evaluate the performance of the firm, which was something we were all proud of then. It wasn't like a doctor taking care of a patient, where you have to take the doctor's word for what was happening. The clients could look at our performance and our results and say, "Yes, it's a good job," or, much better than that. We grew on the basis of being good. Part of that was just working hard, too.

SHARP: Was San Francisco then the kind of fast-paced, developing city that you might have had a lot of competition with other law firms?

HARTWICK: That was less true in San Francisco than anyplace else in the state, because San Francisco was the most established financial community in the state. The real big business had already been acquired by the larger firms. Pillsbury [Pillsbury, Madison and Sutro], and McCutchen [McCutchen, Doyle, Brown, and Enersen], and the Brobeck firm wasn't that old, but it did grow up with some big clients, and got bigger, of course. We were lucky to get some clients that we did grow up with—Schenley, for example.

SHARP: The clients you acquired became very steady clients.

HARTWICK: There was a large amount of referral business, particularly in litigation, because we had started doing insurance defense work, and that wasn't deemed the prize of the legal business at the time. But, it became so as the scope of insurance broadened, and insurance became a much more sophisticated industry in itself.

The trial work actually expanded into what used to be corporate litigation. Right now, there is very little litigation that doesn't in one way or another involve insurance. We grew up with the insurance business, and as it developed, products liability, director's and officer's liability, even antitrust involves some element of insured defamation along the way, which brings in personal injury and liability coverage. Insurance is involved in one way or another in almost all litigation. We grew up with it, fortunately.

At least half of our business has always been corporate practice. These insurance cases expanded into business litigation fields. We were able to support the trial people with our general practice lawyers. If we got into a labor dispute for which some claimed damages were subject to insurance, for example, our labor department was available for help. We had the background on the securities exchange problems, tax problems, probate problems, and things like that. We had the background to handle the insurance problems as they developed and broadened.

##

Shifts in Size, Management, and Clients

SHARP: What do you think have been the major ways in which Bronsons' has changed since you first came?

HARTWICK: Of course, size inevitably does things to you. When we were a small law firm, each of us knew everything in the office. We knew everything that everybody was doing. We worked very closely together. Even after I came back in '45 or '46, it was still small enough so that there was a community of activity.

As you get bigger, inevitably you lose that, because there's so much going on, you can't possibly know it all. We try to make sure that everybody is aware of who our clients are. Even that's hard because there are now so many. That probably is the biggest single thing.

Your contact with your colleagues suffers, because there are so many. We work hard to resist the bad effects of size. We have a staff lunch each month. We have a big party in January each year. We used to have weekly staff meetings at eight o'clock in the morning, but now we are too big to house the group. Each department, though, has a training program for lawyers which is designed to perform an educational function, but also is to get people closer together than otherwise might happen. Those things we keep trying to do, but it's hard to keep up with the growth, and you can't stop it.

We once decided that we didn't want to grow any bigger, but you can't tell people you won't work for them. If you do, you begin losing the people that you want to keep, the clients that you want to keep, because everybody then will think this office is so busy they won't take on any more business. They say, "I would rather get somebody that has got time for me."

So growth happens. Whether you like it or not, it happens, and you can't stop it. We have been unable to figure out a way that would be practical to stop it. You just have to live with it and overcome the bad things that do develop.

One of the things I can remember—as long as Roy was here, his door was always open to anybody in the firm. We have tried to maintain that kind of a relationship with the young people. The young people coming in, I think, feel a remoteness that wasn't true with me. We had tremendous respect, as youngsters, for the old-timers. But remoteness, no. As I say, you try to avoid it. Those two things are the biggest. Of course, there is a big difference in running a seven, eight, nine-man law firm and running a 120-man law firm. The business of running it is different.

SHARP: I wanted to ask you about that, too. How did the roles of Ed and Roy Bronson and Harold McKinnon change over the years in terms of their managing the firm?

HARTWICK: Well, Roy was the manager. Of course, we keep talking about Roy, Ed, and Harold, as we should. But [Lawrason] Driscoll and Jack Painter had a tremendous effect upon the growth and development of this place. Jack was a great administrator. Lawrie had no interest in administration at all. But Jack, whether he was interested or not, he was good. It was very fortunate that Jack was here. Roy's only weakness in administration was that he tended to do

things because they worked in the past. That wasn't always true for a law firm as you got bigger. Jack didn't have that problem. He saw something that had to be done, and he came up with a logical solution. Most of our present partnership structure is a result of Jack Painter's doing. We would not have the partnership structure that we have now if it weren't for Jack.

Lawrie, of course, did for the litigation practice what Jack did for the business end of the office and for the administration of the office. Lawrie's reputation in the insurance industry and the litigation practice for years was just the top.

##

HARTWICK: The emphasis on Roy and Ed and Harold to the exclusion of Jack Painter and Lawrie Driscoll is unfortunate, but it's almost a necessary thing because of the direction of all your questions. There's no question but that the firm would not be what it is without them. Of course, contributions were made by a whole bunch of these people: Vern [Goodin], Max [Weingarten]. Each made his own great contribution. But Jack and Lawrie along with Bronson, Bronson, and McKinnon, laid the foundation for the development and growth of the firm.

Obviously, the very talented people who joined us made great contributions. They had the advantage, however, of the existing clientele which gave them the opportunity to contribute and develop their own reputation.

SHARP: Ed Bronson, Jr., in his interview in the first volume, spoke about the liberal partnership system that was developed within the firm.³⁰ I wondered how you would define the partnership system that developed?

HARTWICK: As it exists today, it's one of the most liberal in the country.

SHARP: Why did it develop that way?

HARTWICK: We have always had the idea that there shouldn't be competition among partners; that if you were admitted into the partnership, it was because you were one of us. Also, the thing that happens in some firms didn't happen here, which is the old-timers just hanging on to the controls, skimming off much of the profits. The profits were spread around.

Roy [Bronson] did not die a rich man. His estate, except for his interest in the law firm, which at that time was the same as fifteen or twenty of us, was not large. He had no more than most of us.

I don't think that is the rule in most law firms. It certainly is not in New York, for instance. Of course this happened gradually. In my time, there was no fixed time during which you either were or were not a partner, as we pretty much have now. And, progression within the partnership was part of the

30. See interview with Edward D. Bronson, Jr., *The Law Firm of Bronson, Bronson, and McKinnon: 1919-1941*, Regional Oral History Office, The Bancroft Library, University of California, 1978, pp. 93-94.

structure, as it is now.

The plan, as it exists now, gets a young partner to the same level of participation, ownership and income as the oldest partner within a relatively short period of time, while he still has a lot of his professional life ahead of him. That, I'm sure, is unique.

SHARP: That kind of partnership system, does it lend stability to the kind of big operation that Bronsons' has become?

HARTWICK: It depends upon whether it will continue to be workable. At our size, it may or may not. I don't know. But, certainly it's a very attractive thing for young lawyers to become part of.

You must bear in mind, now, that we have an excellent clientele, but we still don't have a whole bunch of PT and Ts or P G and Es. It's very much a working law firm, from the oldest to the youngest. I don't mean that the others are not. I mean that it's a different kind of practice from the practice you have for the mammoth corporations.

SHARP: So you see Bronsons' business as different from some of the other large, corporate law firms?

HARTWICK: Well, sure. Until very recently, we were a first-generation firm. We're growing up in the financial center of the West, where business has been settled for a long time. You don't just move into San Francisco and acquire a bunch of big corporate clients. They have lawyers, and they are not about to change.

SHARP: You had mentioned that about Bronsons' for an earlier era, the last time we met, because you talked about how Roy and the other first partners acquired clients in the thirties and so on, and that it was a struggle at that point.

HARTWICK: Sure. But, you see most of the clients—well, many of the clients, we grew up with. Schenley started to use us when they had just begun. First California Company—Roy organized it. Birr, Wilson [and Company], Ted Birr has been president of First California Company, and founded Birr, Wilson. Jack Painter's client, Pacific Coast Company, became a very sizable operation, and we did a great deal of work for them. But that's the kind of practice we had.

I think it could be that we are acquiring clients now, and have for the past ten years, simply by reputation and referrals from the East. You see, referrals don't start right away when you open your office. Now, we get them. We have relationships with some of the eastern firms that are very productive from our standpoint, because all the big money, except for the Bank of America, is in New York still. They have to come to Bank of America, but it's done in New York. The big, big, big stuff. Of course, the Bank of America has a big in-house law firm of its own, too, a very competent one, a good one.

SHARP: Tell me about the various committees that have come into existence at Bronsons' and what they are supposed to do.

HARTWICK: You know, I was never an administrator. First I have no talent for it, and second, no desire for it in the least. I have always disliked it. You can't run

an operation like this without committees. Some of them function, some of them don't. Our management committee does a superlative job. The personnel committee, the hiring committee, are excellent committees. Then, from absolute excellence, you go on down to committees like one that I was chairman of—we never met! Nothing *ever* happened.

But the committees are functioning now. They report regularly to the management committee, and the management committee, under Chuck [Charles A.] Legge, is doing an excellent job. We are as fortunate to have Chuck as we were to have Painter. The people on the committee *want* to be on the committee, which makes a big difference.

SHARP: But you had been on the management committee at one time, hadn't you?

HARTWICK: I was on it for years. I was on when we formed it. Roy had just been a managing partner, in effect. He and Jack Painter decided we ought to have a committee to get some continuity, and the members of the committee should rotate among all the partners. It was a good idea, so that all the partners would know more about the problems of a growing law firm. The only trouble is some, like me, didn't have talent. We needed a talented managing committee.

So now it has grown to five people who have staggered terms. In addition, two of the youngest partners serve for six months so that they can see what goes on. They really do a good job. I think it's being run like a business now. Maybe not as much as we would have our clients be businesslike, but it is much, much better, I think, than the average.

SHARP: You have adopted pretty important new innovations in business practices, just in the running of the office, in terms of billing accounts and so on like that, with Mr. [Victor H.] Hampton, and before that, Mr. [Richard K.] Dilley.

HARTWICK: Yes. We may be over-organized on the internal administration of the office. But if we are, it's just a matter of spending a little more money. It doesn't make any difference. The billing procedure, and the internal business operation is very well done.

SHARP: How has the specialization of law changed the way lawyers interact at Bronsons'? You mentioned that a little bit before.

HARTWICK: You know less about each other's work. Max Weingarten came—I don't know, late forties, early fifties.³¹ There wasn't anything he did that I didn't know, and there wasn't anything I did that he didn't know about. Now I don't even know what he does. He's right next door to me now, and very busy, but I don't know what he does all day! He hasn't the vaguest idea of what I do all day. If I did sit in on some of his meetings, I wouldn't understand what he was doing. The same would be true with him on some of mine.

31. Mr. Weingarten came to the firm in 1949.

That's the problem with specialization. It was much better when we had the old common law system without so many bureaucrats. It was good for lawyers, anyway, those that like to practice law. But as I say, now much of the work is sterile. The substance of some of it's gone.

SHARP: The last question I have is just exclusively about you. I wondered how you see your role in the firm now.

HARTWICK: I still tend to think of it as Bronsons' firm [chuckles], at which I was lucky enough to get a job and stay at.

SHARP: You mentioned earlier about your retiring within the next couple of years or so, and what you are doing to help the clients who have been yours for so long adapt to working with other people.

HARTWICK: Yes. Mechanically, we shifted the assignment of incoming litigation matters to younger partners. That's probably the biggest single thing we have done to accomplish the transition. You know, the lawyers mature now so much faster than they did in my day. I started practice when I was twenty-two, or twenty-three.

Now, people come to us and they are twenty-six, twenty-seven, twenty-eight. They are more mature to start, and they progress a lot faster. They don't need the supervision and the help that I got. I got it because I was working closely with all these highly competent people: Lawrie, Jack, and Roy, Ed, and Harold.

SHARP: Is it easier now, then, to put your clients in these younger hands?

HARTWICK: Sure. Sure. They [the clients] know that they have hired a firm, not just one lawyer. It has to be that way. One lawyer can't service a client anymore.

SHARP: Because of the specialization, clients have several lawyers who do certain things.

HARTWICK: Right.

SHARP: That is all the questions that I had. I wondered if there were certain things that I haven't covered that you would like to talk about, either with respect to the insurance field or something else?

HARTWICK: I can't think of any, Sarah. I have been very lucky in the practice. The luckiest single thing, of course, was I stumbled into the Bronson firm. The people who have come to the firm, their contributions have just been great. Much of my professional life is the result of damn good luck.

SHARP: That must make you think very differently about the firm, because you do think that it was luck.

HARTWICK: The talent that the firm attracted—that is the story of our growth.

SHARP: It is interesting the way you talk about the clients, and then talk about Bronsons'. It is as though the clients have grown up as you have grown up, that the two have sort of really come along together.

HARTWICK: Maybe that was true in the earlier days—

SHARP: It has sort of leveled off now?

HARTWICK: Whether you would say we have arrived, I don't know. We are known as a good law firm, I believe.

##



Taken at luncheon given by Rita Convery on February 26, 1944.
Jean Ross is sitting, fourth from the right.

Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

Jean McCabe Ross

Notes of a Legal Secretary

An Interview Conducted by
Sarah L. Sharp

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Jean Ross Interview

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1

Growing Up in Minneapolis and Marin County

[Date of Interview: September 18, 1980]##

SHARP: One of the first things I thought we would talk about is your biographical background. You may have noticed when Joan Annett did the first interviews, she wanted to get a sense of who the people were who had started the firm. Whether she was talking with Miss Convery, or one of the Bronsons, it was equally important to find out just who these personalities and these names were.

So I thought I would ask you to tell me what your full name is. We'll start there.

ROSS: Well, my maiden name was Jean Altha McCabe. I subsequently married, and my name is now Ross.

SHARP: What were your parents' names?

ROSS: My mother was Minerva Myrtle Roach before she married. R-o-a-c-h was her maiden name. My father was James Patrick McCabe.

SHARP: Did you have brothers and sisters?

ROSS: I had one brother who was born and died about fifteen years before I was born. I was a child of my parents' middle age, you might say.

SHARP: Were there any sisters, then?

ROSS: No. I was a loner.

This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 290.

SHARP: What year were you born?

ROSS: Nineteen-fifteen.

SHARP: And what was the date?

ROSS: November 1, All Saints Day. I just barely missed being born on Halloween.
[laughs]

SHARP: Where were you born?

ROSS: Minneapolis, Minnesota.

SHARP: Did you grow up in Minneapolis, too?

ROSS: Until I was twelve years old. Then my mother became ill with acute asthma, and the doctor strongly advised a change of climate. So in the summer of 1929, they sold everything, packed up the car, and we drove out to California with an idea of eventually settling in Los Angeles. We never got there.

SHARP: Came to San Francisco?

ROSS: Well, we stopped in Oakland to see some friends of my parents. The man was a Linotype operator for the old *Call-Bulletin*. He talked my father into staying here, and the two of them, with another partner, eventually bought into a weekly newspaper in San Rafael. So I did the rest of my growing up in San Rafael.

SHARP: I notice you now live in Petaluma. That's very near San Rafael, isn't it?

ROSS: It's about twenty miles north.

SHARP: So you have spent a lot of time up in that area?

ROSS: I would say most of my life, with the exception of the ten years I spent in Oregon. We lived in Marin County all that time. When I eventually bought a house, it was at the time that real estate in Marin County was heading for the sky, price-wise.

SHARP: It's there now, I guess!

ROSS: It is, I think, just about.

I went up as far north as Petaluma and bought a house up there, just before real estate prices started to rise there, too.

SHARP: Gosh! I think you got in at the best time.

ROSS: I think I did.

SHARP: What ethnic background would you say that you were?

ROSS: British Isles. A little of everything.

SHARP: Did you have any religious ties when you were young?

ROSS: My father was Catholic, and my parents were married in a Catholic church in Santa Fe, New Mexico. My mother promised to bring up any children that they had as Catholics, but my father had turned against the Catholic church for reasons of his own, and he decided that I should, when I grew up, choose my own religion, which I think was a mistake. But, eventually I became a Catholic convert, which didn't last too long, because I married outside the church, and now I am excommunicated.

SHARP: The Catholic church has alienated a lot of people.

ROSS: Yes it has, especially in the last few years.

SHARP: So you grew up during the Depression?

ROSS: It didn't really too much affect me, though, because as you will note, I have said that we came out here in the summer of 1929. Of course, the stock market crash caused an initial shock to the West Coast, but the Depression itself, the unmitigated hard times, didn't hit the West Coast until about four years later.

In fact, the year that I graduated from high school was one of the worst years on the West Coast that we had had during the Depression. Then things began to slowly come back to normal. We weren't hit nearly as badly here as we would have been if we had stayed back East.

SHARP: Was your father's business affected too much by it, then?

ROSS: Well, with the newspaper, we weren't rich by any means but we never lacked for anything that I can recall.

SHARP: What was your father's newspaper's name?

ROSS: The *Marin Journal*. After he sold it, it was subsequently merged with the *Independent*, so it's now the *Independent-Journal*.

SHARP: Did your mother's health get better once you all came out here?

ROSS: Yes, it did. She never had another asthmatic attack after we came here.

SHARP: Did she have occasion to work outside the home during the Depression?

ROSS: No, she never did.

SHARP: Tell me about your early schooling—you mentioned going to high school.

ROSS: I went to Tamalpais Union High School all four years. I liked school; I was a good student. However, I took a business course because of the hard times rather than a college prep course. I was later sorry that I didn't, because I would have liked to go on to college. But by the time I found that out, I was working,

and it just doesn't seem there was enough money to combine both of them. It wasn't as easy to go to college those days as it is now.

SHARP: Now we can get loans and all of that.

ROSS: That's right. You couldn't do that then.

SHARP: Tell me a bit about your employment before coming to Bronsons'.

ROSS: Well, I went to work for a doctor in Marin County. I got the job, I sort of fell into it, because I had done some babysitting for a dentist who was a neighbor of ours, and he shared offices with this doctor. When the doctor told him that he needed a nurse-receptionist type person, Dr. Rutner recommended me and I got the job. I worked for him for three years.

That was one of the occasions when I regretted not having taken college courses in high school, because he wanted me to do some laboratory technician work. He sent me over to St. Luke's Hospital to get all the basic techniques so that I could do things like blood counts and urinalyses in his office. I became interested in it. But, when I found out what I was going to have to do in order to become a technician, I decided I didn't have what it took to go back to college, or go back to school initially, and then go to college.

SHARP: When you were in high school, you could take secretarial and accounting courses, that type of thing?

ROSS: Yes. A business course as opposed to a college entrance course, which I did.

SHARP: I don't know if they do that so much now.

ROSS: I don't know either now. I think you can possibly combine them to some extent. But at any rate, when Dr. Conroy married, he wanted his wife to come in to the office, and do the work that I had been doing. So, I was out of a job.

I came to San Francisco and took a course in switchboard operation. That landed me in a wholesale plumbing office for a couple of years. Then I came to Bronsons'. I was—what was it—twenty-four, I think.

**To Work at Bronson, Bronson and McKinnon
1941-1944**

Hire by Rita Convery

SHARP: I have it down that you came in 1941. Is that correct?

ROSS: Yes, I think it was in August of 1941 when I came to Bronsons'.

SHARP: How did that all come about?

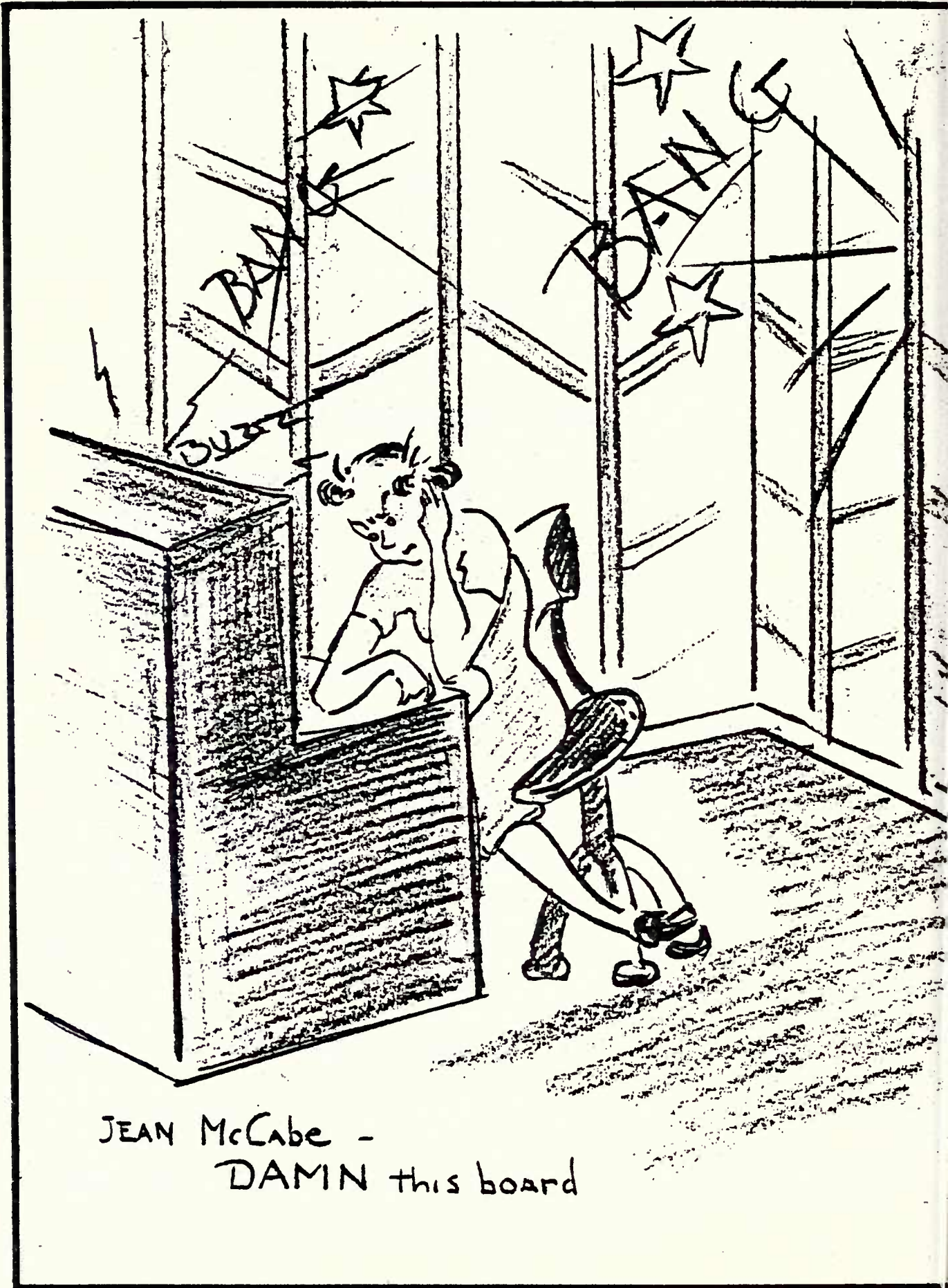
ROSS: The telephone company where I had taken my switchboard training had a job placement agency. I went to the job placement agency when I left the wholesale plumbing company, and they sent me to Bronsons'. It was that easy. I mean, I don't think I had any other interviews other than the Bronson interview.

When Miss [Rita] Convery hired me, I knew I wasn't going to want to stay on a switchboard forever, so I asked her if there was a chance, if I went to night school and brushed up on my shorthand, I could eventually have a secretarial job.³² She said that would be fine.

I don't think I was on the switchboard quite a full year before she came to me one day and said, "You're going to be working for Harold Ropers from now on."

I was just flung into it. The only thing I knew how to do was type and take shorthand. I had no prior knowledge of what was involved in being a legal

32. See Miss Convery's own interview, "Not the Biggest but the Best," *The Law Firm of Bronson, Bronson and McKinnon: 1919-1941*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1978.



JEAN McCabe -
DAMN this board

secretary. Fortunately the people around me were helpful, and Miss Convery was a good teacher.

SHARP: Is she the person who actually interviewed you for the job?

ROSS: Yes.

SHARP: Tell me a bit about her.

ROSS: Of course, she felt that she knew more about the office than anybody, even the partners. [laughter] Mainly because she had grown up with the office. Her first job was with Mr. Roy [Bronson] when he opened his first office. She ruled the office with an iron fist, you might say. There wasn't too much glove about it. [laughter]

She was an interesting woman. Sometimes you got very mad at her, because she was wholly Irish, and quite stubborn, as the Irish can be. But I got along fine with her most of the time, I would say.

Her aims were good. What she wanted to do with secretaries was to give them a well rounded experience in all the various elements of law. So, she would transfer them from one boss to another. Her method of doing this was not the same as it is now.

When a transfer is, shall we say, desirable now, the secretary is called in and given some voice in it. In other words, she is asked if she would like to work for so-and-so, because there is an opening. She is also asked if she thinks that she and this particular man would get along well together personality-wise (which is important). She is given a chance to say yes or no.

Miss Convery didn't do that. She just said, "Tomorrow you are going to start working for so-and-so." One of those times was when I rebelled.

SHARP: What happened?

ROSS: Well, I had worked for Mr. Kirke LaShelle after I worked for Mr. Ropers. Mr. LaShelle, while I loved the man dearly, personally was a very hard man to work for. He was inclined to be irritable, nervous, and he wanted everything done five minutes ago. If you were doing something that was a rush, he tended to stand behind you and watch you while you typed it. That sort of thing was not something I really could put up with too well. It made me nervous and made me make mistakes.

I finally told him one day, I said, "Mr. LaShelle, if you will go out and pace the hall, this is going to get done faster."

SHARP: How did that go over?

ROSS: Well, actually, he went away. [laughter]

At any rate, after Mr. LaShelle, I worked for Wes [C.W.] Dickenson. We got along very well and became good friends. I think I worked with him for probably, oh, over a year. He also had asthma, and his was the chronic type which was aggravated by this climate here. He was in the hospital for a while, not too long, and then he came back to work. He became even more ill, and

eventually made up his mind that he had to go south. When he left, Miss Convery decided that I was going to go back to work for Mr. LaShelle. That is when I put my foot down. I said, "Oh no. I'll quit first!"

I had two reasons for that. It was during the war [World War II] and wages were frozen. The firm could hire people from outside at a higher wage than we were getting, but they couldn't raise our salaries. So the only thing you could do in order to make more money was to quit and go to another firm. So that's what I did. I went to work for a steel broker, which lasted all of a week, because it was a one-girl office. He was gone most of the time, and I almost went out of my mind for something to do. About all I had to do was answer the phone.

Here again, in this first volume, Miss Convery's memory was a little bad—mine probably is about some of those first years too. She said that she didn't even know that I was leaving, that Paul Dana had left Bronsons', had taken his secretary with him, and me. She said she didn't know until we failed to show up one day, which was not true.³³ I had left independently and, as I say, I lasted a week with the steel broker. Then Mr. Dana's secretary called me and told me that there was an opening at the Cooley, Crowley, Gaither, and Dana office to work for one of the other partners. So, I took that, and got quite a bit more money a month, which was quite a relief to me.

That job lasted for about three years, and then Mr. Dana pulled away from Cooley's office. He, and Roger Smith, and Mr. Leighton Bledsoe formed their own firm, Dana, Bledsoe and Smith. That job lasted until I got married and moved to Oregon, which was not too long, probably less than a year.

SHARP: So that between 1941 and 1944 you worked for several different lawyers at Bronsons'?

ROSS: I worked for Harold Ropers, Kirke LaShelle, and Wesley Dickenson.

SHARP: It was after that when you went to the other firm?

ROSS: That's right.

SHARP: You talked a little bit about the kind of training that Miss Convery had in mind for you, and your adaptability to different lawyers and to typing and so on. Did World War II seem to bring you any new duties within the firm or anything like that?

ROSS: Only insofar as clients brought in a different type of work. For instance, one of our clients was Schenley Industries, Mr. LaShelle's client. Schenley started to buy up wineries in California during that war. The work that we did then was all contract work. Great big thick contracts, twenty, thirty-page contracts. We would work overtime sometimes until one and two o'clock in the morning. It was almost solely that type of work until this particular thing was over. I must say, the Schenley people were not ungrateful for the work we did—and the overtime hours we put in. When the job was finished, we each received an envelope containing a \$100 bill. I don't think any of us had ever seen one—much less

33. Convery interview, *The Law Firm of Bronson, Bronson and McKinnon: 1919-1941*, p. 29.

possessed one!

Otherwise—well, litigation work is quite different from corporate work. It was all litigation working for Mr. Ropers, because he was a trial attorney. Mr. LaShelle did some trial work, and I had previous litigation experience to fall back on. He also did quite a bit of corporate work. That's how I got into the corporate end of it. Wes Dickenson was all corporate, all of his work was. He was also involved in the Schenley purchases of wineries.

SHARP: So the long contracts that you were typing, they were outlining acquisition of wineries by Schenley?

ROSS: That's right.

SHARP: George Hartwick talked a lot about Schenley and how it changed so much as a company during the war years. Because it was getting into buying wineries, the whole nature of the company really changed quite a bit. He also talked a lot about just how long it took to do everything, all the typing and so on.

ROSS: Oddly enough, I had lunch with the lady who heads our word processing center, Jeane McLeod, and was telling her about this. She also worked for Mr. LaShelle, much later. I said, "Think back over the length of time it once took us to do this."

Of course, you had to have copies of documents for practically everybody throughout the country. So we would do perhaps three runs of eight copies, each, of each contract that we drew up, which was the reason for working night and day. In this day with the modern facilities that we have, ideally it probably would have been done in about a quarter of the time.

However, you have a different type of attorney nowadays. Fortunately, I have never worked for any of them. They will do draft after draft of a contract with numerous changes, inserts, pulling things out and putting them in someplace else, to the point where probably with the modern day attorney doing it, it takes just as long as it did us to do it back in the 1940s.

SHARP: Just because of the additions that he or she is making?

ROSS: The numerous drafts whereas, before, we would do perhaps one or two drafts. The final typing would be what took up the time. Nowadays, it's the drafting that takes up the time. The final typing—you could do it in a day.

SHARP: That is a really good insight. It's not something that I picked up anywhere else, and I had wondered exactly what the differences were. That's just a perfect example of how the work of a legal secretary is different now from what it was in your earlier days when you were first in the business.

First Impressions of the Bronsons, Harold McKinnon, and George Hartwick

SHARP: I wonder what your impressions of Roy and Ed Bronson were when you first came to work.

ROSS: [whispers] Scared to death of them! Absolutely terrified!

SHARP: Of both of them, or one more than the other?

ROSS: Both of them. Well, Mr. Roy, of course, as the head of the firm and the senior partner, was perhaps a little more terrifying. Not that he intended to be, but both he and Mr. Ed had a tendency to roar a great many times at each other. Also, when they didn't like something that somebody was doing, no matter who it was, they would roar at them. It was a little terrifying.

However, I don't think I really ever got rid of my fear of Mr. Roy. When I came back to Bronson in 1957, I was first working for Mr. Hartwick and Don [Donald J.] Lawrence, who was one of our probate attorneys. Mr. Roy at that time was going through a difficult period as far as keeping secretaries that he liked. They came and went, came and went. So he finally put on a martyred air, and announced he was going to do his own filing. If he had some dictation, he would call Mary Mathes and have her send "one of the girls" in. He thought he could get along just fine that way. So he decided, and went ahead with that plan, but it didn't work out too well.

After a month or so, he decided he was quite tired of it. So he went to—I think it was Dick Dilley at the time—and said, "Why can't I have a good secretary like George Hartwick has?" Mr. Dilley said, "You can. She can work for you, too."

They told me that, and this old terror came back: "I can't work for Mr. Roy. I would be scared to death!"

It turned out he was just an absolute pussycat, just the sweetest man to work for that I have ever known. So I worked for him for twenty years.

SHARP: Mr. Hartwick speaks very highly of both of them.

ROSS: I don't think you will find anyone in the office who knew either one of them who will have anything but praise for them.

SHARP: They seemed like an amazing trio.

ROSS: They were.

SHARP: Each of them had special talents that the other one didn't have.

ROSS: They complemented each other very well. Mr. Ed was the trial man. They were both extroverts to a great extent, but Mr. Ed adored trial work.

Mr. [Harold] McKinnon was the intellect. He was the one who had a flair for language. They all did, but in Mr. McKinnon it was intensified.

Mr. Roy was not only an excellent lawyer, but he was also an excellent businessman. He was the one who kept this firm on its feet financially while it grew.

SHARP: Is Roy Bronson the one primarily responsible, at least in the early years for acquiring new clients?

ROSS: Not primarily. They all brought in new clients. They were encouraged to bring in new clients, of course. Each one of them had had outside contacts which led to clients coming in to us.

SHARP: Mr. Hartwick spoke of the growing expertise in certain areas that Bronsons' acquired; that this happened just sort of year by year. He himself was responsible for a lot of litigation. Then, once somebody asked you to do a lot, then you tend to do more, and you begin to have specialities.

ROSS: That's true. Mr. Hartwick's own work is a typical example. When I first went to work for him, he hadn't been a partner too long. He never did any trial work, he didn't like it, but he did litigation work which didn't particularly require him to go to court. He also did corporate work. He drew up leases and contracts, and formed corporations.

He gradually acquired a sharpening interest in insurance coverage work. He turned out to be extremely good at it. If you have ever tried to read an insurance policy, with all the fine print, you will understand that that is not exactly an easy thing to do.

SHARP: I had the same basic experience. I tried to interview him Monday on some insurance case that I thought I understood, and didn't really. He straightened me out on them, in the meantime giving me an extremely clear and explicit understanding of what the case was involved with and all of it. His language was so precise. It really gave me an indication of the kind of mind that he has, which is incredibly sharp.

ROSS: That is what I meant by starting out with one thing and gradually going into other things. You finally come to something which turns out to be your best love, so to speak, the thing that you are most interested in. He has, for a number of years now, been an insurance coverage expert. He is known all up and down the coast, and elsewhere too.

SHARP: He seems to really see the ins and outs of all these cases.

ROSS: Yes, he does. He often boggles my mind. I will get one view of something from perhaps a very light skimming over it, and it turns out to be entirely wrong, of course. I suppose you could call me the expert on typing insurance coverage opinions.

SHARP: Well, you sound like a good team, then. He certainly can't work without you.

An Interlude Away From the Firm

SHARP: Tell me a bit about your going to Oregon, then, after you left the other law firm.

ROSS: Well, there wasn't anything particularly interesting about it. My husband and I lived in the city, San Francisco, for a little while after we were married. His father had had a series of heart attacks.

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The doctor felt that he was going to have to start taking it easy. His parents had an auto repair business in Klamath Falls. My husband had worked there with his father before he went into the army during the war. They wanted him to come back and go in with his father and take some of the load off of him. So that's what we did. We moved bag and baggage up to Oregon and bought a house up there.

I didn't do too much at first. I did go to work for a production credit loan office that was government subsidized, then I started having children. I had two children and stayed home while the children were young. I went back to the same office and worked there for a while, and then I went to work for an architect. That was in between children, because I remember I discovered I was pregnant right after I went to work for the architect. That was interesting, too. I went to work for a lumber mill after my second child was born, which also was interesting.

In the meantime, my husband decided that he didn't like the automobile repair business, so he took a correspondence course in television repair, and became one of the first television repairmen in Klamath Falls when television first came in up there.

SHARP: You must have had a lot of business!

ROSS: We did. We had quite a bit of business. Eventually, after about ten years, he and I were divorced and I came back to San Francisco.

SHARP: Did your children come back with you then?

ROSS: No, they stayed with their grandparents for a while. I had an aging mother who was becoming quite senile. I couldn't leave them with her because I couldn't trust her. She would leave pans on the stove and let them burn. She would faint every once in a while, and I would get called home. It was just not a proper environment for the children, so their father kept them. He remarried. Of course, I saw them very frequently but couldn't have them stay with me.

SHARP: So then you came back and restarted your career at Bronsons'?

ROSS: Yes. I remember when I went to an agency over in San Rafael for a job. I was going to work over there because I thought it would be more convenient; I wouldn't have to commute. But, the woman in the agency talked me out of it. She said, "Salaries here are miserable as compared with those in the city. I think you would be happier working in the city. I just happen to have two openings. One with Pillsbury, Madison and Sutro, and one with Bronson, Bronson and McKinnon."

I said, "Oh, I used to work for Bronsons'."

So, she set me up with appointments to both of them. I came to Bronsons' first and interviewed with Mr. [Richard] Dilley and Mary Mathes—Mary was secretarial manager at that time. I said, "I don't think I will go over to the Pillsbury interview." Once they had offered me the job here, I said, "I think I'll take this one." They looked sort of strange, and said, "Don't you really want to change your mind?" I said, "No, I don't."

So Mary Mathes has been throwing it up to me ever since, that I needn't complain about working for Bronsons', because I had my chance to get out and I didn't take it. [laughs]

SHARP: It has been with you a long time!

ROSS: It certainly has.

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**Return to Bronson, Bronson and McKinnon
1957-Present**

As George Hartwick's Secretary: The Beginning

SHARP: I think my first question is, and all the other questions follow from it, how different did the firm seem to you in 1957 from when you left in 1944?

ROSS: I don't think it had changed all that much. It was still in the same spot, in Mills Tower.³⁴ There were more attorneys, of course, but not that many more. They had expanded a little bit; there were offices up on the sixteenth floor—a few. We had taken over the whole of the fifteenth floor by that time. But, it just didn't seem too different to me; it seemed almost like coming back home.

SHARP: Which may have seemed pretty nice, considering the difficulties that you had had.

ROSS: In fact, I felt quite encouraged about it, because for a middle-aged woman coming back into the work field, especially in a large city, sometimes it is difficult to get a job. Law offices had always had a reputation for being more willing to hire a middle-aged woman than other types of offices. It just seemed it was nice to get back into legal work again.

But as far as the actual firm itself, it wasn't until after I had been there a couple or three years that it started to expand so rapidly. Of course, we moved in 1960 into the John Hancock building. Then we really blossomed out! It seemed quite a bit different then.

34. 220 Bush Street, San Francisco.

When I first went to Bronsons' in the forties, everybody knew what everybody else was doing. There weren't so many attorneys and you knew that so-and-so was going off on such-and-such a case, and you knew something about the case. When a man went to trial, you were always waiting for him to come back when the trial was over to find out whether he had won or not.

After we moved into the John Hancock building, we became so much separated. The secretaries were all in one room in the Mills Tower. In the John Hancock building, we were spread all over, because there was so much more room. So, you didn't have that close affiliation with the attorneys that you had before, even when you didn't work for them. You didn't know what they were doing on a day-to-day basis. So you lost a little of the feeling of being a family. You were pushed into a small group, and you knew what that group was doing. But, there were groups all over the floor, and you didn't know too much about what they were doing.

SHARP: Were there many of the non-attorney staff still here when you came back in 1957 who were here earlier?

ROSS: Only Mary Mathes. As far as I know, she was the only one. She and I had sort of missed each other. When I left Bronsons' originally, it was in mid-'44, and she came to Bronsons' in December of '44. She had a long period here that I knew nothing about until I came back. She hadn't been here when I left, but she came so nearly after I left, that she knew a great many of the people that I had known when I left. So she was a link, in a way, even though I hadn't known her.

SHARP: Do you remember what your first day back was like?

ROSS: Not really. I seemed to settle in. I don't think I felt any apprehensions. I just sat down and started working.

SHARP: Had Mr. Hartwick gone off to the service when you came in 1941?

ROSS: He was still there in 1941. In fact, he was there for a couple of years, because he worked on the Schenley matters. He did a great deal of it. He didn't go back to Washington until, oh, I think about 1943. I could be wrong about that, but I think it was about then.

SHARP: So you sort of knew each other?

ROSS: We knew each other, yes.

SHARP: Did he interview you when you came back?

ROSS: No. Not until after they had offered me the job. There is another place where the methods have changed. When a new secretary is hired here, she is always interviewed by the man that she is going to be working for. I think it is an excellent idea, because, as I said, Miss Convery was somewhat autocratic. She hired you, and she plunked you down in front of the man you were going to work for. You had never seen each other before. You didn't know what personality you were going to bring forth to each other. Sometimes it worked out beautifully

and other times it didn't work out at all.

Whereas now, at least a secretary has a chance to come face to face with the man she is going to be spending most of her daylight hours with. I don't suppose an initial interview is enough to point out all the pitfalls that you are likely to encounter, but at least it does give you some idea of what the man is like, and it gives him some idea of what you are like. It seems a little more fair than Miss Convery's method.

SHARP: What was your daily schedule like then with Mr. Hartwick?

ROSS: I don't think we ever had a real schedule. He did quite a bit of dictation. Frequently I would be in there for an hour or an hour and a half taking dictation. Other than that, it was a matter of screening his phone calls, and just plain working—typing.

SHARP: How is it different now than when you first came? Does he have more of a precise schedule now?

ROSS: No. As a matter of fact, he is due to retire at the end of next year. He has been phasing out his work gradually over the last two or three years, so he is nowhere near as busy now as he was then. In addition to that he probably didn't mention it to you, he had quite a serious operation last fall. He discovered a cancerous growth under his tongue. The operation was a complete success. I don't know whether you would have noticed it, not having spoken to him before—but it has caused a slight speech impediment.

SHARP: He was afraid that we wouldn't be able to tape, because the transcriber wouldn't be able to understand him. We worked with the machine to get it in the right spot. It was not a problem at all.

ROSS: He apparently doesn't have too much trouble talking on the telephone now, but dictation does tire him, unless it's a very short letter, a couple of paragraphs or something like that. If he's going to do any long dictation, he usually will write it out for me. He doesn't like to use tape recorders. I asked him one day if he minded writing it out. He said, "No," he didn't really, because in a way, it helped him to order his thoughts.

So, at times when he would write something out for me, he would say, "You can do that in final." Whereas before, if he dictated something, he wanted to see it in draft form so that he could make any changes before it went into final.

SHARP: So this enabled him to slow down a bit, and made your work easier actually as a result.

ROSS: That's about the only way his work has changed, that and the fact that it has lessened because, well, Paul Cyril is an insurance coverage expert now. Paul has worked with him for a number of years. Dave Gordon also, he's the current fair-haired boy as far as insurance coverage is concerned. An extremely intelligent young man, and very good at insurance work.

- SHARP: He was explaining to me how much the insurance industry has grown.
- ROSS: Oh, yes. It has grown tremendously and changed tremendously. We used to have little piddling cases like fender benders and rear-end collisions and that type of thing. Now, well, insurance coverage covers so many more fields than it used to. We are getting the feedback from that, now.
- SHARP: So much so that young associates might come on actually specializing in insurance coverage.
- ROSS: They would probably specialize in various phases of insurance coverage. One might specialize in aircraft hull damage, aircraft coverage. Another might specialize in marine coverage, admiralty matters. I can think of any number of things that would be a specialty within themselves and within insurance coverage as a broad subject.
- SHARP: But Mr. Hartwick's area is insurance coverage in general and he is an expert in the field as a whole?
- ROSS: In general, yes. About the only thing he hasn't done too much of is admiralty work.

Thoughts on Clients

- SHARP: Tell me about your contact with some of his clients. Are there some that stand right out as interesting ones?
- ROSS: Well, my contact has been mainly telephone. I haven't had personal contact with too many of them; a few, but not too many. Of course, your telephone contact is one of the initially most important ones. You can make or break the man by the way you talk to a claims man at an insurance company.
- SHARP: Tell me a little bit more about that, about what happens over the telephone.
- ROSS: There are claims men and there are claims men. By and large, I have found that they were very pleasant, very easy to work with. Every once in a while, you find one who is not about to explain himself to a mere secretary. He wants to go right to the top; he will not have anything to do with giving you a message or entrusting you to do something for him.
- Most of them, frequently the ones that I know the best now, will call me and say, "Can you do so-and-so for me? I don't want to bother George; I know he's busy." They are the ones that you're more inclined to like. You are nice to all of them, of course, but you're more inclined to want to do something for someone who will treat you as a human being.
- SHARP: Sure, which is what you deserve to begin with.
- ROSS: That's right! [laughter]

SHARP: You have had some really interesting clients: Schenley, Lloyds of London, and Marsh and McLennan. I wondered if there is one client that seems to be the most interesting, and if there are any stories that you might have about any of them.

ROSS: I don't recall any that stand out particularly above the rest of them. Of course, Schenley has always been an ongoing client. They have had a variety of different problems of one kind or another—fair trade matters, that type of thing.

But as far as the insurance clients are concerned, there was an interesting one just within the last few months. Yosemite Great Falls insurance company had some problems with an agent in Europe. I guess this agent got things into pretty much of a mess, and as a way of trying to unravel this mess, Mr. Robert Brown of Yosemite and Mr. Hartwick went to England, to Brussels, Belgium, and to Italy and Greece. They spent three weeks traveling and interviewing people, and ironing this whole thing out as far as they could. I think it probably was one of the more interesting bits of business travel that Mr. Hartwick has ever had.

SHARP: Was it sort of a goodwill tour?

ROSS: No, it wasn't. He has been on goodwill tours to England, but this was sort of a digging tour—trying to dig into a bunch of tangled facts and emerge with something that made some sense.

SHARP: And it worked?

ROSS: To some extent, I think it did. Yes. At least they came back with a lot more information than they had when they went over there.

SHARP: Tell me about some of the goodwill tours.

ROSS: Well, one of them that I remember in particular—Mr. Hartwick and Mr. Lawrason Driscoll went over to England when the Underwriters at Lloyd's—we had always had it to some extent—became more important. We began to get more clients, English brokers. They were in London for I think it must have been ten days to two weeks. It was strictly a goodwill tour. They were there while Winston Churchill's funeral was being conducted. Mr. Hartwick said it was a very instructive, very interesting period.

Ed [Edwin] Green now is the person who has probably more contacts over there than anyone else in the firm, because he has gone into the aircraft insurance coverage phase. So, he probably is acquainted with practically every broker in London.

SHARP: It's taken for granted that these trips may have to occur at some point?

ROSS: Oh yes. In other words, the overall plan of the company is that whoever has contact with a particular client will make a point of going to make personal contact with them on a regular basis.

SHARP: That sounds very expensive.

ROSS: It is. But it pays off.

SHARP: Did Mr. Hartwick have special abilities in acquiring new clients, or did he have to worry about that kind of thing?

ROSS: Well, he has always been more or less of a liaison man with clients in the insurance industry. I think you have noticed in talking to him that he has a gentle, rather deliberate way about him. It's very hard to ruffle the man. I don't think I have ever seen him when he was angry. He may have been angry, but he doesn't show it. He has an extremely good way with clients. He's tactful, and he seems to know how to tell them what they want to hear. Sometimes even if it's bad news, he knows how to tell it so that it loses some of its sting.

SHARP: I wonder if you thought you had to take any special courses or read special books to help you understand the insurance law that Mr. Hartwick was getting into deeper and deeper.

ROSS: Well, I probably could have, if I had had the time, but I was always working first for Mr. Roy in addition to Mr. Hartwick. Since then I have worked for Fred [Frederick] Morgan in addition to Mr. Hartwick.

Contrasts Among Roy Bronson, Fred Morgan, and George Hartwick

SHARP: You mentioned that when you came back, not too long after that you began to work for Mr. Roy Bronson as well. I wonder if you could compare Mr. Hartwick and Mr. Bronson as far as bosses go.

ROSS: Initially, I would say that they were probably two of the nicest men I have ever worked for in my life. I was a little fearful that there would be some bumping of heads as far as both of them wanting me to do something immediately. But, I never knew them to be other than extremely courteous about it. I would say to whichever, "I'm sorry, I'm doing so-and-so for Mr. Roy or Mr. Hartwick, and he wants it right away. Can I come and see you when I'm through?"

"Yes, that's fine. No problem," [one of them would say].

Where Mr. Hartwick never got angry, Mr. Roy was frequently angry about one thing or another—sometimes with me, if I did something he didn't like. He would tell me with absolutely no holds barred. He was more of a gossip, I think, than Mr. Hartwick. Mr. Hartwick was never too prone to just stop and chat with you. But Mr. Roy liked to stop and chat. In fact, sometimes he would call me in just to chat. He would argue with me. He liked to see if he could get my temper up. Sometimes I would deliberately pretend that I was mad about something just so that we could have a real good argument.

He was also a hard taskmaster. I think he was probably in a sense a workaholic. He liked to work nights, he liked to work Saturdays, he liked to work Sundays. If he had some case that he was working on, why, that was it. It was strictly work. There was no chatting then. It was strictly business.

SHARP: When you have to work long hours like that, that certainly breaks down any barriers that you might have with your boss, just because there's so much to get done.

Was Mr. Hartwick similar in needing to work over the weekend?

ROSS: No. I think I can probably remember two instances in all the years that I have worked for him when he asked me to work overtime. Then he apologized, because it was something that had hit him all of a sudden, maybe half an hour before, something he hadn't planned on or included in his schedule. But it had to be done. I don't think it was more than twice that I ever was called upon to work for him overtime.

SHARP: That's amazing.

ROSS: Mr. Hartwick is one of the few men in the office who, if he has a brief due—I didn't tell you he did quite a bit of appellate work, too.

SHARP: I'm going to ask you about that.

ROSS: If he had a brief due, he knew when the deadline was. I don't think that I ever filed a brief just under the deadline for him in my life. It was usually filed two or three days before the deadline. That's the way he worked. I don't think there's another man in the office who can say that who has ever done any appellate work or briefing of any kind.

SHARP: I was going to ask you about the appellate work, and how that may have created a different daily schedule when you knew that you were working on a brief. But, it sounds like it was fairly even day-to-day progress.

ROSS: Don't have a schedule, so to speak. The attorneys do; they have to have some kind of a schedule, especially the ones who do court work.

It's just a matter of getting in and doing what has to be done on a day-by-day basis. You don't think, "Well, now, Thursday, I'm going to have to do such and such all day." You just know that during the week you're going to have to get so much done, and you just go ahead and start doing it, that's all.

SHARP: I see. I didn't have a real sense of what things were like every day.

ROSS: When you come to work, you usually know so-and-so's going to want you to get this done, and you have got that to do. It doesn't have anything particularly to do with either of the men you work for, but it has got to be done. I guess by virtues of habit, you sort of get your priorities figured out so that you know what you have got to start with. If there's time left, why you'll get some of the rest of it done.

SHARP: I see. It sounds like cleaning house!

ROSS: Pretty much like cleaning house. You clean house every day. Sometimes something is hung over until the next day, but it can't be helped.

SHARP: When did you assume duties with Mr. Morgan?

ROSS: It wasn't too long ago. In the spring of this year [1980]. He had a secretary who was also working for an associate. The associate, who is also a very bright young man, generated so much paperwork that she couldn't be fair to both of them, and continue to work for both of them. Mr. Morgan's work is almost—I would say 75 percent of it, is telephone work. If you're on the telephone as much during a day as she was, and as I am now, you can't get very much else done, that is, in the way of paper work.

Working for Mr. Morgan and Mr. Hartwick has worked out nicely for me because, as I say, Mr. Hartwick's work is phasing out to a great extent. Mr. Morgan's paper work is not all that great. His telephone work is one of the most important things to him in his work.

SHARP: What sort of law does he do?

ROSS: Labor law. You're dealing with labor boards and clients. Sometimes clients are wringing their hands. I am just gradually getting into labor law; I don't know all that much about it. But, sometimes you have to be very cautious about what you say on the telephone. In fact, you have to remember to be cautious at all times. It is interesting. I'm enjoying it.

SHARP: It sounds pretty different from the insurance law.

ROSS: Yes, it's very different.

Changes in the Firm: Management and Office Procedures

SHARP: Tell me now something about Mr. Hartwick's role within the firm, and how that's changed since you came back in 1957.

ROSS: Mr. Roy Bronson was the manager of the firm for many, many years. But, as he got older and when he realized that his retirement was fairly imminent, he knew that he wasn't going to keep the reins of the firm. He was going to have to delegate the responsibilities. So he set up a management committee, which originally was composed of three partners. Two of the three members changed every so many years.

Eventually, Mr. Hartwick became one of the members of the management committee. Then he became head of the management committee, which he hated with a purple passion. He did it very responsibly, but he doesn't like administrative work. Most of the attorneys in the office don't care for it and don't have much talent for it. Mr. Roy did. But Mr. Roy, as long as his health permitted, was on hand to give advice to the management committees, whoever they were. As I say, Mr. Hartwick eventually became managing partner, and senior partner after Mr. Roy died, too.

Other than his fairly recent role of administration, his role in the firm hasn't changed a great deal. He is called upon by many of the other attorneys. They all go running to him for advice: "Where's my lawyer? Where's my lawyer?"

[laughs] Other than that, as far as the administrative part of the firm is concerned, he is now out of all of it. To his great relief, he doesn't have too much to do with it anymore.

SHARP: When Mr. Roy Bronson began to shift gears to make this changeover, was that something that came fairly easily, or was it very difficult for the whole firm to deal with this change of command?

ROSS: It was a little difficult for the whole firm to deal with, mainly because, as I have told you, the average lawyer wants to practice law. He doesn't want to administer. He doesn't want to have anything to do with the business part of the firm. So those of them who were forced into it didn't always have a good idea of what they were going to be expected to do. It limped along for quite some time, I would say, for several years, before they finally got into really managing the firm. Fortunately, Mr. Roy was still around and he told them what they had to be doing. Happily, by the time Mr. Roy's health really began to fail, we had gotten into a nice practicing habit, as far as the administration was concerned.

SHARP: Is that because different partners adapted themselves to administration or because the system was just beginning to work, and people were biting the bullet and doing it?

ROSS: They were biting the bullet and doing it. I don't think that the lawyers who didn't like administrative work ever really adapted themselves at all to it. They just did it because they knew it had to be done.

SHARP: It strikes me that a lot of things just have happened sort of all at the same time, with Roy Bronson giving up the reins and the tremendous growth in the number of lawyers.

ROSS: They all more or less coincided. I think there was a lot of bumping of heads because of it, because everybody had a different idea as to how things should be done, what things should be done, what things should take priority. It took quite some years for things to settle down. In fact, they probably aren't settled yet.

SHARP: What other reflections do you have on how Bronsons' has grown?

ROSS: Well, from my own standpoint, it is getting to be pretty much of a factory now. While the firm is prosperous and still growing by leaps and bounds, it has become more or less completely impersonal. Even in the hiring practices, there isn't the feeling of—what shall I call it? The only thing I can say is, controlled and functional, and pretty much just a place to come and work. I think a lot of the young attorneys feel that way to some extent too, because the firm is so big. For instance, we get a new crop of attorneys in here every year. I haven't yet put names and faces together from last year's crop by the time the next year's crop is coming along. The attorneys feel that, too. Every once in a while some young sprout will wander by, and one of the older attorneys will turn to me and say, "Who's that?" I'll say [whispers], "I don't know. I'm not even sure that he works here." [laughter]

I can't see how it can be helped. It's just one of the side effects of growth.

SHARP: Is that also true of the non-attorney staff?

ROSS: Yes. Very much so.

SHARP: I know that just the operations of the office have changed quite a bit. For example, you now use the computer for all sorts of things. When we started, you were telling me about just in the typing of, the reproducing of briefs and contracts and so on, that that has gotten to be a much faster process. What other things now are quite a bit different, just in terms of the legal secretaries?

ROSS: Well, of course, I think the word processing: soon all secretaries will have word processing equipment of one kind or another. We don't all have it yet. Some of us don't need it. I don't for instance, because I don't put out that much paperwork. But I think word processing is going to be just like when typewriters first came in. It is going to be the thing. Typewriters will be obsolete. Of course, the computer has changed things dramatically.

It has been difficult for a lot of people to adjust to the computer. In many ways, we have all said that we thought—as far as keeping the records were concerned—that it was easier the way we did it before. But, when you get into computers, you can't throw them out and go back to your old ways. It is just progress, and that's all there is to it. You have to go along with it.

But it is becoming so mechanized that, well, I have read articles where they say that secretaries are becoming obsolete, that everything is going to be done by a machine in the future. An attorney would have an administrative assistant, a euphemism for a secretary, but most of the work will be done by machines.

SHARP: I find that a bit scary.

ROSS: Well, I am glad I'm not going to be around to see it, frankly.

SHARP: How do you perceive the role that had been played by Mr. Dilley, and now is played by Mr. [Victor] Hampton—that whole other side of Bronsons' that is the office-managing position?

ROSS: It has become more intricate. Naturally, by virtue of computerization, there is a lot more to it than there was when Mr. Dilley was doing it. I think Mr. Dilley is glad that he's no longer in it now.

As you grow older, you grow less elastic. You tend to long for the good old days—a lot of people do, anyway. There aren't too many people our age who feel that it is worth their while to go into this age of machines. Mr. Hampton, of course, is good at it. As far as I know, he is quite able. There again, [pause] it's just the fact that a lot of the older people around here are, well, becoming obsolete. [laughs]

SHARP: I don't think so. But, I am amazed at how big the firm is. I perceive the firm more as a big business. I don't even think too much about the law that you do.

ROSS: It is a business, and one of the really sad parts about it is that the accounting department, the administrative department administering the business, doesn't really know what the law is all about. In other words, the right hand doesn't know what the left hand is doing, and vice versa. They have their own little empire in there, and we have ours on the legal side. That is probably one of the things that has caused as many problems as anything else when it has come to computerizing our record system; we don't really have an empathy with each other.

SHARP: Would this be a problem, for instance, if you are talking about billings.

ROSS: Yes. Talking about billings, the attorneys have a language of their own which, to the administration, well, it might just as well be a foreign language to the administration in some respects. They will come to me with a bill and say, "This word here, is that a mistake, or is it a real word?"

I will say, "It's a real word. It means something. It's all right in there; that's where it belongs." They go away shaking their heads.

SHARP: There was some feeling that I gathered from someone that Mr. Roy Bronson had perhaps different attitudes about billing, and when the bills should go out. With the growth of the big business that Bronsons' has become, that perhaps the billings go out routinely, maybe to somebody who didn't want to see his bill right away.

ROSS: Well, of course, when you have a long-standing client who is possibly a little temperamental, an attorney will feel that he shouldn't bill routinely. But I think in the last year or so, the firm has changed its methods and decided that routine billing has got to be the coming thing. If a client doesn't like it, why, that is too bad. We do have some clients that we bill on a quarterly basis still, but you have to put in a special request for it.

SHARP: Has the kind of client that Bronsons' works with now changed from what it was, say, in the forties, do you think?

ROSS: Well, it has changed possibly by virtue of the fact that there are more corporate clients than individual clients. We had individual clients more in those days than we do now.

SHARP: That would make for a pretty different relationship, lawyer to client, I imagine.

ROSS: Yes, I think it would. You are working with one man who is a cog in the wheel of the client, and they're working with one attorney who's more or less of a cog in the wheel with the attorney's office. For instance, a lot of Mr. Roy's clients were good friends, and had been for many years—friends first and clients afterwards. I don't think there's so much of that now. Some, I am sure, but not much.

SHARP: I didn't ask you about the changes in the roles of Mr. Ed Bronson and Mr. McKinnon in this period when you came back after 1957. How were their roles changing from when you saw them earlier?

ROSS: I don't think Mr. Ed Bronson's role had changed too much. He was a trial attorney first and foremost. He continued to be right up until he retired. Mr. McKinnon was much more active in the forties. He had his list of clients also, and was very busy. I don't think he had gotten into the appellate work as much then as he did in later years when I came back. He was always head of the appellate department. He passed on all briefs before they were allowed to go out.

SHARP: That was a routine that had been established?

ROSS: That was a routine, yes. And it had been established. In fact, Mr. Hartwick was for a long time head of the appellate department. Mr. Cyril is now.

SHARP: How does that department work?

ROSS: Well, if a client wants to appeal a case, that attorney will sit down and talk it over with him, and then the attorneys have a discussion within the office among themselves as to the appealability of the case: whether we have a fifty-fifty chance of winning, not that much of a chance, or if we have an excellent chance. That decides whether we will go ahead with the appeal. If we feel that there's no chance on an appeal, we'll tell a client so, rather than having him spend the money. An appeal is very expensive.

If it's a litigation case, the appeal will usually be assigned to someone other than the person who tried the case, for purposes of impartiality. Whoever writes the appellate brief will have to submit it to the appeals committee before it goes out, for revision or change in whatever way they feel necessary.

SHARP: Mr. Hartwick, I know has worked for a long time in appeal. He must have certain philosophies about appeals.

ROSS: I'm very happy about one of his philosophies. That is, when he writes a brief, it is brief.

SHARP: That would help you a lot!

ROSS: Some of the attorneys think nothing of filing a fifty, sixty, seventy-five, hundred page brief. I don't think Mr. Hartwick has ever filed one that long. Possibly twenty pages. There are attorneys who I guess like the sound of their own words, and they will go on and on in a brief and belabor points. If he were writing the same brief, he would say the same thing in two paragraphs that they take ten pages to say.

SHARP: He told me that he learned a lot of his brevity from Mr. McKinnon.

ROSS: That is true. Mr. McKinnon was the same way.

SHARP: Did they work a lot together in the appellate department?

ROSS: Yes, they did. I think that everything Mr. Hartwick has done in appellate work has stemmed from his education with Mr. McKinnon in writing briefs.

SHARP: That's very interesting.

The last question I have is just sort of a sum-up one. I wondered what other changes you had noticed in the ways that Bronsons' is managed now from the way it was managed, say, in the forties, or even when you came back in the late fifties.

ROSS: Well, I can't say that I can really give you an intelligent answer to that because management has always more or less kept its methods of managing sort of apart from the employees. The employees really don't have too much to do with it.

SHARP: You just sort of hear about things?

ROSS: We hear about it when it's a fait accompli. As far as the processes by which they arrive at a certain decision, we don't know about them.

SHARP: I don't know what I expected you to say, but I guess that surprises me. Maybe that speaks more just about the distance there is between staff and management now.

ROSS: There is a great distance when there wasn't before. You usually knew, because somebody would say something to you about it, in the old days when the office was small. Nowadays, as I say, a decision is placed before us as a finality. We don't know anything about the mechanism by which the decision has been made.

SHARP: Is that a source of friction?

ROSS: I don't really think so. I think that probably if it were going to be resented by anyone, it would be resented by the people who have worked here for a long time: myself, for instance. The people who come and go—and there is a big turnover—do their jobs. They either stay on for two or three years or they leave, and they don't care by what process decisions are made. They are just doing their jobs, that's it. They are not looking to poke their finger at management. I suppose if we were unionized, it might be something wholly different. I don't imagine we ever will be.

SHARP: Is that something that has been talked about?

ROSS: I don't think it has been talked about per se in this office, but law offices are being unionized all over the country, little by little. I don't think it is going to blossom into anything immediately, but there are quite a few law offices which are unionized.

SHARP: That's interesting.

The last question I have is just picking up on something that you said about when you first came back, that law offices are willing to hire women who are perhaps restarting a career. I wondered why that was so; I didn't know anything about that.

ROSS: Well, partly I think it is the fact that a law office prefers to have a continuity in its non-legal, clerical staff. They want someone who is willing to work for a number of years rather than some girl who is coming in to work for a year or so,

and then plans to get married, or go back to school or whatever. Older women are more inclined to be punctual, more inclined to take their work seriously, because it's more of a serious position to them.

SHARP: They might be single people.

ROSS: They might be supporting children, or parents, or something of the kind. It has always been the case as long as I have worked in law offices. We have had quite an age disparity from young girls of nineteen or twenty to women of my age. There are quite a few older women working here now.

SHARP: I noticed that. That seems to make a lot of sense once you explain it. That's all the questions that I have.

I wonder if there are things that I have not covered that you have thought of—other special experiences that you have had while you have been here.

ROSS: No, nothing in particular that I can recall.

SHARP: Thank you.

##



BRONSON SECRETARIES
ANNUAL CHRISTMAS PARTY, DECEMBER 1946

Miss Mathes is seated on the right side of the table, third woman from the front.

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Berkeley, California

Mary Mathes

Reflections on the Business of Law

An Interview Conducted by
Sarah L. Sharp

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1
**World War II at the Firm
1944-1945**

[Date of Interview: May 27, 1980]##

Biographical Background

SHARP: The first thing I thought we might start with is some biographical background on you, since I know very little about you, except that you have been here for a number of years.

What is your full name?

MATHES: Mary Frances Mathes.

SHARP: What were your parents' names?

MATHES: I was adopted by a woman whose name, strangely enough, was Mary Mathes, Mary W. Mathes. I had no father as such.

SHARP: Did you have any religious influences as a child?

MATHES: Well, going to church, until I got tired of going.

SHARP: What church was it?

MATHES: Presbyterian. The members of the church were having a big row when I was about fifteen; that didn't seem very Christian-like to me. My mother said I

This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 291

didn't have to go back if I didn't want to.

SHARP: So you didn't?

MATHES: No.

SHARP: When were you born?

MATHES: 1918, July, the tenth.

SHARP: Where were you born?

MATHES: Denver, Colorado.

SHARP: Did you grow up in Denver?

MATHES: No, my mother took me to Medford, Oregon, when I was three weeks old. I grew up in Medford.

SHARP: How long did you live in Oregon?

MATHES: All my life until I came to California.

SHARP: When was that?

MATHES: Nineteen forty-four.

SHARP: What sort of early schooling did you have?

MATHES: I went to grade school, high school, and Oregon State College.

SHARP: Why did you come to California?

MATHES: Oh, some of my sorority sisters wanted to come. They insisted I come along.

SHARP: Time to start the career?

MATHES: One of them had never been to California, and she had made up her mind she wanted to move to San Francisco. So we came.

SHARP: Have you ever been married?

MATHES: No.

SHARP: Before you came to Bronsons', what sort of other work positions did you have?

MATHES: I had summer jobs, of course. Then I had worked, in between the time I graduated from high school until I went to college, for an attorney for two years. Then the California-Oregon Power Company, a public utility, for close to four years.

I was out of high school before I went to college, six years.

SHARP: So, before you came to Bronsons' you had worked for a law firm?

MATHES: Oh yes, I worked for an attorney for two years, and then I had summer jobs with attorneys when I was in college. I usually went back to the power company; they paid more.

SHARP: That sounds like a good reason.

First Duties and Impressions

SHARP: Tell me about the circumstances of your coming to work for Bronsons'.

MATHES: Oh, nothing exciting. They just had an ad in the paper and I answered it.

SHARP: And it was for a legal secretary?

MATHES: Yes.

SHARP: What year was this?

MATHES: Nineteen forty-four. I came to work December of 1944.

SHARP: You had just come, then, with your sorority sisters to San Francisco, just looked for the job, and got it right away?

MATHES: Well, we played as long as we had money, which was from about October to December. They finally went to work, so there was no reason for me not to; we couldn't play any longer.

SHARP: When you first came to Bronsons', what sort of training did you have? Was there someone who worked over you?

MATHES: Well, not really. Rita Convery hired me, but she left in about a month. I had had sufficient work experience, so I didn't really need much supervision.

SHARP: When we met earlier, you told me that you worked first for Frederick Potruch. What were your duties with him?

MATHES: Just a secretary. They were doing, at that time, NLRB [National Labor Relations Board] work. You see, it was during the war [World War II], toward the end of the war. You couldn't give any raises without permission of the National Labor Relations Board.

So you had to fill out all these forms, petitions. If you wanted to give somebody a raise, you had to give them a new job description. He did a lot of that work for—as I recall—Schenley and Grosjean Rice Milling.

I can't really remember other clients, but those were the main people.

SHARP: So you would fill out the forms for them?

MATHES: Right. Then they would go before the Labor Relations committee and submit it to them, so that, hopefully, they were allowed the increases in wages for these people. You had to show a change of job sort of thing rather than just say, "I want a raise for this person," because at that time, all wages were frozen.

SHARP: Who actually had to write the new job description? Was it Mr. Potruch?

MATHES: Oh yes, he largely did. He would meet with the client, and they would dream up something to try. I mean, there were probably people who did have actual classifications; but the clients just, in lots of instances, for their old employees, would try to increase the duties to an extent that the board would give the employees a raise, you see.

SHARP: I have heard a lot that during World War II there was an increase in government regulation. So lawyers were then working quite a bit more with large corporations, because they had, essentially, so many papers and things to fill out?

MATHES: Yes, because I don't know what else there must have been, but there must have been all kinds of them. Everything was frozen, you know, gas was rationed. I am sure, if you wanted to buy tires, or iron, or steel or all those things, they were rationed.

There were the inequities of being employed at that time. It happened in this office. The girls who were working before I came were frozen at something like \$165 a month. The only way they overcame that was to work overtime. I was hired for something like \$200, it came out to \$200, but we worked all day Saturday. We worked overtime to make that \$200 they offered to pay you.

In those days that was the reason I came back to work for a law firm, for lawyers. The fact was that it was easy to get any job, and also, you were getting more money than most jobs at that time.

SHARP: Is that still true, that law firms tend to pay better?

MATHES: I think so, yes.

SHARP: Why is that?

MATHES: It does require, it *should* require, a little more expertise. They would like to get, of course, experienced people. But, I have found over the years that the intelligence of most good legal secretaries is a little bit higher than, say, somebody who works in an insurance company for ten years.

SHARP: In the exactness and all of that?

MATHES: That's right. I regret to say that we are finding right now, we are running into the non-reading children syndrome. So I don't find it as entirely true at the present time.

SHARP: It must be deadly in a law firm.

MATHES: It is.

SHARP: I want to ask you about that later on, at the end of our session, because that seems to be a really important development in the law firms.

MATHES: I always felt, years ago when I first came, and for many years afterwards, that the people who were legal secretaries were a little bit better than your average labor market.

I don't say that a lot of your executive types in the big corporations are not equally as intelligent and as capable.

SHARP: What sort of special interests did you bring to working in a law firm that you had experienced before in the other law firms?

MATHES: Oh nothing, really. As a matter of fact, I announced to the dean of our school, I didn't care what kind of a job I got, as long as it was not with a law firm. If you think that doesn't explain it, I have to eat those words a bit! [chuckles]

SHARP: Did you have any special goals when you first came to work here?

MATHES: No, because as long as you were a warm body you could get a job anywhere. As a matter of fact, I almost quit the first week. My roomies were yelling, "Quit! Quit!"

SHARP: Why?

MATHES: I had a bad cold, and Rita Convery let me sit for a week and didn't give me anything to do. You know, when you are new in a law office, or any office, you feel so conspicuous anyway.

So every night I would go home and mutter about this. My roomies were saying, "Quit! Quit!" and I said, "If I don't get something to do tomorrow, I will." Fortunately, she gave me something to do. I didn't care, though, because I could just walk across the street and get another job.

SHARP: Why was it so easy to get jobs?

MATHES: It was because the war was on, and any warm body could get a job doing anything.

SHARP: This was true for women?

MATHES: Yes, because, you see, all the men were off in the service, and so women were doing a lot of the men's jobs. Then, there was just more work than they could find people, I think. That is one of the reasons California started growing; there was so much war industry and everything, and—

SHARP: I knew that about San Diego and the war industry. I didn't realize that the war created so much.

MATHES: Right. Everything grew only as much as it could grow, as far as personnel would allow. If you had work experience, you could just walk into any kind of job.

I *did* go to an employment agency and told them I didn't want to go anywhere I had to drive. I didn't want to go through the hassle of getting gas and all that stuff. So the first place they started to send me was way down in the boonies, south of Market. I didn't even go to the interview or go back to them.

Then I just wrote a letter here; I didn't know it was here, but I answered the ad.

SHARP: I will ask you later about other impressions of some of the firm's lawyers, but, what first impressions did you have of Bronson, Bronson and McKinnon when you came?

MATHES: I think your first impression would be Mr. Roy [Bronson]. You see, there were only a few of the partners and associates here except Mr. Roy, and Mr. Ed [Bronson], and Mr. [Harold] McKinnon. Kirke LaShelle, I guess, was around, because he did not have to go into the service. He was known as the irascible old man; he was rather impressive.

But you see, none of the other people beyond those were here. Mr. Roy was in his prime. You [meaning interviewer] didn't see him, of course, if at all, until he was older. In his day, he made quite a presence.

SHARP: Did he interview you?

MATHES: No. Rita Convery did. I can remember, I had been here about a month and he burst into—we were on another floor—he burst in the door, and said, "Who is Mary Mathes?" I said, "I am." You certainly knew it was Mr. [Roy] Bronson. You didn't have to be told.

SHARP: Was he looking for you for a specific reason?

MATHES: Yes, he came down to tell me Miss Convery was leaving. She was to leave at the end of the year, but she stayed on another month after I came. I've always said Rita hired me so she knew everything was taken care of, but I didn't know her well.

SHARP: You had given me this letterhead.³⁵ I think this is from 1946, is that right?

MATHES: Well, I would think it is the first year that I was here, so that would be late in '45, or possibly '46.

35. See following page for a copy of this early Bronson, Bronson and McKinnon letterhead.

Partners, Associates, and Secretaries

SHARP: Tell me about some of the people on that letterhead. Maybe you could start with Mr. Potruch, since you worked for him.

MATHES: He was, just like so many of these people, not really intended to come into the firm on a long-term basis. Almost all of these people that were here were just to get through the period before the men started coming back from the service.

SHARP: And they knew they were temporary?

MATHES: That's right. I mean by temporary, they might have been here two or three or four years, but it was never intended that they would go on as members of the firm, or anything like that.

SHARP: Was that typical of the law firms in the city?

MATHES: It was typical of this one, but I couldn't say that it was of others. I knew that these people were just considered, some of them, not all of them, right below the line here.

Edgar Rowe went on to be a partner; and he was intended to be a partner when he came in.

SHARP: Now Mr. Potruch was an associate, and he remained an associate?

MATHES: No, he left. He went to Los Angeles. We had opened a Los Angeles office and he went down there, but it wasn't working out, and he left and went out on his own.

SHARP: I didn't know there was a Los Angeles office.

MATHES: It was not as early as this, but it was a short time after that.

Then Doc [Charles R.] Wayland was an older man. He stayed on as an associate, to a point, even after the war. Similarly with Mr. [Edwin] Chapman. They were mature men, I would say both in their fifties at that time, and they were both exceptionally good trial lawyers. But they would never have become partners, I don't think. Mr. Chapman never did, and Doc [Wayland] left not long after that.

Lloyd Howard, as far as I know, is still alive. I have seen him on the street. But, recently, a matter of two or three years, I haven't seen him, you know, to know whether he is still alive or not.

I have seen Podge [Rogers P.] Smith who came back with us after the war, but he did not continue on. He did return to us, but then he went on to, I think the Bledsoe³⁶ office, I am almost sure, which is where he is now.

Of course, I didn't know enough to know why people left. Sam Anderson, we don't know what happened to him.

36. Bledsoe, Smith, Cathcart, Boyd, and Eliot attorneys.

Don [Donald] Smith continued as an associate, but left to practice in Red Bluff. He subsequently died.

Herb [Herbert] Pothier is still alive and still practices, as far as I know, but he left this firm as soon as men started returning.

George Hartwick, of course, is still with us.

I don't know what happened to Joe [Joseph] Gans.

[H.] Ward Dawson is still around, and he has been down on the Monterey Peninsula for years. So that takes care of all of them.

SHARP: It has been said that Mr. Roy Bronson was the real business leader of the firm.

MATHES: That is true.

SHARP: What makes you agree with me about that?

MATHES: In the beginning it was his firm, and everybody else who came in after was someone who would go to him before they would do anything. That lasted through many, many years. If it was some little matter of getting a divorce for somebody or something you might not do it. But, if you had a major client, you would go talk to him about it, particularly as to the general business end of it.

Mr. Ed [Bronson] was what you would say the head of the insurance end of the business. So if it were an insurance matter, you would probably go to Mr. Ed. In the beginning, Mr. Ed also went to Mr. Roy.

I understand, if Mr. Ed had a deadbeat client, Mr. Roy would take it out of Mr. Ed's salary, when they were first under way.

SHARP: Somebody also told me that he was the one who really went after the big business.

MATHES: Oh yes. That is what I meant. If you had a possible major client, then you would go to Mr. Roy and tell him what you thought your chances were of obtaining that client. Then he would help you work on it if you were an associate, or another partner.

SHARP: What would "working on that" mean?

MATHES: You would probably take them to lunch. Or, whoever it was introduced him to them, would have them come to meet with Mr. Roy. Mr. Roy would talk to them.

SHARP: Was he pretty good at making impressions, Mr. Roy Bronson?

MATHES: Oh yes. He was just a great guy, no doubt about that. He was a very fair man. He did not say or do things without thought; he really thought things through. I am sure if he thought there was some reason we should not take a client, he would have the last say. Or, on the other hand, he would say, "Yes, take him."

SHARP: How did Mr. McKinnon fit into the picture?

MATHES: Mr. [Thomas] Slaven was a partner, some time before I came. It was like, maybe, twelve years before. The firm name was Bronson, Bronson, and Slaven. Then Mr. Slaven was, as you know, in a serious automobile accident and never could work again.

Somewhere along the way, Mr. Roy and Mr. McKinnon knew each other at [University of] Santa Clara law school. I don't know when Mr. McKinnon came to work. It may have been before Mr. Slaven was even injured, or maybe it wasn't. I don't know that. That is how Mr. McKinnon came. He obviously had been here for some time. So, when Mr. Slaven could no longer work, they added Mr. McKinnon to the firm name, instead of Slaven.

Mr. Slaven was very young when that happened, he was probably say, thirty-five.³⁷

SHARP: Yes, I was putting the dates together, and he really was a very young man for that to happen.

MATHES: Well, it was a brain injury. He survived many, many years, but he could never withstand the pressure of trying to do something. They told me that he could review a file and talk to you about it, and then the next day it wasn't there. He just could not stand the pressure of anything at all, really.

SHARP: It would be heartbreaking for the people in the firm.

MATHES: Yes, because they really naturally wanted him to come back. He just could not work after that.

Fortunately he had a lot of insurance policies, so he was not wanting. The insurance companies would make him take a complete physical every year, year after year, as though they thought something might come of it, but it never did. I think that, as time went on, there was a deterioration, although I am sure he lived to be in his sixties, or so.

SHARP: Who were some of the other secretaries that you worked with in this early period?

MATHES: Let me go get those early form lists; have you got the copies?³⁸ [searching through papers]

SHARP: Is the early period when Jean Ross came?

MATHES: No, Jean Ross left early in the year that I came. She had been here for, I would guess, three to four years prior to the time that I came. So she probably came around 1940, possibly '41.

When Paul Dana left, which was the end of the year I came—well, she had left before that. She did go to work for Paul Dana, but she had left earlier in the

37. The accident happened on 7 June 1933.

38. Miss Mathes here refers to copies of old employee address lists she provided the interviewer with to help with research.

year, so I didn't know her until she came back. She was gone thirteen years, I believe.

SHARP: So it would have been the fifties by the time she was actually back.

MATHES: I do remember Carrie Monette, who was Mr. McKinnon's secretary. She retired to become a Carmelite nun.

Then Beverlee Carlson, who was actually in the bookkeeping department. Lucille Carlson was a secretary; I fired her one day.

Laura Conrad worked for Mr. Chapman. I just heard from somebody who called me, and said she had died recently.

Merle Cullen worked for Mr. Ed Bronson after I did.

SHARP: What kinds of women were they? College educated like you, career women?

MATHES: I think some were and some were not. I do not think any of these people really had been to college, I don't know.

SHARP: So you found yourself one of the better educated women in the office, then?

MATHES: If you want to call it that. I don't always go along with that.

SHARP: College doesn't make that much difference?

MATHES: No, it doesn't, doesn't necessarily make you better educated.

SHARP: It would have been fairly unusual to be college-educated in the 1940s though, wouldn't it?

MATHES: Well, when you take the general run of these people, I don't recall that they were. But I don't know, where I grew up, you just grew up expecting to go to college. You just went to University of Oregon or Oregon State, and it was just a choice of which one you went to.

I don't say everybody did, but it just seemed like that was what you did. I don't know or remember the background of many of these people, if I ever knew it. I can't put a college to any one of them. Probably Merle Cullen, who worked for Mr. Ed, she probably did [go to college], but the rest of them....

Jimmy [Josephine] Hulsman, as I recall, was the receptionist, and she had undoubtedly gone to the convent. I did not know much about her background but I knew her pretty well.

Lorraine Peiffer worked for us for many years. I know she did not go to college, but she was an excellent secretary. She worked for Mr. Painter all those years.

Yvonne Stein [Dillon] is still with us. She grew up in London, and she was one of the few that survived to go on to secondary school. I think their secondary schools give you as good a college education as we have.

SHARP: Really competitive, I know.

MATHES: Yes, it is really tough, because you have to take an exam when you are eleven. If you do not pass it high enough to go on, then you are sent on to a trade school or whatever.

But she received a very good education. That was during World War II, and of course they had evacuated all the children to the country. Her mother moved her family, the children, back into London, even in spite of the bombing, so that Yvonne could go to school. She was just so pleased that Yvonne was going to get that education.

Some of these people I can't really remember.

SHARP: That's okay. You have remembered quite a few.

Office Procedures, Then and Now

SHARP: Tell me about some of the office procedures. I know that there was an office manual.

MATHES: Oh yes, there was always a manual, as long as I have been here.

SHARP: What were they used for?

MATHES: To help train new personnel. Like today, the summer clerks and new associates who come in are given a copy of this manual. It is hoped that they will read it, because there is a lot of good stuff in there. But, I find as time goes on, they read it less and less. So, I xerox pages and give them to them.

It is just a manual. It sets forth a lot of our procedures, about time sheets, how you should write your time sheets, as an example, and things like that. How you should treat clients and how to write memos and letters. It is very informative.

The new associates are given the manual on their first day. It is always there. They have a copy if they care to look into it and see what they should be doing.

SHARP: Has it always been in the office?

MATHES: Always as long as I can remember, yes, there has always been one.

SHARP: Who works on it to make changes in it?

MATHES: It is updated every so often, and certain people are assigned certain portions of it. One time, Mr. [Lawrason] Driscoll was assigned to do the calendar part of it, which of course I did. He would not know how to calendar if his life depended on it; but that was what he was updating.

SHARP: What does "calendar" mean?

MATHES: We keep a master calendar of all the pleading dates, the appearances in court, the depositions, and all that. We have a full-time calendar clerk, of course.

Then, every day, another girl, because Marilyn does not have time, goes around and sees that the appearances for the next day are taken care of.

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MATHES: One day three partners found themselves over in Oakland in the same court. They had different matters. Then, they decided that that was really a little bit wasteful, and somebody should start taking care of those appearances, so three people did not go to something at the same time at the same place which one person could have handled.

So that was when I was lucky enough to watch the calendar for matters. Somebody had to be sure that if somebody had a conflict, had two trials on the same day, somebody else would have to cover those, or put one over, or something.

SHARP: There must be a whole system of letting people know when they are supposed to be there.

MATHES: There is what we used to call a green sheet. It comes off the computer now, it is no longer the green sheet.³⁹ But, every attorney is given a calendar of the matters for the next day, the day after, and a week from the day. So they get one of those calendars every day, and then their secretaries, most of them, keep a diary book too. We have red diary books for the girls. The lawyers should have been warned at least twice before the day, so they should know what they are attending.

SHARP: So it is in several places?

MATHES: That's right. We did have a couple of days' bad luck where the computer broke down and we could not get it fixed, so we did not get a calendar out.

SHARP: What types of clients did Bronsons' have in this early period when you first came?

MATHES: Very much the same as we do now. We had an insurance business, and a general business, just as we do now. Of course, then it was on a far smaller scale. We had individual clients and corporate clients, and various insurance companies (of which we still have many) we had at that time. And, we have developed some new ones. Then the clients change. Somebody starts liking some other firm and wanders off. Sometimes they come back, and sometimes they do not.

39. Miss Mathes later noted that the sheet has become green again.

Working for Ed Bronson

SHARP: What was the major kind of work done by the firm in this early period, the first five years or so that you were here, do you remember?

MATHES: Well as I say, there was a lot of the National Labor Relations work, because that was hot in those days.

SHARP: You think that was the major percentage?

MATHES: No, I don't think that was the major percentage, but probably it was the biggest part for each corporate client. But we didn't have all that many, and as I say, I can only remember Schenley and Grosjean but there must have been others. Any business would be having that problem [of the NLRB]. And then, as I say, the insurance business.

I only worked for Mr. Potruch for, oh, I would say less than a year. Then I worked for Mr. Ed Bronson, till he gave me away to Mr. Driscoll. As Mr. Driscoll said in the first volume, Mr. Ed was so nice to give me to him.⁴⁰ Well, I shouldn't say I worked for Potruch that long then, because I came in '44 and I started working for Mr. Driscoll in the fall of '45. There were a few months in between there that I worked for Mr. Ed, until he gave me away, as he magnanimously said.

Of course, Mr. Ed couldn't stand me. Later I had a lot of fun with him about it. Unfortunately he got real mad at me one day and was chewing me out. I had the misfortune to laugh, because I thought it was funny, and that was not the way Mr. Ed liked you to respond. He wanted me to burst into tears. The next day he was going on from where he left off, and I was studiously looking out the window to keep from laughing. So he thought I wasn't listening.

Then Mr. Driscoll was conveniently coming back, so he gave me to him.⁴¹ Mr. Ed always swore that was the biggest mistake he ever made, and so forth and so on. I always teased him and said, "You know, you couldn't stand me!"

I don't know what it was at this time, but Mr. Ed had a tendency to get a little mad, and he liked to bully people. Having worked for a man at the California-Oregon Power Company that really knew how to chew you out, or so it seemed to me in my young years, well Mr. Ed wasn't doing too good of a job of chewing me out. I had already been chewed out by a master.

SHARP: That is an experience I guess everybody has at least once.

MATHES: I used to work for the chief clerk and general auditor, and so any time the president chewed out the vice-president, the vice-president chewed out the secretary. Then when they got down to those two people, they didn't have anybody to chew out but me.

40. See *The Law Firm of Bronson, Bronson and McKinnon: 1919-1941*, Regional Oral History Office, 1978, p. 136.

41. Lawrason Driscoll was away from the firm between 1942 and 1945 as a Marine during World War II. Before that he worked with the OPA in Washington.

One day I got a royal chewing out. One of the men came over; he said, "Oh, don't worry about it," he said, "Frank just got chewed out by Mr. MacPherson," and he said, "it went from the top down and you were the last one they could do it to." The president was on a tear that day, I guess.

SHARP: You must have learned about insurance work, then, from Mr. Ed Bronson.

MATHES: Starting with Mr. Ed, yes.

SHARP: How did he tell you?

MATHES: Well, he didn't, but Mr. Driscoll was very good. Also, he was back from the war, and he had not had a great deal of experience, you see.

In a way, we kind of learned together. He was far superior to most attorneys, I felt, in that he told you things so you would know why and what we were doing. A lot of people just tell you to do it, and they don't tell you why, or they don't tell you any of the ramifications—which I think is a mistake. If you expect your secretary to be a good secretary, you have got to help her understand what you are doing. You just can't be a good secretary if you are just told to do something. So I felt he was really superior in that way.

SHARP: That is a nice sidelight. I did interview Mr. Driscoll and he told me a lot about his work, but obviously he would not mention something like that.

MATHES: Well he may not even have been aware of it, either, you know. Some people are just like that. They just tell you because they understand you need to know.

Additional Growth For Bronson, Bronson and McKinnon: The Period After World War II

Settling in as Secretary for Lawrason Driscoll

SHARP: How did your duties change when you became Mr. Driscoll's secretary instead of Mr. Ed Bronson's?

MATHES: Not a great deal for many years. But, as time went on, Mr. Driscoll became the titular head of the insurance department. Then, more and more of administrative duties cropped up. As a result, I would get involved in those.

SHARP: So you assumed administrative duties later on that made you quite a bit more than a secretary, then?

MATHES: It just grew, it wasn't any different. It was just part of the job. Those things had to be done. Just as an example, you used to do little reports before we got so formal, case counts, and new cases, and stuff like that, which was just information Mr. Driscoll had to have.

But, as the firm grew, and you had to plan ahead about how many new associates we had, and all that, a lot more of that became important. Of course, now all those reports that you used to have to do by hand come off the computer. They have to have a projection to know how many new attorneys we want for next year.

SHARP: It has become quite a big business, then?

MATHES: Oh it is, it is. They project financial needs and everything else now, just like any corporation does, anything like that.

SHARP: Do you find it amazing?

MATHES: In a way, yes. But you see, it is something that I, oh, I have just grown up with. It has all developed around me so that it doesn't seem so strange. But it is really formalized now, like any other business.

Attorneys are their own worst enemies, when it comes to that sort of thing. If you did not have a few, like Mr. Legge, who is now managing partner, a few people who could do that sort of thing, you would just be wallowing.

SHARP: You mean the business end of it?

MATHES: That's right. Because they don't like to get their bills in. They just want to practice law. They don't want to lose money, but want someone else to handle the business details.

SHARP: I want to ask you more about that later on.

What was Mr. Driscoll's daily schedule like when he came back from the service?

MATHES: As I say, he started almost like an associate; he had to take hearings and take little trials. He would try cases in the muni [municipal] court. Then of course as he got back in the swing of things, he started handling bigger and bigger litigation. He did depositions, you know, just like one of the associates. But you see, he had been gone for, oh, I guess three or four years, and his background up to that point had not been so heavy.

SHARP: He told me that one of the most important areas in insurance law after World War II was products liability. Do you agree?

MATHES: It is right now, still. It is just that the law developed in such a way that you can sue anybody for anything, any poor manufacturer for something he did twenty years ago. That sort of thing is done in the air field so much.

The air industry was an interesting field to get into. Because, you see, it is a young field, say, it is fifty years old now. They didn't think about, when they made modifications to aircraft, and then after World War II when it became a big industry, they didn't think, "Well, we better watch this, and keep this or that little document because they are going to sue us someday if this airplane crashes."

So the documentation for the Beech, Cessna, and all those people, was faulty, to say the least. There was no precedent for these manufacturers. These men were just pilots and engineers who were developing airplanes, and making them better and better and better. They were not interested in, they did not think that, "I am going to get sued for this."

Then, the law became more and more liberal. You can sue anybody for anything, any manufacturer now. The manufacturer has to tell you why the product is safe, or why it didn't do this, or that.

SHARP: Does that seem shocking, that all that would come about sort of unawares?

MATHES: It wasn't entirely unawares, but the law has just gotten more and more liberal in every respect. In the criminal areas, you can tell that from the newspapers,

where criminals used to get sent to San Quentin and put in the death cells. Now there are just all kinds of defenses, as in the Dan White case.⁴² It is done in every field of law, it is not just products liability at all.

When I first started here, if somebody shot her husband, well, she went to trial for manslaughter and she spent her seven years, maybe got a couple of years off. But now, it is lucky if it is two years. We must not do anything naughty to our criminals.

SHARP: That is very interesting.

What other areas of law did Mr. Driscoll work in besides insurance? When I talked with him he seemed to focus most on the insurance law. He spoke about being a trial lawyer.

MATHES: That's right. A true client would be the insurance carrier. That is what he did, largely. Once in a while he did a little something for a friend, something like that, but he didn't do any corporate work as such.

A Note on Pro Bono Work

SHARP: Did he ever do any pro bono work?

MATHES: Not a great deal, no.

SHARP: Mainly because he was a defense lawyer?

MATHES: Not so much that, but by the time he was back and active, the pro bono work was usually assigned to the younger associates, and they did most of that.

SHARP: Is that still the case?

MATHES: Oh yes. The younger people now want to do a lot of that work. That is one of the problems we have of hiring some of the minority attorneys, is that they want to do pro bono work mainly.

I understand in New York, offices do allow a lot of their associates to do that. There is an office out in the ghetto area where some of our attorneys go one night a week. There are certain matters handled in the office which are assigned to the attorneys. One of the young lady attorneys has one where she has a client who is being harrassed by her landlady, and her landlady has taken her furniture. There are people who can't afford attorneys, so they take on that sort of thing. It is not just a hit and miss thing.

SHARP: Who goes out and actually gets these?

MATHES: Oh, a couple of the partners keep an eye on it, and they visit the offices, and assign it to the attorneys.

42. Dan White was convicted of killing San Francisco Mayor George Moscone and Supervisor Harvey Milk in 1978.

SHARP: So a minority lawyer for Bronsons' would be paid to do pro bono work?

MATHES: No, that is not what I mean. They want to go to places where they are allowed to do a great deal of pro bono work. We can't function with them doing that much outside work.

SHARP: Because it simply doesn't pay?

MATHES: Well, pro bono, we don't get anything out. We can't have somebody working 50 percent of his time doing that sort of thing when we need him here.

SHARP: But there is a certain amount of pro bono work?

MATHES: Oh yes, and we keep track of it, and we get brownie points from the bar association, things like that. We are doing more now than we ever have, but that is because we have more people.

As I say, some of the younger people like to do that, and that is a consideration when they are hired, if they do want to do some of that, but they don't *have* to do it. They don't have to go out there on their free nights and talk to people. They don't have to do that, they just want to help those people.

But it is really the minority people who want to do so much of it. That is their aim in life, you see. So they get gobbled up right away by the bigger firms. I don't say so much here in the city, but if they are in eastern schools, or like that, because apparently in New York there is a great deal of it, from what I have understood.

Driscoll's Most Important Cases

SHARP: Do you remember any of the cases that you think were some of Mr. Driscoll's most important ones?

MATHES: Yes, I can remember an air action, one of his biggest trials, when he was really getting this business developing. It was *Carpenter v. Rogers*. It was a case that was in Plumas County; I can't remember whether it was a Beech or a Cessna that crashed. So he was up there for weeks and weeks on end.

Then he tried what was known as Mer 29 which was a Richardson Merrill product. It was one of the first cases we had that started all this products liability—not his case particularly, because they were nationwide, but that was one of the first areas. Now there are all these medical, or asbestosis cases, and all the IUD [intrauterine device] cases, the pill cases, and all that sort of stuff. There are great volumes of them. But that was one of the first ones, at least that we had.

SHARP: Can you give me the citation for both of these cases?

MATHES: *Carpenter v. Rogers* was never appealed, and it was in Plumas County, and I could get the files. I couldn't get you that Richardson Merrill case, because of its files, and I can't tell you what the name was, but I could probably find it for you.

SHARP: I would like to read both of those, and maybe make a couple of footnotes.

MATHES: Well, Richardson Merrill was appealed. As I recall, it was about a \$600,000 verdict, and there was a large amount of punitive in that. It was a drug given to lower blood pressure.

SHARP: Mer 29 was the drug?

MATHES: That is what it was known as in the trade, but it had another name, of course. It was given to people for high blood pressure, but the side effect was cataracts. The problem was, it was so difficult, in some cases, to attribute the cataracts to the drug because it was given to older people who ultimately had cataracts. But, you did not know whether they were Mer 29 cataracts or caused by their age. Meantime, they had the cataracts removed, so a lot of those cases had no real value.

But in this case that I am referring to, the man was in his forties, and he developed cataracts. So it was pretty hard to overcome, because it did turn out there was that side effect.

SHARP: When I was reading the horn book on insurance and the products liability section, I was looking especially at the defense, what the plaintiff's lawyer had to prove, and all of that. You had to prove that the product was defective, and that the product is what really caused the injury, those two things. With the cataract case I can see how that would be very difficult if it was an older person.

MATHES: That's right. Those cases were of no value, particularly, other than nuisance to get them out of the way. I remember settlements ranging from, say, \$5,000 to \$20,000 and those were probably just nuisance.

But of course, this one was a younger man. Unfortunately in the chain of testing, monkey number so-and-so sort of disappeared. Mr. Driscoll wasn't able to explain what happened to monkey so-and-so, monkey 7, or what have you. So he was left with egg on his face.

SHARP: Because he did lose the case?

MATHES: Oh yes. As I say, the verdict, which of course was some time ago, was \$600,000. That isn't peanuts today, but it isn't anything compared to some of the verdicts today.

SHARP: What about were the years of these two cases?

MATHES: I can't tell you that without looking them up; I just don't recall. They were, say, fifteen years ago, maybe, because we were in the John Hancock building. We have been here ten years, and we were there ten years. That is about as close as I can get on it.

SHARP: I will ask you later about maybe trying to find these cases.

MATHES: My reluctance to get the file back is because they are so voluminous, but I can do that if I have to. There are boxes and boxes and boxes...

SHARP: Maybe we can get it off Lexis.

MATHES: Well, *Carpenter v. Rogers* I don't think was appealed. Now, the other one, when I can remember the name, very likely would be on Lexis.

I have no great memory for years. Ed [Edwin] Green might be able to tell me when the Mer 29 one was.

But that was, to me, when we started getting into big litigation which required just endless work on files, and things like that. The Mer stuff, you see, you would get the—as they do in these other cases—the literature would be provided by the counsel for the manufacturer as well as any information from cases handled in other jurisdictions.

Then, of course, that is when they started asking for all records from the day one that this airplane, or its prior model, was built. So then they would have to go back to Beech and to Cessna, and start in from the first model of that airplane that developed up through the years. Of course the documentation just got unbelievable. There were cabinets full of documents just for that Mer 29 stuff.

SHARP: So the changes in evidence, and what you needed for evidence, made the whole case more complicated?

MATHES: That's right. In a little intersection collision all you would get is a trial with a police report, the depositions, and the medical information, but when you start getting into products liability, you start from the day one that somebody started manufacture. I don't know with Mer 29 if there were changes along the way; but with an airplane, say that this plane's first model was, say in the 1930s. So the plane that actually crashed was manufactured in 1949. Well there are all those years and all those modifications that have been made on the airplane, or one single part of the airplane.

SHARP: What sort of things did you have to learn to help Mr. Driscoll with his insurance work?

MATHES: Fortunately, I had taken anatomy when I was in college, for no reason at all. I quit because I was afraid I wouldn't get credit for it because I didn't have the prerequisite.

It was only a coincidence, but it was very fortunate, because soon we got into personal injuries, and had all the broken bones, and one thing and another like that. It was helpful. It was just one of those fortunate things. I just took it because some of my friends were taking it.

SHARP: Did you take some law courses later on, too, while you were working here?

MATHES: No. I took business law because I had to, in college, and I got a D in it. I was pretty mad about that! We had a goofy professor. Everybody got D's, so it wasn't so bad.

SHARP: Did you ever have to read the horn books or anything like that?

MATHES: Not really, no. Just if I couldn't spell something, or something like that.

SHARP: But Mr. Driscoll was just really good about explaining things?

MATHES: Oh yes. You know, we would get a certain amount of repetition. So you, hopefully, learned something, if you cared.

SHARP: You had said that Mr. Ed Bronson was in charge of the insurance department in the beginning. What was the work split between Mr. Bronson and Mr. Driscoll?

MATHES: Actually, it was sort of the kind of cases, like Mr. Driscoll into the airplane business and developed that. Mr. Ed, at least before he retired, was doing a lot of the Merck, Sharp and Dohme stuff, and things like that.

Of course, since they were the senior men, they always had the bigger cases, you know, with the most exposure.

An Outline of Some Daily Activities

SHARP: Then, shortly after Mr. Driscoll came back from the service, did he have associates who worked under him, too?

MATHES: Oh yes.

SHARP: Would you work for some of those associates?

MATHES: Oh yes.

SHARP: What would you do for them?

MATHES: Tell them to go take a deposition, or to do this or that or the other thing.

SHARP: But you would help them organize their daily schedule. So you, in a sense, were managing a couple of associates?

MATHES: That's right. The problem is, that they were probably, well they still are, assigned to more than one person, more than one partner. Sometimes the poor associate got squeeze in between. One arm pulled one way, and one arm pulled the other, but this was one of the things he [the associate] had to learn to handle.

I handled the calendar for years and that would mean that any associate who was available to do something would be sent to take a hearing or a deposition.

SHARP: Did you spend any time in the courtroom?

MATHES: I have never been in the courtroom; I am keeping my record clean!

SHARP: Did you ever have to serve any summonses?

MATHES: No, I have—not summonses, but I have served subpoenas. We usually let our office boys do it, because they, needless to say, are not paid a great deal when they are in law school. So we always gave it to them, or one of our girls used to,

Lorraine Peiffer; but just because it was on her way. She drove home going by a certain hospital, and we would always give it to her.

SHARP: The reason I ask you is that Rita Convery had a great story in the first volume about having served a summons to a dentist. I thought it was so great I thought I would ask you to see if you had any great stories about having to serve one.

MATHES: No. I threatened to serve a doctor once with a subpoena. He got awfully mad. It was funny, he claimed he was so busy. So when the fellows went up to take his deposition, he spent fifteen minutes ranting about how I had threatened him, et cetera.

I happened to know him; he didn't know who he was talking to. I really thought he was a horse's ass, so I knew what he was going to do.

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SHARP: Did you work with any of the other secretaries on other projects like on the calendar?

MATHES: Oh yes. I tried to get off the calendar for years. Finally, when I started doing the job I am in now, I finally just had to put my foot down. I had been ill, and I had too much to do.

SHARP: I guess once you develop the expertise of organizing something as complicated as the calendar, they would just as soon have one person do it all the time.

MATHES: [interruption in tape] Well, it was just that Jeane McLeod and I could do it. She was calendar clerk for a while. Then, while she and I were doing it, in fact for years, Mr. Driscoll would say, "Isn't there somebody else down there that can do that?" And I would say, "No."

It isn't a job that you can just expect somebody to sit down and do. You have to give them a little training. By the time we needed somebody, it was too late to train anybody. Now they have several back-up girls, which should have been done all along.

SHARP: That is the kind of thing where it is just so much easier to do it yourself.

MATHES: Well, it just grew, because—you know, I was in the office and all these things that I would know how to do I just did because they were there to do. It took me twenty years to get away from relieving on the switchboard.

It just got to be ridiculous, because everybody knew me, and when I answered the switchboard they would just chat with me, and the lights would just go on and on and on, and finally I got off that, too. It was a big relief.

When things got desperate there, I was put back on the switchboard.

SHARP: Well if I can try to put your day together, it sounds like you just had such a variety of things that you ended up being responsible for.

MATHES: Well, it had to be done, I just knew them all, because of longevity. I had the good fortune to get to do them, which is all right.

SHARP: Did you have any obstacles to your doing any of your jobs that you remember?

MATHES: No, well you just had to do these, by osmosis or something. It was a matter of growing, it wasn't so much obstacles. For instance, I only learned how to run the switchboard because we had a switchboard operator who got so panicky that she would yell for me, and I just learned how to do it, that was all. I didn't really take lessons on the switchboard or anything, or calendar, for that matter.

Changes in Office Procedures: The Computer

SHARP: Now I wanted to ask you some questions about changes. I know now that you use a computer for a lot of different functions. How did using the computer come about, and when did it come about?

MATHES: Well, Vern [Vernon] Goodin got interested in computers, and long before it ever came about he had talked about getting one. I would say, maybe ten years before he ever accomplished it.

So they just, ultimately, got one, and started in with it, which was a trial. I think it has been about six years, maybe, seven years. It just took us a long time to get underway before we were using it. And, it's being developed more and more; more programs are put on it. Even in our original context of just the billing.

SHARP: That was the first idea, was to do the billing off it?

MATHES: That's right. It was to do our billing, and that was the only thing we did at the very beginning.

SHARP: So now payroll has gone on it?

MATHES: No, not ours. We have always had the Bank of America do the payroll, and they do it on their computer. That was another thing that, before we got our computer, they did. They sent it to the bank and they just kept that.

SHARP: What other changes in the office procedures have there been since you came?

MATHES: Because of the growth, more people are doing more, like the calendar is a good example. There used to be one person who opened the mail, who logged in the documents, who did the calendar and passed them out, who saw to it that the daily calendar was taken care of.

Well, now the girl who does the actual calendaring *only* does the actual calendaring because it is so voluminous. Another girl does the daily calendar, and goes around to see that all the matters are taken care of. Somebody else opens the mail, because it is a big job to do it. We don't usually get our mail till nine o'clock. People are in at eight o'clock who could just as well be doing it. So sometimes it is eleven o'clock before we get our mail out. Then sometimes

another batch comes in.

We used to have one receptionist and one relief person for the switchboard, and one for the desk. Well, now we have any number of those people who can do it.

Mr. [Richard] Dilley used to take care of all the physical things of the office. For instance, he would be in charge of the carpeting and all that stuff. Now, we have somebody else who has to do that, because Mr. [Victor] Hampton, who has replaced Mr. Dilley, doesn't have time to keep track of every little thing.

It is largely just a matter of growth, because there is so much more of it that one person used to do, just can't do it anymore.

SHARP: From reading the new office manual that Mr. Hampton showed me, I know a bit about the management structure, and the different committees that Bronsons' has. When did all of these things happen?

MATHES: They just grew along with the office. Mr. Roy [Bronson], when he was first starting, didn't have a management committee. But it just got to the point where, for one thing, more partners were learning how to do those things. They usually put one or more of the new partners on the management committee, just so he would learn what was going on.

An associate is really not conversant with the management of this firm until he suddenly becomes a partner. Then they need to start teaching him so that he will understand the business, the right way a firm should be run.

SHARP: What sorts of things are decided at management committee meetings?

MATHES: They have an agenda. Suppose the personnel committee has recommendations for, say, firing or hiring somebody. It is not done just off the spur of the moment. If they find that the person is not satisfactory or something, then it is submitted to the management committee.

At that point it would be just sort of a stamp of approval of the personnel committee's decision. But it would be something like that.

Or, for instance, when we started to do the redecorating, well there was a decoration committee. They had to work it up and obtain the estimates, and all that stuff. Well, that might have been submitted to the management committee, and the management committee might or might not have decided to do it this year, or say, "No, it will wait till next year," or whatever.

SHARP: You were telling me about the computer, that you get projections of how it is serving you. You feed certain figures into the computer. Is it then a matter of getting back, "Okay, we need to hire five more lawyers next year." Is that the sort of thing that it is capable of?

MATHES: Well, not that so much. I was thinking more in the terms of dollars and cents. The management committee estimates what will be required to run this operation, [an amount] which gets increasingly higher and higher. So then they have to project, like, we need so much. The accrual has tripled since I have been doing this job.

We have to bill a whole lot more than we need each month as payments to us are slow at times. It is just a matter of trying to decide, for instance, how much a month they want in billing, so that they will have the money to run this operation.

It is just fight, fight, fight every month to be sure you have your overhead, you know.

SHARP: There are a lot of people who work here.

MATHES: I don't even know how many.

SHARP: Well I know there are over a hundred lawyers.

MATHES: That's right, so I would guess it is—

SHARP: One to one?

MATHES: Yes, I guess we are over two hundred, I don't really know. I should ask somebody.

SHARP: How did you perceive the role of Mr. Dilley?

MATHES: He started out as office manager. He also did all the accounting work. Actually, when he first started he was just a bookkeeper. Then the job grew into being office manager.

After Mr. Hampton came, Mr. Hampton was more administrative. Dick was more financial, until Dick decided to retire. He was the financial manager, and did manually the type of thing I was just telling you that now is done on computer. But, he used to do pretty much all of that manually, to get all those figures together.

SHARP: What was Mr. Dilley's relationship with the partners, as office manager?

MATHES: He would naturally do whatever they wanted, but he would also make suggestions, such as physical improvements and things like that. If, for instance, somebody wanted his office painted, or new furniture or things like that, he would submit it to the management committee or to Mr. Roy, even as far back as that, because Dick was here almost as long as I have been.

SHARP: That is what I thought, your years are just about the same.

MATHES: In the early days you just went to Mr. Roy and said, "Should we do it?" Mr. Roy would say, "Yes," or "No," or "Wait," or whatever.

SHARP: Things have gotten quite a bit more complicated.

MATHES: And more formal, too, because it has to be, or it just becomes a shambles.

Thoughts on Clients

SHARP: I now have some questions about clients that I wanted to ask you. First of all, tell me about your contact with Mr. Driscoll's clients.

MATHES: Of course we would be on the phone with them a great deal. I didn't really have a lot of contact with them personally, because of the area in the Mills Tower. We were never in a position where we would see them.

Then, as we moved to the John Hancock building, I was positioned where I would see more of the clients. Then, of course, I got to know who they were, and to see them so I would recognize them.

SHARP: Why wouldn't you see them before?

MATHES: Because the secretary in the Mills Tower was away from the pathway of the clients. We were in an L-shaped room back here, and the offices were all out here, you see, in a different area. Whereas, you see the areas now, if a client comes in, and the secretary is sitting outside the door, well, she gets to know him, and I think the girls get to know the men.

I would know them over the phone, but if I would see them on the street I wouldn't recognize many of them.

SHARP: What sort of change did that make for you when you began to see the clients?

MATHES: Oh, it was kind of fun, to see all these people that you had talked to for years and years, and get to put a face to them.

SHARP: Did your impressions of them change?

MATHES: Not the really good clients, no. They were always very nice to me.

SHARP: Who were some of the more important clients that you knew about?

MATHES: Mr. Driscoll had some really good friends. The AAU [Associated Aviation Underwriters] were always important clients. I used to talk to them practically daily, a lot. Well, at one time that we were getting the case ready, and stuff like that.

And then, Mr. [Charles] Umland out of Fireman's Fund was Mr. Driscoll's personal friend as well as his client, and he was very favorable to our firm. Jud Kirby was with Pacific Indemnity [Company], and he was one of Mr. Driscoll's clients.

Many of the people that you deal with over and over, did become personal friends of Mr. Driscoll.

SHARP: Long-standing friends?

MATHES: That's right. And they, perhaps, did things socially, I mean you would have them to your home and stuff like that, as the years went on. But, you don't develop that relationship immediately, overnight.

Then, those people are very instrumental in continuing sending their cases, and of being in a position to see that the cases are sent to you, which is important.

There does get to be a point where they become more than a client, they are personal friends. That happened in these two instances particularly. The same way with Bob [Robert O.] Griffin, who is now retired from AAU, and some of the other people.

SHARP: Did you ever have problems with really demanding clients?

MATHES: Oh sure.

SHARP: How did that work?

MATHES: There were many people that finally learned that if they couldn't get a hold of the attorney, they would call me. Then, I would go in and stand over the attorney, dial the number, and hand the phone to him, or say, "Call him back." I have heard several say, "If you really want to get anything done, call Mary Mathes."

If they went to the trouble of calling me, I always saw that their call was returned. As I say, I would just go in, dial a number, and say, "Here he is."

SHARP: How did that make you feel when you would get that sort of reputation?

MATHES: Oh, it is all a day's work. I have a great feeling that you should please your clients, and I have that in billing now. It is a feeling that people who don't understand the law business don't have. You can't teach them that. You have to experience it.

There is a narrow line of keeping your clients and getting your bills paid, but you have to be sensitive to handling that. I have that more with the insurance clients than with the general business people because I didn't deal with them.

If clients do not want you to do something, regardless of the fact that it is perhaps a little unbusinesslike, you still sort of adhere to their wishes because you don't want them to say, "To hell with you!"—

SHARP: —and go somewhere else?

MATHES: Right. So, I kind of get it both ways, because I do understand. I try not to let something like that happen, if I can avoid it.

SHARP: So that it is a matter of sensitivity to the client, and that is more important than the straight business angle.

MATHES: Well, they have their reasons. If they have requested you not to do it, then that is the way you do it. You get aggravated when we run up \$15,000 in advances, or something, but you just abide your time. You get it eventually. As you know, it doesn't pay to bill today to get it six months from now.

But, the slowness of the way cash is flowing, it is annoying to see it there. If they have requested it be done this way ten years ago and we have been stuck to that for ten years, well, you don't just go overboard and change. Besides, it complicates matters in just the physical operation, too. You suddenly start doing that, and they don't understand what you are doing.

That is because I did the other side of the business, you see. You can't teach that feeling, you just have to experience it.

SHARP: You told me that the type of client had not really changed too much over the years, that even in Ed Bronson's time, there were young companies and old line companies that you would have as clients. That still is true now?

MATHES: I would say if you would look at the Martindale-Hubbell books that go back twenty years, and looked at the list of our clients, you would find that there are still many of the same, particularly of the insurance clients.

Now, the others tend to come and go a little more because maybe they don't have the work, for instance, and the individual client.

New Laws and Legal Assistants

SHARP: Were you responsible for finding out information on changes in laws that affected Mr. Driscoll's clients, for instance?

MATHES: That would be the associates, as they do still. They have meetings of different types, and associates report on the new laws, the new cases and stuff like that. I didn't notice anything in our mail for this morning, but there will be a meeting every Wednesday on certain kinds of law—taxes, products liability, or something.

An associate reports on those new cases, so that attorneys are all kept up to date. For instance, if you have an associate who runs across something that he knows pertains to a case, he should write a memorandum or put something in the file, so it would be there when somebody needs to prepare the case for trial. That is definitely a part of the continuing thing that goes on.

If you stuck your head in the sand, you would be in terrible trouble. There would be, probably, a malpractice scandal.

SHARP: How has the new position of a paralegal assistant changed the job of a legal secretary?

MATHES: Not really. I did no paralegal work, as such, when I worked for Mr. Driscoll. Occasionally one of the girls does now, but that is not her major job. The secretary's job is to be a secretary. Occasionally she does something else, organizes documents or something, that she puts in time as paralegal. But very little of paralegal work is done by the secretary.

SHARP: Do you, then, use paralegal assistants?

MATHES: Oh yes, we have twelve, I think.

SHARP: And what do they do, actually?

MATHES: Years ago, the attorney would summarize all the medical records; they do that now. They summarize the depositions, not as to make a deposition report for the client, but they summarize, they call it a page and line summary, so that it assists the attorney when he starts to get ready for trial, he doesn't read the whole deposition. He goes to that summary. Then, if he wants to enlarge upon a certain thing, he has the page and line where it was.

Also, in the document organization, as I told you, there are such voluminous documents, that they organize that, rather than the attorneys.

Of course, the client is not billed anything like attorney's time for that. Then, if it is prepared for the attorney he may do additional work on it, but the original paper-shuffling is done by the legal assistants, as they prefer to be called. They like that better than legal techs [technicians], for some reason. I could never see the difference myself.

SHARP: So, essentially, it makes very, very good work done a little bit more cheaply.

MATHES: That's right, it makes it cheaper. Also, it frees the attorneys to do more of the nitty-gritty.

Notes on Lawyers

SHARP: What kind of work did John Painter do?

MATHES: Mr. Painter? When he came back from the war [World War II], he did not return to us, and went elsewhere. Then, when he did first come back to us, he did insurance litigation work, but he didn't like to do that. So then he went into general business and corporate-type work for us.

Strangely enough, he was a splendid trial attorney. But it was just not his temperament, and it caused him ulcers and things like that. Also, you have to be kind of a ham to be a trial attorney.

SHARP: Is that why Mr. Driscoll was so good at it, at the trial level?

MATHES: You know, you are just an actor, so lots of people like to do that. Some are not suited.

For instance, Mr. [George] Hartwick, if the judge ruled against him and he thought the judge was wrong, it upset him a great deal. But he just couldn't do it, because he just couldn't stand it when he thought the judge would be wrong.

It wasn't that he was being temperamental or anything, but he just couldn't stand having the judge not understand the law.

SHARP: What sort of work does Mr. Hartwick do?

MATHES: He is pretty much in the insurance field, although he does assist in corporate matters. Mr. Hartwick is probably the best known, or the best authority on

insurance matters, I would guess. He works for so many of the insurance companies.

SHARP: Oh he does? As a consultant?

MATHES: Oh yes. But they don't come in just for the intersection collision or something like that. They come in with very definite, heavy problems that they have to do.

SHARP: Like what, for example?

MATHES: He has rewritten their policies, advises underwriting, and all kinds of things that are far more complicated than your defense work of insurance. He does none of that, and hasn't, since his early years.

Mr. Driscoll always referred to him as his attorney. So whenever anybody has a problem of conflict or insurance coverage, even within the office, they go and discuss it with George, because he is an authority on that sort of thing.

SHARP: Mr. Driscoll has quite a bit of respect for him.

MATHES: Oh yes, he always called George his lawyer.

SHARP: And what about Mr. Goodin, what kind of law does he do now?

MATHES: He still does defense work and trial work, and that is what he has done primarily.

SHARP: For insurance?

MATHES: Right. He does have some general business clients. But they're usually litigation matters as opposed to corporate work.

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MATHES: Sometimes insurance coverage doesn't cover it and we go ahead and defend the suit, the same as we would if they were working for the insurance company system. They had no coverage for that particular thing.

Now, so many manufacturers are self-insured up to a point, you see, because it is cheaper. Then, if there is no great risk, well, they have to pay their own way up to a certain point, it just depends. Even some individuals, say, up to \$5,000. With a big manufacturer it is much higher than that, but that is the trend now.

So, at first we get these suits that we are actually dealing with the corporation itself, rather than an insurance carrier. But ultimately, after the insurance carrier goes through his self-insured period, up to \$25,000, say, then it goes on to the insurance carrier. To practicality, it is the same as working for the insurance carrier.

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Later Career at the Firm

Shifting Responsibilities

SHARP: There are a few questions on your later years. You mentioned that you came to work in the accounting department in 1974. Is that right?

MATHES: That would be about right, I guess.

SHARP: Was that when Mr. Driscoll retired?

MATHES: That's about right, '74 or thereabouts. A couple of years before that, I had had a congestive heart failure. I couldn't work for Mr. Driscoll anymore because it was too much pressure.

I worked half-days for two years or more. I did legal tech work. Then they decided that I should do this—that was when they went on the computer—

SHARP: In 1957?

MATHES: No, it was after that, it was, perhaps, more like 1974 or 1975. Well, they actually went on it before I started doing this, but they were still in the early stage. They had not gotten everything done. They were just trying to get everything programmed, and the thing set up. The programmer was so slow. They put way too many things on the computer they then had to turn around and take off.

We programmed our own computer; we did not buy a program. It was an individual thing, tailored to what we wanted, so it took much longer. They had been playing around with the computer, I suppose, six months to nine months before I started helping them with that.

SHARP: So what do you do now, actually?

MATHES: We have time sheets that everybody turns in. I edit the time sheets, something which we hope is going to stop because we are going to have a scanner, shortly. I have to see that all the time sheets are in. Then the bills, each month, go out and I see they all get back in. That is oversimplifying it, because we get a lot of calls or complaints.

When Dick Greene and Mr. Painter asked me to do this, I did it, simply because the need was so great. I could see that accounting was always having to have someone bail them out to get the bills itemized. That was what I was originally to do—oversee the itemization of the bills.

I knew how to do this just like I knew all those other things, simply from being here. About six months after I started doing it, I said, "That's a good laugh. You underestimated what you are asking me to do." Because, it was not as simple as they put it.

SHARP: Well, if they told you how complicated it was, you probably wouldn't have done it.

MATHES: Well no, I did because, as much as I would have liked to stay with my airplanes, the need was really there, and I could see that. They say it is because of my naturally irascible disposition, that I am qualified to do this.

SHARP: You seem very nice to me!

MATHES: Well, thank you. [chuckles] I am a pretty good yeller, so....

SHARP: Well, you are probably in the right spot, then.

MATHES: That's what Dick Greene says. You see, I have yelled at so many of these people for so long, unfortunately they don't take it very seriously. Well, the new associates, I can scare them for a while.

General Changes in the Law and the Business

SHARP: How do you think Bronsons' has changed?

MATHES: It has changed like anything that grows. I don't feel that there is enough time spent with the new people, for instance. It is a shame, but nobody has time.

I was talking to John Sears one day, and he said, "Look, I shouldn't be doing this; I should be teaching him how to do it, but we have to get it out, and I can't wait. I have got to get it done."

That comes from the fact that we have never been overstaffed, so that people have a leisurely time. We just grow faster than we can keep staffed. As a result, everybody is so busy. They should spend more time with the new associates, they should spend more time with the secretaries, because this is the only way they can teach them.

If the attorney is a good man, like I think Mr. Driscoll was, he would teach his secretary. But a lot of the men don't want their secretaries to be anything

but subservient. Not that I am picking out any particular one, but a lot of people are like that. They don't want the girl to know as much as the man does, so that she can handle a lot of those things—which I think is a terrible mistake. First of all, it takes some of the burden off the man, and why not? I am willing to delegate anything that I possibly can, and always have been, but a lot of people don't like to do that. So, I think that is where we have our problems.

Then, there is just the general thing of so many more people, and so many things to keep track of, that it gets a little bit hairy. You wouldn't like it to be that way, but it just can't be helped.

SHARP: Is it, then, a big business?

MATHES: I think it is a big business. It has really become a big business. There seems to be no sign that we will be anything else but.

SHARP: Well, you have to keep on growing to maintain.

MATHES: That's right. Every class of new attorneys we have is absorbed within three months, until you think, you wondered what you did without them. Then you run them ragged, and the older people, who have been around, are still working hard. It doesn't seem to stop.

You would think now that it might, but we haven't really noticed any lessening of the business. We may get our comeuppance one of these days, but thus far we haven't.

SHARP: Is the continuing increase in government regulation one of the things that keeps you growing?

MATHES: I can't answer that so much because I don't know much about that side of the law business, but I would assume so. But, the liberalization of the courts allow more and more discovery. Before you go to trial now, you practically know everything that is to know about a case, both sides. You know the plaintiff's, the plaintiff knows your side.

It has gotten that way more and more as the years go on. You wonder how they can make it any more liberal, as far as discovery is concerned. That is one of the reasons that it takes more and more time. Years ago, they didn't send out interrogatories. There may be a question about what the policy limits were or something. Now, in some of these big cases, they talk about this fifteenth set, the sixteenth set, the seventeenth set, the eighteenth set, the twentieth set of interrogatories!

SHARP: What is an interrogatory?

MATHES: That is where they, where they ask a question. Either side, the plaintiff asks you, and you ask the plaintiff. They ask you what this and that and the other thing is, and what documents you are going to produce, and will you produce them without a court order, and all that sort of thing.

SHARP: This is all pretrial?

MATHES: That's right, it is all pretrial stuff. As I say, years ago there was none of that. When we used to talk on some of what I say about your paper shuffling, when you get up to the twentieth set of interrogatories, you have got documents attached to each one of those sections. It just gets to be outlandish.

SHARP: Is that all changes in discovery rules?

MATHES: That's right.

SHARP: I know there were less than forty people in the firm in 1955, from looking at the phone lists that you gave me. When did the really big increases come?

MATHES: Our biggest growth has been in the last ten years. Last year, as an example, I think we had twenty new associates, and we have never had that many before.

SHARP: Did you hire twenty new staff people too?

MATHES: No, this is twenty new associates. I think that was their plan, give or take one. That is approximately what they planned for going into I don't know, because they have been interviewing all year.

And, we are hiring our influx of summer clerks. We have got six in already. From the summer clerks, the people that are hired as summer clerks, almost all of them—I wouldn't say 100 percent but say, 85 percent—are offered jobs if they are satisfactory during the summer.

They have projected, I am sure, for 1980 whether they want twenty, fifteen, or whatever.

SHARP: How do they project the staff needed to go along with those new associates?

MATHES: Well, they talk about it a lot, of course. Someone says, "Well, I really need another associate to help me." It is done along that basis of what they think their need will be. As I say, so far everywhere we have had a new class in, they were just absorbed right away.

And, Victoria [Rathbun] is having just as many troubles getting her calendar matters covered as she did last year.

SHARP: Does she have an assistant to help her?

MATHES: Oh, no, she just goes around each day to see that all the matters are covered, that somebody is taking it. She can talk to the secretary and the secretary should know, and just tell her yes. Then, if there isn't anybody, she has to hustle and get somebody to go to court or the deposition or whatever the matter is.

SHARP: With all the growth in the firm, you talked a little bit about the relationship between the staff and the lawyers. How does that change over the years?

MATHES: You mean the non-attorney staff? Yvonne Dillon is an example. Joe Phair was leaving, and he had been here two years. She just found out who he was the day he left.

It is just a matter of not getting to know people personally as much as you used to. I am fortunate in the fact that I have this job that I do, because I do get to know everyone. I don't get to know the girls, but I do get to know all the attorneys and the law clerks, and those people, because I do deal with them. If a secretary stays long enough—we have a lot of temps [temporary secretaries]—then I do get to know who she is. But, sometimes I have trouble getting to know them.

It is just a matter of, the bigger you get, the more people there are. Like Yvonne, she probably would know him if she saw him in a group and he worked here, but she didn't know what his name was. And she's one of the people more likely to know. You know some people don't care, and have a lot of blinders. She was laughing because she had just found out he was leaving, and it was the day he was leaving.

SHARP: Are most of the secretaries women?

MATHES: No, we are having an influx of male secretaries, now, and a lot of temps.

SHARP: What is the effect of that on everybody?

MATHES: Oh, nothing. No, nobody cares. We now have a male switchboard operator. First that shook up everybody, I am sure, but just like it does me when I call someplace and I get a male answering.

I was away on vacation; Ken came as a temp, just to fill in for vacation. The first time I picked up the phone in the office, I about fell off my chair! But we have several now; well, two permanents, but we have a lot of temps that come in that are men.

SHARP: What about the women lawyers?

MATHES: I think that our office is a little more modern than a lot of places. We have accepted that more than, I guess, they are accepted in a lot of places. Although I have heard, some of the girls have told me, who are the lawyers, that certain people treat them better than others in that they are more helpful and like that.

So, I suppose there is a little stigma to it. We had a long time before we had any permanent women lawyers. Now, because there are so many more women lawyers, we hire more, and we have a large number of them.

SHARP: Mr. Hampton was telling me that there is one woman who is a couple of years away from becoming a partner.

MATHES: There are two in that class. I am very excited about it, because I think Mr. Roy would be, too.

We lost some of the girls we have hired by attrition, but one, I remember one of the early ones, her husband decided to practice someplace else, and things like that. Another one that was well on her way, she had been here two, going on three years. Her husband is a lawyer, too, and she decided she didn't want to work that hard. She didn't have to, and she went out to Hastings and taught one year. She didn't want to stay.

But no, it is Fern Smith and Deborah David, who are the first women eligible to become partners. I am really excited about that.

SHARP: I think that is all the questions I have for you, believe it or not. Have I missed anything that you would like to comment on in terms of your years here?

MATHES: Oh, I don't think so. Why don't I wait until you get the transcript? Then maybe we can talk about something else, if you like, because of course, this does not cover thirty-odd years. There was just so much of it I'd forgotten, too.

SHARP: I think you remembered quite a bit.

MATHES: Well, it is a lifetime of doing things. You just all do it gradually, you know. If you put somebody down in this place now, at my age, I don't think that they would want to stay here. It's too hectic. I would not want to move to a big firm and work somewhere else, because this is all known or natural to me, so it's easy. But it wouldn't be easy for me since my typing and shorthand are long gone. So, I don't think I'd want to.

SHARP: It seems like it has been a very good firm for you. You have certainly grown a lot in terms of your abilities and all the different things you have to do.

MATHES: It isn't that I am all that smart, it's just that, by experience you have got to have learned something! I didn't learn this all in a day, or a year, or a decade. I just got to know more and more. Then of course, when we were smaller, people did pinch-hit and do more different things than they do now. You have secretaries, and some of them won't do those things; they think it is beneath their dignity, or don't know how to do it, and it just never occurred to me.

Actually, they are doing something now that I think is good. They are trying to get groups of people, and they don't ask one to be a supervisor, they just ask one to be a coordinator. Out here there are certain girls that work in the same area. They can pinch-hit and help each other.

It's more of, to me, not having some girl sitting there not having anything to do. If you get her in a group, they kind of start working together. Maybe then there will be less inequities, where one girl is swamped, and another girl not working.

They've just started that. There is nothing more annoying than for you to be sitting there up to your ears, and somebody is sitting over there reading a magazine. Unless somebody tells her to do something, she won't.

This way, if they all start coordinating their work together, perhaps we'll get more out of all those girls than just two girls taking the burden, and two others sitting there doing half their job.

SHARP: They will begin to know each other better, too.

MATHES: So I think that's a good idea.

SHARP: Who came up with that idea?

MATHES: I don't know, but maybe that's the new trend in these things. It is one of the better ideas, I think.

SHARP: It sounds real cooperative.

MATHES: It is.

SHARP: That's a whole different way of thinking about the job.

MATHES: That's right. They're put in little groups, largely caused by the geographic area. But I do think it should work out, and it should help.

If girls don't want to cooperate, well then they can just go somewhere else. If they want to be huffy and sit there by themselves and do nothing, you weed out the malingerers eventually.

SHARP: I should think that would.

MATHES: Your peer pressure is a little bit greater than you know, than a supervisor coming over and telling you to do something.

SHARP: A supervisor is always a natural antagonist.

MATHES: That's right. If you are in that group, and your peers start glaring at you, I would think that would work.

SHARP: Yes. Well, thank you for all your recollections.

##

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University of California
Berkeley, California

Richard K. Dilley

Brief Recollections

An Interview Conducted by
Sarah L. Sharp

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1

First Thoughts

[Date of Interview: April 13, 1981]##

A Biographical Note

SHARP: I thought we would start by getting some of your biographical background. We like to have this at the beginning of the interview to really introduce the interviewee to whoever is reading the volume. My first question is what your full name is.

DILLEY: Richard Kendall Dilley.

SHARP: When were you born?

DILLEY: In 1916, October 28th.

SHARP: Where was this?

DILLEY: In northern Idaho.

SHARP: What were your parents' names?

DILLEY: Johanna and Robert.

SHARP: What was your mother's maiden name?

This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 291

DILLEY: Tobin.

SHARP: Were both parents Irish?

DILLEY: No, my mother's parents both came from Ireland, but my father was a native of Minnesota. My father's mother, a Taft, was from Minnesota—where he grew up. In Minnesota, Ohio and parts of New England, the name Taft is as common as Jones, Smith, et cetera.

My father went to work for the railroad when he was quite young. He worked eventually for the Northern Pacific. He met my mother when he was working at a little station called Birdseye which is outside of Helena, Montana. It was near my grandparents' ranch. Sometime after he married he transferred from there. In those days, he was a telegrapher and they could bid on jobs. When they got seniority, if a job opened that they thought was better, they could bid on it and if they had enough seniority, they would get it.

So they eventually moved to a place called Larson, Idaho. Nearly all those little stations had some particular function like being on one side of the tunnel or something like that to do the switching. Anyway, they always had the living upstairs; an apartment. There are even some of those still in existence. There is still one near my hometown in Idaho. But it's always a good line to say that I was born in a railroad station! [laughs]

SHARP: I wondered if you had brothers and sisters?

DILLEY: I had one brother. He died in 1967.

SHARP: What was his name?

DILLEY: Robert.

SHARP: Named for your father?

DILLEY: Yes.

SHARP: So you grew up in Idaho. How did you come to California?

DILLEY: Pearl Harbor was December '41. I had enlisted in the army in early '41, came to Hamilton Field. I always knew I wanted to come to San Francisco when the war was over, which I did!

Coming to Bronson, Bronson and McKinnon

SHARP: I know that you came to the firm in 1946 as a bookkeeper.

DILLEY: Yes.

SHARP: I wondered how this came about?

DILLEY: I think it states in that first volume.⁴³ There was a man named Bowen whose family I knew. He had retired from J.C. Penney. Bronsons' had a lot of problems with their books; simply they were just in bad order. So Ernest, albeit he was retired, agreed to come there. Then he asked me if I would be interested in coming there as a bookkeeper, which I was. I had taken an interim job with the American Trust, which is now Wells Fargo Bank, because that was what I had done before the war. I was a teller in a bank. So I went to Bronsons' in July of that year.

Ernest didn't stay very long. For one thing there were personality problems. He was trying to run the place like a J.C. Penney's! [laughs] He was the controller and, of course, that is the job to ride herd on everything. He left and I became the bookkeeper.

I kind of developed one thing after another. The family grew and they began throwing more work at me, and I just sort of grew into the job of office manager.

SHARP: What were your first impressions of the firm when you came?

DILLEY: Well, it's hard to remember that, but I think it was a totally new environment for me. Neither the bank nor the army had prepared me for anything like it, but everyone was just wonderful to work with and work for. I don't recall ever being criticized for anything.

SHARP: Even though you were pretty new at the job?

DILLEY: Pretty new at it. Of course, the firm was and continued to be for a lot of years very much of a family kind of place. We had some pretty lean years, but even in the lean years, they always managed to give everybody a twenty-five-dollar Christmas present, and maybe a raise was \$10 or \$15—and we were glad to get it.

SHARP: Who do you remember best of the lawyers?

DILLEY: Of course, I think we all will remember the three senior partners the most: their kindness, wisdom, talent, and the loss we felt when they died. They died remarkably close to each other.

SHARP: I noticed that, too.

DILLEY: Yes, let's see, Mr. Ed [Bronson] died in the fall of '76 and then Mr. Roy [Bronson] died in the spring of 1977, I think, and then Mr. McKinnon at the end of '77.

SHARP: You think of couples who have lived together a very long time and one spouse may die. Then the other spouse will die quickly after. In that sort of a family it is the same, I think.

43. See interview with John Painter, *The Law Firm of Bronson, Bronson and McKinnon: 1919-1941*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1978, p.184.

DILLEY: In none of the three cases was the death sudden. They all had illnesses that became terminal.

SHARP: How was the firm managed when you first came? I would like to kind of contrast how the managing of the firm changed over the years.

DILLEY: I think Mr. Roy Bronson was running the firm when I went there. Mr. Ed had never had any real interest in management of the firm; he was only interested in being a trial attorney.

Incidentally, did you see that his son was Carol Burnett's attorney?

SHARP: I wasn't sure.

DILLEY: Yes, that was Ed Bronson's son.

SHARP: Is he now with the Los Angeles office primarily?

DILLEY: No, he established that office in Lakeport several years ago. Actually, I think it's been longer than that now.

SHARP: I think there were a lot of people rooting with her against the *National Enquirer*.⁴⁴

DILLEY: Yes, she's a long way from getting her million and six, but at least people shouldn't be allowed today—to print things like that.

SHARP: It sounds like it's going to be the first of several cases.

DILLEY: I think so, yes.

SHARP: Another note I saw on Mr. McKinnon, and I'm not sure now where I saw it because I've gone through so many materials, but I understand that he was the police commissioner in San Francisco.

DILLEY: Yes, he was president of the Police Commission.

SHARP: I think this was in the late fifties.⁴⁵

DILLEY: I think that's probably right.

SHARP: Can you tell me anything about his duties?

DILLEY: The president of the Police Commission is a pretty powerful man. I really don't know. But, they were all powerful men.

Of course, it was quite an honor for him to be appointed to that. So, the firm was eager for him to spend as much time—and he did have to spend a lot of time on that. I don't know how frequently they had meetings, but he certainly

44. In 1981 Miss Burnett successfully sued the *National Enquirer* for remarks made about her in an article printed in the publication.

45. A further check revealed Mr. McKinnon was a member of the Police Commission in San Francisco from 1956 to 1964.

had the red carpet treatment when he was president.

SHARP: Do you remember any particular special activities that the Police Commission was involved in?

DILLEY: No, I don't; I just don't. I was too busy. I was always too busy to hear or learn much about any of the legal action in the office, even up to the time I retired. I had my interests and to me it was the attorneys' job to do their job!

2

Years as the Firm's Manager

Learning the Duties; Innovations Along the Way

SHARP: Once you became manager for Bronsons', how might your relationship with the partners have changed? What did you notice about it?

DILLEY: Not really very much; I was still an employee. Really, I think that my becoming manager sort of evolved over a long period of time, and there was nothing to change in our relationship. I was there to do a job and do the best I could for whatever they wanted.

I guess the biggest thing that was thrown at me along the way was our move to the John Hancock building and that was done in 1960. We signed a lease on the premises in the first part of June, and did all of the construction, and floor layouts, and the furniture buying, and moved on Labor Day. Actually, Mr. Roy and I did most of it. We worked well together and he had good ideas, and he admitted that I had good ones. We had good architects, too, which were most helpful. As a matter of fact, it was a first kind of thing for them, and they got a lot of engagements based on what they had done for us. Now they are pretty high in the field of interior designs—it's Whisler Patri. The name has changed, but Whisler was the principal at that time and they've got that big new complex that is being built at Tahoe.

SHARP: When you became the manager, then you began to have more people who worked under you essentially.

DILLEY: Well, not really. We didn't have a great support staff in those days like they do now. They had support staff—I mean people to do things. There was a succession of secretarial managers. They were never very successful because they always had to be somebody's secretary as well as being secretarial manager. I did some of the hiring. That person happened to be Mary Mathes at one time, but she was also Lawrie [Lawrason] Driscoll's secretary and he was a busy man.

That went on for quite a while, I guess until—I think it was about '67—they finally hired a woman who didn't stay too long with the firm.

SHARP: Mrs. Jean Ross, when I interviewed her, told me that you and Miss Mathes had interviewed her when she came back to the firm in 1957, I believe it was. Did you and Miss Mathes then do quite a bit of work together with the secretaries?

DILLEY: Oh, not really a lot. That was really her principal function, that and trying to find secretarial help for somebody who needed it—getting the temps in. In those days, the quality of temporary people was very poor. Now you can buy anything you want; you pay for it. We just sort of flew the plane by the seat of our pants, and it worked out.

SHARP: Did you make a lot of changes in office practices once you assumed the role of manager?

DILLEY: No, the only thing I did was develop financial forms which are still being used. They come out of a computer now.

The changes that were wrought over the years were later done by the management committee, not by me. Maybe sometimes I recommended something, but by and large that too came along in the later years, after the place got so big they had to set down more operating rules and that sort of thing.

SHARP: If I am understanding you correctly—the management committee *did* take over some of the responsibilities that you had as the office manager?

DILLEY: Yes, the decision making and that sort of thing. They would make decisions that I had to carry out.

SHARP: So you had pretty close contact with the management committee?

DILLEY: Yes.

SHARP: I think you told me before that you usually took the minutes of the management committee meeting?

DILLEY: I can't remember when we started doing that, but it is now the practice that the minutes are kept and agendas prepared. But, I had been doing that for years.

SHARP: So when you went to the management committee meetings, you would be listening to the kinds of things that needed to be handled?

DILLEY: Yes, the only times I ever excused myself was when there were two incidents when our partners were asked to leave the firm. I asked to be not present because I felt it would be embarrassing to them. The committee agreed that it was a perfectly valid reason for my being absent. [tape interruption]

SHARP: When I talked to Miss Mathes and then with Mrs. Ross, they both gave me a lot of detail on how the office practices have changed over the years. Miss Mathes told me that now there is a full-time calendar clerk, that there is now much use of the computer for billings, and so on, diary books for each lawyer, and that all

of those are definite changes from the forties and even the fifties. Could you, in your own words, tell me something more about those changes and just how the day to day—

DILLEY: Well, it was that simple. The calendar was kept in a bound book and handwritten. The daily green sheets, which were produced at the reception desk, were typed and they were all eventually put on the computer. When I make the remark about the support staff, those are the areas. There is a calendar clerk and then somebody who is a backup for the calendar clerk. There is a girl who handles all of the medical claims. Then there is a woman, Barbara Litt, Director of Support Services.

SHARP: How did all of these innovations come about? Did you hear of things going on at other law firms that seemed to work for them?

DILLEY: Not so much, no. I think that a lot of these innovations came when Victor Hampton came to work for us in 1975 because he had a fine education; he's an M.B.A. and he has great talent. He had worked previously at Mills College as their controller.

SHARP: From what I can tell, there seemed to be different philosophies about billing and when to send out the billing. I wonder if this change in philosophy was as a result of the firm just getting bigger?

DILLEY: A lot of it was that it was on a computer and thus it is easy to produce a bill. Each month every attorney gets a list of his unbilled time, and the dollar amounts involved, and pretty much the bill—they do a lot of billing on a monthly basis now that was never done before.

SHARP: Does billing on a monthly basis come about as a fairly sensitive change? By sensitive, I mean, did the clients have to be educated about this?

DILLEY: Yes, to some extent and the attorneys did, too, because there is nothing that an attorney hates worse than to do billing. The computer has made that easy for them now. Of course, if you are going to just 1970 the computer hadn't arrived at that point.

I was going to say that Victor Hampton could be very helpful in that respect because I had almost nothing to do with it. I didn't have the ability and by the time it was fully fledged, I didn't have the interest.

SHARP: So you are the pre-computer person?

DILLEY: Yes.

SHARP: I had a feeling during this period that the firm was becoming a lot more specialized in terms of what each lawyer would handle, Mr. Driscoll getting into the insurance—and so on.

DILLEY: They were already that when I got there. It's always been the case that there were trial lawyers, and business lawyers, and appellate lawyers. Mr. McKinnon was *the* appellate lawyer.

When attorneys are hired even nowadays, they are expected and allowed to express their preference, the kind of business they want. In other words, when they interview they say, "I want to be a trial attorney, I want to be a tax attorney," and they are hired for that reason. Once in a while they change their mind after they have been it a while, but it's not too often.

SHARP: I just wonder how the law departments and the administrative staffs got along, and what the communication was like.

DILLEY: Fine; I think fine.

##

SHARP: Did the specialization that went on in this period make special responsibilities for you as the manager?

DILLEY: I suppose the one single type of law that is newer than the rest is maybe labor, and possibly the banking. The firm does a lot of banking business nowadays. But, by and large, the practice remains the same with a lot of growth in certain areas.

SHARP: Were you involved in the opening of the Lakeport office in 1976?

DILLEY: No.

SHARP: I just wondered if you might have helped them arrange their billing or—

DILLEY: No, Ed Bronson, Jr. had his own idea. He just has one woman there, an enormously talented woman named Edna Dickinson, who lived in that area.

SHARP: How has the training of secretaries changed?

DILLEY: Well, I really can't say much about that. I think, Sarah, that nowadays when they're hired they are supposed to be competent. The Bronsons never went in much for hiring trainees. Perhaps they didn't have any luck at it, but perhaps the reason was that there was little time to train anyone, including the young attorneys. They never really had much time to spend with them. They just had to sink or swim, and some do, some don't. Now if you are paying \$1,500 a month for a secretary, you expect her to know what she's doing and you soon find out if she doesn't. One good source is to hire temps and try to persuade them to stay after you find out they're pretty good.

SHARP: Sure, a pretty good investment.

DILLEY: Yes, right.

SHARP: What do you think was the impact on the firm of the two moves that were made, the one in 1960 to John Hancock and then the one in 1970 to the Bank of America Center where the firm is now?

DILLEY: Of course, we were forced into the second move because Industrial Indemnity bought that building we were in and they wanted it all for themselves, so we had no room to expand. [pause]

Then the move to the Bank of America Center was a prestige thing. I don't know how much space they have; they are on three different floors.

SHARP: That is a good bit of space.

DILLEY: Yes.

SHARP: Both moves seemed to be pretty good for business, just in terms of knowing more people?

DILLEY: That's right and, of course, they talked some of something down here—that is to say for the microphone, Embarcadero Center or something like that—but the partners felt that there was something about lower Market Street that was lacking in prestige. Perhaps they were right because a lot of their clients are in that building, the Bank of America Center, and our accountants, Hood and Strong [CPAs] are there, and Price, Waterhouse [CPAs] are up on [floor] 36, I guess.

SHARP: It is a handsome building, very beautifully decorated and appointed.

Additional Comments on Changes in the Firm

SHARP: How did the positions of Ed and Roy Bronson, and Mr. McKinnon change in the firm as they got older, do you think?

DILLEY: Of course, they sort of diminished their activities. Mr. McKinnon decided to retire. The year he retired, 1967, he said, "There is no such thing as being half-retired." He got rid of his personal possessions in his office and went home.

Then Mr. Roy sort of curtailed his activities a lot.

Mr. Ed developed Parkinson's disease, which ended his life in the fall of 1976.

SHARP: When the three of them began to shift gears a bit, especially both Messrs. Bronson, did that come fairly easily to the firm?

DILLEY: Oh yes, Mr. Roy Bronson was around quite a bit to give advice, and he took care of his personal friends. By that I mean, there were lots of clients he had that were good clients, but they wanted *him*. But as time went by, it was not difficult for the clients to become interested in some younger men. The same is true of all the senior partners, as it turned out.

Mr. Roy had an office until the day he died, something he could walk into and sit down.

SHARP: And work some?

DILLEY: Or just look at the view.

SHARP: So by the time they were well into retirement, the management committee was working on a full-scale level?

DILLEY: Yes, right, and Mr. Roy I would say lost interest in the management of the firm as time went by, but he was not adverse to criticizing something that he didn't like the looks of, particularly if a girl walked in through the reception room in jeans! [laughs]

SHARP: Well, it's clear to me from just the appearance of the firm, it's obvious what correct dress and behavior is; it's quite formal, it seems to me.

DILLEY: Yes, well, it should be I think. There is too much first-naming now, but that's just an old man talking. Jean Ross and I were talking about that recently at lunch. She still feels that way. She has known George Hartwick and worked for him for a lot of years, but she will call him George if they're in the office alone. She would never dream of calling him George in front of a client, and Mary Mathes is that way, too.

But, the young attorneys encourage first-naming, and first-naming is everywhere nowadays. I call you by your first name. You didn't say I could, but I think it's unnerving to be called in the office about something and then say, "Who am I talking to?" and the girl would say, "Oh, just ask for Debbie." You think, "Debbie what?" [laughs]

SHARP: A little uncertain about the whole thing.

DILLEY: Yes, right! I'm a great one for getting the names of people I talk to, if I've got an ax to grind and have to be talking further—but that isn't always very successful.

SHARP: Mr. Roy, Mr. Ed, and Mr. McKinnon all had pretty firm ideas about what they thought was proper behavior, both for the lawyers as well as the other staff?

DILLEY: Yes, right, they just expected it to be that way and it was. We always called Mr. Roy and Mr. Ed that way, but Mr. McKinnon was always Mr. McKinnon. It was only after Mr. McKinnon died that I was ever able to refer to him as Harold. But we were close friends. He was awfully good to me in lots of ways and during my illnesses and that sort of thing.

SHARP: Mr. Weingarten really liked Mr. McKinnon, too.

DILLEY: Oh yes, he worshipped him.

SHARP: He seemed to have a good relationship with Mr. McKinnon.

DILLEY: Yes.

SHARP: I now have a few questions that ask for a longer view from you. I wondered how the type of client that Bronsons' has handled has changed since you first started working there?



Edward D. Bronson, Sr., Roy A. Bronson, and Harold K. McKinnon

Taken at luncheon honoring Roy Bronson's 50th anniversary in legal practice, ca. late 1960s.

DILLEY: I think that I answered that when we talked about the practice because it really hasn't changed much, except for, as I said, labor, and maybe heavier into banking and that sort of thing.

SHARP: Are there special needs created by the really long cases that I now understand go on. It was Mr. Hartwick who was saying that some cases last maybe five and six years.

DILLEY: No, you just build your staff and when the hiring time comes, they try to look ahead and develop the new people coming in, like the FDIC thing and the U.S. National Bank—that will go on, I suppose, for years; I don't know.

SHARP: Were there certain qualities as the manager of the firm that you would have looked for in a young associate if you had your choice?

DILLEY: I don't know. I've had favorites. I'll say that, but whether it was a personality favorite or not I don't know.

There are many young attorneys coming in. They don't have much to do with management until they become partners, and then they have almost nothing to do with management except to help in hiring interviews. Then the first year, partners have two or three junior members of the management committee that are rotated at six months. That is to give them a taste of the management committee, and also to give them a sense of participation and a voice for the younger people.

SHARP: I wondered if you had an ideal partner in mind, if there was a certain kind of person whom you thought was easiest to work with in terms of your own duties as manager?

DILLEY: Charles Legge is a superb managing partner, as were his predecessors. Each partner in the firm has something to contribute to management. They are men for all seasons.

SHARP: I still haven't met Mr. Legge.

DILLEY: Oh, haven't you?

SHARP: No, I'd like to. It seems like he has been into some very interesting legal work.

DILLEY: Yes, he's very busy.

SHARP: The older partners seem to travel a great deal for their clients and their work.

DILLEY: Yes.

SHARP: One of the last kinds of questions that I have asks about your perspective on lawyers in general, and how the work of lawyers has changed in the past thirty years or so since you first came.

DILLEY: I don't feel qualified to answer that.

SHARP: I wondered if there were things that you noticed.

DILLEY: I just don't feel qualified because I never was interested in the practice of law as such. I never had time for it. That's the kind of thing that Chuck Legge would be well able to answer.

SHARP: Okay, maybe I'll ask him. I have asked this kind of question of the lawyers, but I just wondered if you ever had time to think about it. It doesn't sound like you did!

DILLEY: No.

SHARP: I wanted to ask you why you thought that Bronsons' had flourished so, had become so successful? It was in a period that you were there that it all seemed to happen.

DILLEY: I think maybe the answer is this mass of buildings out here from my apartment window, Sarah. I wondered how they were going to fill them and they're practically filled right now. I don't know how much of Embarcadero Four is taken, but these others are all full. They're building all of these other buildings that are full, too. It's business moving in San Francisco.

SHARP: Business in San Francisco has just grown tremendously.

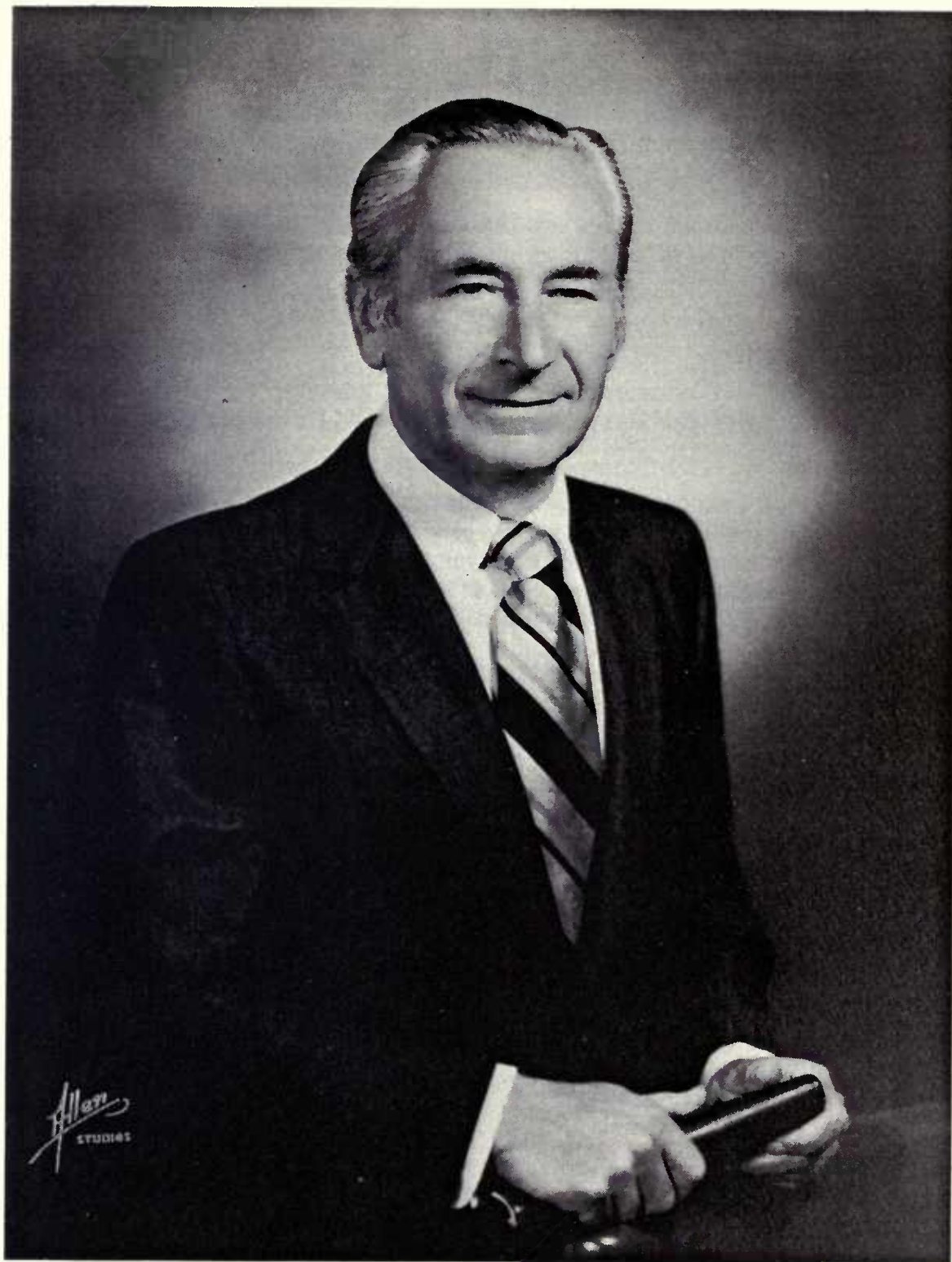
DILLEY: Yes.

SHARP: The growth that the firm has experienced, is that the major change that you've noticed?

DILLEY: I would say so, yes. I think that's true of the big firms. The successful ones are growing, growing, growing—if it doesn't grow, something is wrong, the business isn't being produced. Maybe, again, the old sweet smell of success. This Carol Burnett thing is a real coup because it's a prestigious thing. I'm sure it will do nothing but good, apart from the financial side of it.

SHARP: That's all the questions that I have.

##



MAX WEINGARTEN

ca. 1981

Regional Oral History Office
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University of California
Berkeley, California

Max Weingarten

A Career in Tax Law

An Interview Conducted by
Sarah L. Sharp

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1

Biographical Background

[Date of Interview: February 20, 1981]##

Growing Up and Schooling in Vienna

SHARP: I thought I would just ask you some very basic biographical questions. You have had just a very interesting past. First of all, I need your full name.

WEINGARTEN: Max Weingarten.

SHARP: There's no middle name?

WEINGARTEN: No middle initial.

SHARP: Just so it's in the transcript, I need the date that you were born.

WEINGARTEN: April 2nd, '14.

SHARP: What were your parents' full names?

WEINGARTEN: My mother's name was Klara [spells name], and my father's was Henoeh [spells name].

SHARP: Did you have brothers and sisters as well?

WEINGARTEN: Yes, I still do. I have two brothers who are here, and my sister who was killed by the Nazis.

SHARP: Were they older, then?

WEINGARTEN: No, they are younger.

SHARP: You're the oldest in the family.

WEINGARTEN: Right.

SHARP: Were both of your parents Polish?

WEINGARTEN: Yes.

SHARP: And they had lived all of their lives in Poland?

WEINGARTEN: No, in Poland until 1914, then in Vienna, and in Israel.

SHARP: Did they come to the United States at all?

WEINGARTEN: My father died in Israel; my mother then came to this country and died in California.

SHARP: What religious influences did you have when you were growing up?

WEINGARTEN: Very, very orthodox Jewish.

SHARP: You mentioned when we met before you actually had grown up in Vienna.

WEINGARTEN: Right, all my life, since I was six months old. My parents fled when the war broke out with the Russians, and came to Vienna.

SHARP: Tell me a bit about growing up in Vienna in the twenties and before, from what you first remember.

WEINGARTEN: We were pretty hardworking people. My parents had a little store. I went to school. My father originally wanted me to become a rabbi, so I went through some pretty long orthodox Talmud studies. I went to school, and when I came back from school, we had to help out in the store.

Pretty early, I had an uncle, Josef Auerbach, who was in the movie business. He said that I should go to the gymnasium. You see, in Austria you had the choice of going to the gymnasium, which led to a sort of academic career, or to another school which you quit at fourteen. My uncle had influence over our parents; I started going to the gymnasium, which you do when you are around ten years old.

SHARP: You decided pretty early that you wanted to go into the film business instead of—?

WEINGARTEN: No, no. Well, first of all, when I went to the gymnasium, you were just the same as here, you might say, as when you finish junior college. You start at ten and you finish at around eighteen. While I went to the gymnasium, I made money by teaching. There was one particular girl, I remember—a brilliant girl—who had a broken spine. She was practically hanging like this [gestures position], and couldn't go to school. I taught her every day for about two or three hours. In two years, she made up the curriculum for about four years.

SHARP: So you were tutoring all that time?

WEINGARTEN: Yes. When I finished the gymnasium, I started going to the university [University of Vienna] to study law. I started working for motion picture companies at the same time.

SHARP: What were your duties?

WEINGARTEN: You see, at the university when I went to law school, it isn't like here where you go to junior college and you don't know yet what you want to do. When you start university, you have to make up your mind. It's immediately a professional school; I went to law school. Law school here and the study of law in Europe is completely different.

SHARP: I was going to ask you about that.

WEINGARTEN: It takes you four years to get your doctor's degree. During these four years, the first year and a half you study Roman law—I had Latin for about ten years. Then you study the old German law; and then you study particularly church law, because Austria was a Catholic country. The various family relationships like divorce and marriage and children were governed according to the legal principles of each religion. Since Catholic was the state religion, church law study was compulsory. I took it for about a year and a half.

You only have oral exams, and you really never know whom you're going to get, because three or four professors may teach a subject. What you do is you really don't go to many lectures, but before the exam you take like a cram course. The fellow would tell you, "If you get Professor Braslow, you have to give him one answer. Because if you give Professor Braslow an answer that another professor teaches, he'll ask you where you learned that nonsense."

So what I did was I worked for that motion picture company from eight until two. Then I went for about two or three hours to these courses. Once in a while I had to take a seminar. When you had the exam, which was oral, you just crammed for about six months. I would get up at four o'clock in the morning, and study until seven, then go to work, and then study again in the evening.

SHARP: It sounds like a very, very rough schedule.

WEINGARTEN: But I enjoyed it.

What I did in the movie company: first I serviced the various theaters. I worked for a movie distribution company. The theaters booked their movies for the next two months, and we would line up the films they showed. Then I worked quite a bit in editing the newsreel. In those days they used to have newsreels. I got to know pretty much all phases of the business. Once in a while, there would be a movie produced in Europe, and I would work sometimes as an extra or in a production.

SHARP: Did you think at the time that you were going to law school that perhaps you really wanted to leave law school and do this—?

WEINGARTEN: No. I wanted to be a lawyer.

SHARP: How did you work out with your father that you would not become a rabbi?

WEINGARTEN: He finally accepted it. In the Jewish religion, when you are thirteen you become what is called bar mitzvah. Actually, from that time on, I really became much more agnostic, because the more I went to the gymnasium and had contact with people who were completely areligious, the more I completely turned away from it.

SHARP: If it's like the universities in America, it's a very secular kind of community.

WEINGARTEN: Yes.

SHARP: Did any of your brothers become a rabbi?

WEINGARTEN: No. My brother, the younger one, left for Israel—this is a separate story; I'll tell you this later.

As I say, the study of law is completely different, because you don't have the case method. You study theory. Then when you get your doctor's degree, which for me was in 1936, I had lined up a job with an attorney to start in November '36—[taking out original diploma] I dragged out the original—

SHARP: Oh, that's wonderful!

WEINGARTEN: It was in 1936 that I got my doctor's degree. You can have a copy if you want to.

SHARP: Thank you. That seal is very interesting.

WEINGARTEN: Yes. Well, they do everything with seals.

SHARP: Yes, it's very proper. Would these signatures have been your professors who had examined you?

WEINGARTEN: No, that's the rector and the dean and so on. Of course, you have a tremendous amount of different professors.

As a matter of fact, if you are interested in an anecdote—you see, the exam is all oral. There are four students being examined, and here sits the professor. He'll throw a question at one, and say, "Candidate A, what is your answer to this problem?" The candidate would give an answer. He'll turn to candidate B and say, "What do you think of that answer?" It would last about three, four hours.

The professor who was giving the exam in church law was a bishop who later became a cardinal. He asked the question, "What are the impediments to a valid marriage?"

The candidate answers, "Bigamy."

He says, "Right."

"Commission of a felony."

"Right."

The candidate couldn't think of celibacy. In Austria, when you made the vow to become a monk, then you couldn't get married. So the professor who was dressed in his clerical garb, tried to help the candidate by pointing to himself. The candidate beamed and said, "Impotence," which was also an impediment to a valid marriage. [laughter]

SHARP: How did that go over?

WEINGARTEN: Well, he passed anyhow, so the guy was pretty charitable.

SHARP: So it's not a private exam; there are other students.

WEINGARTEN: Yes. There's about three or four at the same time. It's very formal; you are dressed in a dinner jacket usually.

Anyhow, you had about six exams. They were very tough. When you finish and you get your doctor's degree, then you have to work for an attorney for four years before you can practice on your own. So it's not that when you come out with your doctor's degree from an Austrian university, you can start practice.

I got my degree in May, 1936, and was supposed to start working for an attorney in November. My uncle was making a movie in London starting in June of '36, so he said, "It will take about three months. Why don't you go and handle the financial things?" (I was always pretty good in financial matters.) "Then when you come back, you start your work."

So I packed a suitcase with a suit and a couple of shirts, and went to London. Once I was in London, I got a much better view of what was going on in Austria. I never went back. I stayed in London until Hitler invaded Austria in spring of '38. I would have had to exchange my Austrian passport for a German one, which I never did. I applied for a visa to the United States, and got it pretty fast.

SHARP: When you were finishing your law school, had you thought about going somewhere else?

WEINGARTEN: No.

SHARP: How did you deal with your parents in telling them?

WEINGARTEN: Well, as I say, one brother had already left at the same time that I left for London. He went to Israel. I presumed they figured there was nothing they could do about it anyhow. I had been pretty much independent; I had moved out when I was eighteen, and was on my own. So it wasn't any problem with my parents.

SHARP: Did you finish working on the film?

WEINGARTEN: Yes, I worked on the film. Then I worked for United Artists until I left for the United States.

Arrival in the United States

SHARP: Did you come right to San Francisco or Oakland?

WEINGARTEN: No. I came to New York. I didn't know a soul at that time. As a matter of fact, when I arrived—it was in August in my heavy suit and coat from London, and it was terribly hot; I didn't know a single soul. I saw somebody waving, and thought I recognized a guy. But he wasn't waving at me; he was waving at somebody else. Anyhow, I recognized him, and talked to him. He said there was a room available in New York.

So I got that room. It was so goddamned hot I couldn't sleep. I remember I took a blanket—it was on 77th Street—and I went to Riverside Drive, and I slept in the open. I found out later that under my room was the heater for the entire house! [laughter] After that I always took a room in a garret.

I didn't know what to do in New York. I had very little money. I did odds and ends; I worked as a butler; I worked as a house painter. There's a very funny story. I met this guy from Vienna who used to have a movie theater. He said, "If you want to work, I can get you a job as a painter." I said, "Fine." He said, "If they ask you whether you have any experience, just say, 'Yes.'"

I was standing on a corner; we were picked up and they took us to a place in Brooklyn. I remember they were building some houses. I got a bucket with paint and a brush and some pattern—I'll never forget this. I was supposed to put this pattern on the wall and paint over it. I painted for about an hour. Then I stepped back, and I suddenly saw the pattern was cows, and they were all upside down. [laughter] So that was the end of my painting career.

But then I met a fellow who was very impressive. I could type, and was very good in financial things. He said, "I'm forming a company, and I'll give you a job. But," he said, "you have to change your name." I said, "Okay." He said, "Change your name to Michael M. Wyngate." I was the only Michael M. Wyngate with a "y" in the New York telephone book.

It turned out that he made me president of the company. I said, "My God, that's really God's country. You come here, and you're immediately a president!" I found out later that he was smuggling arms to both sides of the Spanish Civil War, and he used that company as a vehicle. Anyhow, he was a fascinating guy. I had a job!

When the Spanish war was over, he said he was going to Hollywood to make a movie. So he took me along. The movie never materialized, and he went back to New York. I stayed in Hollywood because the draft was breathing down my neck, and I knew my time was limited. I liked Hollywood, and I said, "I might as well wait here until they get me."

There I met my future wife, Erica. I was drafted in '42. I left for Orlando, Florida, and there I proposed to my wife on the phone. She said, "Okay," she was coming. I went back to my base, and there was a big sign, "All leaves cancelled; we are moving." I called her back and said, "Don't come." Then we went to Norfolk, Virginia, and I asked her to come, and the same thing happened two days later—all leaves cancelled. I called her back, "Don't come." Finally we went to Philadelphia. She came and we got married there. Three months later I was shipped out overseas. I was gone for nearly three years.

SHARP: I wasn't aware that Europeans were drafted so quickly.

WEINGARTEN: If you were an immigrant, you were treated the same as an American.

SHARP: Had you already become a naturalized citizen by that time?

WEINGARTEN: No. I had an immigration visa. You normally have to wait five years, but since I was in the army, I became a citizen much faster—in Philadelphia shortly after I was drafted.

SHARP: Was your wife from Vienna too?

WEINGARTEN: No, she was from Berlin.

SHARP: Had she come to the United States a long time before?

WEINGARTEN: No, I think she had come about a year later. I came in '38; I think she came in '40.

Return to Law School: Courses at Boalt Hall and Stanford

SHARP: How did you end up at Boalt Hall?

WEINGARTEN: When I came back from the army, my wife, as I say, was living in Berkeley, and she had gone back to school. She was a lab technician. She came from a very prominent European family—different from mine completely. Even though of Jewish origin, but completely oblivious of Jewishness. She had gone back to the university [University of California] in Berkeley to study. So that's how I came to Berkeley.

Since I had the GI bill, I went back to school. I studied first accounting for about a year, and I didn't like it. One day I went into law school—this was in '47—I saw the dean, and I said, "This is my background." He said, "Well, I have no opening in the first year, but I have an opening in the third year. With your background, maybe you can do it." I said, "Okay."

So I started out with the third year first. There were only about four students there. For the first few weeks I didn't know what they were talking about, but I caught on pretty quickly. After about three months, I wrote my first law review article. I finished the entire thing in two years. Not that I got any credit for my European law study, but they had a speed-up program for veterans. I took even one summer session in Stanford which had courses that I needed.

SHARP: And you had gotten the language facility—

WEINGARTEN: Oh, the language was one of the things I had. Well, this brings back a couple of incidents—one was in the army. I really had a fantastic time in the army. I was in intelligence, first with an air force fighter group, and then with a special intelligence unit where I interviewed German industrialists. They wanted to send me to officers' training school. I said, "I don't want to go to officers' training school, learning how to stand at attention."

We were an organization in which discipline was very lax. We were mostly professors and scientists. I said, "Look, if you want to give me a commission, give me a direct commission. I'm not going to officers' training school."

I was summoned to London; there was a hearing before five generals. They interviewed me, and then they asked me what my native language was. I said, "Broken English." [laughter] I got my commission.

As a matter of fact, I interviewed quite extensively this fellow [Albert] Speer, who was armaments minister.

When I finally went to Boalt—I liked it very much—it was much more fascinating the study of law here, than it was in Europe. I liked the case method. While I was studying, I instigated a film festival, which was a huge success. I bought a projector, and rented a hall at Masonic Temple on Bancroft Avenue. I had films like *Alexander Nevsky*, *The Baker's Wife*—all these. A friend was handling the projector, and my wife was cashier. We were such a success that the local theaters got mad at me, and complained. They sent the fire department after me, and the health department. They finally complained to the law school. So the dean called me in and said, "What are you doing?"

I said, "I have to make some money."

He said, "Look, will you stop it if I give you a scholarship?"

I said, "Sure."

SHARP: It would be much easier on you, anyway.

WEINGARTEN: Yes. It was fun.

So, when I finished law school, I had several offers. I had one offer from a Hawaiian firm. Then I had an offer, after an interview by the Bonneville Power Administration in Portland. It's an outfit like the Tennessee Valley Authority. Then I had an offer from Bronson, Bronson and McKinnon. I checked with some friend of mine who was an attorney, who had been an attorney here for about thirty years at that time. He said, "It's a young, aggressive firm. I think, if I were you, I would take that job."

By the way, it was interesting: I graduated from law school, and my wife got her Ph.D. the same day.

SHARP: Wonderful! In the sciences?

WEINGARTEN: Clinical psychology. She was also pregnant with our first child. So it was quite a day.

2

First Years Practicing, and Other Thoughts

Starting at the Firm, An Early Case

WEINGARTEN: When I joined Bronson, Bronson and McKinnon it was really a small firm. I wanted to do tax work, and they had absolutely nobody. They had this fellow, Donald Smith, as a tax man, whose tax practice would consist of—he said, "I got to call up the IRS and speak to some guy," and then this became the existing law. He was completely oblivious of doing research; he was really doing mostly probate work.

The firm practice had very little business law. It was mostly trial work. So in order to build up a tax practice, I started soliciting, getting acquainted with a lot of CPAs. I started to give lectures, and write some articles. I think within a comparatively short time—a few years—I became quite known as being a pretty good tax man. We started getting cases at approximately the same time the firm began to get more business law, with [Jack] Painter handling that aspect—[and] Jack Ward.

So while in the beginning I used to do comparatively little tax work on the office side—I was doing a tremendous amount of research—that's how this Latham case came up—really, that's a fascinating story.⁴⁶

What happened was that one day Ed Bronson came in and threw that file on my desk, and said, "This attorney on the other side doesn't want to give me any more time. Dream something up, some demurrer stuff like this."

Well, with beginner's enthusiasm I started digging in, and I found out that we had a very good cause for demurrer. What happened was that this plaintiff was a patient at the county hospital. Seemingly, they left an infected needle in his leg, and he lost his leg or something like that. He sued for negligence. I researched and came to the conclusion that a county hospital

46. *Roy Latham v. Santa Clara County Hospital*, 104 C. A. 2d 336 (1951).

had sovereign immunity in those days—the law was changed later—and therefore they couldn't be sued. I filed a demurrer. A demurrer means that everything that he says is correct, but he still has no case.

The lower court agreed and held in my favor. Then he appealed, and I won the appeal. Then, the plaintiff's attorney was so mad, he sued the insurance company to get the money back for the insurance, because he said since there was no liability, you shouldn't collect premium. We won that one on the theory that, "Even though there was no liability, there are fools like you who sue, and we have to defend."

Getting into Tax Law

WEINGARTEN: But more and more, I got out of this negligence field, and into the practice of taxation, estate planning, and it has been most of my work—what I really like is negotiating deals.

SHARP: What sort of deals?

WEINGARTEN: Well, like right now I'm working on several takeovers, transactions where the clients are excellent in their field, but they are not very good business people. So I negotiate the terms and handle not only the legal aspect, but also the negotiations.

SHARP: How does tax law come into negotiating deals?

WEINGARTEN: Well, I'll give you an example that just happened recently.

A bank asked me to do some tax planning for one of its clients involving a real estate transaction. In the course of my work I found out that the client, aged ninety-three, had many years ago made a gift of a valuable co-op apartment to the Oakland Children's Hospital, but she retained a life estate. Because of her age, she was no longer able to live in the apartment, so that for many years this magnificent apartment was vacant. Since the building was a co-op and not a condominium, she could not rent it out because it required approval of all the tenants. So here was this valuable asset not doing any good to anyone. I asked the bank whether their client would give me power of attorney to negotiate with the charitable organization to buy her life estate. The client agreed. The hospital was delighted to purchase the life estate, since this enabled it to sell the apartment and wind up with approximately \$600,000 in cash. Our client got a substantial amount for the life estate. So all parties were happy, yet nobody had thought of this solution before.

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WEINGARTEN: So to me, a good lawyer is not somebody who knows the law, but it's the idea of seeing certain facts which you can turn to the advantage of your client. You come up with certain ideas which nobody thought about. That's really

what I like most.

SHARP: Let me just back you up a bit. You told me something about what the firm was like when you first came in. From the other impressions that I had gotten from the other lawyers, it was clear that when you came it was the period when Bronsons' was really beginning to take off, and to become much more specialized. I wondered if, because you had told me you wanted to do tax law when you came in, if you really were the beginning of the tax department.

WEINGARTEN: No question about it. There was nobody who did tax work.

SHARP: You told me that you contacted a lot of CPAs. Was that so that they would contact the people whom they—

WEINGARTEN: No. The way it works is you get friendly with CPAs, and they always have questions. So I got friendly with them, and I said, "Look, if you have any questions, don't hesitate to call me up." The CPA is much closer to the everyday affairs of a client, because he handles all year his transactions. So these CPAs were very grateful, because they would frequently have problems they didn't know how to handle. They would call me up over the phone, or I would take them for lunch and discuss their problem say, and I wouldn't charge them anything for it.

When their client had a tax problem, and asked the CPAs to recommend an attorney, they would recommend me.

SHARP: Did you then begin to assume some of the work of the already existing Bronson clients?

WEINGARTEN: That in addition, sure. Like Jack Painter got a client—Pacific Coast Company, which was then our biggest tax client. They had a tremendous amount of tax problems, which I handled.

Then we had a client, Parr Richmond Terminal, where I handled all the tax work. I began to handle the tax work for Eastman Tag and Label Company. I began to handle the tax work for the business law problems that were beginning to come in. I also got a lot of referrals, business that came to me just where we did not do the regular work, but only the tax work.

SHARP: And that's really how the list of clients grew?

WEINGARTEN: Yes.

SHARP: The new referrals that came, and then your taking on additional work that existing clients—

WEINGARTEN: Yes, because when I came, we had the reputation of being an insurance defense firm. It was very hard to get out of that chain pattern, and [have it] become known that the office had a tax department. [gets paper] I mean, here's an article I wrote in the *Journal of the Patent Office Society* on a tax problem.⁴⁷ I had once a case involving tax consequences of patents. So

47. See *Journal of the Patent Office Society*, XXXIV, No.9, September 1952, for Weingarten's article, "Income Tax Consequences of Various Patent Transactions."

everytime I would have a case, I would just see whether I couldn't write it up.

Then, as I say, I began to lecture in the bar associations.

SHARP: Were there other lawyers who were your contemporaries you would get to know as a result of tax cases?

WEINGARTEN: Oh, yes. As a matter of fact, every Tuesday, we arranged a meeting of young attorneys of my age. We would meet for lunch and discuss problems, and things like this.

Then I began to join the San Francisco Tax Club—as a matter of fact, I was president last year—which comprises the leading tax practitioners—lawyers and CPAs. In the beginning, we would have anywhere from four to ten people who would meet every Tuesday for lunch, where everybody would discuss their problems, and current new cases and things like that.

SHARP: Was a typical problem the acquisition of clients?

WEINGARTEN: No, we wouldn't discuss clients. We would discuss tax problems.

SHARP: The issues.

WEINGARTEN: Yes.

SHARP: I know that the period from the Depression through the end of World War II there was a tremendous growth in government regulation in the United States—federal government regulation. I wondered if once you got into the firm, if you began to become aware of a government regulation that some of the other lawyers were dealing with, and if these had implications for tax law.

WEINGARTEN: No, I dealt with the federal regulations, and the revenue regulations. But I didn't deal with any regulations of any other agency—food and drug, or air safety, or things like this, no.

On Lawyers and Law Firms

SHARP: I thought we would move to your thoughts on the roles of lawyers and law firms. You've given me some of that. I just want to ask you a few more questions.

Lyman Tondel talks about what he says the role of the private lawyer is. He says essentially that the lawyer is supposed to protect individual liberties, vis-à-vis other individuals, and vis-à-vis the state.⁴⁸ I wondered if this idea makes any sense to you at all?

WEINGARTEN: Well, I think that is essentially correct. As a matter of fact, one of the things which I never stopped admiring in this country is the fact that the

48. See Lyman M. Tondel, Jr., "The Role of the Private Lawyer," in *Law and the American Future*, (ed) Murray L. Schwartz, Englewood Cliffs: Prentice-Hall, Inc., 1976.

government is subject to control by the judiciary the same as an individual. [You see, I] come from Europe, where frequently, historically the state is the one that is the superpower and the individual just trembles when he is opposed to the state. When I go to court, and it is *Joe Doe v. The United States*, if the United States doesn't comply with an order of the court, the court will say, "You are in contempt." I never stop marveling at this.

To me this is absolutely one of the most fantastic things in this country, which people don't appreciate—the fact that you don't tremble when you go to an official, that he has to be responsive to the law the same way as you are.

SHARP: So you would never find Tondel's kind of article written, at least in Austria, where someone would be talking about the role of the lawyer and the protection of, essentially, liberty?

WEINGARTEN: No. It may have changed now; I don't think so. But the concept that the federal government, with all its power, is responsive to an order of the court the same way as a simple citizen is, is just something which I find the most wonderful thing about our system.

SHARP: You certainly have a different perspective on it, coming from Europe and seeing the United States probably in a very different way.

WEINGARTEN: Right.

SHARP: When you came into Bronsons', were you made aware of the role that you were supposed to assume as a lawyer? Was that something that was talked about?

WEINGARTEN: No. The way it worked at Bronson, Bronson and McKinnon was that you came in and they threw files at you. I'll never forget it—when I came, they had a big case: the Insurance Commission had closed down Rhode Island Insurance Company. Roy Bronson grabbed anybody he could; we were working weekends and Saturdays. I tried to say, "I don't think I can do it because I haven't got my bar exam yet."

He said, "That's okay, you can do it." [laughter] They were very busy, and nobody talked about the role of the lawyer. You really had to grind out memos, and that's what you did. They also sent you to court immediately, arguing motions and things like that. So there was no discussion about what the role of a lawyer was. The role of a lawyer was to put time on the time sheets.

SHARP: You had spent a very long time in school in Austria and at Boalt Hall when you got here. What was the connection between what you learned at law school in both places, and once you got sitting at your desk at Bronsons'?

WEINGARTEN: I think the advantage that I had is that I was more mature, and I'd had a substantial amount of experience in business. As I say, in London I handled, when I was twenty-one years old, several hundred thousand dollars, which was a lot of money in those days.

Also, when we hire a new lawyer, I want to make sure that the fellow is not a law review man who just reads the books. When I speak to young lawyers, I try to impress on them that you have to learn not the law, but you have to learn how to apply it to reality. To me, the essence of a good lawyer is that he knows what the practical aspects of a certain case are. Because I see so often lawyers who bang their head—"I'm right! I'm right! I'm not going to give in!" They are hurting their client.

I think the essence of practice, particularly of a business lawyer, is first to find out what are the practical aspects, and then to see how you fit it into the law to the best possible advantage—because you don't want to win a moral victory for your client if he winds up losing money.

SHARP: When you interview people coming in, perhaps as new associates, is that something that is lacking, do you think, in legal education the way it is now? They aren't learning the practical aspects?

WEINGARTEN: Well, you can't learn the practical things in law school. I mean, you have to pick it up in life. If you find a man, and the man has a pretty good scholastic record, but he has also worked outside and has some experience, that to me is quite important.

SHARP: Another author that I read, Beryl Levy, wrote about what he thought the *change* was in the role of lawyers.⁴⁹ He said that previously, perhaps in the thirties and the forties, lawyers were strictly trial advocates, and that somewhere in the fifties and in the sixties there had been this shift into the role of a lawyer as more a counselor, and someone who would guide the operations—certain operations, anyway—of a firm, a corporation.

I wonder if you are aware of yourself being a counselor to corporations as opposed to just a trial advocate?

WEINGARTEN: I would say most of my work is being a counselor; and I don't think there's any change. I think it has always been the same: you had trial lawyers, and then you had lawyers who were counselors. To me, the most favorable aspect of practice is if you grow with your clients, like, I have some clients like Fritz of California. It's a publicly held company. I started with them when they were tiny. And today, they employ four or five hundred people. You grow with them; you know their problem, I suppose like a family doctor who knows intimately the background. I think a business lawyer is basically a counselor, because you have to know the affairs of your client, and, as I say, to me, particularly in my practice, I would say a majority of the practice is counseling. A client wants to do a certain transaction; I say, "Have you considered that aspect?"

A typical example—they come in with tax shelter plans. To me, the first thing I look at is not what the tax consequences are, but I analyze the economic aspects. If the project makes no sense from an economic aspect, I say, "No sense going into it and getting a loss. You are better off paying your

49. See Beryl Harold Levy, *Corporation Lawyer: Saint or Sinner*, New York: Chilton Co., Book Division, Publishers, 1961, p. 31.

tax and keeping the rest. You'll lose the entire thing."

I don't think there's anything new in this book. I think that division has always existed, that you would have a trial lawyer. I suppose it's typically in England, where you have solicitors and barristers. The barrister doesn't know anything about the client; he just has that lawsuit, and that's all he handles.

The thing that disturbs me about the American system is that the people have become tremendously litigious. Every time something happens, he loses on a certain transaction, he won't say, "I made a poor deal." He'll say, "Who can I sue?" The courts are clogged up with a tremendous amount of cases which shouldn't be there.

I think that one way of reducing litigation would be if you would have the European system that the prevailing party would get reimbursed for attorney's fees. Then you wouldn't have these tremendous amounts of cases.

SHARP: What do you think of the pretrial conference, then?

WEINGARTEN: Well, as I say, I don't do any trial work. But, to me, the pretrial conference makes a lot of sense. What you're trying to do is to try to eliminate the tremendous expense of a trial, and try to settle it.

But, as I say, I have situations where a client will come to me and he has a claim for \$14,000. I discuss it with a trial man, and he'll say, "I guess it's a good case. But, my God, they'll have a \$12,000 lawyer's fee." There's something wrong with a system like that.

SHARP: Somebody else had written about the role of lawyers as even broader social counselors. When a corporation approached you about a specific legal question, they might really want to know the broader social implications or the broader political implications of what it is they were trying to do.⁵⁰ Do you find yourself being asked broad questions?

WEINGARTEN: No.

SHARP: Or moral questions?

WEINGARTEN: No.

A General Note on Tax Departments

SHARP: The last question that I had—and this will sort of set us up for our next interview, when we talk most specifically about tax law and your career in tax law—one analyst has cited tax departments of law firms as being some of the most creative departments, and in some cases the most lucrative, most profitable, departments of a large law firm.⁵¹ I wondered what you thought

50. See Robert T. Swaine, *The Cravath Firm and Its Predecessors*, 3 vols. (New York: Ad Press, 1946 and 1948).

51. See Levy, *Corporation Lawyer: Saint or Sinner*, p. 35.

about that.

WEINGARTEN: I think that's correct. When you say most creative ones, it seems to me you have to distinguish between the human aspect and the economic aspects. Basically, the tax department is not like family law, where you have a tremendous amount of emotional and personal problems. Basically, you're dealing with money. So it is much easier to be the more lucrative thing.

If you have a deal where you make a lot of money for the client, he doesn't mind paying a good fee. And usually, in the tax department of a large firm, you are dealing with large amounts of money. So I would say that it is correct that the tax department is quite profitable, and should be.

SHARP: So you were given quite a bit of positive reinforcement from both Roy and Ed Bronson when you were beginning to bring in essentially new work and establishing a new department?

WEINGARTEN: Yes.

SHARP: Did they have much to offer you in the way of guidance?

WEINGARTEN: No. Absolutely none. You just had to get it for yourself.

SHARP: Did you work with them then very much?

WEINGARTEN: Yes. Well, I enjoyed particularly working with [Harold] McKinnon, because McKinnon was an intellectual. We frequently had discussions on philosophy and the moral aspects of law, which had nothing to do with particular problems. But McKinnon was a man who was really not concerned with money and getting clients. I think if he would have been on his own, I don't think he would have made a living. But he was a fascinating person. I was very fond of him.

Roy and Ed were excellent lawyers, but really, I will say I don't know whether Roy had any other interests. His life was the law and practice, and the lofty, good things of life were a couple of martinis, good food, good laughter, and pinching a girl. He was somebody who loved the basic aspects of life, basic aspects rather than the intellectual ones. I think that's the reason why he was so fond of McKinnon, too, because he felt that he [McKinnon] supplied to the firm the intellect.

SHARP: I understand from George Hartwick that Mr. McKinnon was a very shrewd editor, for lack of a better word.

WEINGARTEN: Yes. He had a magnificent command of the English language. His briefs were really masterpieces.

SHARP: And they were brief!

WEINGARTEN: Well, that's the art.

SHARP: Did you have similar learning experiences?

WEINGARTEN: Yes, because I wrote quite a few briefs. I learned quite a bit from McKinnon.
[brief tape interruption]

SHARP: I thought of one last question about your first years out here. I did a little bit of background on the Jewish community in Oakland. I know that the Jewish Welfare Federation was fairly strong in Oakland when I thought you might have moved there.

WEINGARTEN: I moved there; but I've had little contact with them. I make my annual contribution to the Jewish Welfare Fund, but I've not been active. I belong to the Temple Sinai, and I go maybe once a year. Lately, I've been active on the board of the Jewish National Fund.

I've really concentrated more on my practice of law.

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A Career in Tax Law at Bronson, Bronson and McKinnon

[Date of Interview: March 17, 1981]##

An Overview of Tax Law

SHARP: I thought today we would go more deeply into your career as a tax lawyer for the firm. I wanted to begin with your telling me what you see tax law consisting of. Just a general framework, and then we'll go from there.

WEINGARTEN: The law basically consists of trying to achieve a desired result with the least tax liability. There are two aspects to tax practice. First, you might say, tax planning. In other words, when a client comes to you before he engages in a certain transaction, you try to figure out the most economical way to handle the transaction. This also covers estate planning.

The second aspect is when the transaction has been completed, and the government comes in and makes a certain claim; you try to oppose the government's claim. Frequently, in the second alternative, the transaction has not been handled in the most economical way it could have been done, and you now try to do the best you can with whatever facts you have.

Since tax consequences permeate any kind of business transaction, and any transfer of assets to the next generation, in case you have personal means, it has grown in importance quite a bit, especially because of inflation. Many people who never thought they'd have a tax problem suddenly are thrown into a tax bracket where they have tax problems.

SHARP: I wondered if you'd seen a lot of changes in a tax lawyer's work from the fifties and sixties, compared with now?

WEINGARTEN: Yes. You have much more tax planning because people are much more conscious of tax consequences and come to an attorney before they enter a transaction. Whereas before, most of the tax work was after the deed had been done, and the government has come in and tried to assess a deficiency. So I think the tax planning aspect has grown much more than the tax litigation.

SHARP: When you were here in the fifties and sixties, did you work more with state tax laws or with federal tax laws?

WEINGARTEN: Mostly federal.

SHARP: What were the main issues, do you think, if you could pick out two or three big issues at that point in federal tax law?

WEINGARTEN: I would say the main issues were whether a certain gain is ordinary income or capital gain. The different brackets have a tremendous impact—and a tremendous amount of problems in connection with corporations, whether a certain distribution constitutes a dividend, which is not deductible by the corporation, or whether it constitutes an expense, which is deductible by the corporation.

Then, of course, in estate planning, involving estate tax, you have the problem whether certain items are included in the estate, and secondly, if they are included, at what value. This issue arises mostly in connection with closely held businesses—what is the value of the business? It's not like you have a listed security when you can look up the price in the *Wall Street Journal*. It's a business where the stock is not traded; and the question is, how do you value it? I would say in connection with estate tax law, that has been the most controversial issue.

SHARP: Have there been several laws in the past twenty or thirty years?

WEINGARTEN: No. The law has been always the same: it's the fair market value. The question is what is the fair market value; it is a question of fact. It's a question of lining up facts favorable to you and negotiating with the Internal Revenue Service.

SHARP: So the IRS are in the position of legislation, as it were—

WEINGARTEN: No, they're not legislating. They're supposed to carry out the existing law; they don't legislate. They have no authority to legislate, even though they do it to some extent with their regulations.

SHARP: That's really what I was getting at.

WEINGARTEN: Mostly they're not supposed to legislate. But frequently Congress drafts a law in very general terms, and states that it is to be carried out pursuant to regulations published by the Internal Revenue Service. If you have a law like

this, really the regulations do constitute legislation.

SHARP: In the 1950s, I understand that tax rates were really increasing, and, in fact, even approaching some of the levels that were achieved in World War II.⁵²

WEINGARTEN: Yes, because at some times there was an excess profits tax, which was petering out, but I think it was enacted in connection with the Korean war.

SHARP: How was your work at this point in the fifties affected by increased tax rates?

WEINGARTEN: The higher the tax rates, the more people are hit by taxes, and the more likely they are to oppose it.

SHARP: And more interested in planning as well?

WEINGARTEN: Yes, planning too. Right.

SHARP: Generally, is there something you can say about how a tax lawyer's practice changes with fluctuations in the national economy? Is that something that you've noticed?

WEINGARTEN: The main fascinating aspect in connection with the growth of the economy were corporate reorganizations. That's where you really could do the most constructive work, because there are specified rules which are pretty technical, and which you have to follow closely. If you deviate, the penalty can be very high. It's a question of whether the transaction is tax-free as a reorganization, or whether you have to pay the tax. The results can be pretty severe; and what you do in those cases is that you apply for a ruling with the Internal Revenue Service.

That was the main aspect of work—corporate reorganization. It was fortunate that at that time we had two clients who were quite involved in these aspects. The Pacific Coast Company, which was a client that Jack Painter got, which was run by two people, Hugh Jacks and Don Watts, who were extremely sophisticated, and with whom you could discuss the most intriguing and complicated tax planning ideas, and they would go along with it. So really that was the beginning of our highly sophisticated tax practice.

Then Parr Terminal and Parr Richmond Industrial, who were very sophisticated and inclined to listen to any plans which I had. And in my beginning enthusiasm, I had quite a lot of plans. Particularly with Parr, we developed the idea of selling substantial properties—warehouses—to churches, using their tax exemption as means to develop a good price with excellent tax consequences. It was really a fascinating area.

SHARP: What you're telling me is that a lot of your work depends on an assertive client as well.

52. See J. Keith Butters, et al., *Taxation and Business Concentration*. Symposium conducted by the Tax Institute, June 15-16, 1950. Princeton: Tax Institute Incorporated, p.v.

WEINGARTEN: Yes, that's right. The client will go along with certain ideas you have, and be willing to go along with a certain plan that you suggest and outline.

SHARP: I guess I had thought of it more of a one-way street—that they automatically would want to go along with whatever you had in mind.

WEINGARTEN: Well, no, because sometimes you would have two or three alternatives. If the transaction is crystal clear, of course they wouldn't need you. Usually the situation was one where the results could be either way, and the question is sometimes that you outline for the client the risks, and advise him that the risk may be worthwhile taking. The interesting phase of the tax practice are situations where the result isn't quite clear; but you develop a plan which you think will stand up based on existing law because of certain fact situations you develop.

On Taxation and Corporations

SHARP: Earlier in your career, in these first fifteen years or so, were you aware of coming to any grand conclusions about taxation, what the goal of taxation should be? A lot of the writing that I have seen has tried to make a case for the burden of taxation to be on one part of the nation as opposed to another part.⁵³

WEINGARTEN: No. No, because we didn't do anything involving tax legislation. You just worked with the laws as they were passed by Congress. Sometimes, when a new law or a new regulation is contemplated, and tax practitioners are asked to hand in their views, we would do it as members of tax organizations. For instance, when I was president of the tax section of the San Francisco Bar Association, and certain laws were contemplated, we passed a resolution expressing an opinion as to the proposed law. You write a letter to Congress. Whether your letter has any influence or not, you really never know. If the law passes along the way you suggest, it might have passed without your comment, too. So you just put in your input, and how effective it is you really never know.

SHARP: I've seen some notes suggesting that corporation tax provisions are generally seen as fostering a trend towards industrial concentration, or business concentration, anyway. There's a lot of discussion about the meaning of corporation tax provisions in articles that I've seen.⁵⁴ I wondered if this was an important issue earlier in your career.

WEINGARTEN: Well, it has nothing to do with earlier practice; it applies equally today. The maximum corporate tax rate is lower than the individual tax rate. So for any person in a high bracket, if he can segregate a portion of his income into a

53. For example, see Randall S. Stout, "Ethics in Federal Taxation," *The Tax Magazine*, 41: 44-49, January, 1963.

54. For example, see article by Gustave Simons, in Butters, *Taxation and Business Concentration*, p.69.

corporation he'll always come out—tax-wise—far ahead. Furthermore, having a corporation also lends itself very much to estate planning.

In other words, if you have a corporation and you have shares, you can give one or two shares to your children and get it out of your estate. Whereas if you have a business in a partnership or proprietorship, it's much harder to give an interest in the business to your children.

Also, you can give away a portion of your business to your children without losing control. As long as you retain more than 50 percent, you have control of the company. Whereas if somebody is a partner with even 5 percent, he can prevent you from doing whatever you want to do.

A corporate structure in the capitalistic system has always been an extremely useful tool from a tax point of view, not counting the non-tax advantage that you have limited liability, that you can protect your other assets and not expose them to the risks of running the corporate business. So there's no question that as a business gets more successful, it will usually incorporate.

SHARP: Which will, in some cases, push towards a concentration?

WEINGARTEN: Well, push to a concentration because most businesses are concentrated in corporate forms. I think it follows because of our tax structure, not because of our general law, that really, to some extent, pushes you to a corporate structure.

SHARP: I just wanted to ask you about that because it seemed, as I was going through some of the journals, that kept coming up as a really important issue in the past twenty or thirty years, the whole issue of business concentration in the United States. As a tax lawyer, I thought you might automatically have some things to say about it.

WEINGARTEN: As I say, the tax law favors a corporate setup because the tax rate is lower and you can shelter income which would be taxed at the top rate if you had that corporate income added to your other personal income. As I say, it has tremendous advantages from an estate planning point of view.

It also makes you more anonymous. If you run a business as an individual, everybody knows you are in the business. If you are in a corporation, really nobody knows who's behind it. So from that point of view, a corporate business structure is pretty much favored by most businesses.

California Tax Concerns

SHARP: I saw a "Report of the California State Bar Committee on Taxation" for 1964.⁵⁵ F. Daniel Frost was the chairman of this committee. The report outlined changes suggested by committee members in the California Revenue

55. See *Journal of the State Bar of California*, 39: 560-579, 1964.

and Taxation code. One suggestion was the repeal of this Section 15303 which was a difficult section to read on inheritance taxes. I wondered about suggestions of this type, and what happened to them.

WEINGARTEN: First of all, it's different from federal tax law changes. The state taxation changes usually have come from various lawyers' committees, also because a majority of legislators are attorneys.

I don't know whether you saw today's papers—two initiatives on eliminating the California inheritance tax are going to come up in future elections, and both were somehow drafted by California attorneys. That's nothing special about taxation laws. Most proposed laws, be it in the tort field or any other field, usually come from various lawyers' committees. So I don't think there's anything special about the taxation field. [intercom buzzes; brief tape interruption]

SHARP: Also in the 1960s there was some enthusiasm for a tax court in California. Actually, it was the Model State Court Tax Act, which would have set up a truly judicial court, not an administrative department.⁵⁶ I wondered if you knew about this, or had any feelings about it.

WEINGARTEN: Yes. As a matter of fact, it came much closer to fruition in the last two years. I was a member of the State Bar of California Taxation Committee. While I was a member, for the first time, we succeeded in getting—I think it was Assemblyman John Knox to sponsor a bill to have a state tax court similar to the federal Tax Court. In federal law, you have a choice if the government comes in and claims you owe taxes. You can either pay the tax, and then sue for a refund in the district court, or you have an alternative in opposing the tax before paying it and fighting it out in the Tax Court.

You do not have any such alternative with California taxes. You have to pay the tax, and then sue for refund, which is pretty hard.

So there have been these various efforts from time to time to set up a state tax court along the lines that you have in the federal one. The closest we ever came to that was last year. But the thing died in committee for the simple reason that you have objection, first of all, from the state taxing authority, the Franchise Tax Board, because it doesn't want that. Then from the judges, who are afraid that you might curtail their authority because you would take it away from a judge who now decides a tax case, and would shift jurisdiction to somebody who does only tax work. So it didn't carry; and I don't know whether it will ever come to fruition.

SHARP: But it would be a good idea?

WEINGARTEN: I think it would be a good idea. The point is this: state taxation doesn't carry the importance of the federal for the simple reason that the state income tax is deductible for federal tax purposes. In other words, if the state comes in and says you owe \$10,000 in taxes—if you are in the 60 percent tax bracket,

56. See Dorothy J. Kray, "California Tax Court: An Approach to Progressive Tax Administration," *Southern California Law Review*, 37: 485-528, 1964.

you are always saying, "It will only cost me \$4,000, because I can deduct it. Why the hell should I fight it? The lawyer's fee will cost that much."

Unless you are dealing with a very substantial amount, it really usually doesn't pay to fight state taxes. That's the reason the Franchise Tax people are much more unpleasant and much more unreasonable than the federal people, because they know that you are really in somewhat of a dilemma; you might give in to them even though they know they are wrong, because the amounts involved make it uneconomical to fight them.

SHARP: That's really interesting.

Argument for a United States Tax Court of Appeal

SHARP: I wanted to talk about the federal level. I had seen an article by Martin Shapiro about the relations between the U.S. Supreme Court and the IRS [Internal Revenue Service].⁵⁷ He was talking mainly about the Warren court. He said that the U.S. Supreme Court was reluctant to get involved in really complex economic matters, preferring instead to defer to IRS guidance, and that IRS policies have to be consistent. If they are consistent, the Supreme Court wouldn't disallow them. The court would acquiesce to IRS rulings.

Shapiro further suggested that there should be a tax court of appeals to get more genuine judicial review, because of the apparent lack of desire on the part of the U.S. Supreme Court to really get into the matter.

I wonder if you were aware of this power balance between the IRS and the U.S. Supreme Court?

WEINGARTEN: Well, it's not between the IRS and the U.S. Supreme Court, because before the case comes to the U.S. Supreme Court, it must have gone through two levels of federal courts. Either the Tax court or the district Court, and then the circuit court of appeals. So it isn't a situation of a battle between the IRS and the Supreme Court, because two federal courts already have dealt with that issue. The Supreme Court generally is reluctant to take on cases that they don't have to, for the simple reason that they don't want to assume additional work if they don't have to. Secondly, you can only get to the Supreme Court in a tax case if you have two conflicting circuit court decisions.

In other words, before a case can come to the Supreme Court, there have to be two circuits which interpret the same section differently. The IRS or the taxpayer goes to the court and says, "Look, here's a law which is supposed to be applied uniformly throughout the nation, and you have two conflicting views. We have to have an answer."

A typical case was the case which I won in the Ninth Circuit [Court of Appeals], which was *[Estate of] Schmidt v. Commissioner*.⁵⁸ I won that case,

57. Martin Shapiro, "The Warren Court and Federal Tax Policy," *Southern California Law Review*, 36: 208-222, 1963.

58. 355 F. 2d 111 (1966).

and then, I forget whether it was the Fifth Circuit or another circuit, decided the same issue the opposite, in favor of the IRS. So the Supreme Court had to take it, and then decided it the same way as I had won. But that's the only time the Supreme Court will take a tax case, if the case has already been dealt with by different circuits and they have reached different results.

So I disagree with the view that the Supreme Court struggles with the IRS. The Supreme Court will only come in if there have been different interpretations of the same section by different circuits. Sometimes they decide for the IRS, and sometimes they decide for the taxpayer.

SHARP: If you put the circuit court or the district court in the position of the U.S. Supreme Court, do you have a sense of the relationship between these courts and the IRS?

WEINGARTEN: No. It depends completely on the judge. Sometimes a court will reach a wrong decision; and I don't see that he will do it because of opposition to the IRS or opposition to taxpayers. It could be that he is a poor judge, he doesn't understand the issues. It could be that the attorney for one or the other side did a poor job.

You see, in this country, the judge really doesn't do any research. He relies on whatever the attorney feeds him. If you have one side doing a poor job, the other side doing an excellent job, you may reach a result which may be legally completely wrong, but it's the fault of the attorney who did a poor job.

I don't see a conflict between courts and the IRS.

Now there are some judges which are pro-government, and some judges which are pro-taxpayer. But that has nothing to do with the court as a general concept. It has to do with this individual judge.

SHARP: I'm really glad to have your ideas on that. I've brought these kinds of theories that I've seen written in articles, and each lawyer that I've talked to so far has turned them all around, and said, "From my experience, it's just totally different."

WEINGARTEN: Another thing which I have experienced—coming back—I think it would be an excellent idea if you would have a Tax Court of Appeal. I've seen cases where you have a very complicated case, and you come up to the circuit court of appeal—I had an experience rather recently. One judge was Cecil Poole, who had only done criminal work. He didn't know what was going on.

There was another judge who was seventy-five years old, who was sitting what is called "pro tem" from New Hampshire—a retired judge—and he didn't know either what was going on.

There was one judge who really handled the thing; and he decided the case against me for the simple human reason—it was a very complicated case—he would have had to reverse the Tax Court, he would have to write a lengthy opinion, he would have to dig through a lot of transcript and material, and from a human point of view, he probably had other cases waiting still for him—all he had to do was saying "Affirmed, per curiam" and he was rid of it.

If you would have a Tax Court of Appeal where all three judges are familiar with what goes on, this thing wouldn't happen.

SHARP: So you're arguing for the expert—

WEINGARTEN: Oh, no question about it. But I don't know whether it will ever materialize, for the same reason that it didn't work in the state. Judges are reluctant to give up power.

Notes on Tax Clients

SHARP: I wanted to ask you a little bit more about Bronson clients. A few minutes ago, and in our first interview, you talked about Parr Richmond Terminal and Pacific Coast Company.

I wonder who else were frequent tax clients for you among the long list of Bronson clients?

WEINGARTEN: I developed a client of mine, Fritz of California, that started out as a small company and grew, and became a publicly-held company.

One of my main clients, and still a client today, for whom I do a lot of tax work is Thomas Culligan, a prominent real estate developer on the peninsula, and I'm now dealing with his son.

One of my best clients, and one of my best friends was Fred H. Lenway Company, which started out small and grew tremendously. Fred Lenway was very much intrigued with various ideas I came up with. We carried them out, and most of them were quite successful.

SHARP: What were some of the issues that they would bring to you? Does that come to mind quickly at all?

WEINGARTEN: Yes. To give you an example, Fred Lenway Company came to me, and wanted to get the entire copper output of a Philippine company called Le Panto Mining Company. Some big law firm in New York had written an opinion that if Le Panto would make this deal with my client, that it would become subject to United States taxes, and they didn't want to do that. My client came to me and said, "Is that correct? What can I do?"

I developed a plan how to handle that, whereby Le Panto was not subject to U.S. taxation and my client got the copper. It was a typical example where the client received what he wanted, and he became one of my best clients after that.

Fritzi of California was a small company. I reorganized them and made them public, and today they are a publicly-held company that is traded over the counter.

With Parr Richmond Terminal I was involved with a plan of selling substantial real estate deals to churches, and to split up the company tax free between two branches of the family.

Thomas J. Culligan wanted a way to handle certain transactions so that he was subject to capital gain rather than ordinary income.

SHARP: Mr. Hartwick told me a lot about Schenley, and Schenley was an important client of his.

WEINGARTEN: Yes.

SHARP: I wondered if you had done any tax work for them?

WEINGARTEN: Yes, I did. Schenley being a Delaware corporation, with its principal office in New York, all their federal tax work was done by their New York lawyers. What I did for Schenley oftentimes was state taxation work. Quite a bit involving property taxation.

SHARP: I would think so.

Are there other clients who come to mind, especially in the fifties through sixties?

WEINGARTEN: I did a tremendous amount for clients that were sent to me by CPAs, just for their tax work. In other words, clients who had their own lawyers, and wanted somebody to handle a certain tax thing because their regular lawyer didn't feel he was properly trained to do that. These were people who did not become our normal clients; we just did certain tax work, handled cases in the Tax Court, and never saw them again.

Trying Cases in the Tax Court

SHARP: I don't want to keep you too much longer. I wanted to ask you just a bit about the two cases that you sent to me.

WEINGARTEN: Well, the one case, the *[Estate of] Schmidt v. Commissioner*,⁵⁹ was a rather important case because it involved an issue that had never been litigated before, and it constituted a change of the [federal] government's view. I was really outraged when this case came up. This fellow Schmidt, who had been a client of mine, died. After his death, the government came in and assessed a substantial tax against the widow. I was absolutely furious.

We lost it in the Tax Court. I appealed, and, as I say, I won it in the circuit court. The government kept on fighting it, and then won a case in another circuit. Then it was taken up to the [United States] Supreme Court, and the Supreme Court decided it the way we had won it in the Ninth Circuit.

The other case has really very limited technical aspects.⁶⁰ It involves the question of whether a certain bond was evidence of indebtedness within the meaning of a certain section. I think that to somebody who is not a tax

59. 355 F. 2d 111 (1966).

60. Mr. Weingarten had directed the interviewer to another one of his cases, *Ernest A. Wilson and Marjorie Wilson v. Commissioner of Internal Revenue*, 51 TC 723 (1969).

expert, it would not mean very much. I don't say this is any particular benchmark case.

SHARP: I wondered more about the kind of confrontation that came up in Tax Court cases. In the *Schmidt* case, there's a pretty strong disagreement it seems, between Judge Ben Duniway's decision with the Tax Court and the Commissioner's office [of Internal Revenue] on what was taxable income and what wasn't.

WEINGARTEN: Yes.

SHARP: I wondered if that was a pretty common controversy—what was taxable income and what was not? From what you've said, it would seem that it was.

WEINGARTEN: Yes. In other words, there was a question whether a reserve for bad debts became taxable when you incorporated. Everybody had assumed for thirty, forty years that if you have what is called a tax-free incorporation, that you do not have tax demand. The government suddenly, after years and years of this assumption, changed its view and hit that widow with a tax. The other one [*Wilson*] really involved a question of whether a certain transaction was for capital gain or ordinary income.

SHARP: In the *Schmidt* case, Duniway complained about the Tax Court and the Commissioner's not seeing what he called the "economic realities" of the *Schmidt* situation.⁶¹ They just didn't really see what was happening.

WEINGARTEN: I don't know whether it will mean anything to you, but my view has always been that the effective way of showing a point of view is to take an extreme example. That's what I did when I argued that case before the court. I said, "You take a situation"—basically. I don't know whether you know what the reserve for bad debt is.

SHARP: No.

WEINGARTEN: Let's take, for instance, somebody who has a little grocery store, right? He gives credit. Let's say somebody owes him \$10,000. He assumes that a certain amount is not going to be collected. So he deducts this, as the "reserve for bad debt." Therefore, when he values his accounts receivable, he says, "They owe me \$10,000, but I'll put up a reserve of a \$1,000 and I'll collect only \$9,000." You deduct that \$1,000 as an expense.

Now there's a certain provision in the Internal Revenue Code, which states that if you incorporate a business which you have run as an individual owner, and then you incorporate—by transforming the business to the corporation for stock, it is tax free; you don't pay any tax.

The government suddenly came and said, when you transfer this going business, the reserve for bad debt of a \$1,000 which you deducted when you were running it as an individual, you suddenly have to pick it up as income.

61. See 355 F. 2d, at p.113.

I said, "That's nonsense." I gave the court an example to show the idiocy of the government's case. I said, "Presume that someone does not incorporate. He has worked all his life as a little grocer, and now wants to retire. So instead of incorporating, he sells his business. So he sells the \$10,000 worth of accounts receivable, but he only gets \$9,000 because of the reserve for bad debt."

The government admits in that case you don't have taxable income for the \$1,000. So I said, "Here you have the idiotic view that when you sell the business for cash, you don't have 'income.' But when you incorporate tax free, you get a piece of paper, you have income."

That was so crystal clear that they didn't realize—they were just blinded by the legal mumbo jumbo, and didn't see the economic realities. I suppose that's what Duniway referred to.

SHARP: Is it fairly frequent, then, that you are, in trying a case in the Tax Court, fighting a lot of things that they don't understand?

WEINGARTEN: No. First of all, let me say this, very few cases are fought in court for the following reason: if you are a good tax lawyer, and the client has a hopeless case you are not going to take it. I'm busy, and I don't want to take your money when you don't have a case, just to delay things. You only take a case if it has some merit, where there may be a conflicting view. You may be right; you may not be right; we don't know.

In 90 percent of the cases in that situation, you settle. The government knows the same thing, that nobody knows who's right. You deal with pretty competent people, and you settle. Most of the time you go to court if, like in the *Schmidt* case, the government came out with a policy in Washington, and the local office said, "Look, we can't settle. That's a policy in Washington, and there's nothing we can do."

Basically, when you go to court, it's usually 10 percent of the cases that you handle. In those cases, it's usually [one of] two situations. Either you and the government cannot agree on the facts. Let's say, for instance, you have a fellow who claimed from his corporation a salary of \$200,000, and the government says that's too much. You can't settle it. So it's a question of fact. You present your side to the court, and the government does its side, and the court decides. Or, you have a question of interpretation of law, where the facts are really admitted, but you and the government give a different interpretation. Those are the two situations when you go to court.

SHARP: And the *Schmidt* case was—?

WEINGARTEN: The *Schmidt* case, as I told you, was one case where the government came out with a new policy in Washington, and we had no choice but to fight it.

SHARP: I notice that the *Wilson* case was a Rule 50 case.

WEINGARTEN: Well, they are all Rule 50 cases. Basically, the Tax Court consists of sixteen judges. It's a rotating court: a judge will go to where the court sits. I mean, they'll send one judge to San Francisco, one to Los Angeles, mostly in the big cities. The judge will hear the evidence, and then he'll go back and decide

the case. If it is an important case, it comes out as a Tax Court case, which means all the judges participate. They'll hear what the one judge that heard the case has to say; they'll agree with him or disagree with him. Then the decision will come out by the Tax Court, which is quoted as "TC." It may be unanimous; it may be five dissenting and eleven for the majority.

On the other hand, if it is not an important case, like involving a question of whether the salary was reasonable or unreasonable—in other words, it doesn't involve any big issues—then it comes out as a memorandum decision.

##

4

An Historical View of the Firm

[Date of Interview: May 18, 1981]###

Specialization the Key

SHARP: We've talked a lot about how the tax department grew under your guidance, and we've talked about the specialization of the firm in other areas too.

I wanted to ask you how you thought the firm had changed in its daily operations since you came in 1949?

WEINGARTEN: With the growth, it naturally had to change. The firm was small; everybody knew what everybody was doing, and there were frequently discussions as to how a case should be handled.

As the firm grew, there was more and more—somehow—departmentalization. Even within certain departments—like in the trial department, some people would do malpractice work, and other people would do technical—products liability. Another department would handle aircraft liability cases. The same way in the business section: we developed a department for real estate, a department for antitrust, a tax department. The tax department grew: we developed within the tax department specializations. Some would do estate planning, the others would do more corporate reorganization. Another person might specialize in real estate law and tax consequences. Obviously, as the firm grew, somehow it developed into—you might say—a series of small firms within the firm, rather than one individual unit.

SHARP: You would consider the tax department almost a small firm within Bronsons'?

WEINGARTEN: Well, perhaps the tax department is not a good example because the tax department to some extent services all the other departments. Like a real estate deal will have tax consequences; a divorce might have tax consequences. So you really branch out with your tentacles into all other departments, whereas other departments can be pretty much centralized without affecting any other department.

SHARP: When you came in 1949 you mentioned that the firm was really pretty small, at least much smaller than it is now.

WEINGARTEN: Oh, yes. I think there were about nine or ten people.

SHARP: That's what I had thought. I wondered how you had seen the firm adapt to the increased numbers, besides this specialization that we've talked about?

WEINGARTEN: It happens gradually. You don't jump from nine to sixty—as you grow, your needs change with regard to administration. Suddenly you need a different accounting system, and you need an additional librarian because one can't handle everything.

I think as you grow, your needs grow. You call in a consultant and make improvements. The growth doesn't happen overnight.

The Partnership System and Committee Structure

SHARP: In the first volume of the Bronson oral history, Ed Bronson, Jr. talked about what he called the liberal partnership system that had developed at the firm.⁶² I wondered what you thought its impact had been on the firm? I've asked this of the other lawyers just to get their ideas, but I wondered what you thought.

WEINGARTEN: Well, the impact has been that basically, this firm has a rather liberal system about becoming a partner, and then once you become a partner as to how you progress in the partnership. I presume that was to a large extent the idea of Roy Bronson, who obviously in the early part of the partnership (when the firm was small), was really the guiding and controlling influence.

He felt—and his vision proved to be correct—that in order for the firm to grow, which was his aim, that you have to be pretty liberal. Whereas other firms, the people at the top would try to get the biggest share of the pie, he was more liberal in sharing it with the younger partners.

62. See oral history interview with Edward D. Bronson, Jr., "Reminiscences of the Bronson Brothers," in *The Law Firm of Bronson, Bronson and McKinnon: 1919-1941*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1978.

I was struck, for instance, when I became a partner, how the junior partner would be able to say something without sitting back and worrying what the senior partners would say. I mean, it was pretty much a laissez-faire attitude, which I think has contributed to the fact that compared to many other larger firms, there has never been any breakup or any kind of split, or internal differences. It's sort of harmonious.

SHARP: Could you say a little more about how this particular kind of system worked on your own career? You mentioned it just briefly.

WEINGARTEN: I don't think that has any influence on my work. I was really never so much concerned about whether I made a few dollars more or not. I was concerned about doing interesting work in an environment with people I respected and whom I liked. I found that in the firm, so the other aspect—really, I don't think I worried much about it.

SHARP: Did it change how you worked on cases?

WEINGARTEN: No.

SHARP: How did the roles of Ed and Roy Bronson change over the years in terms of managing the firm? You mentioned it, but if you could say a little more about that.

WEINGARTEN: As the firm grew, it became obvious that you cannot run a forty or fifty-man firm like a ten-man firm. Whereas in the beginning, the management committee was really just a sounding board for Roy Bronson, and whatever he wanted was done; as the firm grew the management committee became much more a policy-making vehicle. They would frequently disagree with Roy, and he would willingly accept whatever the majority decided to do.

Plus the fact, of course, as they got older, their workload and client contact diminished. So from that point of view, too, their influence diminished.

SHARP: How did the role of Mr. McKinnon change over the years?

WEINGARTEN: I don't think the role of McKinnon really changed much at all. He was never much active in policy at all. He was much more like—I don't know what you would call it—more a counselor to other attorneys. He really was seldom active in client relationships. Or if he was, only on the fringes. He never really solicited clients; I don't think he dealt directly with clients.

If someone had a problem which required a lot of thought, he would come to McKinnon. Or, if there was a big appeal that had to be done, he was a beautiful writer, and he would write the appeal. So I don't think his position really changed as the firm grew. He never really was active in management or policy making.

SHARP: Several people now, including yourself, have mentioned the development of the management committee, and how it came about. I wondered if you could say something about the issues that the management committee handled in

the beginning of this period, and then a bit later on. You said that its role in policy making became stronger, more assertive—

WEINGARTEN: In the beginning, when the firm was small, we would have a partners' meeting once a month, or sometimes more often, at eight o'clock in the morning. It worked out all right, and you decided whatever issues there were, and that was it.

As the firm grew, obviously this became not feasible. First of all, half the people might not be able to show up at eight o'clock—somebody was on trial, and so on. It was my idea to change this, and I suggested, and the suggestion was adopted, to have a dinner meeting once a month where everybody can show up. That worked out, and we still have that policy.

You can submit to the partners' meetings more basic policy matters, which the management committee didn't have the power to do. But routine things, like whether to extend the lease, or whether to buy more books, or whether to buy a certain piece of machinery, the management committee would adopt and decide, and then simply furnish copies of the minutes to the partners at the monthly partners' meetings where they could review it. The partners' meeting—they were really more left the basic decision, like how many lawyers should we hire, who is to become a partner, et cetera.

Here again, it developed more and more that the work was split up in committees: we have a personnel committee, which reviews the salary structure in the city so we should be competitive. It [personnel committee] reviews the workload of the various people, how many people we should hire. Then they make a recommendation, and then again, discuss it at the partners' meeting.

What developed is like a typical corporate setup, where you have a board of directors that meets and decides the thing, and then major things will be decided by the shareholder's meeting.

SHARP: You mentioned that you noticed even when you were a junior partner that you could suggest things.

WEINGARTEN: Even still today. Somebody who just became a partner last year at the last partners' meeting can make any suggestion he wants to, and be listened to. If the suggestion makes sense, it may be adopted; it may be not adopted. But the fact that he's junior or non-junior has no bearing.

SHARP: It sounds pretty exciting. How have you been involved in the management?

WEINGARTEN: *None*. I hate it and I always stayed away from it. Anything involving administration.

SHARP: I got just about the same response, word for word, from Mr. Hartwick.

WEINGARTEN: I never liked administration. One of the reasons I stayed with a big firm is that I can pass it on to somebody who likes it.

SHARP: I understand Mr. Painter really liked administration.

WEINGARTEN: He loved it, yes.

SHARP: So you were able to escape any committees?

WEINGARTEN: No, I'm on several committees. But, I got out of being on the management committee.

SHARP: Can you tell me anything about the other committees that you have been on?

WEINGARTEN: Oh, yes. [shuffles in desk looking for papers] Well, the business committee; there is a committee to decide whether to take contingent fee cases. I'm on the profit sharing and pension plan committee because I started that. We have a retirement committee; we have a library committee. I only know about nine or ten of these committees.

SHARP: When did you start the profit sharing one?

WEINGARTEN: When I became a partner, I noticed we had secretaries who had been with us for a long time. It seemed to me unfair that when these people had been here for forty, or thirty years, that the people who are then partners should have the burden to pay for these people. So I suggested a retirement plan for non-lawyers. Then as the tax law changed, which permitted more liberal contributions for partners, we introduced a Keogh plan, which we have, which covers both secretaries and all the other staff members.

SHARP: I don't think I have the date when it was that you became a partner.

WEINGARTEN: I think I have the card here. [gives announcement to Sharp]

SHARP: Thank you. Fifty-eight. The same time as Mr. Goodin.

WEINGARTEN: Yes, we became partners the same day.

SHARP: Is this a time of a lot of ceremony?

WEINGARTEN: Well, that's the only time that they ever had a ceremony. Ed Bronson threw a big party at his home. That was the only time, I think, we ever had a party for it.

SHARP: So you instituted this committee pretty soon right after that, or as soon as you could?

WEINGARTEN: No, we started the profit-sharing plan—I think it was in about the middle sixties.

SHARP: So the idea was, if you came up with a plan like this, you automatically became head of the committee? They said, "Okay, Mr. Weingarten, you can go ahead and do it"?

WEINGARTEN: Right. It also so happened that I did that retirement plan work in the tax department.

SHARP: So it was a natural—

WEINGARTEN: Yes.

SHARP: Has the time that you put in on this administrative work grown as you have gotten more senior in the firm?

WEINGARTEN: Well, to some extent. But to some extent, you can also delegate more.

SHARP: How do you think your role has changed in the firm over the years? That's sort of a long-scope question.

WEINGARTEN: Well, I don't think it has changed very much, except in the sense that the tax department has grown, and we have now a group of really, I think, outstanding people in the tax department. Whereas before I was the only one, now you have five, six people to whom people can turn. So from that point of view, you might say that my role has diminished, because you're not the only one who does tax work.

Hiring New Lawyers

SHARP: Did you get a chance to get in on the hiring of the young associates?

WEINGARTEN: To the extent that it involves tax work, yes. As a matter of fact, I remember particularly one incident when Dick Greene was hired. The person then head of the personnel committee was John Ward, and he wanted to hire somebody else from Washington. I insisted on hiring Dick Greene, because I liked him.

I think to some extent that the wishes of the person who heads the department are usually controlling as to who will be hired for that particular department, which makes sense because you work with them.

SHARP: Did you have certain qualities in mind that you were looking for in a young associate?

WEINGARTEN: Yes. Mainly, I was looking for a first-class academic background; I was looking for somebody with an extremely good mind; and somebody who could handle situations which are not routine and use original thinking. And at the same time, be somehow a likable person, so you have the possibility of good contact with clients.

SHARP: From what I've seen of your tax work, especially as a young associate and partner when you came in, you were interested in doing a lot of writing. Is that something that you would want a new associate to do as well?

WEINGARTEN: Yes. Because in this particular field, by writing and participating in bar association activities and continuing education, you make a name for yourself. And that's what you have to do to get a reputation that you are a tax attorney in this city.

SHARP: The two articles that you showed me that you had written were especially involved with new interpretations of certain laws, or making exceptions in certain cases.⁶³ Is that something that is particular to tax law?

WEINGARTEN: Well, to some extent, yes. What happens is, frequently the laws change, and there are no cases there. It's a new law, and nobody knows how they are going to interpret it. All you can do is based on past experiences.

Basically, what I did when I had an unusual problem for a client, I had to do some research work in connection with that problem. I would then write it up. It really wasn't any particular additional work; the work had been done.

SHARP: How do you think you would contrast the young associates coming in with how you were when you came in?

WEINGARTEN: I would say this: I would say that the young associates today, in my opinion, are more alert, I think more sophisticated, and extremely bright. I think the reason for this is that entry into law school has become much more competitive. The people who get into law school have to overcome more hurdles than in the past. If with all these hurdles you are then in the top 10 percent, you have to be pretty smart and pretty good.

SHARP: How do you think the needs of the firm have changed since when you came in? Do you have any sense of that?

WEINGARTEN: The need has changed in the sense that you have more clients; you need more bodies.

SHARP: The specialization of the law—is that sort of the major thing?

WEINGARTEN: Well, the specialization of the law hasn't changed as such. It only has changed—as you have more clients, you can afford to have a special labor law department. Before you couldn't do it; anybody who would do other work would have to dig in and study labor law. But as your clients grow and your needs grow, you can afford to have specialists in the various fields, because you have enough work to keep them busy.

Changes in Work and Interaction: Lawyer and Non-Lawyer Staff

SHARP: You mentioned a couple of times that the way that lawyers interact here has changed, because you had more time before, and there certainly were fewer of you in the 1949 through 1965 period. I wondered if that was because of the increased specialization, that you have certainly less need to communicate with everybody in the firm.

63. In addition to the article in *Journal of the Patent Office Society*, 1952, see also, "The Kimbell-Diamond Doctrine and Consolidated Returns," in *Taxes—The Tax Magazine*, February 1954, pp. 125-128.

WEINGARTEN: No, I think you have less opportunity. For instance, before we had six, seven offices, and you saw everybody every day and five times a day. Now sometimes I don't see people on the thirty-fifth floor for six months. By the mere fact that you have a different layout and a completely different organization.

SHARP: It's much more enclosed now.

WEINGARTEN: Yes. The other day something funny happened to me. I called up a young associate, and he wasn't in, and so I told the secretary, "Ask him to call me."

She said, "Who's calling?"

I said, "Mr. Weingarten."

She said, "What's your phone number?"

So that gives you an answer.

SHARP: That's amazing!

You mentioned to me that you had a really special relationship with Mr. McKinnon. You often, or sometimes, anyway, got to have talks about the "moral aspects of law."

WEINGARTEN: That's right. He was, as I say, a highly intellectual person. We would frequently have purely intellectual duels. Many times I disagreed with him. He emphasized very much the function of religion as compared to pure ethics. I enjoyed these encounters very much.

SHARP: Is there time or room for anything like that now?

WEINGARTEN: No. Somehow we don't get around to it anymore.

SHARP: How has the non-lawyer staff changed since when you came?

WEINGARTEN: Traditionally, most lawyers depended on a single secretary who would take shorthand, do the typing, answer the telephone, keep time records, et cetera. This is changing. The technology of word processing and machine dictation is eroding the most cherished of secretarial skills, namely, shorthand and typing. The use of dictation equipment is obviously more efficient for a law office. Also, economy necessitates that typing be centralized. Rather than one secretary being assigned to a single lawyer, the secretary will take tapes from a central place, plug in the earphones, and type.

It is more efficient—but I doubt whether it is good for the morale. Only a few like it. They certainly miss the human contact and experience, and the interchange of ideas.

I have been very fortunate to have had Yvonne Dillon as my secretary for over twenty-five years. She is not only a wonderful human being, but extremely competent, and her common sense and good advice have been of great help to me. I have also tried to make her work more interesting by explaining to her the issues involved in a particular case, the relationship and idiosyncrasies of the client, how the case progresses, so that the work has more meaning for her rather than just doing the typing. It certainly has

affected the quality of her work. I cannot visualize an intelligent person being satisfied with putting on earplugs and typing from a tape which is meaningless to that person. This trend may be unavoidable, but I think it may have an effect on the kind of person the law office will ultimately attract to do this kind of work.

SHARP: Have you used computers at all in the tax—

WEINGARTEN: Computers? A little bit, yes. I have two associates that use it. We bought some special computers to make various computations.

SHARP: Have they significantly speeded up the work, have you noticed?

WEINGARTEN: Well, it speeds it up. I mean, when you do some estate planning, you figure out what the tax would be under various alternatives. Sure, it saves time.

SHARP: Do the associates come in with any ability to use Lexis or any of the other computers, or is that training that has to go on once they get here?

WEINGARTEN: No. The other day I wanted a certain problem answered. I at least trained my associates, before they use Lexis to check with me. Lexis is pretty expensive, and some cases warrant it and some cases don't warrant it. If it does warrant it, I'll tell them yes, use Lexis.

SHARP: Is there a real eagerness to use the computers?

WEINGARTEN: Not particularly. You can just use it or not use it.

SHARP: I know that is pretty expensive.

Why Success?

SHARP: The last question that I have is sort of an overall one. I wondered just what you thought accounted for the enormous growth of the firm since you've been here?

WEINGARTEN: I would say first that I presume the normal reason why any business grows, is that clients are satisfied with your services. I think we have been trying to give good advice, plus the fact that at least I have tried to train the people who work for me to realize—which is frequently lost in a big firm—that to you a problem may be a small one; to the client it is the most important one. To report to the client regularly; to answer phone calls and letters immediately—in other words, to let the client know that you are on top of his problem.

Next, obviously, is the complexity of our society. There are more and more laws being passed and more and more regulations being passed. Any kind of business is faced with problems which it never faced before which requires legal assistance. That, in turn, has increased the use of lawyers.

Thirdly, as mentioned earlier, our society has become litigation-happy. Any time you have a loss in a business transaction, you don't say, "My God, I made a lousy investment," but you think, "Whom can I sue?" The entire nation is legally propelled—one against the other—children suing parents for not having made them happy; students suing teachers if they don't succeed in life. If this trend continues, the paper consumed for legal files will exhaust most of our forests, and "process serving" is going to be the growth industry of the future.

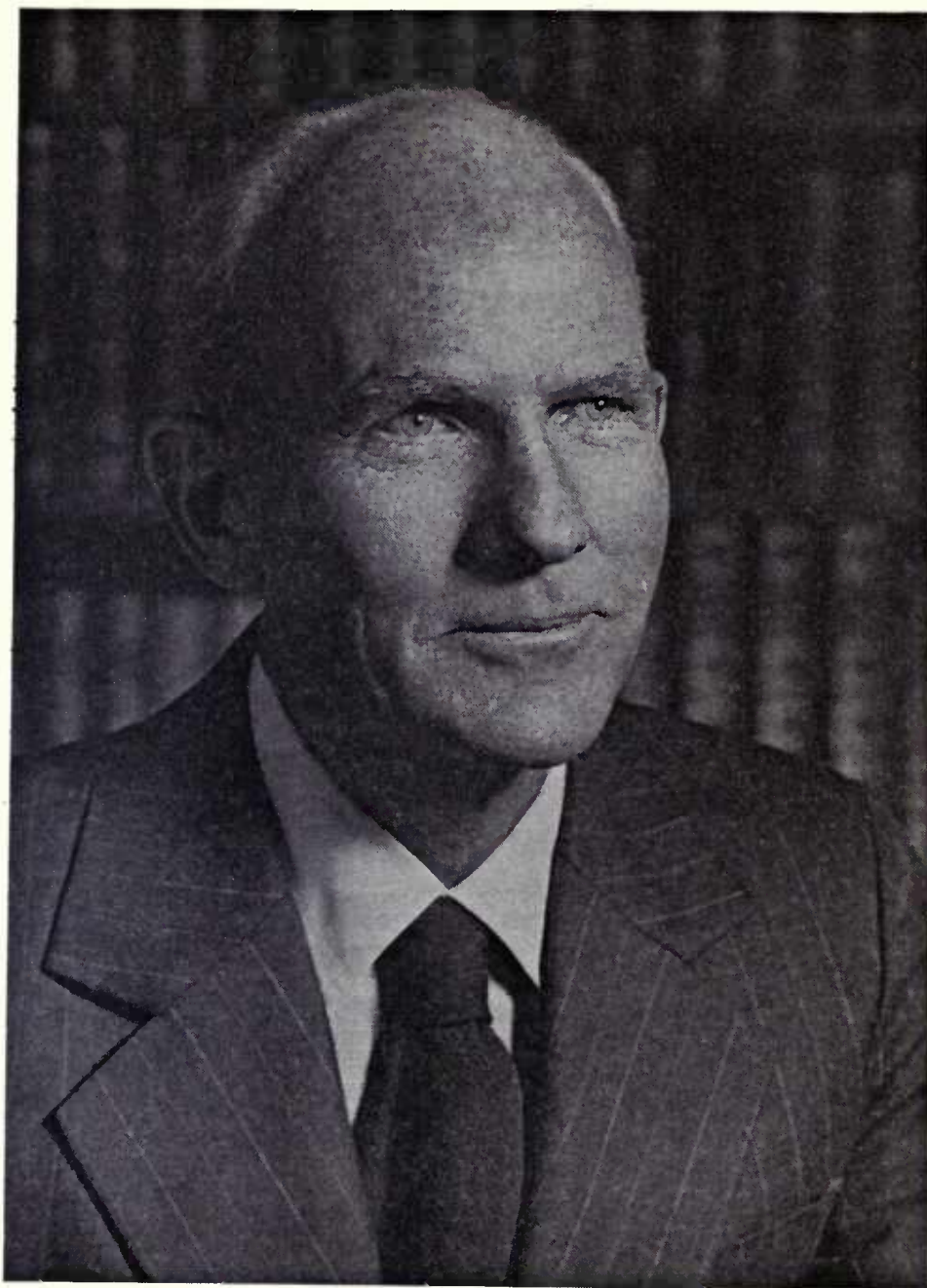
Seriously speaking, I think it is a defect in the American judicial system that you can have a lot of these nuisance suits brought which can drag on for an extremely long time and be very expensive, and after you win, the person who brought it about is not required to reimburse you. Under the European system, if you bring a suit and lose, you have to pay the prevailing party's expenses. I think if that system would exist here, it would cut down a tremendous amount of lawsuits. Also, perhaps the courts should use some self-restraint and decline jurisdiction in some cases. All the world's ills and troubles cannot be settled by the courts.

SHARP: In the tax department, this increasing litigation—is that something that is really prevalent?

WEINGARTEN: Not necessarily tax litigation, but tax consultation is increasing. I'll give you a typical example: estate planning. Estate planning ten years ago would only affect maybe 1 percent of the population, because most people didn't have enough to worry about. Well, with inflation, somebody who has a house suddenly realizes that he has an estate tax problem. So more and more people, as a result of inflation are suddenly catapulted into a high tax bracket where they need legal advice and help.

SHARP: That's all the questions that I have. I thank you for your time.

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VERNON L. GOODIN
ca. 1982

Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

Vernon L. Goodin

Practice and Administration at Bronsons'

An Interview Conducted by
Sarah L. Sharp

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1

Biographical Details

[Date of Interview: June 2, 1981]##

SHARP: The first thing I need to know is your full name.

GOODIN: Vernon Lee Goodin.

SHARP: When were you born?

GOODIN: April 6, 1915 in Healdsburg, California. I left there in about six months and we moved to San Jose for a year, then to Santa Maria, California until I was eight. Then we moved to Piedmont, California where I grew up. I went through the Wildwood Grammar School (up to the third grade), then Havens School and to Piedmont Junior High and Piedmont Senior High, graduating in December of 1932.

SHARP: What are your parents' full names?

GOODIN: My mother was Margaret Mooney and then she married my father, Robert Lee Goodin. My mother was born in Chicago and came out here in 1906 and was married in 1907. My father was born in Williams, California up in Colusa County. Both his mother and father had come across the plains, my grandfather in 1853 and my grandmother in 1850, when she was a girl of about seven or eight. She was brought by her parents who came out here and settled in 1850.

SHARP: Do you have brothers and sisters?

- GOODIN: I have one brother and one sister.
- SHARP: What are their names?
- GOODIN: Lila Goodin—she lives in the family house in Piedmont—and Delmer Goodin who is a retired teacher living in Sacramento.
- SHARP: Are they older or younger?
- GOODIN: Older.
- SHARP: So you were the youngest?
- GOODIN: I was the youngest.
- SHARP: How would you describe your ethnic background?
- GOODIN: Probably British, my mother's name being Mooney. She is three-quarters Irish and my father was probably Scottish and English.
- SHARP: Did you have any religious influences when you were growing up?
- GOODIN: Yes, very much so. My mother was a good Catholic and my father was an anti-Catholic! [laughs]
- SHARP: They probably had a lot of good discussions!
- GOODIN: That is correct. I was a Catholic until I was twelve, but I was never confirmed. We were all baptized and my sister was the only one confirmed.
- SHARP: What are some of the things that you liked to do when you were young, growing up in Piedmont?
- GOODIN: There were the usual things. I was active in sports in high school, the football team mainly and also in track. Also, I did a little work in plays in the little theater there when I wasn't busy on some team or another, and was active in the local fraternities.
- SHARP: In high school?
- GOODIN: In high school, yes. There were two fraternities. They were sort of competitors and that was interesting.
- My boys are thirty-four and thirty-two and they went to Berkeley High. There were certainly fraternities there. They didn't call them really fraternities—clubs—at that time. My daughter is thirty and by that time I think that the clubs had sort of gotten into disfavor, although she did belong to one.
- SHARP: Did you like school?
- GOODIN: Oh, very much, yes. [laughter]

I really had no complaints about growing up. We had quite a lot of social activity. There was a dancing class put on by a Mrs. Prather, and if you got on that list, your social position was secure! [laughs]

SHARP: I'm sure!

How did you decide to go to law school out of all these different things you were doing?

GOODIN: I knew that I was going to be a lawyer from the time I was three or four! [laughs] My Grandmother Goodin told me that Abraham Lincoln was a lawyer and he was a good man, and therefore I should be a lawyer. So when other little boys wanted to be policemen and firemen, I still wanted to be a lawyer.

SHARP: When you were real young, did you do anything that would help you become a lawyer? Did you read certain things or carry on any interesting cases with yourself or other kids?

GOODIN: No, but in high school lots of times we would play games and that sort of thing and I would always act the part of the lawyer.

SHARP: Did you get into debating?

GOODIN: No, I never did any debating. The closest I came is to being in these plays in high school.

SHARP: I wanted to talk some about two other interesting shorter careers that you had before you came to Bronsons'; I found them particularly interesting. What led up to your going to work for the FBI [Federal Bureau of Investigation]?

GOODIN: I graduated from law school [University of California] in 1940. In the first place it was difficult to get a job in San Francisco or Oakland, really, and the top pay for any job was \$100 a month. That was good pay in those days. The FBI was offering \$3,200 a year which was a princely sum! Also, it sounded interesting and was very selective. So I applied and was accepted and simply decided. I mean it was a matter of interest, but mainly a matter of wanting to make some money.

SHARP: Had you had a special interest in government work when you were in law school?

GOODIN: No, not at all. I was just lucky to get through law school! [laughs] By that time I worked at the Federal Land Bank which later became the Farm Credit Administration. I was lucky enough to get a job as what they called a weekend watchman. They had a regular watchman in the day on the first shift, and one on the early morning shift. These men got a night off plus Saturday afternoon and Sunday. My job covered these times. That put me through law school.

I earned \$65 a month and that was a princely sum! That was sufficient for me. I didn't, of course, pay anything at home, but it was sufficient for me to have plenty of money for cars and dates and everything that I had time for.

Also, I could study when I was the watchman. It didn't take much time; it was an ideal job.

SHARP: Did you have to make your rounds?

GOODIN: Yes, and then sit and wait for people to ring the bell.

SHARP: Tell me a bit about your duties with the FBI during the war.

GOODIN: At first I was simply a regular investigator. In the first place, you go through a rather intensive training in Washington, and in Quantico, Virginia, where you learn all about guns, and it's just routine—quite demanding but not too difficult. Then you start just investigating, going out and covering leads, and talking to people, and trying to find out what happened with regard to all of the crimes that the FBI investigates. They switched me around quite a bit and that was customary in those days. I first went to New Jersey and the New Jersey office; that was in late '40. I was only there a few months when I was transferred to Connecticut. Then I spent some time in Providence.

About that time there was a problem that developed in New York. They sent twenty-five agents out of New York and they switched a large number into New York. I came to New York, I guess, in the spring or early summer of 1941. I was there through Pearl Harbor, and while there I was really mainly on what was called the Communist desk. We were investigating Communist activities and that was rather interesting.

It probably was before Pearl Harbor that it was determined that we should have an intelligence system throughout the world, which we really didn't have before. That was a precursor of the CIA [Central Intelligence Agency]. It was decided by the powers that be in Washington that the FBI would take the western hemisphere and that a new organization called the Office of Strategic Services, later called the OSS under Wild Bill [William J.] Donovan, would cover the rest of the world. The FBI was called the Secret Intelligence Service [SIS]. I don't really know on what basis they chose, but along in the spring of 1942 they asked me if I wished to get into that. I, of course, did and it was interesting.

Then I went to Washington and learned Spanish in five weeks [laughs], twelve hours a day, seven days a week, plus study, and at the end of that time you could really start to speak a little Spanish. Then I was assigned to Peru as an undercover agent.

SHARP: But you weren't actually working as a lawyer?

GOODIN: No, the reason that the FBI liked to have lawyers, and they were at that time 90 percent lawyers and 10 percent accountants, was that the lawyers presumably knew what evidence to look for and would be able to handle themselves in such a way that if they were ever required to testify in court, they would have admissible evidence. That was the real reason and they still have a good share of lawyers, I think.

SHARP: Did you ever do any trial work for them?

GOODIN: No. Oh, I testified a few times, but you don't do any actual trial work in the FBI. That's done by the U.S. attorney's office.

SHARP: What brought you back to the Bay Area then at the end of the war?

GOODIN: I remained in Peru as an undercover agent. In fact, I was undercover longer than any other agent in the FBI! [laughs] One reason I returned to the Bay Area was that my wife, whom I had known in college just barely, came down to Peru as an officer of embassy, one of the first women officers of embassy ever sent out of the United States. When she came down, I did not want her to blow my cover and so I got hold of her and told her who I was and what I was doing. I asked her not to write home and say, "Guess who I saw in the street!" [laughs]

One thing led to another and we finally got engaged along toward 1945. She left around March or April, somewhere around in there, and toured South America with another girl who was later our matron of honor. When the war was over, I came back and we were married in November of 1945.

I spent the entire war with the FBI. You could if you wanted go into the armed services, or you were entitled to be exempted. The FBI tried every way possible to keep the people in the FBI, and I was persuaded to stay.

At first, there was no FBI in the embassy. We were all undercover, but that was changed. Then they would put one agent in charge of a country in the embassy and he would be administrator. There were never very many agents. I don't think there were ever over 150 or so at any one time for the whole western hemisphere, and I think we knew what was going on.

Later in the war we were really counter espionage agents. To begin with there were a lot of Axis agents. In Peru particularly there were several thousands of Italians and Germans and about 100,000 Japanese. One of my first assignments in '42 was to spend three months in the Amazon jungle running down a rumor that the Japanese were building airfields in the jungle to bomb the Panama Canal, which was only five or six hundred miles away. There were about three or four of us and we knew that if we sat in Lima and said in our codes to Mr. Hoover in Washington that this was impossible and ridiculous, that we would all be cashiered. [laughter] We knew that we had to be able to write and say, "Agent So-and-So has covered the territory and can swear that there are no airfields being built." I won (or lost) the toss.

SHARP: It sounds like pretty hot work—sitting in the jungle.

GOODIN: [laughs] It was. The jungles were almost as hot as the subways in New York in the summer.

SHARP: Well, you had some training then!

GOODIN: Right.

SHARP: So how did you move from the FBI to the Alameda County D.A.'s office?

GOODIN: After the war, anybody who had stayed with the FBI through the war had to come back to Washington and could then have the office of their choice. They could go anywhere they wanted. At that time I'd had a couple of offers to return

to South America because of the language facility and so forth, one with the Creole Petroleum in Venezuela and another one in southern Peru which sounded rather interesting—running a rather large operation involving land and cattle and business. But my wife and I decided that we simply wanted to spend our lives and raise our children here and so we came back to San Francisco.

SHARP: So your appointment as deputy D.A. was a pro forma—

GOODIN: No, no, I came back here and I asked for assignment to San Francisco. Then I started looking around for a job. I don't know why, but I didn't really particularly look for jobs in law firms because with my FBI experience I felt that work in the D.A.'s office sounded interesting. So I talked to Mr. Ralph Hoyt who was then the D.A. [of Alameda County] and later judge, and he hired me. He didn't really have a spot, but he did have an opening as an investigator at \$225 a month. I was technically hired at the salary of an investigator and in a few months I became an attorney with an opening salary of \$300 which was [laughs] livable! Even \$225 wasn't livable with a wife and an oncoming child.

SHARP: We know quite a bit about this particular district attorney's office because when we were doing the Earl Warren project, we interviewed Frank Coakley and others.⁶⁴ I think he became district attorney in the early period when you were there.

GOODIN: Yes, Hoyt was D.A. for about two years and then Frank Coakley took over as D.A. I worked for him for the last three years; a very fine man. I still see him, as a matter of fact. He is still around and just great.

SHARP: His interview is very interesting; he seems like he was a pretty innovative district attorney. What sort of D.A. was he to work for?

GOODIN: He was a tough task master, I'll tell you that. He was a bulldog himself. He just absolutely would leave no stone unturned, and you knew that you had to really prepare.

SHARP: Did the investigative work you had done with the FBI really help then?

GOODIN: Oh, not particularly because the D.A.'s office had its own investigators and they were very competent. I think maybe I did help them a little bit and maybe that was an advantage, but not a great one.

SHARP: What were some of the main activities that you were involved in when you were in the district attorney's office?

GOODIN: Prosecuting cases day in and day out. In fact, you were in court a lot more than even here [Bronson, Bronson and McKinnon] to begin with, and, Lord knows, I was in court an awful lot here to begin with. You had these cases prepared for

64. There were four volumes of oral histories covering the Alameda County district attorney's office, *Perspectives on the Alameda County District Attorney's Office*, Volumes I-III, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1972, 1973, 1974; and Arthur Sherry's volume, referred to on the following page.

you by investigators. As they were very competent you could just pick up a file and you would interview the witnesses. It wouldn't take very long to do that, and you would simply go down and pick a jury and try the case. You were constantly on trial.

SHARP: Were there some skills or activities that you learned in the D.A.'s office that were really helpful once you came over to Bronson, Bronson and McKinnon?

GOODIN: Yes, one of the things that I should mention, when I first came in the D.A.'s office, I was working with some of the older attorneys. You may have talked to Art [Arthur] Sherry,⁶⁵ who was later a professor, and Folger Emerson. They were the two top trial men when I came in and we worked under them.

Then we were assigned to the municipal courts—but they weren't called municipal, they were justice courts in those days—for the prosecution of misdemeanors. I spent a little while in Oakland, I think about six months. There you would just try one case after another, and occasionally before a jury when somebody, like in drunk driving cases, wanted a jury. But mostly they were cases before the court and you didn't really have time to interview each of the witnesses. You might try six or eight cases in a day and it would be scheduled by the investigators or by the police department. We were doing it for the police department in those days.

You got the opportunity to really sort of react on your feet. You didn't have all the time to prepare because there were traffic citations, drunk arrests, prostitution cases—and all of the usual type of thing that is now handled by the municipal court.

I went out to Berkeley and was the sole deputy D.A. in Berkeley for a couple of years. Then I came back and spent another about two and a half or three years, I guess, prosecuting felonies out of the main office. We didn't have any other main office. There is now a big main office in Hayward in the southern county.

SHARP: It has really grown quite a bit since then.

GOODIN: Oh yes, I think when I went in there were about thirty attorneys in the D.A.'s office and that included what is now the county council. The county council's office now has about thirty or forty and the D.A.'s office has about 125 or 130.

SHARP: Coakley mentioned some interesting criminal and civil cases that he was involved in when he was D.A. He mentioned the Burton Abbott case for one. I don't know if you recall it.

GOODIN: This was after I had left.

We had some interesting murder cases. In fact, I prosecuted three of them, but there was nothing terribly remarkable about them. They were just simply murder.

65. See his interview, *The Alameda County District Attorney's Office and The California Crime Commission*, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1976.

2

To Work At Bronsons'

First Impressions and Duties

SHARP: How did you come to work for Bronson, Bronson and McKinnon then?

GOODIN: I decided that I did not want to pursue my career doing one thing in the D.A.'s office and I didn't particularly want to ever be D.A. That wasn't anything that I aspired to. So I wanted to get into private practice.

SHARP: Did you hear about the firm through someone?

GOODIN: Yes. There were several of us in the D.A.'s office, Judge John Cooper, and I, and Dick Lynch, were thinking of getting out. We felt that five years in the D.A.'s office was enough and we were all looking and thinking about getting out. John Cooper interviewed over here and for some reason or other he decided that he wasn't interested. I don't know exactly how it happened.

Then one of my friends, Arthur Sugden, who was a fraternity brother of mine in college, and had been here for two or three years talked to John and said, "Is there anybody else?"—because they were looking for somebody in Bronsons' at that time. So John said, "How about Vern Goodin?" When Art heard that it rang a few bells because he had also been in the D.A.'s office. I don't know why he didn't think of me before. Anyhow, he arranged for me to come over here and be interviewed by the person who was doing the interviewing then, Kirk LaShelle. You have heard that name before?

SHARP: Yes.

GOODIN: Of course, by that time I had three kids I think and this was quite a move for Bronsons'. In those days it was a little different because you took a lawyer on and you felt that you really ought to keep him. You wouldn't take him out of a good job and then keep him for a while and then kick him out; it was a serious

undertaking. I came over and I eventually met every partner before I was hired. But then I came in 1951.

SHARP: What sort of first impressions did you have of the firm as a whole?

GOODIN: [laughs] Well, I was scared to death because it had been ten years since I got out of law school, or more, and my knowledge of civil litigation and particularly tort litigation was sketchy to say the least. So I was scared as to whether I would be able to cope, but I really was impressed with the friendliness. I mean everybody was perfectly friendly. There isn't any question on that, but everybody was so busy that they didn't really pay much attention to what you were doing!

SHARP: I guess that was just as well if you weren't sure what it is you were doing! [laughter]

Did you have special feelings about Ed or Roy Bronson?

GOODIN: Oh yes, I felt that they were characters without any question. Roy was particularly warm and friendly, but of course, he wasn't the one that was directing my work. That was Ed Sr. Ed really wasn't directing. Kirk LaShelle was doing the assigning, but I worked with Ed quite a bit at first. All that we really did in those days was take a few depositions and get a medical examination and you were ready for trial. There wasn't all of this extensive discovery work that we have developed in the last thirty years. So principally our job was to either be on trial or taking depositions or doing some research.

I took a lot of depositions for the first several months until I started getting my own trial calendar. Then I started trying cases and did an awful lot of them in the first few years.

SHARP: Did you work with Ed Sr. because he headed most of the trial work?

GOODIN: He was the key man in the insurance litigation department. Kirk LaShelle had done a lot of trial work, but he was the one who talked to the insurance people and did the assigning. So my actual work with Ed consisted mainly to begin with—and for not a very long time either—of taking depositions in his cases.

SHARP: Did you work with Lawrason Driscoll and George Hartwick?

GOODIN: Oh yes, very much so. Mr. Hartwick was my lawyer, our lawyer— *the* lawyer! [laughs] The oracle of all law.

SHARP: What impressions did you have of Mr. McKinnon when you first came? I wondered if you worked with him.

GOODIN: No, I didn't work with him because he was the egghead of the outfit and a very, very brilliant man. He was really a scholar of the first magnitude in my opinion. Of course, I had tremendous respect for him.

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SHARP: I know Mr. Weingarten had said that he worked a lot with Mr. McKinnon and spoke of him as a very different person from either Roy Bronson or Ed Bronson.

GOODIN: Oh yes. In the first place, he never drank a drop of liquor while I knew him. I don't know the history you might have gotten on that. I think it varies. He was with Roy for a while and then had a long illness. He rejoined a lot later. When I arrived, as I say, he didn't drink at all and Roy and Ed were people who really enjoyed drinking, not to excess but [for] conviviality and getting around.

SHARP: So Mr. McKinnon really stood out even more probably.

GOODIN: Yes. On the other hand he was always friendly and whenever we had parties or any social function he was there and enjoyed it, and we enjoyed him. He was a very interesting conversationalist. He was rather well connected socially, I think, through his wife.

SHARP: It was in this period when you were new to the firm that Bronsons' began to get away somewhat from the specialization of insurance?

GOODIN: No, no, that had happened much earlier. In fact, Roy told me that he and Ed made a conscious decision in the thirties that Ed would pursue the insurance defense business and he would try to develop the corporate side. By that time there was a partner by the name of [Tom] Slaven, who became a partner in January of '27. He had a very bad accident in 1933 and even though he lived for years and years afterward, he could never practice law again.

He was the secretary of his class and I was secretary of my class in UC [University of California] and I ran into him at class secretary meetings in the fifties. He didn't like to talk to me at all because I think that his memory was poor, and it seemed to make him nervous. But I did run into him a number of times. He looked perfectly fine and would talk to most people very well, but not to me.

Harold became a partner but I think that they hoped that Slaven would come out of it for two or three years. So it didn't become Bronson, Bronson, McKinnon until '37. But at any rate, somewhere along in there after Slaven's problem and in the thirties, as Roy explained it to me, he still tried a few cases himself, but he took dead aim at trying to develop the business side of the office. That commenced *long* before I ever came into the firm.

Of course, Jack Painter did trial work until he left to go with another firm. When he came back after the war, he came back to Bronson, Bronson, and McKinnon and still did trial work until he got some business clients going. In fact, when I came in, I took over a number of cases that he had been handling. So he was still handling a few insurance defense cases as late as when I came in. Particularly he had a specialty in maritime law and I took over a number of cases in that field.

SHARP: I talked with Max Weingarten, he came in '49. That is really before you were here.

GOODIN: A couple of years; he had been here a couple of years.

SHARP: He talked about really getting up the tax department when he came. I wondered about these other departments and how they had grown after he explained to me about how the tax department came about. I wondered how the whole practice grew and how the different areas of specialization came about.

The Practice Expands

GOODIN: When I came in, we had this relatively small-business type of practice. There was some corporate representation, a little bit of banking and representation of stock brokers—First California was one. I'm not sure that we even had a bank as a client. Occasionally some of the banks would ask Roy to do some negotiation for them.

Max was devoting himself largely to tax because there were tax problems developing more and more.

We did have a probate department. Every law firm has a probate department and we have had troubles with that the whole time that I've been here—until the last few years when we got Norm Kavanaugh. For some reason we didn't have anybody that was really interested in it. It was sort of dull, but somebody had to do it. We've had a department so-called ever since I've been here but it has changed. There was a fellow by the name of Don Smith in charge when I came. He was followed by Don Lawrence who was a young fellow and I thought did a good job of it.

In the meantime everybody in the office would have a probate client every once in a while. Some friends would want to have a will, or somebody's mother or father would die, and you would have a probate. Even though you did no probate yourself, you depended upon the probate and tax departments to handle it. But you were still the "client contact."

I'll never forget doing a probate of a relatively small estate. A tax problem developed and so I sent it on to Max [Weingarten] and Max saved the estate \$5000! [laughs] I could have worked from here to kingdom come and I never would have recognized what should be done. It turned out that it had taken Max an hour and a half of work to do this—for a saving of \$5000! Even the IRS couldn't understand and Max had to spend another hour or so explaining it to them, but it stuck.

SHARP: Did you come in specifically as a trial and insurance man?

GOODIN: Yes, well, as a trial man because I had tried so many cases in the D.A.'s office, and it was an easy switch from criminal prosecution to defense of insurance companies. I don't know why that is, but it was an easy change. A number of people have done this, including Ernie [Ernest B.] Lageson. We got him out of the D.A.'s office in Contra Costa County and another one that we got out of the D.A.'s office in Alameda County was John Martell, who left after three or four years to form his own firm.

Notes on Architects' Malpractice Cases and Arbitration; Shifts in Trial Practice

SHARP: How generally did your work as a trial lawyer change from the time you came in '51 to about the mid-sixties?

GOODIN: I don't think it really changed very much in that period of time. That's a period of about fifteen years, and if anything, the only change that might have taken place was that I was handling cases that were more involved or had the potential of more money involved. In the late fifties—or maybe it was even earlier than that—I happened to defend a few architects and engineers. That developed the beginning of what is one of my major specialties here, the defense of architects and engineers.

SHARP: I read the article that appeared in *Insurance Counsel Journal* in 1967.⁶⁶ I was fascinated by your description of a whole new area of product liability especially in the work of architects. I was interested in how that developed. Had somebody referred you to some architects?

GOODIN: Yes, in the 1950s there really wasn't very much in the field of what we now call malpractice, and malpractice insurance was a rarity. I mean it was just being developed. Most of the professionals were protected under what is called a general liability insurance policy, unless their professional liability was excluded—which it wasn't in those days. On the rare occasions when architects and engineers got sued, their general insurance carrier took over the defense and then assigned it to us.

Frankly, what happened—it's sort of interesting, I think—is that I tried a lot of cases, but among them two or three cases defending architects and engineers. One time one of the architect groups, I think the local AIA (American Institute of Architects) asked me to make a talk before them. I said, "Why me?" [laughs] Well, I had tried two cases so I was an expert! [more laughter]

Actually, that and other talks led to architects coming here. One of them I am having lunch with today came as a result of a speech I made years ago. He had been our good client for more than twenty years.

SHARP: Certainly, people seem to be needing or asking for litigation far more than they used to.

GOODIN: Otherwise we wouldn't have gone from fifteen lawyers when I came to 115 now! [laughs]

SHARP: I wanted to ask you some general questions. One of the main ones is how trial practice changed from the time you began here until about the mid-sixties, whether it is discovery or use of pretrial conferences, or what.

GOODIN: Yes. The main change that has come is in procedures. As I indicated before, when I first came here you took a deposition of the plaintiff; the plaintiff took a deposition of the defendant; you got your own independent medical examination; and you were ready for trial. These were personal injury cases. Most of my

66. "Architects and Malpractice," *Insurance Counsel Journal*, April 1967.

cases were personal injury cases in the first five or ten years with this firm—with the exception of these architects' cases.

In those cases, I think the first case that I had that I can remember was a case where some dry rot had developed in a house over in Richmond. The house had been built, oh, more than four years before the dry rot showed up and we got out on a demurrer on the statute of limitations and that made the company very happy. I don't think we could do that today.

I never will forget an architect early on who was sued because, in a restaurant, he had set up a stool where you had to stand up on a step to get to the stool. Some lady turned around and she tripped off of the step. She claimed that there should have been some warning or something like that. The jury decided that this was so common to step up to a counter to a stool that there shouldn't be any liability. That was one of the early cases.

At any rate, in all of the personal injury cases, you couldn't take the deposition of the doctor; you couldn't get the doctor's records; you couldn't get a disclosure of witnesses. It was a lot more fun [laughs] because you didn't have to go through all of this rigmarole. One by one these procedures were developed whereby you could take the doctor's deposition, you could get the doctor's records, you could get the plaintiff's records, you could get disclosure of witnesses, et cetera. The main thing is the records, I suppose. The number of records that we get these days is absolutely incredible and very time consuming. That is the reason we have twenty or thirty paralegals working—for the most part on records.

The practice has changed very, very much away from being in trial to this trial preparation. In connection with that the trials themselves get lengthy because the amount of material that is available to present. You simply can't try that many cases. The courts, even though they have expanded, can't take care of the total expansion, so they in self-defense have developed, and they are still developing, such things as mandatory settlement conferences, arbitrations, pro tem judges, and a number of different things, some of which work and some of which don't. It is an ongoing process.

It is still expanding. Witness the huge upsurge in these cases like asbestosis, DES, Dalkon Shield, Agent Orange, and a number of others. We have hundreds of each of these.

SHARP: In the article you mention the tremendous amount of work that goes into the preparation of architects' liability cases. Is that because of these new discovery procedures or just because it is so complicated?

GOODIN: In 1967 there had been quite a change. That was one reason that I think that I wrote the article—because it was a field that was burgeoning. What I probably had in mind was that even in preparing your own architect's case, your client has invariably a tremendous number of records that you have to go through to figure out what you would present yourself in court, and also look over the plans and the specifications and then be sure that you understood them.

In fact, I got a special set of glasses when I started representing architects. They were trifocals because I would have to stand around a drawing table with a few architects and engineers, and I would either have to put my nose down to the table [laughs] or step far away for the distance. I got trifocals so that I could

see their plans and drawings from a distance of three or four feet.

SHARP: In your vita it mentioned that you had done some arbitration and I wondered if it was in these architects' liability cases—because you mention that in the article, too.

GOODIN: Yes, arbitration has been acceptable. At one time, it was almost illegal. I forget the exact history of it, but there was some question about it. Then it came into respectability.

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By the 1950s, arbitration was legal in California and the American Arbitration Association has a local office here. I forget how I happened to get on the list, but I did. I have been arbitrating for them for years and still do.

Most of the arbitrations that I have done included some architects and engineers, but mainly it has been on the tort side. I don't know why that is. I have been an arbitrator many times in architects' cases, but generally by appointment.

There are several different ways of going through arbitration. One of them is that if people agree to arbitrate, one side can pick one arbitrator and the other side another, and then the two arbitrators could pick a third neutral one. That is one way of doing it.

Another way is by agreement saying that we will arbitrate under the rules of the American Arbitration Association. If that is the case, then the American Arbitration takes over and administers it. More recently in the last few years, there are arbitrations that are directed by the courts. This is due to special legislation—but this is beyond the 1965 period.

SHARP: I know that at Bronsons' one client might have three or four more lawyers depending on what specific problem is at hand, if it is a tax problem, or an insurance problem, or whatever. But as a trial lawyer, you get your client through a certain route I imagine. I just wonder if this has changed since you came?

GOODIN: Certainly it has. When I first came, as far as our defense trial work was concerned I think it was 90 percent insurance work. In those days, the insurance company had a different attitude and a different liability to their insureds. The insurance company had much more control over the destiny of the case and if it felt that there was no liability, it didn't pay any money. It was under no obligation of good faith in dealing with the insured. This is something that has developed within the last thirty years since I have been here.

In dealing with the clients, in the insurance business, you have two clients. You have got the insurance company and the defendant, whoever it is the insured. In the old days, we really felt that our only client was the insurance company and that the insured was quite incidental. We sort of treated him as a witness. We would tell him where to come for depositions, and when we were

going to try the case, and it was a different type of thing. He wasn't really a client.

Today when an insurance company assigns us to defend somebody, *that* somebody is our client. From that time on, even though the insurance company is paying our bill and ultimately (unless there is reservation of rights) will pay any amount that is paid on any judgment, and is under an obligation to settle within the limits of the policy if they can, they are under this obligation of good faith.

So I think there is a big difference. Now when we get an insurance case, we really are thinking of the insured as the client—not the insurance company. That attitude I think has changed.

Also, we have much more litigation involving people or firms who either are not insured or have insurance with high deductibles where they select their own counsel. We might report to the insurance company and let them know what is going on, but our key contact is with the client.

I have a number of clients who have quite a lot of litigation, but they also have other problems in many different fields than the litigation field—the corporation or tax field, or real estate. When any of those clients have anything but a litigation problem, they are automatically put in touch with the appropriate group within the office—i.e. real estate, probate et cetera. A lot of my clients have real estate problems and things that they want to do not involving trial work. When that happens, I try to keep abreast of what is going on with the client, but I turn the particular matter over to whoever is the specialist in that field. So that is a big difference.

First Interest in Firm Administration; Changes at Bronson, Bronson and McKinnon

SHARP: To set us up for next time, tell me how you became interested in the administration of the firm, the management of the firm?

GOODIN: Well, you asked me to think about that [laughs] and I'm not sure. I don't know how other people are, but I manage all of the affairs of our house except for the house itself. Any buying of houses, I guess, has been decided by my wife, but any investments or purchases—cars or anything that is not connected with the house or living—I do. I sort of get a kick out of keeping track of things and managing them, and I manage my own affairs fairly well.

When I came with the firm I was working as a lawyer and, of course, before you become a partner you don't really have much to say about the management. Nobody ever inquires! [laughs] Certainly then! When I became a partner, Jack Painter was emerging as the chief administrative assistant to Roy [Bronson].

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GOODIN: When I became a partner, the one thing that surprised me was that I had been here for six years and I didn't realize how completely the entire firm was dominated by Roy Bronson. We just looked it up. He was then sixty-nine years old, but he was still in *complete charge*.

Have you learned when we first developed an administrative committee?

SHARP: It is still pretty foggy in my mind.⁶⁷

GOODIN: Well, it remained foggy [laughs] because years later, I had been a partner for a good many years, and Roy complained that he didn't think that the administrative committee was functioning. The reason was that whatever they decided, if it was not what *he* decided, his decisions prevailed. At any rate, the thing that really amazed me was how little Ed [Bronson] participated. He didn't have interest in administration at all. He was doing a great job of trying cases; he was a fantastic trial lawyer and he took care of getting clients and keeping them happy. Sometimes they would get mad at him because he would go off to Mexico and not report to them enough! [laughter]

He [Ed Bronson] was supposed to be the administrator of the trial department, but actually I suppose if anybody did it it was Kirk LaShelle who was doing the assigning. Nobody ever checked up on anybody else to my knowledge. Every once in a while Ed would ask for a report on all of the cases that you had, and that was his total administration! [laughs]

It was sort of interesting. Some of his [Ed's] requests for reports required you to say when you had last reported to the company and it told him a few things about it, but not very much and it was never on a regular basis.

At any rate, to answer your question, I thought that this outfit had been going for about thirty years without my good help. [laughs] Even though I would sit in the partners' meetings and some of the things that were discussed and decided I thought were the stupidest decisions in the world, I kept my peace because I felt that they knew better than I.

Jack Painter had gotten interested in the administration, and I think he knew that he was going to be the one to follow Roy. As I say, they may have had an administrative committee at that time, although I don't think so.

After I had been a partner for a year or two, Jack said, "You don't seem to be saying much." [laughs] I told him that I thought they had been going along well without my help.

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SHARP: Tell me about the efficiency committee.

GOODIN: By 1959, Jack Ward, who you may have heard of before, had come in—I think about the same time that Max did and he was on the business side. He was very

67. As discussed in the following interview, the minutes of the partners' meetings reveal first mention of an administrative committee in 1948.

interested in the administration. So he and George and I were appointed to what we called the efficiency committee. This was *not* the administration committee, but we were asked to look over the office and see what suggestions could be made. There is a memo on that from George and Jack and me.

George really never did have much interest in the administration as such—I mean the nitty-gritty of preparing forms and keeping records and all that sort of thing. He had other more important talents. [laughs]

SHARP: This is Mr. Hartwick?

GOODIN: Yes. There is only one George [laughs] so there is no confusion, at least I don't know of any other George that we have had even as an associate. We must have had. But anyhow, anything that was done on the efficiency committee was generally done by Jack and me, with George's blessing but not participation. That sort of started my interest. Actually at one time I was on both the economics of law committee of the local bar and the American Bar Association. I don't think the state bar had one. Maybe it did, but I don't think so.

I did become interested in the ABA set up because in addition to their economics committee they had one on the use of computers. I think I mentioned my interest in computers. I can't tell you and I don't think there are any records to indicate exactly when all of this came about, but certainly by 1961 I had made contact with IBM [International Business Machines] and arranged with the then salesman, a complete operation that I thought we should use. By 1961 we had a total of twenty-seven attorneys.

It seemed to me that we had enough to warrant the use of this equipment. It would have saved a lot of effort that we later had to expend to get our computer installation into operation with many more attorneys on the line.

SHARP: I have just one last question and the rest of the questions I would like to ask next week. What are the general changes that you have seen in this firm since you first came?

GOODIN: Well, it's been a complete turnover. There hasn't been a partner in the firm for years who was a partner when I came in. The senior three of us, George, Max, and I are about to depart too. So there has been a complete turnover in personnel. I don't know what type of change you mean. Do you mean in the attitudes?

SHARP: We talked about how different the law is, that it is much more specialized and that there is much more of it. There is certainly a much larger staff, both on the non-lawyers' side as well as lawyers. The other partners had talked somewhat about a change in attitudes in the firm, how people get along or whatever, a more intangible kind of change, and I wondered if you had noticed it too.

GOODIN: No, I think that the thing that really has been remarkable over the years is that the firm's atmosphere has not changed. Roy and others made it a very friendly firm. For instance, everyone is on a first-name basis. For the most part, the minute that a new associate comes in here, he doesn't call any partner Mister. It started as a very friendly firm and I think that that has hung on.

That spirit has continued, but when you have 115 attorneys, you can't be buddy-buddies with all of them, but we never were. We still have as many social affairs and functions as a firm that we ever did, more in fact. Even in the old days there were partners that got along and certainly got along professionally, but they weren't having parties back and forth. In fact, quite the contrary. They were doing more for developing business and that sort of thing, rather than having parties centered within the firm.

From the very beginning, there has never been a tremendous amount of association between the wives of the partners. They were friendly and we had occasional parties and that sort of thing. Now, that may have changed.

I think when the young people come in now that are not from the area, they don't have a broad base of friends. I think that they tend to get together more. When I came in all of us were from the area and we all had many, many different connections. So even though we were friendly and had social gatherings, it was not by any means the principal or even a small part of our social lives. Maybe that has changed a little bit.

Are you going to interview any of the young people?

SHARP: I don't think so.

GOODIN: Not about the '65 era! Let's see how many we had by that time. [refers to notes] Nineteen sixty-one was the year which delighted me no end. We hired nine associates that year which was the most we had ever hired, and what I had been pushing for for years. That was the year that we moved to the John Hancock building. We went from an average of nineteen attorneys in 1960 to thirty-seven in 1965.

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An Historical View of Changes in the Administration of Bronsons'

[Date of Interview: September 17, 1981]##

Evolution of the Administrative and Efficiency Committees

SHARP: I thought we would start by discussing some of the things I found in the partnership minutes that triggered questions. In the 1948 minutes, for example, there were the concerns that the partners had about how the firm was coming along, and all the changes that were going on. Specific items, like the number of new associates to be hired, were talked about. There was no decision actually in the minutes, of how many should be hired. Somebody had come in and said, "I have too many cases," and so it was talked about that a certain number of cases would be reassigned. The hiring of additional secretaries, the streamlining of accounts, and the speeding up of the billing process, were all in the 1948 minutes.

In these minutes, also, is the first mention of the administrative committee. Now, it is unclear whether that's when it began, or that's just the first time it showed up in the minutes. The administrative committee was asked to check on cutting down office expenses, if it could somehow. There is not too much sense of the give and take between the administrative committee and the partners.

GOODIN: Well, you see, I came in 1951, and didn't become a partner until January 1, 1958. I looked at those minutes also, and I was absolutely astounded to find that there was any reference to an administrative committee in 1948. To my knowledge, I don't think the administrative committee even began until after I became a partner—or about the time that I became a partner. Even when we did have an administrative committee it did very little, particularly at the beginning, because Roy was making all of the decisions.

SHARP: This asking the committee to look into cutting down office expenses, it seemed to me a gesture, not a real task—not a strong task. But I wondered if you had heard about it when you first came in, or it was obvious that it was active?

GOODIN: No, it was not. There was no administrative committee that took any real part in the administration of the firm until the late fifties, and maybe the early sixties, to my knowledge.

SHARP: In the last interview you mentioned that Mr. Painter was in the process of becoming Roy Bronson's assistant, in some respects. I wondered how this came about.

GOODIN: Well I don't think that Jack got really interested in administration until much later than the 1940s. I think it was probably in the early 1960s, or maybe in the late 1950s. By the early 1960s, then the administrative committee did start to function but didn't meet on a regular basis, to my knowledge. I don't know, did you find out in the records exactly when it started meeting on a regular basis?

SHARP: No, it is not there, so I'm not sure. In the partnership minutes there are references to recommendations that the committee made to the partners, and then the partners discussed them. It didn't seem to be on any regular basis. They became more frequent recommendations in the 1960s.

GOODIN: Well, I never actually became a member of the committee until Jack Ward died. Let me just check my records here. Jack Ward didn't die until 1967, so I didn't actually become a member of the management committee until then. But, much earlier than that, several committees had been appointed. I remember once George, Jack and I were appointed as an efficiency committee.

SHARP: You mentioned 1959, as maybe the starting date of the efficiency committee. Whose idea was it?

GOODIN: I think it was generated, probably, by Jack and me. We had talked about this a little bit.

In the first place, when I became a partner, I thought it was really a great partnership. I learned early on that there was one guy that was calling the shots and that was Roy Bronson. Even after the administration committee got organized, why, it would go and meet, then come in, and then talk to Roy [laughter], to see if they could make the recommendations that they were going to make.

SHARP: I don't think that's so unfamiliar.

GOODIN: Early on, I learned that if I wanted to do anything, all that I did was to talk to Roy, or take him out to lunch or something. If I sold him, I didn't have to sell any of the other partners at all. It was a decision.

SHARP: What sorts of things did the efficiency committee come up with, then?

GOODIN: [reviewing report] I have an early report here of December 1959. This was when George and Jack [Ward] and I were on the committee. It is really on office

administration. It recommends certain things for clerical employees and a division of labor; and then an organization as to the work of the attorneys and work assignments; it recommends that we have staff meetings—we are still working on that—to get a proper method of conveying all the information that everyone gets to everyone else, and keeping up on things in the easiest way possible; and then office procedures and miscellaneous problems.

SHARP: How did you come up with these recommendations that you wrote?

GOODIN: I think that it was obvious that the firm needed some administrative changes. I guess this is true of any organization. We thought that it particularly needed it at that time, and it has been needing it ever since, even though great progress is made.

SHARP: Was this your first real contact with administrative mechanics?

GOODIN: As far as I can recollect, yes. I remember this because when I became a partner, I thought that there were a few things that ought to be handled differently. Jack Painter opened up a flood gate, which he may have regretted later on. [laughter]

SHARP: How did you begin to get your ideas about how a law firm ought to work? How did you begin to really think about administration, in terms of Bronsons'?

GOODIN: It developed fairly slowly. In the first place, I have always had an interest in automation and computerization (it wasn't called that in those days). My first major interest was in the handling of the time sheets. Each item was written out, typed, and retyped a number of times before it would show up on a bill. In those days we didn't have Xerox.

I worked with IBM in 1960 and 1961, and came up with a complete program for putting in an IBM system. In those days we were using the old punch cards.

SHARP: I know that there was an economics of law committee of the San Francisco Bar. Then there was a committee with the same title for the American Bar Association. They put out reports, things for lawyers and others to read—suggestions for changes in administration of firms. I wondered if, you were aware of them, if you read them, if they helped you, if they didn't help, what sort of connection you might have made with their work.

GOODIN: Yes. At this time, the whole idea of administering law firms was being developed. The largest firms in the country were still relatively small compared with today's firms. Up until that time, I don't think that there had really been a need for administration as such. If you have a small office, you automatically know everything that is going on in it, and you don't have a need of administration.

To cite an example, I was the prosecuting attorney in Berkeley, during 1947 and 1948; I was the only prosecutor there. It got to the point, just before I left, where one person really couldn't handle it any longer. I used to get down to the office about 7:30 and start reading police reports, and be ready by nine o'clock court, and I was able to take care of it. When I left, they decided they would put two people out there, but two people wasn't enough. They very shortly had to

put one person to administer and two people to work. [laughter]

SHARP: There were three people to replace one.

GOODIN: The point I'm making is that if you are doing a very small operation, you don't really need much in the way of administration.

SHARP: Because the scale is just so small.

GOODIN: Yes, that's right. One of the things in administration is knowing what other people are doing and what is going on. If you are doing everything yourself, you know without any administration.

SHARP: At least you hope you know.

Partnership Distributions and the Retirement System

SHARP: We will get back to some of these general administrative questions, but I did want to ask you a couple of specific questions from the partnership meeting minutes. There was a change over from a percentage to a point system, for partnership distributions. In the 1940s and in the 1950s, the matter of acquiring and giving up percentage points was an important element in the partnership minutes.

GOODIN: That is right.

SHARP: By 1963, at least, the firm had switched over to points. It shows up as in 1963, but I'm not really sure when it happened—if it was earlier or whenever.

GOODIN: I think I can tell you what the reason for it is. After an annual meeting, there was a shift in percentage points. Roy and Ed were still coming down in percentage points to let some of the younger people have a percentage point or two to begin with. Ed said that he loved these meetings but one thing that he hated about it was to have to go home and answer the question that his wife would ask, "How many points did you lose this time?" [laughter] I thought that there ought to be a better system.

SHARP: You have talked a lot about Roy Bronson's dominating the firm, and there is an issue of lawyers not really being so interested in the administration. In any given firm, the lawyers might be quite willing to leave all the administration up to one person if that person not only started the firm, but is very energetic about the administration and really wanting to do it.

I wondered, were other partners pretty content to let Roy do the managing so they could go about their work as lawyers and not have to worry so much?

GOODIN: Yes, I think that that is part of the syndrome of law practice. There are very few, really good administrators among lawyers. The difficulty is that in order to be an administrator, you also have to have enough clout to make your decisions effective. Roy had a nice combination of having enough administrative ability

and enough clout as an attorney to manage the firm and keep it moving forward. Administration or management is many different things to many different people. Roy was certainly not an M.B.A. in management. There is no question of that. But, he was the one that made the decisions as to where the firm was going to go and, to a certain extent, how it was going to get there—and let the minor decisions not be made at all, or be made by others.

SHARP: I wondered how the point system came about, whose idea it was.

GOODIN: Well, I think it was mine, because when I heard this remark by Ed I thought that there should be some way of getting new partners in, and readjusting the amount of income that each partner would get by distribution of profits, without the necessity of any partner having to go home and tell his wife that he lost a "point." It seemed to me that this solution was a good solution, and I think it has been.

At that time, we had five partners who had 10 percent each. Roy and Ed were coming down to 10 percent. It was easy to eliminate the "percentage" idea and go on the "point" system with the maximum of 10 points. It must be in the minutes somewhere.

SHARP: I found these early allusions to the percentage system and the point system. Then it's in 1936 [reviewing notes] that there is an actual mention of units.

GOODIN: And they add up to more than one hundred units?

SHARP: Those are just changes. By 1964 and 1965, then it is a more complete listing.

GOODIN: Well, certainly by 1964. I think the point system went into effect in 1960.

SHARP: In the minutes, there was no mention of, "Now we are going to change from percentage over to points and these are the reasons that we are going to do this." There was never any clear statement like that. There were just these notings that people were changing their position, and that's all there is—at least in the partnership minutes. It must be in some other type of record.

GOODIN: I don't remember having any arguments over it at all. I think it was just one of those things that we developed, and talked about. Then the next year, rather than change percentage, we just started adding units, calling them units or points.

SHARP: Have you seen this done in other firms, other businesses?

GOODIN: No, this is sui generis to our firm, I think. In fact, the whole idea of having partners, the senior partners, share equally, is, to my knowledge, rare, and still is rare in law firms.

I should say that, in those days, there were many, many, studies done of the manner in which the profits or earnings could be distributed. Before I came on board, I'm sure that Roy or somebody else had developed a system of their own. I know that one time early on, I think the first year that I was a partner, they had what are called production records. It would make some partners feel great because they were producing a lot more than they were getting, but others would be low in production that year.

There are so many factors that you have to take into account. You've got what the partner brings in by way of business, and how profitable it is, what he does with regard to it, how much time he spends on it, how much time he spends with younger people. The younger people are really where you make the money, because you bring them in and you charge a fair rate for their time, and there has to be a profit factor in there. Then collections, contributions to the bar itself, activity in the bar, activity in community affairs. These things all go to make up a law firm, and everybody contributes in many different ways to a law firm.

The focus, in those days, and still is, is to try to strike a balance between the contribution of a particular partner and what he gets out of the firm. We have resolved lots of those problems by saying that we will assume that everybody is working to his level best.

I call it the marriage theory. You get some good wives and some bad wives. If they are bad enough, you divorce them. I should say spouses. [laughter] But if it's within tolerance, everybody is equal.

That is the way that we have done it up until the last year or two. I think that this has resolved a lot of problems that other firms have at the end of the year splitting up the pie.

SHARP: I had a few questions about the retirement system, and how it developed under the Keogh bill in 1967, at least according to the partnership meeting minutes. I wondered, first of all, if you could tell me what it is, and then we will go from there.

GOODIN: In the first place, our retirement program preceded Keogh; it had nothing to do with Keogh. I think if the Keogh plan had come in, we might have tried to get it coordinated with our retirement program in some way, and we are trying to do that right now. The original retirement plan, and the one that still exists, is not funded at all. It depends completely on current earnings from the firm.

SHARP: Was this just a discussion point then, down at the bottom of the page where I circled it in blue? (That's the minutes.)

GOODIN: Yes, 2 December 1966. The retirement plan became effective 1 January 1967. The Keogh bill was not passed until 1967. I'm surprised it was done in 1967. There had been a lot of talk about it, but we had put our plan into effect before the Keogh became a reality at all.

SHARP: Tell me what your plan was.

GOODIN: Well, Jack Ward and I had been working on this for several years. I should go back and say that generally you don't think of a law practice as having present real value. When I came in to the partnership, we were on an accrual basis.

If I contributed anything major to the firm it was getting us off that accrual basis in 1963. At that time we had paid taxes on accounts receivable. That and our cash contributions were the only assets that we had. Then Jack Ward and I got started talking about time on the books. We had no idea of how much time we had in the hopper and of course, at that time we had fifteen or twenty attorneys. Guesses were as wild as from \$100,000 to \$1 million.

SHARP: That is pretty wide!

GOODIN: We could have picked this up, you see, with the IBM equipment very easily. I never thought that it could be done manually, but Jack did. He got Dick Dilley, our office manager, to make an inventory of all the time on the books in the mid-sixties. When we multiplied that out by value of the hours we had, it turned out to be substantial, in the neighborhood of three-quarters of \$1 million, as I remember.

When we discovered this, Jack and I started thinking the firm could pay retirement against the partner's interest and make retirement mandatory. We had four partners over sixty-five at that time. If you continued a firm with that many overage partners taking out their full ten units say, you simply couldn't sustain the firm. You would have people leaving, because they could do better elsewhere. Some of the senior partners had not put aside enough to really live decently.

We worked on a number of schemes. By that time, you see, we realized that every partner had a big stake in this fund, that nobody ever thought they had an interest in. If another partner had ten points, and say that ten points was worth 8 percent, why, you really had an 8 percent interest in, among other things, the \$750,000 in time on the books—which was substantial in those days.

We felt that we should give every partner a pension when he retired, that could maintain him decently. We decided upon \$15,000 in 1967. We required partners to start reducing "points" at sixty-eight and be "out of points" at seventy-two, to begin with. That permitted the firm to retire the older partners with a livable income. In addition, every partner would have the incentive to be sure that the firm was healthy and viable. It encouraged the senior partners to make sure that their clients were turned over to younger partners, and that those clients remained clients of the firm.

So it was a healthy situation. You could see that we could provide for four or five retired partners at that level at a cost to the firm of about what it would have cost to have one overage partner who was not producing and was taking his full ten points. This just seemed like a good idea to everybody and it *has* worked up until now.

SHARP: You mentioned to me that Mr. Weingarten did work some on the plan. I wondered what his role was.

GOODIN: Anytime that we had anything to do with taxes Max would automatically take care of it. I don't remember him working with Jack and me on the retirement plan at all. When the Keogh plan came in, he worked very hard on that, and he also worked on a profit-sharing plan for the staff, the non-lawyer staff.

Thoughts on the Committee Structure

SHARP: I sent you a sample of the administrative committee and the subcommittee structure, as it was in 1952. Could you just comment on how it was arranged? I wondered if you knew what the purpose of the subcommittees was?

GOODIN: I think that Roy was searching for a means of getting people to administer the firm. Of course, even in those days you did have to have somebody in charge of litigation, and in charge of the various departments. They might not have been called that, but there was someone who was responsible to do that sort of thing. I see here that Kirk LaShelle was called the managing partner and certainly he was the one that actually hired me. He received the cases from insurance companies and then assigned them. That function was later taken over by Lawrie Driscoll and then ultimately by George Hartwick.

To that extent, the managing partner did do the assigning and in those days it was mainly insurance cases. The other types of litigation really hadn't developed yet, and the general business and tax you didn't really need assignments for, because clients came directly to a partner and he would arrange to do whatever was required of him.

SHARP: Based on that sketch then in 1952, could you comment on how the administrative and subcommittee structure changed by say the 1960s?

GOODIN: I see here that administrative committee members are Arthur L. Shannon and Driscoll. I just don't think that they functioned as a committee in those days at all. I don't think that the administrative committee really began to function until the 1960s, and even as far as the late 1960s are concerned, Roy still continued to dominate. Even after I became a member in 1967, he was quite dominant.

Even the subcommittees didn't do very much. Now we have a committee structure of about thirty committees. If five of them are really functioning, why.... [laughter]

There *are* a few committees that really do function. The hiring committee is really a functioning committee now and has been for many years. The personnel committee is another committee that has developed and has done a real job for a good many years. There are other committees that come and go.

SHARP: I had a special question on the change in the role of the managing partner. We talked a couple of times this morning about the administrative committee not having quite so many duties as it does now. And there wasn't really a functioning managing partner for some time even when the administrative committee came into existence.

GOODIN: Well, while we are thinking about this, I see that this is called the administrative committee in the early 1950s. It became management committee at one time and I think that that was really the beginning of an administrative committee. I can't remember and I can't find when we started calling it the management committee, but it was in the early 1960s. Jack Painter was the chairman. It was the committee that did the managing.

Even today we don't really have a managing partner; we have a chairman of the management committee. It depends on who he is and how much power or say he has.

SHARP: Can you speak a little bit about how this chairman of the managing committee has shifted, in terms of weight, in terms of duties? Has there been a general shift from the sixties to the seventies?

GOODIN: Yes. My records only go back to 1964. At that time the management committee consisted of Jack Painter, Lawrie Driscoll, and Edgar Rowe. That is the first time that I recollect that there was a management committee that really started to function.

Roy sat with the management committee every single week and the committee by that time was meeting every week. I believe that that's when the committee started to manage. Roy still dominated it up until the time that I got on it and for a little while thereafter. Then his effectiveness began to wane. Jack really took over and was chairman of the management committee I think, right up until the time he retired.

SHARP: Were you chairman?

GOODIN: I was never chairman.

SHARP: What was the period then that you were on the management committee?

GOODIN: I was on and off. I was on in 1967 I see, and off in 1973, at the end of 1973, so I was out of it from 1974, 1975. I went back in 1976. Then I left in 1979.

SHARP: Tell me a bit about those first years that you were on the management committee. What was going on? What were the main issues that the committee was working with, if you recall?

GOODIN: Well, by that time we had done a great deal of restructuring the firm. We had gone onto the cash basis by 1963. Then we developed the retirement program to be effective January 1967.

You mentioned that there were discussions in 1948 as to how many people to hire. My recollection is that we didn't have any hiring program at all as late as 1958 when I became a partner. I felt that we should and I did a study to find out how many people we had actually hired unbeknownst to ourselves (because in those days partners would hire associates if they needed them—and everybody would sort of go along with it). It turned out that for the previous few years we had been hiring somewhere between four and five attorneys per year but not on an organized, regular basis. Many of them were people that had just walked in off the street to look for a job and somebody needed him and he was hired.

We then decided that we would start on a regular hiring basis. There would be two or three brand new attorneys out of each class. Now it has evolved to where we are getting fifteen or twenty out of each class.

SHARP: You mentioned that a partner would hire a new associate if he thought he needed that sort of assistance, and it was very much a one on one.

GOODIN: Not really. I think that he would talk to some of the other partners and say, "I think we need somebody," and they would say, "Okay, go get them." I remember once before I became a partner, Ed Bronson came to me and he said that we needed somebody to come in. I went out and I searched out in my mind as to who I thought might be a good prospect and brought him over and introduced him to Ed and Ed hired him. I am sure that this was after discussion with at

least some of the other partners, but hiring wasn't on an organized basis until the late 1960s.

SHARP: Then there was an actual committee.

GOODIN: Then a hiring committee was formed. A big effort was made to get people right out of law school. I liked the idea of hiring a lot of people right out of law school. Some of them make it and some of them don't, but you don't have the problem of bringing somebody in laterally and upset the system. Although we have done that. I was a lateral hire myself.

SHARP: Was there a list of schools from which you would recruit?

GOODIN: No. At first we decided that we would start interviewing the California schools, U.S.C., Stanford, and Boalt.

The committee did a very good job starting off by having a swing through California. Then they started going back East, and recruiting in the East, Midwest, and South. By that time, I had been criticized for not doing more on hiring and recruiting but my theory is that the young should hire the young; they have to live with them longer. So what I see or think of recruits, or what they think of me is not important. [laughter]

SHARP: How did the management committee see its relationship with Mr. Dilley?

GOODIN: I don't think that the management committee ever had any problem with that. Mr. Dilley was originally, of course, an accountant. As time passed it became obvious that he knew what was required to make the office look first class. He had very good taste. I used to think it was high-priced sometimes, but he would have nothing but the best: you name it—printing, equipment, furniture, and all the things that are required in the way of operating an office.

At first he wasn't completely in charge. We had a secretarial manager who did the hiring and firing of secretaries and other administrators. Ultimately Dick was put in charge of everything. However, in certain areas he had no interest—like the file room. He could care less about forms for keeping track of cases, and that sort of thing. He could do more or less what he wanted but he never had anything to do with the administration of the lawyers themselves except to supply them with support personnel, equipment, and so forth.

SHARP: He gave me copies of his reports that he submitted, I imagine, to the partners.

GOODIN: Yes, he submitted an annual report and those ought to be very interesting as far as the firm history is concerned.

SHARP: They are because they show how the physical plant changed, and what he knew he needed to work on. There is not too much on what the exchange was between Mr. Dilley and the management committee. There is some indication of the relationship between Mr. Dilley and the partners in that he would make recommendations which were alluded to in the partnership minutes, but the management committee is sort of left out of that relationship. That is why I asked you how you worked together.

GOODIN: Dick attended all management committee meetings, and took the minutes, and simply did what the management committee asked him to do. He did take on one responsibility after another but not the complete administration that Vic [Hampton] now handles. Of course it was much smaller in those days and Dick could handle a lot of it personally. But the relation between the management committee and Dick was always very, very cordial and he simply did what he was told.

Use of the Computer

SHARP: I want to get back into some more administrative areas. In 1968, the American Bar Association had a survey on time-keeping techniques and they noted a variety of systems that were used in law offices. I wondered how Bronson, Bronson and McKinnon changed time-keeping systems to accommodate the growth, to accommodate the increasing numbers of lawyers. It seemed to me to present an obvious problem, or at least something that had to be worked out. When was there a specific shift over to an instructed time-keeping system, for example?

GOODIN: Oh well, the time-keeping system was originally that each lawyer would write out a time sheet on a daily basis. It would then be typed by his secretary.

SHARP: That is what you were talking about earlier?

GOODIN: Yes. Then each entry would be retyped onto a card for each particular case. Then when the time to bill that case came along, the attorney would get the card or cards that had been retyped. He would change the itemization or do whatever was required to prepare the bill. Then the bill had to be typed again in final form. This was very laborious.

Somebody, I am not sure who it was, located some pressure sheets so that, rather than have to retype, the secretaries would type on the pressure sheets and the girls in accounting would then peel off the pressure-sensitive paper and paste it on the cards. That at least eliminated one set of typing, and eliminated a lot of errors because in retyping you always have errors. That system was used until we got onto the computer system which was in 1973.

SHARP: To what extent are the time records used in preparing a bill for a client?

GOODIN: Completely. That's what we base our bill on and always have.

SHARP: The reason I ask is because the A.B.A. suggested that there were other elements like priority, or expertise of the particular lawyer, or the type of client—that somehow it is more complicated.

GOODIN: Oh it is. There is no question about that. We have graduated fees for different types of clients and every individual has a different fee for particular types of cases, depending on his expertise. However, the fundamental basis on which the bills are started is the time record.

- SHARP: Let us just get a brief description of the IBM system that assists you in the bill development. You mention that it came about in 1973. The reasons are obvious because of the tremendous amount of really tedious work, coordinating the cards and so on, but how actually does the system work?
- GOODIN: When it first came in we still had to have the lawyer dictate or write out his time sheet. It was then typed by a secretary because it wouldn't have been very readable otherwise. Then it was entered into the computer. From that time on it could be repeated or changed or reorganized without it having to be retyped all over again. We started getting printouts of each bill in much the same fashion as the old cards, but it didn't have to be retyped.
- SHARP: Was there someone else or was it the management committee who kept track somehow of the activities of everyone in the office to somehow measure efficiency and productivity?
- GOODIN: The only actual records we keep are the time records by attorneys. These are the only actual record that we have ever kept, except for that production record that I told you about twenty-odd years ago. We don't even know the times. Suppose somebody puts in two thousand hours. We are not sure at what rate that is being billed out even now. We have never made any effort to do that.

Growth and Bronsons' Goals

- SHARP: I wondered how Bronsons' came to the idea of trying to plan its growth. Was it starting to assess the caseloads of associates and partners and somehow trying to figure out what to do next? Or, was it meeting clients' new demands?
- GOODIN: First off, Roy is the one who decided he wanted to have a balanced firm. This goes back into the thirties. He started trying to develop non-insurance clients. That has continued right up through until today.

There is a certain amount of chance in it. For instance, Jack Painter developed a client that required a lot of business-type of advice and handling in the late 1940s. Jack switched over from being a trial lawyer to being a corporate lawyer. In fact, when I came in I took over some of his cases because he was getting far too busy on the corporate side.

The Schenley Company came in through Kirk LaShelle and that was developed by many people, and we still represent Schenley.

[It is hard] to say that there was a particular plan. I mean you can have it in mind, and certainly everybody has it in mind, to develop in certain areas. The firm decided early on that they didn't want to develop in the area of workman's compensation insurance. That is when Mr. Keith left and started another firm; that is long before my time.

It had been determined long before I joined the firm that we didn't want to get into family matters, divorce or criminal defense. It is very difficult to handle criminal practice in large firms, so that was almost automatically eliminated. In practically every other area, I think it was more a consensus than a plan.

To a certain extent it is a little bit of chance. For example, we were asked to represent the Federal Deposit Insurance Corporation through the recommendation of a friend of Ed Bronson's, Mr. Martin from Texas. He had known Ed for a long time, knew he was a capable trial lawyer, and knew that the Federal Deposit Insurance Corporation would need some help out here on the collapse of the San Francisco National Bank. We knew that it would be a lot of work. We actually hired one person (who was retiring from an insurance company) to administer the suits that were coming in on that case. Ultimately, Chuck Legge took over and ran all the litigation. In my opinion, this was the genesis of the business litigation department.

For that one client, ultimately, we realized that we were going to have to have more people. We simply went out and hired more people to handle it, including one administrative manager just for that alone.

SHARP: That is exactly the kind of information that I wanted, but I was not at all sure how to get at it. In the first volume interviewees talked about Roy Bronson wanting to have a general practice, and I wondered once you came in how that shifted around.

How is work assigned among the associates and the partners?

GOODIN: As far as the insurance litigation is concerned, we have always had one person in charge. That was Kirk LaShelle, then Lawrie Driscoll, then George Hartwick. Every case that came in would go across that person's desk and it would be assigned to whomever seemed to be able to take it, as far as his caseload was concerned.

There were many different times where an attempt was made to determine workloads. For a long time we have kept case counts, how many cases are assigned to a lawyer. But you can have one case that will take a year or a thousand hours to handle, and another one that will take ten hours. We have never been able to solve that problem on numbers alone.

We have tried many different things—assigning groups of new associates to the litigation department, for example, and then anybody in the general litigation department could use any associate. That was used for a while. The plan that probably has worked the best is to have an associate assigned to a particular partner or maybe a couple of partners. Then it is up to the partner to keep the associate or associates busy. If they are not busy, they go around and ask other associates if they can help.

So it works out on a person to person basis. I think this is one reason that it is important to have good morale in a firm and not have people vying with each other for position—just to do the work that has to be done as far as the firm is concerned.

SHARP: In terms of morale, then, is there some desire for competition among the associates, or is that a pretty obvious thing that the firm likes to stay away from?

GOODIN: Well, we like to avoid any competition among associates. The whole idea of the organization is that if A is good enough, he is going to make partner, and if B is good enough he is going to make partner, and if C is good enough he is going to make partner—irrespective of the relationships between A, B and C.

We have made as many as five or six partners at a time, which proves I think, that it doesn't depend on an associate cutting anybody down, but simply building his own career. That is one of the benefits of the "marriage theory," so to speak—that you don't have this inner vying with each other to get a bigger share of the pie or more credit or something like that.

SHARP: I wondered if the firm has anything that you would call goals, and how these goals might have changed since the fifties. I don't mean so much the kinds of law you handle, but anything else you might consider a goal for the firm.

GOODIN: No. I think that the goals have always been pretty much the same. First of all the firm demands that each lawyer do a good job for the client. Beyond that every lawyer owes obligations to the firm, to the profession and to the community and society in general. The firm has always supported these goals. We encourage our attorneys to participate in bar activities and community activities. I think we have been fairly successful in that.

It may be of interest that this firm was one of the original members and backers of the San Francisco Lawyers Committee for Urban Affairs. This committee develops and coordinates an extensive program of pro bono legal representation for poor or minority individuals and community groups. This committee was started by Rich Morris in 1968. Rich left a good practice to devote himself to public service becoming successively Executive Director of the committee, later of the Bar Association of San Francisco and after a stint at the ABA, Executive Director of the State Bar of California. I will never forget Rich's calling on me in 1968 when we were in the old John Hancock Building. His pitch impressed me as being right out of a Bob Newhart script. I said to him, "Rich, you want me to sell my partners on assessing themselves \$25 per attorney (it has since gone up to \$100 per attorney) for the purpose of setting up an administrative organization which will then assign us cases for which we will get no fees?" The concept of pro bono work had not fully developed by that time and some of the partners, particularly the older ones, didn't fancy working for free anyway and to pay for setting up an administrative staff which would assign us such cases was—well, difficult for them to accept. However, most of the large firms joined and Jack Painter and I were on the original committee of sixteen. This has now grown to a committee of over one hundred and a budget of over \$200,000. It does such things as run a "store front" office available to low income groups, open evenings and staffed by members of the larger firms.

SHARP: How is all of that communicated to a new associate coming in? Or, is it?

GOODIN: Oh, yes. This is part of our selling process. [laughter] The new associate is told this in some of the original meetings that we have when a new group comes in each year. A partner meets with the new people and tries to inculcate them with some of the ideas that the firm has lived by. The rest of it is just by working together. The new associate just gradually gets the ideas that are traditional in Bronsons'.

SHARP: I think that you are a typical business in that sense that those sorts of things often aren't spoken. A person works in a place for a certain period of time and then begins to understand the people that he or she works with, and what is

expected, and what the whole purpose of the practice is.

GOODIN: I think that that's true in large measure. Of course, we do have the office manual. It sets forth a lot of our ideas as to how the law practice should be run, how the firm should be run.

SHARP: And that had really evolved over the years.

GOODIN: Yes, it has and it should be revised periodically but it isn't always. [laughter]

SHARP: I wanted to wind up by asking you about your experiences with the Commonwealth Club. I know that that has been an important activity for you. I wanted to have you just tell me a bit about your work and your years as president and the sorts of things that you got involved in with it.

GOODIN: I got involved through Wake Taylor, who was a friend of mine from college. He was president of the associated students of the University of California at a time when I was class president of the sophomore class. We got well acquainted and have known each other ever since.

He was president of the Commonwealth Club in 1969, and he asked me to become a quarterly chairman. I was then asked to be on the board of governors and one thing led to another. [laughter] Then I was finally asked if I wanted to become next chairman of the executive committee which is the traditional stepping stone to becoming vice-president then president. At that point I thought it was such a commitment that I'd better ask the partners.

SHARP: That did take a lot of your time, then?

GOODIN: Oh, yes. When I was vice-president and president, I am sure it took a third of my time. But this was a lot of fun because you are meeting all sorts of very interesting people. There is a lunch every Friday with some distinguished speaker and the president has a chance to cross-examine the speaker in a fifteen-minute question and answer period at the conclusion of the talk. It does go out over a lot of radio stations, over 130 at the moment.

SHARP: Oh, I did not realize that. I knew that they rebroadcast them on KQED, but I did not know it was more extensive than that.

GOODIN: Yes, that is right. One time we had Prime Minister Tanaka of Japan. I called upon then Governor Reagan [laughter], and Tom Clausen, president of the Bank of America, to make a few remarks, before having the prime minister speak. This was probably one of the high points. Another one was when we had Elliot Richardson just a few weeks after "Bloody Saturday."

SHARP: Oh, that must have been a lively meeting! [laughter] Was it a longer question and answer period?

GOODIN: No. We are limited by the radio schedule, but it was a very interesting meeting.

Additional Notes on Innovations in Administration

SHARP: Are there other facets of administration and management that I haven't asked you about, that you think are important?

GOODIN: Of course the things that I talk about are the things that I know and that I did. One of the things that I did was to develop the litigation sheet, by which we are still starting every matter that comes into the office. It is an eight-part form. I received a lot of flack for developing a form that is duplicated automatically in eight copies. Many of those copies probably are not very much used today. At one time they were used, and in my opinion, should be used again, but I am not going to get back into it. [laughter]

That was a real effort because we didn't have a list of our cases or who we had cases for. We did have an index of sorts. If you couldn't find the file, you couldn't find anything about the case. So I developed this form that originally was only for the lawsuits. We were having trouble because something would come in and we wouldn't be able to find out who had the case. I felt that there was a real need for this to be done.

This took a long time and particularly to go back and pick up the cases that were pending so that they could be worked into the system; this took a good year's effort. We had a girl come in on a special basis that really worked with me on it, Vivian Shagen. She has since died; she was a wonderful person. We put it together and it has been operating ever since. I think that that started in about 1966 or 1967.

SHARP: So now there is a routine way of finding out where exactly the case file is and what is going on with it?

GOODIN: Well, what this system does is that you have the case, the name of the case, to whom it is assigned, a little bit about it, who the client is, and a lot of information that is basic to knowing what that file is about, in a central location. It is kept in the file room. You can find out a lot about every single case in the office without having to go and find a file. It leads to a lot of other controls which have now been taken over by the computer of course.

SHARP: What other sorts of innovations have you brought in like that one that we haven't talked about yet?

GOODIN: Well, I suppose this goes back to some of Roy's ideas. As I say, he was a fantastic leader, but he wasn't really an M.B.A. manager-type. We had some really big arguments about, for instance, the question of capitalization. When I came in, for every percentage point that you had, you were required to put in \$3000 of capital—that is "after-tax" capital. That is a lot harder to come by than "before-tax" capital. It took me a long time to figure out why we were making some money but couldn't pay it out.

I gave myself, I think, a course in what an organization really is about. I realized then that the reason that we couldn't pay ourselves the profits was that our profit was all going into "accounts receivable," which were going up all the time and we were paying taxes on it but without cash to pay out to the partners. I got out a memo expressing my ideas in August of 1962, and I must say that

Max [Weingarten] picked it up and ran with it. By January of 1963, we were on the cash basis.

I think that the whole genesis of this idea was mine. It goes also back to Roy [Bronson] being not interested in keeping records on a regular basis on a lot of things that I was interested in. I was interested in how much cash we had at the end of the month, how much in accounts receivable we had, how much we had out in clients' advances at the end of the month. We did have a monthly statement but none of that information appeared. I will never forget asking him if we couldn't have that *as of the end of the month*. We got it on the fifteenth of the month, or the twelfth, or whenever he felt like asking how much money was on hand. He would ask Dick [Dilley], and Dick would let us know. But I said, "Can't we have it on an end-of-the-month basis?" He said, "What the hell do you want to know that for?" [laughter]

Another interesting facet was Roy's attitude on distributions before we went on the cash basis. I finally prevailed on distributing the profits monthly. But before that time, if there were a possibility of distributing profits, Roy would see that there was \$20,000 in the bank. Then he would have it distributed, based on the point interest of each partner. Some people might have borrowed against their interest, or gotten advances. It was a hard job to convince him and the other partners that the distribution should be based upon not what it was that the people had at that time, but what their interest was after all the advances and everything else should be taken out.

Some of the things you look back on now were really big arguments at the time. In truth and in fact there have been many attacks on our capitalization, and it has withstood all of them up until now. We are still at \$3000 a point. The argument has been going on for thirty years. However, in my opinion, it should still go on. We *do* have to borrow quite a bit of money now, which we did not in the old days.

SHARP: Is that the substance of the attack?

GOODIN: Yes, that we ought to have more after-tax money of our own in the firm, and then not have to borrow so much. There might be some merit in this. I could be convinced otherwise. For years I fought it, but I think at this point I could be persuaded otherwise.

SHARP: You mentioned, I think the first time we met, about your wanting to rent instead of buy, and you saw that as really important in terms of how the firm spent its money, how the firm really organized the business-end of the practice. Is that the kind of change that also had some opposition from certain people?

GOODIN: Oh, very definitely, yes. We had to move from the Mills Tower in 1960. We actually moved in January of 1961 [to the John Hancock building]. We were in the Mills Tower for twenty-eight years.

There was some interest in buying a building. One opportunity was a building on Sansome Street. It was a six-story building. We could have bought the building for a million and a half dollars, and our office would have used half of the space. If we had bought that building it would have required more capital immediately. Then you would have had the problem of who owned the building.

It was my feeling that if the firm purchased that building it would then be owned by the persons who were partners at the time that the building was purchased. In the end there would be no Bronson, Bronson and McKinnon law firm and the building would be owned by the heirs of Bronson, Bronson and McKinnon.

My real thesis is that since running a law firm is hard enough to do, administratively and in every other way, the operation should be as limited as much as possible to the law. If you can rent the space, you should rent the space. If you can rent furniture, you should rent furniture. If you can rent pencils, do so.

You should certainly rent all of the computing and word processing machines. We have machines that are worth hundreds of thousands of dollars now. If we had to buy them and put out capital for them, why then we are in another business. All we want to do is have the *use* of that space and furniture, and machines, and as I say, I would even rent the pencils if we could. [laughter] You can't do that so you have to buy something. That is the reason we have the capitalization we have.

SHARP: I wanted to bring that out again and especially at the end because it is an important ingredient in how you look at the firm, how you look at the administration and the business part of the practice.

GOODIN: We have accomplished almost every modernization and procedural reform that I can think of. One thing additional is the form books. I did start that with one of my secretaries.

SHARP: Yes, I noticed in the minutes that there was a litigation form book. That is different from the litigation sheet?

GOODIN: Yes, very much so. You know you have changes in secretaries and in the old days we handled a lot more cases. I think we have discussed this before. You got a case, you took a deposition, you got a medical examination, and you were ready for trial. There was not all of this discovery and a great mass of documents that we find in cases today, so you had a lot more cases and practically no discovery. In order to settle a case you had to agree on a settlement—say, settle it for \$5000. (That was a big settlement in those days.) I finally figured out that there were eight steps that you went through—you prepared a letter to the company asking for the check, you prepared a release, you prepared a dismissal, et cetera.

On one occasion, when I was getting a new secretary, I had my old secretary come in and I dictated exactly what we did. So when my new secretary came in I said, "Here is the routine, and if I write on the top of a file, 'Settled, \$5000,' you go through those eight steps, and we close the file."

This included many different forms of release and dismissal and so forth. It occurred to me that there were other lawyers in the firm who might use the same system. Then it occurred to me that there were a lot of other forms we were using, not only legal forms that were filed, but also routine responses to complaints—routine motions, demurrers, motions to continue, and things like that. I decided that this would be useful for the entire office.

This new secretary, who was Helen Perez, got interested in putting this together, so we started collecting forms and ultimately produced a form book. It has been revised several times and needs revision again, but I am not about to do it. [laughter] And the practice has changed too. I don't know, I don't use that many forms these days, and I am not sure who does.

One of the interesting things that happened on our first form book was that I collected letters. Included in the form book were form letters that we sent to clients. I can't even remember what the subject was, but George Hartwick started looking through the form book one time and saw a form letter. Apparently the laws had changed since the letter had been dreamed up and the time that I put it in the form book. It was about an insurance coverage matter that was out of my field. He took one look at that and said that this was malpractice. [laughter] We had to go around and pluck that letter out of each of the form books.

The idea was that we would revise that form book periodically, and we kept an absolute check on the number of form books that were produced and where they were. That system failed too because we did revise it two or three times and it was too difficult to retrieve all the form books and make the changes. The next time, it was so changed that we simply started afresh. I think it was done once after that and that is what exists today; I hope nobody is using very much of it!

SHARP: Well, I really appreciate your time and your interest.

GOODIN: Well, I am delighted. My interest is high in this whole thing. [laughter]

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CHARLES A. LEGGE

1982

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Charles A. Legge

A Career in Business Litigation

An Interview Conducted by
Sarah L. Sharp

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1

Biographical Details and Schooling

[Date of Interview: November 12, 1981]##

SHARP: Let's begin just with your full name.

LEGGE: Charles Alexander Legge.

SHARP: When were you born?

LEGGE: Nineteen-thirty, August. San Francisco.

SHARP: What were your parents' full names?

LEGGE: Roy Alexander Legge and Wilda Rampton Legge.

SHARP: Did you have or do you have brothers and sisters?

LEGGE: Yes, I have a younger sister.

SHARP: What is her name?

LEGGE: Barbara Scarborough, and she lives with her family in Las Vegas.

SHARP: What ethnic background would you say that you have?

LEGGE: Oh, it's English, Irish, Scotch, I would say.

SHARP: Would you say that you had religious influences at all when you were growing up?

This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 292

LEGGE: Yes.

SHARP: What were they?

LEGGE: Well, rather mixed. My mother was from Salt Lake City and from a large Mormon family. So, I had some religious training as a Mormon as a young person. I can remember giving talks in the Mormon church here in San Francisco. For some reason that training never took. Most of the religious training was at a community church, Congregational Church over in Piedmont, where we moved when I was about twelve years old. Then of course, in later life, we have been active participants in the Presbyterian Church in Orinda and Lafayette where we live now.

SHARP: What can you say about early schooling that you had?

LEGGE: Well, by early you mean very early? I went to a public grammar school here in San Francisco, Winfield Scott School down in the Marina. I would just call it a traditional public grammar school education.

SHARP: Where did you go to high school?

LEGGE: I went to Piedmont High School across the bay. After I got out of grammar school we moved from San Francisco to Piedmont.

SHARP: What business was your father in?

LEGGE: He was with International Harvester Company for about forty or fifty years.

SHARP: Did your mother work outside the home?

LEGGE: No, she never did in business, but was very active in community and charitable affairs.

SHARP: I know that you went to Stanford University and I wondered what that law school experience was like.

LEGGE: The law school itself? Well, it was very intense. I took the first year of law school as my senior year in college. It was a program where they give you a combined A.B. and J.D. degree in six years instead of the usual seven. So, the senior year of college was the first year of law school and very intense. With the usual degree of paranoia that all first-year students may have. After that, after the first year, then you got a little bit more comfortable. At the end of my first year my wife and I married.

The work settled down to something you knew you could do. There was just a lot of it, and at the same time [you were] working on the law review. So, it was just a matter of trying to ration twenty-four hours in a day to get as much done as you could possibly do. It was very challenging, a very intellectually stimulating experience.

SHARP: You had gone there as an undergraduate as well then.

LEGGE: Yes, I had.

SHARP: Was that a pretty easy transference then?

LEGGE: Oh, sure. It was a comfortable place and you are there, so it was easy to do.

SHARP: Did you have any special early experiences besides going to law school in your early adult years?

LEGGE: What do you mean, as a child?

SHARP: Well, as a young adult. Law school, I would think, would be a fairly special experience to have.

Did your family take any special trips?

LEGGE: Well, let me say that I think that other than education, and of course the influence of parents, the thing that my parents did for me which was probably the best thing they could have done which was to get me out of the middle-class, white Anglo-Saxon Protestant environment in the summertime.

Beginning with being about eleven or twelve years old, every summer I went out of town somewhere to work. It was on a farm, two farms, and all summer, lumber yards up in Humboldt and Mendocino County in the forests. I worked for a tractor and truck dealer one summer and had experiences like that.

Being on your own and working with people you weren't used to being around who were motivated by a little bit different things—I think it is a very broadening part of the education.

You asked questions about travel. Mother and Dad were not extensive travellers. They both come from rural backgrounds. My father from rural areas in Nebraska and then San Diego, which is no longer rural but it was then. Mother from a large family running a farm and a family store in Utah.

So they were very pleased to have a nice home and a good place to live, and other than just small vacations mostly within California, they were not extensive travellers.

There is one other factor, too, that I think has an impact upon people around my age. That is, the general era we grew up in. The 1930s were a rough time economically. As soon as that recovered, we were immediately in World War II. After two, three, four years of normalcy after that was over, along came the Korean war. So, by the time people my age got to be about twenty-four, twenty-five, you know, about the age of getting out of law school, we had been through a lot.

I don't mean that my personal life was adversely affected by all of that. My parents were middle-class people. We didn't starve in the Depression. I was too young for the war [World War II]. I did get involved in the army in connection with Korea.

Those were just disruptive things that the whole United States felt growing up in that time. I think that it had an impact on the way that people grew up and got out and went to work. For example, young men and women who are coming

to us now, say they are twenty-four, so they were born in the late or middle 1960s.

SHARP: Well, I was born in 1949 and I am thirty-two, so they would be born in the fifties.

LEGGE: Okay, born in the fifties, really no conscious recollections of anything until the sixties. The sixties, you know, [was] a good period of, a certain degree of controversies going on there, but probably they were too young to be touched by them. No wars in the usual sense, and no economic deprivation in the usual sense. I think those things have an impact on people.

SHARP: For instance, did some of the people whom you were in law school with, did they drop out and become involved in the war in any way?

LEGGE: Well, our law school class had a combination of people that had already been in World War II. Then the draft boards were generally good to us and let us finish law school before they took us into Korea.

You see, that's what happened to me. I was draft eligible right away but they let me finish law school before I went in the army.

SHARP: How long were you in the army then?

LEGGE: Two years. Right out of law school.

2

Coming to Bronsons'

The Founding Partners

SHARP: How did you come to work at Bronsons'?

LEGGE: A client of the firm, a man by the name of Harry Phillips, was a good friend of my folks. In fact, they were neighbors. He met me and introduced me to Roy Bronson. [pause]

SHARP: That was it?

LEGGE: Well, yes that was essentially it. As I was getting out of the army, I had some job offers and Bronson was one of them. I came in and met Roy and met Harold and Jack Ward, who is now dead, and Jack Painter, and a few others. I liked the feel of the firm.

I will always remember my first interview with Harold McKinnon. I didn't know anything about the man's brilliant educational background. I made the mistake of quoting something to him. Well, of course, he was so learned in so many areas that we immediately got into a quotation match which I lost terribly. For everything I knew, he knew ten of them and even could correct the ones that I was misquoting. [laughter]

SHARP: Is this before you were hired or after?

LEGGE: This was the first interview with him.

SHARP: A faux pas of the first order.

LEGGE: It could have been, but Harold was very much a gentleman and I guess I held my own to a certain degree. He didn't hold it against me.

SHARP: Maybe it helped in the long run.

What was the firm like when you joined it?

LEGGE: Well, compared with what it is now, of course, it was much smaller. There was a feeling that everybody knew what everybody else was doing. There was simply a greater feeling of everybody's presence.

The way the firm is structured now because of its size, you have a great deal of contact with a few people. Some you hardly see at all even though they are your partners. I think I was number seventeen, the seventeenth lawyer, in the firm. So, I knew everybody and had an idea of what everybody was doing. That is about the biggest difference I would say.

SHARP: When I talked with both Jean Ross and Mary Mathes, they mentioned the way that the firm was laid out was so different.

LEGGE: Was physically laid out, yes. Yes that was interesting, we were then in the old Mills Tower building and the library was a center area. Five, six, seven of the lawyers' offices were located right around this library and hallway area. It was impossible *not* to be in contact, at least see people as they were wandering through there every day.

The rest of the offices were laid out just on one corridor going out in that hallway. That went to the stenographic area. So again, you were in contact with people all the time, you couldn't hide.

SHARP: What were your first impressions of Roy and Ed Bronson?

LEGGE: Well, of course you stand in awe of people like that when you are young, and of what they had achieved by the time you go to work for them.

They were both very different personalities. Roy was in total charge of everything. He was very dynamic, obviously brilliant, great feeling and great capacity for people. He really had a sense of how to deal with people. In a very fair sense, I don't mean that he was manipulative; he understood people.

His attention to people was not just limited to his partners or his clients. He had a sincere interest in the staff and the young lawyers who came in, and the people he worked with, and the clerk personnel of the courts—really a genuine interest in people.

Ed, Sr., his practice, his role in the firm, was more limited, but nonetheless important and dynamic. That was strictly in this area of trial law. He was sort of the senior hired gun.

It was obvious that Harold was very much the gentleman of the old school, who was highly intellectually trained; and a great deal of the calm, quiet thinking in the firm. No, they were really three very remarkable people.

SHARP: It sounds like an amazing combination.

LEGGE: It really was when you think about it. One of the great virtues of all three of them was the fact that they let strong people grow up around them and under them. I think it is too often a fact with a strong person that he or she wants to dominate and is afraid of other people growing up on their turf and taking over

their territory.

It was not that way with those three. They welcomed the best people they could get, and let strong people and strong ideas grow up around them.

SHARP: Was that how they approached the growth of the practice itself?

LEGGE: Very much so. You see, that was very important, the growth, to have a firm grow that goes beyond the first generation. You have to have a second generation grow up whose abilities are just as strong as the first generation. You have to have a concept of *management*, a concept of future growth, a concept of what is to be done with the firm, that goes beyond the practicing lives, let's say, of the founders. They very much had that in mind.

I think it was a great deal of Roy's wisdom that set up the management procedures that could go beyond his life. He was turning over control and management long before he retired from the firm.

SHARP: I don't have much sense of how Roy and Ed and Harold interacted.

LEGGE: Constantly, and beautifully.

SHARP: Are there any anecdotes that you can think of that could give me a fuller sense?

LEGGE: There is no doubt that of the three, Roy was captain of the team. He had founded the firm and seemed to have the best overall impression of the practice and the clients and the people. It was a matter of constant communication with Roy and Harold and Ed. They were always getting their heads together frequently in the hallway, in one another's office.

Each one would listen to the other with a great deal of respect. Each of them, of course, grew a little bit differently in the practice of the law. Roy with business. Ed with trial. Harold with the appellate and the more legal, scholarly style of the practice. I can't really think of any anecdotes as such dealing with that relationship.

If you are interested in remembrances about that generally, of course I remember a lot of things. One of them was Roy's humility. We used to have Friday morning meetings with all the lawyers in which we would get together and talk about the new case law, just to keep ourselves up to date. Then we would go upstairs to breakfast at the top of the Bar Association [of San Francisco] lounge. We used to have a little informal breakfast while everybody talked. Many times during those conversations, instead of trying to impress the new lawyers with how important he was, Roy would confess to errors both social and legal, and as the kids say these days, "let it all hang out." He had an amazing sense of humility.

He was a very prodigious worker too, and was right up until the end. I remember one time I came back in to work one evening. I walked by Roy's office and he was slumped over his desk. His teeth had fallen out onto the desk top, and he was slumped over. I thought the man was dead.

I walked in, and well, he was all right. He had gone out and had some cocktails. He had a heavy dinner, and he had simply fallen into a heavy slumber at his desk. He put his teeth back in his mouth, perked himself up, straightened

his tie, and went right back to work. It was five, twenty seconds later, and he was back working full steam. The man had the constitution of a bull.

SHARP: He seems like an amazing model.

LEGGE: Yes, it is. Well, most people can't do what Roy did because he worked constantly, worked to the nth degree, had social life to the nth degree. He just did everything. Most of us don't have that constitutional capacity to do that.

Learning the Ropes

SHARP: I know that you came in as a business lawyer. I think that's right. Whom did you work with the most?

LEGGE: Well, when I came into our firm at that stage, to say that I came in as a business lawyer is about half-correct. I started working with Jack Painter right away. In our firm, everybody had their share of personal injury insurance defense business. I tried more than my fair share of those cases in my early days.

I can remember at that time, Mary Mathes was in charge of being sure that the day's court appearances were all covered, whatever they were. I would come in with a full load of work to be done on my own matters, and Mary would grab me with this file to go argue a demurrer and that file for a settlement conference or something.

Mary had my whole day planned out for me on things that I didn't even know I was going to do when I got to work in the morning. That is the way you worked with Mary and for Bronsons'.

SHARP: My next question was to ask you how work was assigned. With Miss Mathes, that is an extra ingredient.

LEGGE: That was an extra ingredient. There is no doubt about it. Well, work was generally assigned on the basis that each young lawyer worked for a partner or two partners. You did whatever that partner had to do.

Most of mine in the early days was for Jack Painter. In addition to that, being assigned personal injury cases for defense and trial.

SHARP: How did you see your role as an associate?

LEGGE: Well, I didn't have any grand scheme at it. You know, I'm just starting out. I've got a wife and a child. Going to work in an established firm, my role was simply to do what I was asked to do. It was really that simple.

SHARP: Just to crank it out?

LEGGE: Just to crank it out and learn whatever I could learn, and take on as much responsibility as I could take on. I think role definition is something you look at a little bit more later in life, and probably more in retrospect than you do at the time it is occurring.

SHARP: How did you learn what you needed to know to practice law outside law school?

LEGGE: Well, you learn by doing. You learn by observing. You learn by the responses we got from the partners to the work that was done. You learn by the clients' responses. There is a great deal of just listening.

I have always gotten in pretty early in the morning and I remember for several years Lawrie [Lawrason] Driscoll and Bob Friedrich were two of our very professional high level trial lawyers—they would get in in the morning—and we would just sit out in the reception area and have a cup of coffee for about ten or fifteen minutes. They would be talking about their cases and what they were doing with them. I would just sit and listen to what they were doing, and occasionally ask a stupid question.

Then observation too, out at court. You have a few minutes between court hearings and you just drop in to watch other lawyers try their cases.

Harold McKinnon

SHARP: I know that, for instance, Mr. Hartwick told me that he had taken a brief to Mr. McKinnon. Mr. McKinnon changed it around considerably. Was that sort of relationship between you and Mr. Painter?

LEGGE: Well, I also had the same kind of relationship with Harold McKinnon that George Hartwick did.

Jack was working in the business field, and there wasn't the same opportunity for the literary exchanges because the corporate work just didn't lead to that. Jack was a very good teacher and very patient, and I had a good relationship with Jack, very good. Our relationship continued into the management of the firm.

I also had that same intellectual arrangement with Harold McKinnon because I did a lot of brief writing. Harold would go over a lot of my briefs.

The man is really, was really, an amazing writer. I don't know if you are aware of where he got his education. As I recall it, he was in World War I, and he was gassed by the Germans. As a result of that he either contracted tuberculosis, or some lung weakness or something like that. For a great deal of his early life, and I think this was after the war, in the 1920s, he couldn't work at all.

He spent a great deal of time in the hospitals, and a great deal of time flat on his back. Well, instead of vegetating, or reading pulp trash, like probably most of us would do, Harold took that opportunity to educate himself. He did intellectual reading, and intellectual writing. As a result of it he became an intellectual convert to Catholicism.

He would read Aristotle and Plato and outline what they had to say, compare one with the other, and bring contemporary thought into things. His intellectual capacities continued again right down to the end. He was a good friend of Mortimer Adler, and also of an author here in San Francisco who writes on an economic and social level, a man by the name of Louie Kelso.

I remember Adler was coming out to San Francisco for a visit, and he was scheduled to have lunch with Harold. Adler had just written a new book. Harold gave me the book when I went home and told me I was to read it and brief him the next morning, so I could tell him enough about the book so he could have lunch with Adler, and carry on a conversation as if he, McKinnon, had read the book.

At the same time, Harold had, again the same way Roy did, a great capacity for getting along with all people. Harold very much had the appearance of the gentleman and the scholar, but when he was president of the San Francisco Police Commission, there is a certain amount of rough and tumble in that. You have got to get along with cops and people who were attacking the police force, and the policeman's role in the San Francisco community.

Harold was right in the middle of all that. He used to, as a matter of fact, go out and ride in patrol cars at night. Occasionally, he used to go out and jump in the back of a car and to the patrolman say, "I am Harold McKinnon, president of the Police Commission, and I would just like to follow you around for a couple of hours." So he would get actually involved in whatever he got intellectually involved in, the intellectual mind.

Changes in Roles, Communication, and Departments

SHARP: I want to ask you to shift gears to give me an overview, but I am interested in your giving me some detail on how you think the firm has changed. You mentioned that it had gotten a lot bigger, and it was somewhat less personal because of the size, but what beyond that?

LEGGE: Well, I don't know that it is much beyond that because of the fundamental philosophy that Roy and Ed and Harold grew up on, and that was client service. You know, it is still our bedrock today. We try to grind into all of our lawyers that the number one person around this law firm is the client. It is not the partner, it is not the associate, it is not anybody other than a client. That is who we exist for. If the client says, "Jump," we jump. So to that extent the philosophy has not changed.

The systems and organizations have not changed drastically; they have improved; they have gotten more complicated. As automation and other new devices and management tools have come on the scene, we've adopted those. The fundamental systems of control are simply the natural process of growth from what we had.

I don't know that really anything has changed terribly much, of course, except just the mere size. To grow from what I saw as man number thirteen, to where we are now over one hundred, of course, is a large scale of growth. In order to control that, in order to make it practical, people have to form little nuclei of the work they do, and you have to superimpose controls and management over that. As a result, it does get less personal. There is no doubt about it.

We are sorry that's so. We would like to be as personal as we always have. We try to maintain personal contact by office events, training, social events, partners' lunches, partners' dinners, lunches with all the lawyers. So we try to maintain communication. But, we have to recognize that with size does come a certain degree of impersonality. No way to get around it completely.

SHARP: When you were an associate, for example, and there were partners' meetings, I know they were semi-annual and annual before that. How was information communicated to you as an associate from a partners' meeting, for example?

LEGGE: Well, just that if somebody had something to say to me, they said it. That was about it. Of course, as a young associate you were paranoid, and figured every partners' meeting was talking about you and how terribly you were doing. So, you walked on eggs a bit. You know, there was no formal communication system. It's just that when someone had something to say, they thought you ought to say it.

SHARP: Is it somewhat more formal now?

LEGGE: Yes, we try to make it more formal because of the number of partners and the number of associates we have. If you left communication to total informality, you would have two divergent words going to different people that are supposed to have the same meaning but don't because different people are conveying them in different ways. So we do try to formalize them.

We recognize that people are people. They are all different. The degree of maintaining secrecy, the degree of expressing themselves accurately, all varies. I am sure that something that is said or done at a partners' meeting may get conveyed to a group of people differently, simply because different people are doing it.

SHARP: How did Ed Bronson's role in the firm shift from when you came in until his death in 1977?

LEGGE: Ed, Sr.'s role didn't really change that much. Ed left the management pretty much to Roy, and to a lesser degree to Harold. When Jack Painter became chairman of the management committee, to Jack. Ed, other than of course, participate in partners' meetings, and always have his say, really was not active in management. He was the senior trial lawyer; he ran the trial department. I don't think that role changed a great deal during the period of years that I knew him.

SHARP: It doesn't seem like Mr. McKinnon's role changed too much either.

LEGGE: No, I wouldn't say that it did. Well, when did I meet him, 1956? So I knew them probably fifteen or twenty years.

I don't think the roles of any of them fundamentally changed. Except that throughout that period, there was, subtly the shifting of responsibilities. Not formal delegation of responsibility, not a memo going out saying, "Here's what we are going to do now." You just sensed that the next generation, Painter, Driscoll, Rowe, Jack Ward before his death, [Vernon] Goodin, [Max] Weingarten, Hartwick, were beginning to acquire more stature, handle more of

the client matters, and have more say in the affairs of the firm. It was a gradual transition, I think.

SHARP: Now, you became partner in 1964?

LEGGE: Sounds about right. I am sorry, I don't know the exact date. Yes, I think that is right.

SHARP: There was a point when the administrative committee, the management committee by that time it was called, was really beginning to function in a more dynamic way than it had previously.

LEGGE: Well, I can only speculate about that, I think that is correct, but at that early stage, I didn't really have that much to do with it, so I really can't speak to how it changed before that.

Other than I do know that, in talking with Roy and Jack Painter, that Roy decided, at a very early stage, that the next generation had to be trained for management. So, there had to be a management committee, and Roy would not be a formal member of it, but would be ex officio. Then gradually the power and control would be passed on to a management committee, and Jack Painter would have a large role in it.

SHARP: How did your own feeling, or role, if you want to formalize it, and call it that, change after you became partner?

LEGGE: Oh, it didn't really change at all. It's really just a matter of logical transition. The stuff I might have on my desk on January 1, 1964, was the same stuff I left on December 31, 1963. You just change and you move on, and hopefully take bigger responsibilities and do a better job.

My personal career, if that is what you are getting into, did go through a transition. That is, before I became a partner, I was working for Jack Painter in business matters.

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In 1960, the firm began to get more business type litigation, not just insurance defense litigation. The business type litigation—antitrust cases, corporate cases, contract cases. I don't mean to say that we never had them before, but there seemed to be more of them coming along.

Because they involve both business skills, a knowledge of business, and trial skills, I started doing a lot of work on those. Until ultimately, and I have forgotten when it was that the firm decided to, break out business litigation as a separate department from the two that had then existed: business and insurance defense.

I was the one who was initially in charge of the responsibility of breaking out that department, forming it, and developing—that sounds terribly pompous—*helping* to develop that aspect of the practice and giving it more emphasis. Since

then, you see, my practice shifted to where my practice role is in business litigation.

I am not really a corporate lawyer anymore, although I have some business clients. I don't try the casualty type cases. I try business type cases.

SHARP: In the next interview, we will talk in more detail about that, the changes in that, and the kinds of cases, and we will fit those [United States] Supreme Court cases in as part of the trial practices.

LEGGE: Well, those [United States] Supreme Court cases are sui generis because they were criminal cases when I was appointed to represent indigent felons, and really don't have much to do with the mainstream of the practice.

SHARP: I knew that, but it is such an interesting phase, that I wanted to get into that.

What was the impact of the liberal partnership system on your own career?

LEGGE: What do you mean by liberal? The bringing in of new partners?

Well, before you became a partner, the important thing was that you could look up the ladder and see that there was room for you. Nobody pulled that ladder up afterward, but I don't think I paid a great deal of attention to it for a while. I was happy to be a partner in the firm, happy to see that there was a future progression for me, and just moved on to the next logical step.

Your questions, in that regard, sort of underlie an assumption that at point A, as a young partner, I was looking ahead ten, fifteen years to see what things would look like. I really didn't do it that much, either as a young associate or as a young partner. You do your job, you try to develop new clients, you do the best you can. You are more concerned about the workaday practice than about such long range things.

The Management Committee and the Growth of Bronsons'

SHARP: How have you been involved in the management of the firm?

LEGGE: Well, that *does* involve, that does get to long range matters and the need for looking ahead. I don't know how I first got interested in management, I guess it was, I suppose as a younger partner, I was one of the few younger partners that actually read the financial data that were presented to us.

A lot of the partners would never even read the financial statements. I remember one of our partners who was killed in an auto accident, when they were cleaning out his desk, they found piles of the firm's financial statements were still in the sealed envelopes that had been delivered to him.

So, I would read the financial material, ask questions, and occasionally make some suggestions. I suppose by that, somebody assumed I was interested.

I believe I became a member of the management committee in 1970 or 1971, some time in there. I have been a member of the management committee ever since.

Of course, when you get to that role, its very nature requires you to look ahead, to broaden out on the sides of your perspective and to look ahead to try to see what longer range things look like.

SHARP: What are some of the main issues that the management committee has faced since you got on it?

LEGGE: Well, the biggest one is growth and how to cope with it. How big are we growing? Why are we getting bigger? What is the consequence of getting bigger? How do we cope with getting bigger? How does this affect what it costs us to operate, what we have to charge our clients, the type of service we provide our clients, the future, giving opportunities to all the young people, and things like that.

SHARP: What is the most interesting part of administration?

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LEGGE: Well, I think it is long-range planning. It is the opportunity to sit back and take a look at the profession, take a look at the firm, and take a look at society and say, "Where are we going?" To a certain extent, that is drifting and dreaming.

On the other hand, you have to get practical because you have to relate it to what your hiring plans are; to what type of practice you want to develop, to office space, to whether the economic base is strong enough to carry forward, to whether with certain growth, there is room for all the associates we are hiring to become partners. I suppose that is the most interesting aspect.

SHARP: Where is the firm going?

LEGGE: Well, we are continuing to grow, and continuing to respond. I can only talk round that subject because I don't think any law firm can really give you a totally clear-cut answer.

The reason being that a lot of the practice of law is what I call responsive. That is, we respond to what the clients bring to us. We can identify certain areas of law that interest us, and we can go out after those areas and attract clients and business, but by and large, we never know what is coming in the door.

It is not like a manufacturing company that can identify a product need and say, "We are going to go out and manufacture this product and it is going to take two years development; R and D [research and development] and testing, and three to four years and here is our market, and that is what we are going to sell."

A law firm can't quite do that. It can try to move in that direction by market planning. But a great deal of where any law firm heads depends on what is brought to it. I can think of some rather sterling examples. When we first got Federal Deposit Insurance Corporation as a client, well, nobody went out and solicited FDIC, it just came in.

Then it mushroomed into a type of practice that, for almost twenty years now, has involved a large number of our lawyers.

Antitrust cases are similar. You know, you never know where that next antitrust case is coming from. Yet, you can get totally absorbed into it.

So for anybody to sit and say, "Here is where we are going to be five to ten years from now"—it is impossible to say. You can set certain things: we are going to be a full-service law firm. We are going to do everything there is to do in the practice of law, with the exception of the hard-core crimes, with the exception of domestic relations, and with the possible exception of patent trademark. We are going to be full service. We are going to grow to the extent that we have to to serve the needs of our clients. We can say that we want to broaden our kind of practice into other areas when we can afford to. All with of course, certain economic constraints, and certain financial things that have to be considered.

We want to not only be the best, we want to perhaps someday be the biggest and the best. Although growth is not itself—bigness is not itself—an objective, the track record of the legal profession in the last twenty or thirty years has been that with growth comes better quality clients, more interesting law to practice, and better income.

SHARP: How much would you have to grow to be the biggest?

LEGGE: By saying the biggest, I was saying that really facetiously. There are firms in town of two hundred, 250 [lawyers]. There are firms in New York, I guess, that are over three hundred now. Obviously that type of growth pattern is really beyond immediate comprehension to us unless some very major things occur.

SHARP: Your perspective on all of this is interesting because of the time that you came in. You came in at 1956, at a point where Bronsons', at least from what I can tell, was still really small, had not grown that much in the thirty years previously. But it is I guess, really in the 1960s, seven, eight, nine, ten years after you came, that things really took off.

LEGGE: Really mushroomed. Yes, well, to a certain extent, I would analogize it to the sailing of a ship. To a certain extent, all of the law firms were carried along on a tide of growth. Even if they had done nothing, as long as they didn't screw something up, they would grow.

There was more litigation, more complexity in the business world, developments of fields of law that had been previously quiet or unknown such as antitrust litigation, SEC-type litigation, tax regulation and litigation, sex, age, race discrimination. Every time the legislature met in Sacramento, or Congress met in Washington, or the [United States] Supreme Court was making revised law, there were new things to be litigated about.

People are willing to litigate—to me, one of the big changes in the past twenty-five years is just how litigious people have become. I don't just mean the lawyers, I mean the clients. It used to be that litigation was the last extreme they went to. It was an unthinkable thing unless they absolutely had to. Now, sometimes suits are the opening shots in negotiations and merger struggles. One of the first things they do is run out and file lawsuits against one another. It's amazing.

So, in a certain sense, we were all carried along on that tide. Now, how well a particular firm does riding that tide probably depends upon how good the sailors on that particular ship are, whether they are hustling, working hard, attracting clients and doing a good job for the clients.

SHARP: There are some interesting examples just in Bronsons'. I am thinking of three: yourself, Mr. Hartwick and Mr. Weingarten, in sort of seizing on their specialty areas and allowing the firm to grow.

LEGGE: That is very true. Tax was, of course, another big area of growth beginning after World War II, and continuing right up until the present time. It is an unbelievable complexity. Max was there at the right time. Now George in his specialty in insurance law, it was very interesting the way he was able to develop and work that.

It was me and business litigation, so I just rode the tide. That is, growth in business litigation was there. It became a question of how you got some of the business, and how you organized the management of it once it came in, and then how well you served the client.

The Role of the Lawyer

SHARP: Well, now the questions that I am sure you were waiting for! I sent you the Tondel article. He sees a real "role" for private lawyers, at least at that writing anyway.

LEGGE: When was that? I didn't see a date on that article.

SHARP: Well, before 1976 anyway. It is in a collection by Schwartz.⁶⁸ The collection was published in 1976. When Tondel wrote it I am not exactly sure. He sees this role, now he is speaking only of private lawyers of course, as supposed to protect individual liberty and right within the law, vis-à-vis other individuals and the state.

Does that mean anything to you at all?

LEGGE: Yes, it does, it does. I don't suppose that when a lawyer walks in the door at six-thirty or seven in the morning, he says, "I'm here to protect individual liberty and be the touchstone of the traditional process, standing between people and oppression." People don't think in those terms.

But the existence of the private practice of the law is very important to those concepts. Those fundamental natural rights are in what we do here, and some of them may get directly involved in the actual cases we handle and the work we do. The counseling we give to our clients. It is also apparent in such things I have done as accepting appointments to represent indigent criminals. Another thing is the pro bono activity.

68. "The Role of the Private Lawyer," by Lyman M. Tondel, Jr., in (ed) Murray L. Schwartz, *Law and the American Future*. Englewood Cliffs: Prentice-Hall, Inc., 1976.

But, when you get to our size, and the type of clients we have, what you are contributing to society and to the social and economic framework of the country, are really a couple of other things that aren't quite the little person being oppressed by the government, or being oppressed by anybody else.

It is kind of making the whole stream of the thing move along, and I say that in two ways. One is, counseling, counseling business people on what they can do and what they cannot do with respect to hiring, manufacturing products, putting out services. Saying no to them occasionally. Or, steering them in the direction they should be going rather than in some other direction that might be counter-productive.

Now, we are here to serve their interests. I don't mean that we are super philosopher kings, telling American business what to do. We're not. We are trying to solve practical problems for them. But within the scope of that counseling, you can really accomplish a great deal. I think more good preventive work has been done by the corporate lawyer who says to his client sometimes, "No, you can't do that," or, "You can't do it that way, you have got to go do it this way," than all of the police forces, federal agencies and plaintiffs' antitrust bars in the world.

This is on a daily basis. There are lawyers and firms like ours all over the country who are keeping business people heading in the direction where law and society want them to go.

The other major function is that we are supposed to perform in the society a relatively easy, relatively inexpensive, and relatively rapid means of resolving their disputes. That of course is negotiation and litigation. I will leave open to others the question of how well we are performing that, with respect to cost, with respect to speed, and delay, all of those factors. In a lot of cases you really wonder what is being done. But that is what we are *supposed* to be doing. By and large that is what we strive to do too, is to make that process flow.

So both on the counseling side and the litigation side, I think private law practice performs a very, very important function. I think most lawyers feel that way very sincerely.

SHARP: I think Bronsons' is really a fascinating firm. It is the only firm I have studied so far, so I don't have a long list there, but you seem to have very interesting clients for one thing.

LEGGE: And they bring to us interesting work. It is generally what's new. We are generally on that cutting edge in the business, in the economic and the legal world of what's going on.

Another function lawyers perform too, and this goes back into counseling function, is to serve as a pool of ideas. That is, we deal with so many people on given subject matters, that when others come to us with the same subject matter, we've had oftentimes a lot more exposure to their industry than they have themselves—for their method of business, or whatever it is they want to do. We are able to function, not just in legal advice, but in a pool of ideas, a pool of resources.

SHARP: You are speaking somewhat too just about the general nature of the client/lawyer relationship. That seems to have changed quite a bit from what you were saying.

LEGGE: Yes. You mean historically changed? Well, it has gotten a bit more detached. You'll find a great deal of change because of the size of both the clients and the firm. You will still find that a great deal of it is really very, very personal. It is sitting down eyeball to eyeball with somebody, and after all the facts, and all the law, and all the business things, it comes down to the discussion between the client and the lawyer as to what is going to be done. It gets very personal.

SHARP: Looks like you have made some other notes there.

LEGGE: I went over your letter yesterday, and just made a note or two.

SHARP: Are there some things that we didn't discuss?

LEGGE: I don't know, let me see. I will have to put my reading glasses on to be able to tell you that.

I think that another area where the practice is headed into a certain amount of trouble, and this goes with size, [is that] we in the profession are getting awfully expensive for some part of the general public.

In addition to that, there is specialization. Size, complexity, have forced specialization. Specialization has problems. There is still room in this world for the generalist. If you leave the specialists to their fields, they may produce terrific specialty results in what they are doing, but it may not be consistent with the overall best interests of the client, or with the overall best interest of society.

You do need generalists who can sit down and say, "All right, corporate specialists, you told me what is best here, tax you told me here, labor you told me over here. Now we have got to sit down and put this all together and exercise judgment on what is the best thing to do."

It may not be the best thing to take the maximum tax advantage. In the long run, the client's interest may be served by a broader range approach. That is the kind of thing I mean.

Frankly, I think the medical profession has the same problem. They have got the human body so divided up that the person who treats the man for a heart ailment, and prescribes dilators and blood thinners, doesn't talk to the man who has treated the guy's ulcers, where the blood dilators aggravate his ulcers. Indeed, I understand there are now doctors who specialize in being generalists, who take the word of the specialists, put it all together and try to develop a program.

I think specialization, overspecialization, is a problem that can lead the legal profession into trouble. If there aren't generalists, people with judgment, who filter this through in the decision making process.

SHARP: Are there people at Bronsons' who can do that?

LEGGE: Oh, yes. Perhaps we ought to build it more into our structure. I mean, most of our people have excellent judgment, excellent judgment, even though they are specialists. But the partner in charge of the client is supposed to be the generalist who filters all that through.

You know, it may well be that we, and again I am talking about the profession, and not our particular firm, may have to set our structures up so that all specialist information gets filtered through somebody with broad judgment to be that it really is consistent with the best interests of the client.

Well, the only thing I emphasize is that there is a danger of overspecialization.

SHARP: That is all the questions that I have for you for today.

About Retirements

LEGGE: I don't know what this is particularly appropriate to, but something you mentioned a moment ago jogged my memory that I was the person who was delegated by the firm to negotiate with Roy over the economic side of his retirement.

Those same magnificent qualities that Roy always had even came in to being there when he was negotiating over such a personal question as what the firm was going to pay him for the rest of his life: still generous, still long-range thinking, and still very much with the firm's interest at heart.

It was a difficult thing for me to do. It was kind of like negotiating with my father over how much I was going to pay him for the rest of his life. It was very difficult, but Roy made the process as easy as he possibly could and still had that great long-range judgment.

SHARP: How did you do it? Did you go out to dinner, or go into his office?

LEGGE: I decided not to do it on a social basis. It had to be on a businesslike basis. So I would just go to his office. We would sit down and talk about the issues and then I would go back and report to the partnership and report to the management committee. Gradually the issues narrow, and gradually things do get resolved.

I'll just see if I can recall any other anecdotes about the seniors that might either be entertaining or enlightening.

SHARP: What was it like around here after they were gone?

LEGGE: Their personalities were very much missed. By the time they left, their role as practicing attorneys and as administrators, their presence within the management of the firm—that transition, pretty much, was made.

Well, I can't think of any anecdotes at the moment about Roy or Ed or Harold. If I can think of any I will put them down.

SHARP: Does it seem like it is coming around again with, at least Mr. Hartwick and Mr. Goodin, relatively close to retirement, that you are going to be missing people again?

LEGGE: Oh yes, it is going to be a constant process. But you see when we once took the step of formalizing the retirement process, having both the voluntary and compulsory retirement plan, it is just a matter of time before that occurs. You know it is going to occur, and without consciously thinking about it, you realize that when somebody gets to a certain age, that they are going to be missed, and going to be leaving.

With Roy and Ed and Harold it was a bit more abrupt than that because we had not adopted a formal retirement plan, and as the three founders they were, of course, welcome to cut any sort of arrangement they reasonably wanted. So their presence was missed.

Have you seen those pictures? [pointing to photograph album]

SHARP: I have seen them, they are really wonderful. They capture a nice set of faces and thoughts and everything.

LEGGE: And haircuts.

SHARP: And haircuts, yes!

Was there any thought of changing the name of the firm?

LEGGE: I don't think there ever has been. I cannot ever remember a really serious comment made about changing the firm name.

SHARP: Because so many people now work at Bronson, Bronson and McKinnon who not only didn't even know any of them, but have no connection?

LEGGE: Well, I think that, with the larger firms, the trend is to institutionalize the name and leave it there. The State Bar has given us more latitude to leave the firm names the way they are even though the founders whose names were in the masthead are no longer practicing. For example, Morrison and Foerster went through that—shifts in their names, eventually a few years ago came back to simply Morrison and Foerster and have decided to leave it at that. I doubt that there is a Morrison or a Foerster still there.

Pillsbury, Madison and Sutro has had its name for years and years and years. I believe there is a Jack Sutro who is retired, but I don't think there has been a Pillsbury or any of the senior Madisons around for a long, long time. So I think the trend is to institutionalize the name so that it has recognition over the years.

The idea of rotating new names as the partners move up in seniority, causes certain dilution of identity. I don't think any of us want that. I know of no serious thoughts at all on changing the firm name.

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Notes on Practice

[Date of Interview: December 9, 1981]##

Hill v. National Auto: Class Action and Insurance Defense

SHARP: I thought what we would do first of all is just talk briefly about some of the details involved in the first four cases: *Hill v. National Auto*, *Winter v. Koratron*, *First Empire Bank/Societe Generale v. FDIC*, and the *Gap Stores Securities Litigation*, and then get into some more general questions about what they represent to the development of the business litigation.⁶⁹

LEGGE: Yes.

SHARP: About one of the Northern District Court cases, the *Hill v. National Auto* which is 1968, I wanted to ask you just briefly what you saw going on in this case, what the goal of the case was, and so on.

LEGGE: The plaintiff's primary objective was to use what to him was a perceived wrong, and a relatively minor one in any economic terms, using federal statutes, in this case the antitrust laws, to try to become a class representative and convert a small, individual wrong into a very, very large national wrong.

69. *Welton S. Hill v. National Auto Glass Co.*, 293 F. Supp. 295 (1968); *Jack Winter, Inc. v. Koratron Company*, 50 F.R.D. 225 (1970); *First Empire Bank-New York and Societe Generale v. Federal Deposit Insurance Corporation*, 572 F. 2d 1361 (1978); and, *In re the Gap Stores Securities Litigation*, 79 F.R.D. 283 (1978) Mr. Legge provided the interviewer with these citations for discussion from a Lexis printout of the firm's federal and state appellate cases.

Now, I think it is illustrative of the movement that began in litigation, roughly in the middle to late sixties, of the development of so-called class actions. How a person who may have a wrong, but a small amount, by calling it a class action, involving class action procedures, has a weapon of procedure for trying to do something about a perceived wrong. You may like that, or you may not. There are some who feel that it gives access to the courts to people who would not economically otherwise have access.

On the other hand, one could argue that there are some minor wrongs in this world that we just have to let roll off our backs. That we can't make a large, complex expensive litigation out of every little wrong that occurs to everybody.

SHARP: What was Judge Albert Wollenberg saying about Allstate's activities?

LEGGE: Well, he really wasn't saying much about Allstate. You see, I think that one of the things that this decision illustrated is the tactical choices that you make in litigation.

We decided to attack the pleadings at the very beginning of the case, to try to get it thrown out without having to go through the normal processes of discovery and trial, to short cut it. We were unsuccessful in doing that because the judge said that there was enough in the complaint to justify going ahead.

So we went ahead with the case, and then we won on its merits. Now, again, it depends on your perception. To answer your question specifically, Wollenberg really wasn't saying anything about Allstate's activities. All he was saying was, to the plaintiff, "You've got a right to question Allstate's activities. If you can prove that they are wrong, come try prove to the court that they are wrong." Well, in fact, they could not and did not do that.

It poses a dilemma for defense counsel as to whether to take that crack at the very beginning of the case, trying to get the whole thing knocked out early, and saving your client a lot of money, saving the court's time; or, whether you have to give the plaintiff his day in court, go in and take his deposition, get his records, try your lawsuit, and win that way.

SHARP: So, the next step for plaintiff [Welton] Hill then was pushing the antitrust part of the case?

LEGGE: Yes, that is right.

Then what happened was, we went in and defended Allstate in that, took Hill's deposition, got the facts, and gave Hill his opportunity to get the facts from Allstate, and then convinced the court that there was just absolutely no liability.

SHARP: Is this a frequent kind of case for insurance defense?

LEGGE: Yes, it is. Well, you say insurance defense. This is a little unusual in the sense that we actually are defending an insurance company's own practices. This isn't a matter of an insurance company paying us to defend an insured. See, one of their service suppliers was suing them saying that their business activities were incorrect.

This is another thing you see a lot of in litigation these days.

SHARP: That's really what I was getting at—the activities being called into question.

LEGGE: The company's own activities. Yes, that is an increasing factor too.

I think that the basic reason I mentioned the case to you was [that it is] illustrative of small plaintiffs who have access to the courts because of the class action procedures.

The dilemma in dealing with them is whether you try to knock them out very early in the case, or whether you have to get in and prepare a whole case, and ultimately end up trying it and winning it as we ended up doing.

SHARP: I was interested in the use of the McCarran-Ferguson Insurance Regulation Act. Was this any particularly new interpretation of part of the act?

LEGGE: Well, yes it was, and that is what we were confronted with in our legal arguments. As a matter of fact that is still a very live issue. The United States Supreme Court has decided a couple of cases on that within the last year or two in how far the McCarran-Ferguson Act goes.

When regulation of insurance companies was by that act given back to the states, that is, taken away from the federal government and given back to the states, the McCarran Act was an important part of that. It purported to insulate the insurance companies from activities which, if it weren't for that insulation, might be violations of the antitrust laws.

It was intended to mostly be in the areas of rating, that is, setting rates, commission schedules and things like that, to give them a certain flexibility to deal on a group basis that an ordinary mercantile company wouldn't have.

Once you get beyond the questions of rates and the fee schedules, and get to the point of what about all the other things which an insurance company does, then you get questions as to whether that particular activity is exempt under the McCarran Act. That, as I said, is still a very live issue. There are cases all over the country now on the question of whether certain things insurance companies are doing are or are not exempt under that act.

SHARP: I was interested in the application or use of the Sherman Anti-Trust Act. I don't usually think of insurance companies as having to worry about antitrust proceedings.

LEGGE: Most people don't, that's right, but they are and do. We have had a lot of these types of cases. I think that historically, of course looking for the perspective, that the *Hill* case, is really a reflection of both the benefits that the class action procedures, which really began to develop back in the middle 1960s, brought to people who otherwise would not have access to the courts. But an opposing consideration is the comparable burden on the courts and on the defendants in having to deal with those.

SHARP: I know that when I was interviewing Judge Wollenberg we talked a lot about class action suits. He was always very interested it seemed to me in determining what was a class and what was not a class using the elements of Rule 23 and all

of that. The process that the judge goes through in that determination seemed applicable here later on.

LEGGE: Yes it did. You see, in the reported case in *Hill*, we tried to get Judge Wollenberg to throw the case out before he got to the question of saying the class. That in saying, "All right now, assume that the complaint is true, and assume that there is a class, even then there should be no liability." But, he would not go that far with us. He said, "No, the client is entitled to his day in court." He had his day in court and lost.

Winter v. Koratron: Application and Discovery

SHARP: In another Northern District Court case later, it's 1970, *Winter v. Koratron*, is this essentially a patent application case?

LEGGE: Yes it really was. My role in the case was minor. But the reason that I mentioned it, is to show the complexity in business litigation. You bring legal concepts together, you have complex claims and proceedings, and a lot of parties, and then you have to have mechanisms of dealing with it.

The case concerned the patents, the original patents of permanent press fabrics. Koratron or, I have forgotten what their name was at the time, [Koret of California] had those patents, and then licensed them to manufacturers. Of course as soon as a manufacturer takes a license he has got to pay a royalty. So they start looking for other ways to do the same thing where they can quite legally, legitimately, and ethically design their way around the problem, and not have to pay a royalty, to be able to do it other ways.

Koratron felt that what the manufacturers were doing was not correct so they went out and filed suits against them for patent infringement and sought to get money under the royalty agreements. So the manufacturers come back and bring into play another legal concept. They attacked the patent and the validity of the patent and its enforceability, but they also brought in another concept. That concept is the antitrust laws again.

That is, that even assuming the patent is valid and enforceable, the licensing entity Koratron or Koracorp has so improperly created a marketing and control mechanism that it was a violation of the antitrust laws. (Again this was a national matter. Although the licensor was here in San Francisco, the company is doing manufacturing all over the United States.)

A mechanism had to be set up for the handling of those cases. So they went to what was called the multidistrict panel, meaning when you have cases filed in a whole lot of districts, the judicial council can consolidate them and transfer them to one area for handling—which they did to San Francisco.

In this case, the judge they selected was a judge [William E. Doyle] from Denver, Colorado. So, you had in the handling of these cases all these issues, plus the fact that people who were involved in suits all around the United States had to come to San Francisco for their hearings. The judge assigned to the case had to handle the thing in Denver, or travel from Denver to San Francisco.

SHARP: I knew that there was something going on about changes in discovery, in this case, but I really didn't figure out what it was. I wondered if you could go into that.

LEGGE: What did you read? Did you read the judge's opinion on that?

SHARP: Yes.

LEGGE: Which judge was it? There was a Judge Charles Renfrew's opinion.

SHARP: No. Doyle.

LEGGE: Yes, that is Judge Doyle from Denver. Oh, what you were reading there is not the final decision in the case. The case was tried and ruled upon by Judge Renfrew. You were reading a preliminary decision by Judge Doyle as to the scope of the discovery.

Well, as I am sure you can see, although I don't remember the specific issues that were before Doyle, the basic idea is that you have got all of these patent issues, all of these antitrust issues, and all these parties, and that this discovery is to go on for years and years and years. You are making litigation so terribly expensive, so some parties want to cut issues out. They want to get rid of issues so there is no discovery. Or, they want to prioritize the discovery, say, "Well, let's focus on this, and when that is resolved go to something else." That is the exercise Judge Doyle was going through.

I have frankly forgotten what his actual rulings were. I think it is the *process* rather than the actual decision itself, which is probably the more significant for your purposes.

SHARP: Did this have a special impact as a Federal Rules Decision?

LEGGE: Not that I recall, but again my role was not a major one in that case. Again, these are, from a historical perspective, an ongoing set of problems of attorney/client privilege and of defining the scope of the issues in the case, and trying to tailor the discovery to fit the issues, and trying to be practical—at the same time giving the litigants an adequate opportunity to prepare their cases and to be heard.

It is really, as I said, more illustrative of the process than it is significant with respect to a particular decision.

First Empire Bank: The FDIC in Action

SHARP: There is a Ninth Circuit case among these. It is *First Empire Bank* in 1978. I don't know if there is a brief history of the U.S. National Bank set of cases, but I wondered if you could just set out some of the issues?

LEGGE: The Federal Deposit Insurance Corporation is our client there. They have been a very significant client of our office since I believe 1963 or 1964. We have represented them in connection with a lot of failed banks in the western area.

U.S. National Bank was the largest.

When U.S. National Bank was about to fail, it was so large that the regulatory agencies felt that there would be a terrible impact on the community of San Diego simply to have a bank fail.

You have no idea what it means when a bank fails in terms of credit loss, checks that bounce, and people not getting access to money. It is a terrible disruption.

So they used some powers that Congress had given to the FDIC bank in the 1930s. That is, instead of just closing down a bank, and paying off its insurance—a process that takes months—the USNB would have taken a *lot* of months. Instead of doing that, Congress gave FDIC the power to go with something that is called a purchase and assumption transaction. That is, and I am being very brief about trying to define it, FDIC finds another bank to take over the good assets and the liabilities of the failed bank. Then FDIC puts in, in cash, or guarantees or loans or something of the equivalent, enough to make up the difference between the liabilities and the good assets so that the old bank is taken over, as a going entity, and FDIC takes the old bad assets out of the bank.

That is what FDIC did in San Diego. At that point in time it was a quantum leap beyond anything that they had done before. It took a lot of advance preparation, both negotiations and preparations for the court. In dealing with that, U.S. National Bank was an international bank and it had substantial sums of money, substantial quantities of paper held by foreign banks, foreign entities. There just wasn't time to call up everybody and say, "Hey, what are we going to do about this?"

FDIC had to react as best it could, and categorize levels of obligations. So when the bank failed, with respect to letters of credit that had been issued by USNB and held by foreign banks, USNB did not provide for the protection of those. So the foreign banks sued FDIC to get that protection. The issue was whether they were entitled to the protection of the Federal Deposit Insurance statute and the protection of the purchase and assumption agreement that FDIC put into effect.

After taking discovery in London, Washington, San Diego, and all over the place, we tried the case in San Diego and FDIC won it then. That is the district court held that, no, they [FDIC] were not obliged to protect those foreign letters of credit. However, the Ninth Circuit, the appellate court, reversed that, and determined that those foreign letters of credit were entitled to the same protection.

That, again, is not a legalistic description of the issues and what they decided. That is a general framework which is illustrative of the size and complexity. It is illustrative of how law gets into the facts of ongoing commercial business transactions; how narrow opinions are, narrow in the sense of critical. Nothing was very clear cut legally. You had to make predictions as to what a court would do, another court may disagree with. You just never know.

SHARP: Did much of your work with the FDIC involve various applications of the Federal Deposit Insurance Act?

LEGGE: Some. When you liquidate a bank for FDIC, most of what you are doing is trying to resist the liabilities of the old bank—people who think they have got claims and suits against the old bank.

Then you try to collect the assets of the old bank, which is primarily trying to collect bad loans. So most of the work of representing FDIC in a failed bank situation is simply defense of claims and high level collection work. By high level, the amounts may be very small but they may get up to the millions. It is that mundane if you consider collection work mundane. But constantly there are ways in which the Federal Deposit Insurance Act does get involved with it.

I had the experience of, I guess it was 1964 or 1965, of appearing before a [United States] Senate committee back in Washington, representing the FDIC. The Senate was concerned about what then had been a rash of bank failures and what changes to make in the legislation. I was a witness and counsel for FDIC before the McClellan committee, the rackets investigating committee.

SHARP: You mentioned in our last interview that the FDIC brought so many cases to you that that actually developed as a specialty. How?

LEGGE: Yes it did. First of all it was a necessity simply of being able to put manpower to work on a large matter. So, we had to designate a team of people. Then there came the matter of getting familiar with the FDIC statutes, FDIC's regulations, their procedures and how they want to handle matters, their policies, the legislative matters that we just mentioned, the Federal Deposit Insurance Act, and other matters like that.

It just evolves into a team of people who have expertise and know those things. So when another one [case] comes along or more problems arise, they are the "specialists" who get that type of work.

Gap Stores Securities Litigation: Both Plaintiffs and Defendants as Classes

SHARP: In the *Gap Stores Securities Litigation*, that is also included as a Federal Rules Decision. I wondered if you could just say something about how the FRCP [Federal Rules of Civil Procedure] rules involving class action were applied here.

LEGGE: In that case you had a stock situation, where there were a lot of people who claimed that they had lost money because of the drop in the market value of the shares of The Gap Stores shortly after The Gap Stores went public.

So there were again ten to fifteen, maybe twenty lawsuits filed, all purporting to be class actions. Well, they were all centered in San Francisco, before Judge [Spencer] Williams. We determined from the very beginning that there would be a class, a plaintiffs' class of some kind. So, we agreed to that, but what we disagreed over was how broad the class should be.

Then the plaintiffs tried something rather innovative, which was to make a *defendant* class out of certain of the stock and bond brokers who had handled the securities. Instead of having to sue each of the several underwriters of that stock issue separately, serving each one separately, they asked to make a class out of them.

One defendant would have the burden of representing all the defendants in the defendants' opposition. That, at the time it was done, was rather a unique idea and Judge Williams agreed with it and went along with it.

It did not affect my particular aspect of that case because I was representing the corporation The Gap Stores itself. Its real impact was on the counsel who were representing the stock and bond underwriters.

The *Gap* is illustrative of, again, present trends of litigation. You again have the class action being used. No one stockholder had a very great loss. Then you have in addition to that some very aggressive plaintiffs' attorneys from all around the country who want to make class actions out of it, and want to control a class. Again you have the multidistrict judicial panel which says, "Well we can't have these cases going on all over the United States," so they consolidate the cases in San Francisco. You have the problems of who on the plaintiffs' side is going to control that litigation. Then going ahead with it, getting the job done, and in this case, instead of trying the case, we ended up settling it.

They were very complicated settlement discussions. It is what goes on very frequently in litigation where there are so many interests. You have the plaintiffs, the class and their attorneys, and many of the plaintiffs' attorneys have their separate ideas. You have the corporation which I represented. We had the officers and directors of the corporation, who were separately represented and for whom there was some insurance coverage. We had the attorneys who represented the corporation, not us, but their regular corporate counsel. There were also accountants and the stock and bond underwriters and perhaps a few others that I may have forgotten about. All under those parties, all of them having to have a say, and all of them being involved in negotiations.

SHARP: Did this involve a new interpretation for part of the 1933 Securities Act?

LEGGE: I don't know that you call it new. There were a couple of issues there that the courts had not finally decided or that other courts had disagreed on. In fact, some of the issues that were resolved there, not resolved but were faced there, are still unresolved.

One question is whether certain sections of the federal Securities Act give individual litigants a private right to sue at all. Or whether they are simply regulatory statutes, where the federal government is the only one who can do anything about it.

If you are looking at the *Gap* as a case that made a lot of new law, I think really the only new law it made was this use of the defendants' class. I think again, from your historical perspective, that the *Gap* cases are simply an illustration of how when something goes wrong, with the securities of a publicly held company, you have now these massive class actions.

You have plaintiffs' attorneys wanting to control them and competing with one another for that control. Lots of defendants and very complex procedures. To try to resolve these, to try to get all of the work done, resolve the disputes, is a very complicated package, if only because of the large number of people involved in it.

SHARP: I am impressed in these four cases by the *process*.

LEGGE: That is why I mention them, because it is really the process of what is happening to litigation. Most of the general public thinks you file a lawsuit and in a few days you are going to end up before a jury trial. Then you are going to have a *decision*.

Well, I suppose that might be ideal but it doesn't work that way, particularly in business litigation cases. The issues are too complex. There are too many people. There are too many large sums of money involved. Then the courts have these class action procedures and they have wide open discovery, all of that just drags the litigation and cases out.

Growth of the Business Litigation Department

SHARP: What do these cases show, do you think, about the growth of the business litigation department at Bronsons'?

LEGGE: Well, we have grown. By we I mean the whole profession has grown in business litigation. The increased use of the Securities Acts, for private suits, increased use to get trust laws, just a whole mess of other things.

Our firm did not have a separate business litigation department when I started. We had our general business people and we had our insurance defense litigation. We began to get cases of antitrust nature, SEC nature, that didn't quite fit either mold. It took both skills. It took the knowledge of business, because you know you can't really try an antitrust case unless you have some business knowledge. You can't try a securities case unless you have some experience in dealing with stocks and bonds on the business side.

On the other hand, you can't give those to strictly corporate and business lawyers who have never been in a courtroom. For several years we tried to handle it in one of the major departments. I should say, that some litigators tried to give some time doing business litigation. Conversely some of the business people trying to give some time to litigation.

We finally decided that we should develop a separate specialty of business litigation.

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LEGGE: I cannot take any credit for the firm having grown because of me. I think we simply were riding along on the tide of a great increase in business litigation. The only good sense we had was to design the right type of ship to sail with the tide.

SHARP: What would you say were the most frequent issues brought to the department when it was first started?

LEGGE: You mean in terms of the scope of cases? Antitrust and SEC.

SHARP: And now?

LEGGE: The same, with some broadening. In business litigation, however, it is amazing, absolutely amazing, how many small contract cases there are. That is, people enter into written agreements, and some of them involving large sums of money, with so little forethought as to the problems that can arise, that they come to you with these contracts and even *they* are amazed at how they were silly and stupid about doing some of these things.

We have contract cases on the plaintiff's side and the defendant's side, where you just wonder what people could possibly be thinking of when they enter into those contracts.

SHARP: What's an example of a small contract?

LEGGE: Oh, we had one where, one of my most recent ones, two people were forming a business, a computer software business. One was bringing the hardware and the other was supposedly developing, had the talent for developing, the software. They were going to form their own business and they did.

They didn't look down the line far enough and the business did not prosper, although you might think that it was an ideal combination of the hardware with the software, and two very aggressive people. The business floundered. They didn't give enough thinking to who would really be the head of the thing, so they both tried to run it. They didn't give any thinking to who was going to be responsible for maintaining the finances of the organization, so nobody did that.

They did not have a sensible marketing plan. Each of the two were out floundering by themselves. So the debts piled up and up and up. Then they went their own separate ways. They have some loose language in a letter they had between them as to what would occur at various times including a breakup.

They did not foresee and did not *deal* with either the opportunities or the problems. So, they have now broken up. The hardware is being attached by a creditor. One of the people is trying to keep it locked in his basement and won't let the lender or the other one in. The one who has got the right to the software can't get the software from the other. So they are both at a total impasse.

Where, with a little foresight as to what might have occurred, and not just in doomsday what might have occurred, but even a successful "what might have occurred," they could have sat down and maybe with just a few hours of thinking could have eliminated both the problems that gave rise to their failure, business failure, *and* have eliminated the disputes they are now going through, and the money they are now spending to resolve those disputes.

The Lawyer-Client Relationship

SHARP: If you are not inside the business, inside the corporation, how difficult is it to learn the facts of what is going on?

LEGGE: You mean in order to prepare a case? Well, that's a factor of *people*. Some people are very good communicators, some are terrible. The good communicators, the client communicators and good lawyer communicators, get along very, very well. You can get the facts. The client can educate the lawyer with what he needs to know.

But, if you want to cross a client who is not a good communicator, with a lawyer who can't effectively communicate, it becomes a very difficult process.

Particularly on technical matters. I suppose some of the most difficult ones are construction type disputes, contract and construction. You may have a course of conduct going on day after day after day, when work is being done and how it is recorded. In the construction field you have to get into, you just look at all these working plans and papers. They are just a morass that mean nothing to you. Somebody has to explain them to you.

Some don't care, and in some instances it is very difficult. With some it is easy, and I think the biggest single factor there is just how good is the client communicating and how good is the lawyer communicating?

SHARP: How do you establish some sort of tone of trust?

LEGGE: How do people communicate with one another in trust of any level? I don't know. First of all I suppose you could say that if the client brings the business to you, he has at least right at the very beginning said, "I trust this person."

Then you have to get to know him to know whether you trust him. I think we all start out with a very great degree of trust in our clients. Some of us who have been burned a few times will also have a certain healthy skepticism about what our clients tell us at first blush.

As long as you can establish the fact that one, you have to be talking to each other, and second, that you have mutual objectives, then, what are the objectives in the case? You can work at getting on the assumption of trust, and then the trust develops.

This last factor, identifying what it is you want to do with the case, is very important. The lawyer may have in the back of his head, "Here is what I am going to do," something like, "I'm going to knock this thing out." He may not really communicate that to the client. The client may view the case a different way. What the lawyer is doing could conceivably be ending up being contrary to the corporate policy or principles that the company wants to follow.

So there has to be the communication and there has to be the definition of where the case is going to go.

SHARP: I wanted to ask you about Mr. Painter and how you might have worked with him—not as part of the business litigation department but as someone who might have brought the case to you.

LEGGE: Well, I started working for Jack when I first came into the firm. My role with him was simply I was an associate assisting him in his role as a corporate partner. The work I was doing for him was almost all business, corporate and contract. I remember a lot of timber work and a lot of shipping work.

Then as I grew in the practice and he [Painter] gave more things to me, and I started doing the litigation, he would give me the litigation problems that would arise. Then, they were my problems. I was supposed to handle the cases. I would communicate with him, just a) to keep him advised so he could communicate with his clients, and b) to get his counsel as necessary. Once turning a case over to me he viewed that as my responsibility.

SHARP: Did that seem particularly scary at the beginning?

LEGGE: No, because it developed gradually. It isn't as if one day you are fish and the next day you are fowl. It's a gradual process of taking on work and pieces of work, and then finally a whole case.

Adaptation of Trial and Litigation Procedures

SHARP: I had a couple of questions just generally about trial and litigation procedures.

Have there been some special procedures adapted for the increasing amount of litigation?

LEGGE: I don't think so in the courts. That, I think, is one of the very great problems in the process of administration of justice in the courts. Cases have gotten more complex and they haven't gotten simpler. The multidistrict panel and its assignment of cases throughout the country to one area, is an attempt at simplification and I think a very wise one.

But you superimpose upon the court system the class action rules, which whether you like it or don't like it, does add tremendously to the work of the courts. Then you add the tremendous increase in discovery in every case, that is, the great volume of pretrial depositions, examination of documents and interrogatories. Then you add to the court system the fact that just about every year the Congress meets, or every year the state legislature meets, they give the legal system something more to litigate about: environmental things, sex discrimination, age discrimination. Those were unknown five to ten years ago. There is a substantial volume of energy law.

There are substantial volumes of litigation now all of which is now centered in the courts. What they have done, is really in my estimation, shove ten pounds into a five-pound bag. It just won't hold it. There just are not enough steps being taken to simplify and shorten down the litigation process. That is why you have a lot of people who want to use arbitration instead of the court process. That is why you have the so-called rent-a-judge process that people are using. I think that they need to do more to simplify.

SHARP: Well, like what?

LEGGE: One example that I urge and will urge in the new job that I have with the courts [as member of the Ninth Circuit's Judicial Conference], is what I would call the simple handling of short cases. That is, why should some cases that are relatively small go through the complex processes? Why can't we simply have a pleading that frames the complaint, an answer which frames the defendant's issues, and then if it is a matter of two people disagreeing with one another, get them to trial in thirty days or ninety days.

Don't have any pretrial discovery. Get A up there to tell his story, and then put B to tell his story and then let the judge and jury decide the darn thing. Why make that case get in line behind the *Gap Securities Litigation*, the *Koratron* cases, and why put the parties through the expenses of taking depositions, taking documents?

I am convinced that there are a large number of cases that can be disposed of and disposed of very rapidly that way. That is one answer. First of all, you take the universe of all litigation and then you say out of that universe here is the portion that can be handled that way. Then you can attack the other segments of the universe to see if you can come up with some ideas on those things too.

SHARP: I thought the pretrial conference was supposed to help.

LEGGE: Supposed to. In my opinion, while it may have shortened down trials when you actually get in the courtroom to try the case before a judge and jury, all it has really added is another level of bureaucracy.

Well, I am not stating that fairly. I am sure in some cases the pretrial conference has accomplished something. So that when the jury is sitting there the issues are defined, the evidence is defined and there is less wasted time there. But in most cases, it is simply another procedural step that you have got to put somebody through. In a lot of instances, an unnecessary procedural step.

SHARP: Besides your small case handling, are there other case management techniques or other sorts of things you would do?

LEGGE: Well, there are other things that can be done. These are mostly things that would have to be done by the courts or by the legislature. Your question is hitting me without having given it any thought for the purpose of the meeting with you today, so I can't recall everything, but there are plenty of ideas to be used.

Some judges are trying a few of them themselves. For example, some judges have a rule that just limits absolutely the number of interrogatories that can be asked, regardless of the size of the case. You can only have twenty questions. They don't care how big your case is or how small, there are only twenty questions. That is obviously an attempt to do the same thing.

There are other things that can be done, but I think most of it clearly depends on the willingness of particular judges to trim cases down earlier. I think that the summary judgment procedures are very underused. That is, most lower court judges are afraid of summary judgments and don't grant them unless they are in the *most* clear case because they are so often reversed by the appellate court on the basis that, lurking somewhere, somehow in the case, is a question of fact that the lower court should not have decided in a summary fashion.

If the appellate courts gave the lower courts more liberality there, you would in fact end up with faster justice, and in my opinion probably better justice. In any case, there may lurk within it some element of, call it a 1 percent or 2 percent factual issue. Ninety-nine or 98 percent is a legal question that some courts should decide. Just from a statistical, numerical point of view that case ought to be decided and gotten rid of, even at the risk of a 1 percent to 2 percent risk that there is something else in the case.

Arguing Before the United States Supreme Court

SHARP: I wanted to ask you just briefly about your experiences at the United States Supreme Court. First of all, how did the *Anderson* and *Procunier* cases come to you?

LEGGE: I got a call from federal court judges asking me to volunteer to take the case to the [United States] Supreme Court. Both of those cases were criminal. In neither one of them did I ever even meet the client. By the time I got them, they had already been convicted and were in prison and then were seeking to go through the federal court process to try to get out of prison because of violation of constitutional rights.

There was no compensation for either case. They were done on a pro bono publico basis. As I said, they were at the request of judges asking if I could take the case on.

SHARP: *Anderson* was a forgery case.⁷⁰ The petition for review was on a legal question of the petitioner's failure to testify. How did you go about getting ready to argue that case?

LEGGE: Well, how you go about something like that is you first of all get the transcript of his trial so you know what occurred at the trial. Then you go through and read that and see how those procedures conformed with what is then the defined law of the United States Supreme Court as to what a person's constitutional rights are.

Or if you are in a gray area, or think you have an area in which something that was done to him should be in violation of constitutional rights, then you petition the court for a hearing. You state what your case is and why you think you should have a hearing. If the hearing is granted, you then write a more detailed brief on the merits—why what was done was wrong.

In the petition you are primarily simply trying to attract the attention of the court with your case. You say, "Hey, hear me." When they say, "We will hear you," then you get down and argue the case.

When you get to the stage of the actual oral argument, it simply becomes a matter of going back—well, I shouldn't say simply it is a lot of work going back—and going over that transcript again, going over the arguments that were

70. *Anderson v. Nelson, Warden*, 390 U.S. 523 (1968).

made, seeing what's new, trying to come up with some new ideas and some new approaches.

SHARP: Why did the court hear this case?

LEGGE: The *Anderson* case? I think it decided to hear that one because of the issue of whether an accused could be compelled to testify. That had already been established, you could not compel him to testify. The prosecutors were using the failure to testify as very heavy argument stuff for a jury, almost creating an inference of guilt before the jury because the person hadn't had the nerve to get up there on the stand to testify.

It was an argument that [said], "Look, Mr. So and So says he didn't pull the trigger. He sits here in this courtroom and refuses to get up there and tell his story. He refuses to be examined. What can you ladies and gentlemen conclude from his refusal to even get up in his own defense?!" That type of an argument.

The [United States] Supreme Court said, "Well, if the constitutional privilege against self-incrimination means anything meaningfully, it has to include the fact that his taking the stand can't be wrapped around his neck.

SHARP: What was interesting about the *Procunier* case?⁷¹

LEGGE: The *Procunier* case was interesting for a lot of reasons. From a legal point of view, not terribly much. I think the significant thing was that this was the early days of the Burger court. The Burger court was trying to send a signal down to the lower court and to the state prosecutors that it was not going to go along with the liberal expansion of constitutional rights and privileges that had gone on during the [Earl] Warren era.

They were attracted, I think, to the Atchley case because Atchley had been in prison for ten years. He had been convicted a long time ago. We were bringing these issues up much later. All of the things we were arguing for him are matters which the Warren court had created since his conviction. Rights that they say existed, but didn't say it until after his conviction.

So I think that is why the Burger court took it on. I think that they did not decide anything really significant with respect to the law. But they were sending a signal down to the lower courts, and said, "Hey, we have to get tougher on this federal law stuff. Although we are not going to tolerate gross violations of constitutional rights, we are not going to expand things out in this criminal direction, the way the Warren court handled it."

I am convinced that had I had the same *Procunier*-Atchley case before the Warren court I would have won it. I am also convinced that if I had the *Anderson* against Nelson case before the Burger court I would have lost it. [laughter] I really do think that the difference in the makeup of those two courts would have flipped the result in both cases.

SHARP: What was impressive about the court?

71. *Procunier, Director, California Department of Corrections v. Atchley*, 400 U.S. 446 (1970).

LEGGE: You mean in the substance of what they decided?

SHARP: No, in just what the court was like, just the demeanor of the court.

LEGGE: Oh, the demeanor, the actual demeanor in arguing the case before each court case is really not much different from one another.

Both Warren and Burger are very warm human beings and very gracious presiding officers. They are well aware, of course, of how counsel can be intimidated by simply the physical surroundings and being back there before the United States Supreme Court. They do their act the utmost best, and make it friendly, and make you feel at home and that your arguments are welcome and wanted.

I really don't draw any distinction between the two of them as presiding officers, or the graciousness with which they receive the arguments of counsel. That court is remarkable.

SHARP: I was asking you about your impression of the demeanor of the court. You mentioned that both Chief Justice Warren and Burger made the advocate feel quite at home.

LEGGE: Just a couple of other observations about the court. It is unique in the services that their clerk's office provides to the attorneys. The clerk's office for one thing is really very courteous and very eager to be of help to the practicing attorney. It is unlike most of the clerks' offices that you run across; they barely tolerate you.

They have a library that you have access to when you are in Washington. They have a lawyers' reading room where, as you are preparing for your argument, you can be in there uninterrupted, with runners. If you want a book, they will go get the book for you. If you want a file, they will go get a file for you.

Actually, in the courtroom they also have runners for counsels. So if you are there at the counsel table and if something comes up and you want a book, you flag down one of the clerks and they run off and within seconds will have that volume for you.

It is organized so that the time of the court is not wasted at all. They have on the speaker's podium lights indicating your time to speak. When you get down to a certain period of time where you are getting near the end, a yellow light flashes when your time is up, a red light goes on and you are supposed to stop even if you are in mid-sentence. Of course, if the justice asks you a question, you can go on and respond to the question.

Then they have it organized so that the counsel who are to argue the next case are sitting right behind the counsel arguing. So the instant the previous case is finished, the counsel vacates, the next are already there ready to move forward and talk. It is not a matter of people floundering around wondering where everybody is.

During noon hour breaks the clerk's office escorts you to the cafeteria to see that you are the first in line, and to see of course that you are all ready to resume again when the argument begins in the afternoon. So they really take

very good care of you. They do make you feel like you are performing a real function.

I suppose one element of the thing that you may consider disappointing, if you haven't been there as a spectator, is that there really isn't time for speeches. You might think you are a Daniel Webster or another great advocate. You have got fine learned speeches to give, but you never get a chance to give them. Most of the process is questions, questions, questions. That is what you get from the court, and that is how you have to prepare your oral argument. You have to know, of course an outline of what you want to get across. But you are not going to get time to give a speech. You have to be prepared for all of the questions about the case that the justices could possibly ask you. That is the only way you get your verbal messages across.

SHARP: How long does it take to give the arguments?

LEGGE: They did it according to the size. I think when criminal cases are argued they are limited to an hour a side. I think most cases are limited to a half hour a side. But that has got to be the tip of the iceberg. You know, when you are standing up there you have got to have total control of the entire case. You have got to know everything because you don't know what is lurking in the court's mind.

You will spend most of your time looking up and down the bench as you answer questions from the justices.

On the Cutting Edge

SHARP: That is really all of the questions that I had. I wondered if there were some things about your experiences at Bronsons' that we hadn't covered? The letter may have intrigued you to think of other statements that you would like to make about the growth of the business litigation department.

LEGGE: Well, I don't think there is anything more that is worthy of consideration as a general matter for discussion.

One thing about the practice that is probably true with respect to other firms as well as ours: I just consider it a real joy to be able to do what we do here.

That is, we have interesting work to do. We have interesting people to work with, and work for, and work against. We have interesting subject matters to deal with. We are by and large on the cutting edge of what is going on in the world. If not scientifically, at least in virtually everything else, and in some cases, with respect to science. It is such a privilege to have all this interesting work and interesting things to do, and have a capacity to do something about it.

I consider myself so much more fortunate than some of my friends in high positions in other business companies whose work becomes routine, or it just loses newness and vitality. The practice of law, and I think those of us who are privileged to engage in it, and the type of work we have here, is a very privileged life. It has its burdens—the pressures, the time, the juggling, the wins, the losses. It has its pressures. But on balance, it is a life that really is very much appreciated.

SHARP: Why is it that Bronsons' is doing all this?

LEGGE: Well, I think we have capable people. We have good clients. We develop a reputation as the years go along so the business comes to us. But we are not unique. I am sure that there is meaningful work in other firms too. I am sure that you would hear the same thing from other partners in other law firms.

SHARP: Is it possible to say that the increasing litigiousness of the American public has made really interesting work?

LEGGE: Yes, that is true, and made us money, too. To be pecuniary about it, of course, the more lawsuits there are around the more money the lawyers make. That is not necessarily the best thing.

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Victor H. Hampton

Bronsons' First Administrative Manager

An Interview Conducted by
Sarah L. Sharp

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1

A Biographical Introduction

[Date of Interview: October 6, 1981]##

Youth, College, and Early Career

SHARP: First of all I just want to get some biographical background. What is your full name?

HAMPTON: My full name is Victor Herbert Hampton.

SHARP: When were you born?

HAMPTON: November 24, 1933.

SHARP: Was this in Oakland or in San Francisco?

HAMPTON: No, in Detroit, Michigan.

SHARP: Did you grow up, then, in Detroit?

HAMPTON: Yes, I was born in Detroit, raised in Dearborn, which is a suburb of Detroit.

SHARP: What are your parents' names?

HAMPTON: My mother's name was Florence Caroline Johnson and she married Albert Edwin Hampton. They were both English and they came to America in about

This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 292

1921, came directly to Detroit.

SHARP: Did you have brothers and sisters?

HAMPTON: I had one brother who is now deceased. His name was Arnold Stanley Hampton.

SHARP: You are the older?

HAMPTON: Younger.

SHARP: I want to get a sense of just what your early years were like. I would like you to tell me just a bit about your early schooling. Then we will just go up through your later years.

HAMPTON: Well, as I say, I was raised in Dearborn. I went to Dearborn public schools until I was in the eighth grade when we moved to Detroit. I continued in Detroit public schools through high school. I graduated from Cooley High School in June of 1950, which was the start of the Korean war. I graduated at sixteen because I had skipped two half grades, the second half of third and fourth grades I think it was.

I went to the University of Michigan in the fall of 1950. My intention, right from the start, was to get a degree in accounting. I stayed at the university for both my bachelor's and my master's degree in business administration with a major in accounting and finance.

SHARP: Why did you pick accounting?

HAMPTON: I don't know. Nobody else in the family was an accountant. My father was an engineer with Ford Motor Company through almost all of his working career, although he did not have a degree in engineering. He worked for Ford for the last ten or so years in establishing the production lines for the new models of the cars. So, he was always about a year or a year and a half ahead of actual production.

Nobody else in the family was an accountant in prior generations. I do have one cousin in England who is an accountant. It just seemed natural for me to become an accountant.

SHARP: What were some of your early jobs? Did you work in college?

HAMPTON: I had no jobs while I was in high school. When I went to college I worked in the audio-visual extension program at the university just mailing films out to high schools and grade schools in the state, receiving them back and processing them. I did that for about, I think, two years.

Then I started getting active in student activities and worked with student government and eventually was treasurer of the student government. Part of the student government program is running a classical film program on weekends, and I was assistant manager of that and earned some money doing that.

One of the summers while I was at the university I took three courses at Wayne State, which is in Detroit, just so I could finish school a little bit faster.

Two other summers I was an intern in accounting, one year at Ford Motor and another year at Touche, Niven, Bailey and Smart which is a public accounting firm. They are now called Touche, Ross and Company. While I was at Touche Ross I was acting as a very junior auditor. This was during my last year in college and I was offered a job with them when I finished college.

Do you want me to go on from there, or do you want me to go back into history a little bit first?

SHARP: I did want to get a sense of what your early jobs were like because I knew that you came to Bronsons' from Mills. I want to somehow get you from Dearborn to Mills. You began to have some jobs actually in accounting, and using the degree?

HAMPTON: Yes, while I was in school I was doing work in accounting both at Ford and at Touche Ross. When I graduated with my master's I did have a job at Touche Ross, but just as I was about to leave school, I was offered a job as the executive secretary of the United States National Student Association. This was understood to be a one-year appointment.

I talked to the Touche Ross people and they agreed that it would be a good opportunity for me so they deferred my coming to them for a year.

I went to Philadelphia, which is the headquarters of the National Student Association, and worked with student leaders in running a program for about three hundred member student governments around the country. The biggest event of the year is a National Student Congress held annually. At that time we had about six hundred students attending a week's program concentrating primarily on student government, but also voicing opinions on national affairs. The conference that year was held in Minneapolis, at the University of Minnesota.

While it is a regular paying job, we spent an unusually large number of hours working for the National Student Association. Our days were often fifteen and sixteen hours long and it went on seven days a week.

It was a lot of fun and I enjoyed it and I did not mind having spent that year. It was not strictly accounting. It was general business or office management, but I was the chief financial officer as well.

I came back to Touche Ross and worked for six months as a junior accountant doing regular audits—preparing to take the balance of the CPA [Certified Public Accountant] exam. I found, however, that I was not really happy doing auditing work. So when I was drafted into the service about six months later, I told them that I probably would not be coming back because I just wasn't happy with that kind of work.

I spent two years in the army. Almost all of the time I was at Fifth Army Headquarters, which is in Chicago. I was assigned to the Military Personnel Section of the Adjutant General's office of Fifth Army Headquarters. I was primarily a clerk typist—did no accounting, felt that I was wasted, but you do what the army tells you to do.

In the course of my time there I did have an opportunity to help senior enlisted officers audit personnel records which involved some trips to other installations around Chicago. I helped set up the financial records for the officers

club at Fort Sheridan which is on the north side of Chicago.

In order to make ends meet while I was in the service and in order to be able to live off base, I took a part-time job working in the accounting department at one of the department stores in downtown Chicago—which was a lot more fun than being in the service.

I was only in the service for two years. Toward the end of those two years I got another job as a junior accountant at the managing consulting firm of Booz, Allen and Hamilton, which is in Chicago. I was doing very routine accounting work such as bank reconciliations, and helping the development of budgets and analyses.

They offered me a job when I finished the service and I went to work for them in September of 1958. I was first the assistant to the manager of budgets and taxes. After I was there about four months the manager of accounting decided to retire and I took over her position as manager of accounting. It was the first, permanent, full-time job where I felt I was really using my accounting work and enjoying it. I was very happy at Booz Allen and I stayed with them for about five years, but there was not a great deal of opportunity for growth there. The person who supervised me was the controller and it appeared that he would stay there for an extended period of time.

After I had been there for about four years I had an opportunity to move to their international office, which at that time was in Zurich, Switzerland. I was three days from moving to Switzerland when they decided they did not want to expand their international operations at that time. I was then in a position of having been replaced as the manager of accounting and having no specific places to go in the firm.

I stayed with them for about another six months while we tried to work out an appropriate assignment and nothing really promising developed. So, I started interviewing and found what I thought would be a very happy existence at North Advertising, which is also in Chicago, as head of their billing department.

North Advertising is about the fourth largest advertising agency in Chicago. Their primary account was for the Gillette Company handling Toni home permanents, Gillette razors, Adorn hair spray and the like. During the time I was with them, they acquired another advertising agency and were very aggressively expanding in other advertising agencies. It was my responsibility to try to merge these new companies into the financial operations of North Advertising. So, it was very challenging and very interesting.

I found, however, that I was not very happy with some of the fiscal policies of the firm and decided that it would be better for myself and for my own development if I were to leave.

Years at Mills College

HAMPTON: I redid my resume, and found a very small ad in *Wall Street Journal* where a small liberal arts college for women on the West Coast was looking for an assistant business manager. Because of my connections with the National Student Association, I just guessed that that was Mills College and I knew of its

reputation and decided to apply for the job.

I was interviewed by Lawrence W. Larson, who was at that time the business manager and vice-president for finance of Mills College. He was interviewing around the country and he interviewed me in Chicago, and I was hired almost immediately.

I accepted the job without having ever come to Oakland for an interview. I had never been in Oakland or San Francisco. My wife and I piled our two children in the car, they were then two and four years old, and we drove out to San Francisco. We stayed in an apartment on the campus at Mills for two months until we found our house which was in San Ramon, California—and where we are still living fifteen years later.

SHARP: What time of year was it when you drove out?

HAMPTON: September. It was hot and in those days we didn't have air-conditioned cars so it was very warm. But it was a good trip and the kids travelled well.

I started in Mills in September of 1966, fifteen years ago, and stayed with them until 1975, almost nine years later.

How deeply do you want me to go into my experiences at Mills?

SHARP: What I would like to do in the next several questions is somehow contrast your work at Mills with your work here at Bronsons'.

What were some of the main issues in administration that you had to handle when you were at Mills? Let us start out that way.

HAMPTON: I started there, as I said, as the assistant business manager and about six months later was made business manager. Initially, we had a controller at Mills, Fred Livingston, who had been with the college for about twenty-five years by the time I started. He had done a very adequate job as controller and as chief accountant, keeping the books straight and paying the bills and so on. But, Larry Larson's feeling was that Fred was not able to develop with the college and to meet some of the challenges which private colleges were facing such as handling government grants for construction or research, inflation crunches and declining enrollments. Gradually I became more involved in the overall accounting for the school, as well as taking on some of the more special projects which Larry Larson had in mind.

At the time I arrived, Mills was just beginning a very large building program, most of which was funded partially by government grants for building both classrooms and residence halls, and partially by a very major fund-raising campaign which the college went through.

One of the ideas which really appealed to me when I decided to go to Mills was that they were considering developing a coordinate college for men. I saw that as an opportunity for real growth, if I were to go into that coordinate college as their financial director. That never came to fruition but I had enough other things to keep me busy that it did not matter.

I spent a lot of time in administering the government grants which required detailed accounting to the government. It required a great deal of investment of cash for temporary periods of time as the grants would come to us before we had

to disburse the money. So I was involved in the investment program.

In addition to the short-term investments, the college has a very substantial endowment which was managed by outside investment counselors, but I was their primary contact.

We had to streamline the accounting procedure, especially as it pertained to student accounts because so many of the students were on some kind of scholarship or other student aid. This meant a lot of confusion for them as well as for the college—as to where the money was coming from, when it was coming—and making sure that all accounts were paid currently.

The fund-raising program required a lot of coordination with the development office which was the fund-raising office. There were just a lot of activities and special projects. While I was there, we began developing long-term financial planning which meant development of long-term budgeting programs, which we had not done before.

Many of the projects were done at the request of the Board of Trustees. After the first year or so, I attended all of the Board of Trustees meetings with Larry Larson and participated in some of the financial discussions. It was a good opportunity to meet with a lot of influential people in the Bay Area, including Jim [James D.] Hart of Bancroft Library, who was on the board.

I found it to be a very challenging, very rewarding career. But, there came a time when I could see no future for myself at Mills other than staying in the same job, which I did not want, for a long period of time.

I discussed the opportunities with Larry Larson and he tended to agree with me that there wasn't a great future for me there. I decided I would start looking around. I interviewed, I think, probably three different organizations, one of which was Bronson, Bronson and McKinnon. I decided that Bronson had the greatest potential for growth for me. In May of 1975, I came to Bronson.

Administration at Bronson, Bronson and McKinnon

A Time of Transition

SHARP: What were your first impressions of the firm when you came?

HAMPTON: I had very little experience with lawyers in any of my prior positions, except that at Mills I did have some dealings with Crosby, Heafey, Roach and May which is an Oakland law firm that handles all of Mills's legal matters.

I was, I think, surprised that there were so many very large law firms in San Francisco. At the time I came to Bronson, I think, we probably had fifty-five or sixty attorneys. It was hard to conceive that I would be responsible to all sixty attorneys or to, certainly, the thirty or so partners we had at the time. But my experience at Booz, Allen and Hamilton which was a partnership when I went there, did help me to work with a great number of partners.

The firm was being adequately run for a medium-sized law firm, but Bronson was trying to develop itself into a large firm which could be responsive to the needs of its growing list of clients. They had just installed a computer which was not being adequately used, in my judgment. They did not have themselves properly organized administratively to develop and plan for the future.

I came after being interviewed by about five different partners. Most of them indicated they were trying to organize for the future. There was very little indication of what the structure of my job would be. There was an indication that my responsibilities would be in general business management, in trying to increase the use of the computer, in trying to develop plans for the future.

At the time I came, Richard Dilley was the office manager of the firm, and we decided that for clarification purposes, we would retitle his position as financial manager and my position would be administrative manager. Neither title probably very adequately or accurately described our responsibilities because I was certainly involved in finance and he was involved in administration. But,

he had been here for thirty years and it takes a little while to change procedures and responsibilities and so on.

SHARP: Would you consider your coming into Bronsons' similar to your going to Mills with your relationship with Mr. Livingston?

HAMPTON: I think that part of the reason that I came to the Bronson firm is because I saw just a tremendous similarity between what I moved into at Mills and what I was about to move into at Bronson. In both cases there was a man there who had been with the operation for a long period of time who had done a very good job, but who, the principals of the operation felt, was not ready to move into the future.

While I was at Mills, I found that it was a very easy transition for my taking over some of the responsibilities that Fred Livingston had. We always managed to work very closely and comfortably together. Fred was a very unassuming person. He was getting to the point where he did not want to take on additional responsibilities, so it worked out very well.

Fred Livingston had been crippled by polio when he was a youngster and had had a series of operations which resulted in his having to use a cane at all times. When I met Dick Dilley I found that he was suffering from rheumatoid arthritis and he was on two canes at the time. It just seemed that it was natural for me to come here.

I do not think that the transition at Bronsons' was as smooth as the transition was at Mills, possibly because Dick Dilley had had a broader range of responsibilities here than Fred had at Mills, and, because I think Dick Dilley was a little more reluctant to give up his responsibilities, and I think partially because he was under a great deal of pain because of his illness. That is bound to affect his personality. He was never anything but a gentleman and we worked, I thought, very well together—but the changing of responsibilities was a little less easy.

SHARP: I should just stop you right there. When you came to the firm in 1975 there were all sorts of changes going on, from what I could tell. Both the Bronsons died within a year or so after you came. Mr. McKinnon then died shortly after, if I have the sequence correct. Then Mr. Dilley left.⁷²

HAMPTON: He has been gone three years now.

SHARP: Almost all of a sudden the people who had been here the very longest, in two cases people who had actually founded the firm were gone. How would you contrast, just generally, the firm before all of the change took place and afterwards?

HAMPTON: Well, all three of the original partners, Bronson, Bronson and McKinnon had retired quite a few years before I came. Jack Painter who took over as the managing partner of the firm, as I recall, on the departure of the Bronsons, had

72. Ed Bronson, Sr., died in the fall of 1976. Roy Bronson died in the spring of 1977, and Harold McKinnon died late in 1977. Mr. Dilley retired in March 1979.

retired before I came. So, there had been some interim management.

I think that it was just a few years before I came when the firm really started to grow very quickly. They took on the responsibility for handling the bankruptcy of the United States National Bank in San Diego, as counsel to the Federal Deposit Insurance Corporation, before I came. It was at that point that they decided they had to get into the computer age. They had to really plan for significant growth. I think that planning was initiated by partners who were not right at the top of the ladder, but were getting very near the top and could see themselves as being the leaders in the late 1970s and now in the 1980s.

It was those partners that decided that they had to have some administrative help. Many law firms in the 1970s finally realized that if they wanted to continue practicing law, individually, they would have to get administrative help from non-lawyers. Prior to my coming, the general administration of the firm was handled by lawyers. Dick Dilley handled the financial operations and handled them well, but the partners needed somebody who could take over responsibility for day-to-day administration. It makes much more sense to pay somebody \$50,000 to do that than to spend attorney time, which is now being billed at \$125 or \$150 an hour, in administration. It just does not make any sense.

Plus the fact that lawyers, generally, with this firm have been with the firm since they have finished college. They have very little business experience outside of this firm. It is a lot more reasonable to bring in somebody from the outside who has certainly a broader range of experience in administration—and who has an interest in it—rather than use a lawyer to do administration just because it is there to be done.

Our firm is not unique in this regard and we may be even a little late in getting into that area of things. There are a lot of other law firms that have administrative managers who have been with the firm certainly longer than I have been here. It is generally felt that the first administrative manager in a law firm has a very short life expectancy because he is changing a lot of the ways that the firm is being managed. I have been here six years and that is a long time for a first administrative manager.

Increased Use of the Computer

SHARP: What sort of changes did you make when you first actually took over, after Mr. Dilley did retire?

HAMPTON: The first year that I was here I felt that I was not being utilized properly. Then I came to the realization that if I wanted things to happen I was going to have to start them on my own. So, I developed a program of, a list of, several projects that I felt we should be working on that I was prepared to start and to carry along.

I asked the management committee at that time to approve them as projects and to give me some priority order. They said they would do so, but they did not do so. So, I finally said, well, if they don't want to tell me what projects to work on, I'll just pick the ones that I feel are the most important. I just started developing projects and assuming more responsibility and reporting to the

management committee on what I was doing.

I had not had any formal evaluation of my work, or of my performance. I asked for an evaluation, and they said they would give me one but they never did. I finally decided, after talking to people outside of the firm, that no news was good news. If they aren't telling you you are doing a bad job, you must be doing a good job. So I stopped worrying about whether I was going to be evaluated.

I did not make major changes. I still don't make major changes without full approval of the management committee. One of the things that concerned me the most was that we had a computer which was installed primarily to assist us in keeping track of attorney time. By keeping track of time you are developing a format for bills which are to be sent to the client.

We were moving very slowly in turning this computer into a bill preparer. Many firms in San Francisco had computers then and have computers now, but very few of them use a computer to prepare a final bill. They generally use it to prepare a draft of the bill which the attorney then changes and has somebody type into a final bill. Our contention was that we would prepare a final bill using the computer. At the time I came, we probably prepared 50 percent of our bills on the computer. I felt that was a terrible waste of technology.

We are now preparing probably 95 percent of our bills on the computer. Every attorney, with one exception, uses the computer for preparation of most, if not all, of their bills.

SHARP: How did that happen? How were you able to communicate that need to use the computer more fully for bill preparation to the lawyers?

HAMPTON: Well, some of the lawyers recognized that the computer was there and should be used to prepare bills in final form, but none of them had the time to spend to carry that along. Others did not trust the computer. It was a new concept to them and some of them are opposed to it because it cost a lot of money. They would much rather be able to go into the accounting department and look at that hard copy that they were used to seeing, and deciding what to bill based on that hard copy. It takes time to change their attitude.

One thing we had to do was to improve the reliability of the computer information. That just takes a lot of attention to detail. I could not do all of that myself. We just had to make sure that we developed quality control within the computer operation. We have always had good computer people. They are loyal and they are conscientious. I think we have just gradually brought our attorneys around to realizing that they are going to do a good job for them.

There is very little distrust of the computer at this point. Part of the change in attitude came about because our clients got used to the idea of computers preparing billing for them. They got used to the idea of using computers in their own operation. They had faith in their own computers. Therefore, when they see our computer bill, they tend to have more faith in that than they do in a typed bill—which is certainly counter to what attorneys thought ten years ago.

Ten years ago, attorneys would say that clients will never accept a computer bill because people do not trust computers. That has changed now, and we are all used to computer operations. A lot of the attorneys realize that certainly the

computers can do it faster, and I think that probably many of them do not realize that if we didn't have a computer now, we would either be months behind in preparing bills or we would have a staff of ten people typing bills. It is much more efficient and much cheaper to do the bills on the computer.

SHARP: When Vernon Goodin and I talked about the use of the computer, I think that that was one of the ways that he approached using the computer—entering attorney time onto the computer. There was so much typing and preparing involved in coordinating the attorneys' time cards that that seemed like a really perfect application. I wondered what other sorts of applications of the computer have been made?

HAMPTON: The primary purpose of our computer was to keep track of attorney time. We then developed into preparing final bills on the computer. We keep track of all of our accounts receivable on the computer by recording each bill that is sent out and recording the payments against those bills. So, we are able to send out statements to our clients of what is unpaid at any time. We are able to send reminders to our attorneys of all of their bills that have been sent out that have not been paid.

We keep our general ledger on the computer. We keep track of our conflict of interest on the computer. This is a very sensitive area because attorneys must be careful that they do not represent one client and then act on the opposite side in another litigation matter against that client, because if they do so they are in conflict of interest.

Every time we consider accepting a case in the office, we must go back into our records and determine if we have ever represented somebody that will now be on the opposite side or vice versa. It does not mean that you may not represent somebody on the opposite side if the prior matter has been completed, assuming that you get releases from everybody that is concerned. But you must be aware of what those potential conflicts are and resolve them. We have not yet got all of our conflict [of interest] data historically converted to the computer, but all new information is being put in and we expect will be fully operational in a couple of months.

We keep track of our legal research that has been in the office by subject matter so that we can determine if we have ever done prior legal research that will help us in a new matter so that we don't spend a lot of time reinventing the wheel, as they say.

Word Processing and Team Work

SHARP: What other changes in office practices have occurred since you came in 1975—whether it is the roles of secretaries or office assistants or use of space in offices?

HAMPTON: I think probably the greatest change in law firms in the last ten years has been the development of word-processing equipment. When I came to the firm, we had a number of what are called magnetic card typewriters where the information that you are typing is stored on a card. You are able to revise those cards and then play it out in final form, so that a good deal of typing does not have to be

retyped for correction.

In the last five or six years, vendors have come out with increasingly more sophisticated equipment. It is hard to keep up with all of the changes, but unless you keep modifying your equipment you are going to find yourself behind the times, and much less productive than you could be.

There was nobody studying these changes when I came with the firm. I spent a good deal of time looking at alternatives and proposing changes to the management committee. Most of these changes have been approved and we now have a significant amount of word-processing equipment in the office. Most of this equipment now combines a visual display of the text and more sophisticated storage so that you can store a fifty-page document on one diskette and call it up into memory, revise it, move paragraphs around, and change names within it with one sweep up of a button. The final document prints out much faster than with the old kind of equipment.

In order to utilize the equipment to the fullest and get your full money's worth from it, we have developed extended hours in our document center so that two word processors work Monday, Tuesday, Wednesday for twelve hours a day, and two others come in and work Thursday, Friday, Saturday for twelve hours a day. Instead of getting a thirty-seven and a half hour week out of the machine, you are getting about seventy-two hours out of the machine.

You are obviously getting more use out of the same space and you are certainly getting a lot more work done.

SHARP: They are pretty popular?

HAMPTON: Yes, there are other law firms that are on extended hours. None, to my knowledge, are on twelve-hour days but ours seems to work out. Our people are very happy with it because it gives them three days of work and four days of free time which they can use as they wish. It also cuts down on their commuting costs.

SHARP: Sure. Is that sort of extended time applicable to roles of other assistants in the office?

HAMPTON: We have no other people in the office that are on that kind of extended hours. The people in the computer room do have varying schedules so that we are keeping the computer room open from about seven o'clock in the morning to about six or six-thirty in the evenings, plus on Saturday.

This does not work out very well in straight secretarial assignments because the attorney needs his secretary available to him when he is working. Attorneys cannot work on these kinds of hours either. We are experimenting with what is called secretarial work groups where we may have a group of four or five secretaries in a team handling the work of eight to ten attorneys. In case of illness or absence, another secretary can be available to that attorney, their phones are covered, the secretaries are familiar with that attorney's clients and his method of operation. It helps to iron out the peaks and valleys of work loads.

We have a proposal which is being developed to present to the partners to put work groups throughout the office. We figure this would save thousands of dollars a month but it does require a change in attitude and approach both on the part of the attorney and the secretary. We are not sure it is going to be approved, but it is a concept that the partners ought to be looking at.

SHARP: That sounds like a pretty dramatic change especially in terms of the relationship between the attorney and his secretary. Traditionally, a secretary, usually a woman, would be working for an attorney, usually a man, for fifteen or twenty years perhaps, and there is not an interchangeability at all. So you would be pretty much revolutionizing the whole concept of the assistant, the secretary.

What about the use of male secretaries, is that something that is here, somewhere?

HAMPTON: It is here, here [at Bronsons']. I think that changing this relationship between the attorney and secretary is revolutionary. It is true that generally the secretary was a woman and the attorney was a man. We probably now have ten to fifteen woman attorneys and we have three or four male secretaries. There is a revolution and it is a change, and attorneys and secretaries are getting used to those changes.

It used to be that one secretary would handle the work of one attorney. Most attorneys are already used to the idea that they have to share their secretary with another attorney. The changes in technology enable one secretary to do the work of two attorneys if we give her the proper equipment and the proper support, and it is much more efficient. You can rent a power typewriter for \$700 a month and if you can get one secretary with her power typewriter to handle the work of two attorneys you are saving a good deal of money. Secretaries are now getting paid anywhere from about \$1200 to \$1800 a month and there are not enough of them to go around. So you have got to find some other alternative.

If you can change the attitude of the attorney and the secretary, and prove to the attorney that his work will get done at least as fast and maybe better over the long run, he is going to be willing to make those changes. As long as the secretary was there to do the attorney's work, everything was fine, but secretaries go on vacation, they get sick, or their families get sick, or they have a family emergency, and if you don't plan for that, you have an attorney with no secretary—and you can only find so many temporaries to help him out on any given day.

If one attorney has a rush project where he needs a hundred-page document revised by this afternoon, one secretary cannot do it unless she gets power equipment or gets help. What we are trying to do is anticipate those needs, and to give the attorney the help he needs.

One of our senior partners, Max Weingarten, has had the same secretary, Yvonne Dillon, for about twenty years. It would be an ideal situation for a one attorney-one secretary relationship, but Yvonne is willing to change and has got word-processing skills which makes her able to handle the work of more than just Max Weingarten, and Max has been willing to change. So, now Yvonne Dillon is going to be the coordinator of our business team which has about ten attorneys and five secretaries, with extensive word-processing equipment.

This business team does a lot of securities work with heavy documentation, which means long documents, many revisions, and you can't do that on a regular Selectric typewriter. These people are willing to change, and if they can change, I am sure that we can prove to litigators in the office that they can change their systems.

We have an insurance litigation team where two or three secretaries serve four or five attorneys, and it works out. Because of changes in the habits of those attorneys or their practices or terminations of secretaries, we are not always right up to the normal secretarial work group size, but we have proved that can work. As soon as we can get all of the attorneys to give it a try, I think that we can prove that it will work throughout the office.

SHARP: That is really interesting. It sounds like you have a tremendous amount of work to do yourself. How do you delegate your own work?

HAMPTON: I have about nine or ten people reporting to me who are supervisors of various groups within the office, such as the records room, the library, the accounting department, the computer. Good business management says that you should not have that many people reporting to one person, but it seems to work in this firm.

Many of these supervisors have been with the firm as long as I have and do an excellent job. They do not require a great deal of supervision. There are needs at times to coordinate the work of these various areas of responsibility, and it is my responsibility to see that those jobs are coordinated. It is important to keep the lines of communication open so you know what is happening in those departments and what their needs are.

We tried having regular meetings of these supervisors to exchange ideas and try to keep the lines of communication open, but we found that those meetings were not really terribly productive. Now we just have meetings as needed—sometimes just certain members of that administrative supervisory group, sometimes it is the entire group.

I think the key to a good operation is to have quality people in those positions, and I think we do.

Administration and the Committees

SHARP: I wanted to ask you about other elements of management and administration in the firm. For example, you have told me a bit about how you work with the management committee. It seems to be a matter of transferring information to them—suggestions for changes or other sorts of recommendations. What do you see as their role in the firm as a whole?

HAMPTON: The partners meet as a group now, once a month. It is generally a dinner meeting where they review the actions of the management committee and where the partners as a group decide policy for the firm. The partnership agreement specifies that the overall policy of the firm is decided by the partnership. So the management committee really handles things on an interim basis.

They certainly develop proposals for the partnership—handle the day-to-day administration of that policy. As the firm continues to grow, the partners find that they are not really attuned to the day-to-day questions that come up. It becomes very inefficient for now forty-four partners to sit down and make policy. Certainly they need to keep the lines of communication open so they know what is happening.

Increasingly people are feeling that policy decisions are going to have to be made by a smaller group of people. There is a proposal that is just now reduced to writing which would expand the responsibilities of the management committee and would reduce the number of partner meetings to discuss policy. The management committee now is composed of seven partners, all but two of whom are elected by the general partnership. The last two are generally junior partners who are appointed to six-month terms, just to get a feeling for the administration of the firm. So these seven people meet every week to review all aspects of the firm's operation—to receive the reports of the standing committees, primarily hiring and personnel—but all matters of policy have to be referred to the partners.

They are acting as a funnel or a refiner of ideas, but at the same time getting very involved in the nitty-gritty of approving attendance at professional meetings, approving business planning or business promotion trips or activities, reviewing reports of financial operations of the total firm and of the branch offices, reviewing proposals for mergers with small law firms or private practitioners, and reviewing personnel evaluations of associates.

It is taking more and more of the time of those seven partners, and yet we are spending three hours every month for forty-four partners to sit down and review what the management committee has already proposed. Somewhere along the line we have got to change those responsibilities.

I have always felt that a lot of the detail that the management committee looks at every week could be handled by giving me broader lines of authority, so that they do not have to deal with that detail. The primary example is reviewing attendance at professional meetings. Each week we probably review, on the average, requests for ten people to attend professional meetings. Generally these meetings are in San Francisco and the registration fee is generally \$55 to \$75. We have probably turned down two or three requests in the five years that I have been attending management committee meetings.

I have proposed several times that we not spend the time reviewing this every week, but they feel that they must keep their finger on the pulse of what is happening. If that is what they want to do, that is fine. I do not feel that it is appropriate. I think that as we get larger they are just going to have to relax about some of those details.

SHARP: What would you consider an example of a task that they could not or should not give up?

HAMPTON: The management committee? I think a management committee or a finance committee should have the responsibility for reviewing the financial report and determining whether we are on track on our budget or our financial program for the year.

I think this group should be concerned with long-term financial planning. At the moment we do five-year forecasts almost every year which are presented to the partners at their annual retreat. Generally, little is done with those other than the fact that they are presented. I think that the management committee should be looking at those and deciding, "Is this where we want to go?" Most of these forecasts show that as long as we continue to make a large number of partners every year, we have got to hire a larger number of associates every year. Yet, some partners say, "We do not want to become that big." Well, somebody has got to make a decision, "Are we going to be that big, or are we going to cut down on the number of partners?" Or, "Are we going to change our billing rate structure?"

We generally make those kinds of decisions only when we are forced into it. I think that the firm needs to make some more forward plans so that they know where they are going. I think this is a responsibility of a management committee.

SHARP: What sort of a relationship do you have with the other committees? Do you work with them as well, like the hiring committee or one of the other committees?

HAMPTON: I do not regularly attend any other committee meetings. We do have a non-attorney who is the attorneys' hiring coordinator, Kristen Smith. Her responsibility is to act as the administrative assistant to the chairman of the hiring committee and to work with that committee and arrange interviews both at law schools and here in the office.

She reviews all resumes that come into the office to determine if we should pursue them further, and develops the responses to those resumes. She keeps all of the statistics on hiring. So, she has a dual reporting responsibility to the hiring committee and to me. So, to that extent I am responsible, or active in the hiring program.

The same thing is true with the personnel committee. Dick Dilley, before me, and then I, and now my assistant, Marilyn Fitzgerald, acts as the administrative assistant to the personnel committee in sending evaluation forms out to the partners to evaluate associates. She receives them back, summarizes them, coordinates them, develops the agenda for the personnel committee, and prepares the minutes of the meeting. She does not attend the personnel committee meeting and I have never attended the personnel committee meetings. But, we do assist that committee.

I have attended some business promotion committee meetings. My assistant, Marilyn, helps that chairman in developing projects for business promotion and client relations. We provide assistance to department chairmen, statistics, address lists, client lists, which help them in their work.

Specialization in Administration

SHARP: I wanted to ask you something about the specialization of administration in the firm. In my own mind I compare it with the specialization of the law that has gone on in the firm since the 1940s, since the 1950s. Does it seem like the specialization of administration is manageable?

HAMPTON: Well, I think it is easier to handle the specialization of administration in a very large firm, such as ours, because you have the resources to hire people who can handle those specific areas.

When I came to the firm, a lot of the partners thought I was a computer expert. I had never operated a computer. I had only been to a couple of very short courses—one or two day seminars, given by a vendor on computer operations. I couldn't go in and operate a computer if you paid me. What I can do is to interrelate among our computer people and our partners and other attorneys. I do not speak the language of a computer, but I have a pretty good grasp of what a computer can do. I rely on the computer supervisor, Sue Roumbanis, to tell me specifically what we can do and what we cannot do, and to develop programs and make changes.

I find personnel work probably the least appealing part of my overall responsibilities, so I have a very good personnel supervisor, Kathy Agnew, who does that work and who likes it. She is a former secretary in the firm and has just developed her skills as she has gone along, but I consider her to be a specialist. I wouldn't take her job if you paid me to do that. I could probably do it, but I would not want it.

I probably am more familiar with the accounting operation because that is my background and it is also my interest. So I have to be very careful not to spend too much time in the day-to-day-accounting operation because number one, I am not paid to be the accountant, and number two, it is inhibiting to the controller or the chief accountant to have somebody standing over her shoulder all the time.

For a large law firm administrator, like myself, you do not have to be a specialist in any one area. What you have to be is a person that can deal with those various areas, can be conversant with what is happening in those areas, both inside and outside the firm, and can deal with people.

I spend some time in seminars which are given by legal administrator organizations, or by vendors, where you learn what is happening in the industry, where you discuss with other administrators how they are handling problems. The local chapter of the Association of Legal Administrators is very active and it is one of the better chapters in the national organization. While I do not get a great deal out of the formal seminars, you always feel that you can call up other administrators in other firms and say, "How are you doing this?" "What are you doing?" "Who should I talk to about this new equipment?" They are all very responsive and supportive of each other, so it makes it a lot easier.

If you are an administrator in a very small firm, to some extent you have to be a specialist. You cannot afford, probably, to have a full-time personnel supervisor. You cannot afford to have a full-time computer operator, so what you do is become more of a specialist yourself, and you find people who can maybe handle two of those jobs at once, or handle one of the jobs at the same

time that they are a secretary. Your personnel supervisor may be half-time secretary, half-time personnel supervisor. Or, the librarian may also be the records room supervisor, or the hiring secretary may be the secretary to the hiring committee chairman. Again, it is a question of coordination and of developing the skills of the people that you have.

Perspectives on the Firm

SHARP: How do you assess the role of the senior partners in the firm?

HAMPTON: It depends on the individual senior partner. There are some who put in a full day's work, but have absolutely no interest in administration, or how the firm is run, or in supervising other attorneys. They are happy to be, essentially, a sole practitioner in a very large firm. Some of those partners are really not pulling their weight. They are taking out more in income than they are generating in current years. That was not true as they were coming up through the ranks, but it is certainly true now.

There are others who recognize their responsibilities and do have a hand in some part of overall management. A good number of them serve only as coordinators of the work of others or in training younger attorneys, and that is a very valuable function. They are not truly involved in administration. They are involved in the practice of law but in a more valuable way than these first attorneys I spoke of.

Then there are the partners who are very involved in administration. They are on the management committee, or they are very active in the personnel committee or the hiring committee. The chairman of the hiring committee, to my recollection, is active in no other way in general management, other than chairman of hiring—but that is a very big job. He is a specialist in that area and is making a real contribution.⁷³

SHARP: So you see the senior partners sort of having unique areas that they are contributing to the firm, besides handling cases or handling litigation or clients somehow?

HAMPTON: Certainly. That is right. Chuck [Charles] Legge is the chairman of the management committee and has a very, very heavy business litigation practice. How he gets everything done in a day, I do not know. He is extremely active in almost all phases of administration, management, and policy decision making. At the same time he carries a heavy case load. Other members of the management committee are a little less active than Chuck but do carry a heavy load of case work as well as management.

I think that is true, not just in the law firm, the people who are the best people are probably also the busiest and make the biggest contribution. They have learned to organize their time so that they can be effective.

73. Upon his review of the manuscript, Mr. Hampton added that John Sears had been elected to the management committee since this interview had been conducted.

SHARP: I have a couple of wind up questions. I wondered how your perspective on lawyers and their work in general has changed in the years that you have been with the firm?

HAMPTON: Well, as I said, when I came to the firm I had little experience with lawyers, so I really cannot say what I expected. I find that for the most part the attorneys in the firm are considerate, understanding, ambitious, certainly intelligent. If there are any drawbacks to them as a group, they are overly impressed with their position as a lawyer. They frequently slip into the habit of calling themselves professionals, and implying that everybody else is not a professional. I feel that one of my more important jobs on an informal basis is to keep reminding them that the rest of us are professionals in our jobs.

I feel that a secretary is a professional. She has a very big responsibility in assisting that attorney. She may not have the responsibility that he does, but she is a professional and has to be treated as such. If he wants her to respond to his needs, he has got to make her a part of his team. The attorneys that have the best relationships with their secretaries do that. They let them know what is happening, when it is happening, and why things are being done.

Others who look at their secretaries as just an extension of the typewriter, number one, do not keep their secretaries very long, and do not get good ones to begin with because that attitude comes through right in the interviewing process.

SHARP: I am sure.

Do you have a sense of the role of a lawyer in business, just from what you have watched?

HAMPTON: Many lawyers look upon a law firm as an association of lawyers and tend not to think of it as a business. I found at Mills that many of the faculty members looked upon it as college, an institution of higher learning, but not as a business. I feel that my responsibility, both at Mills and here at Bronson is to run the operation as a business.

Mills was there not to make money, but to make ends meet. It was not a profit-making organization, but they cannot succeed if they are going to lose money every year. Here, we are here to make money. I mean that is why we are existing. We have to make money to pay the partners. We have to make money to pay the attorneys. We have got to run it as a business. So, lawyers have got to be businessmen. If they won't do it themselves, they have to have people like administrators to do it for them.

In addition, every one of our attorneys is dealing with a client, and that client is using us only because he has a problem in his business where he needs an attorney's help. Our attorneys have got to be attuned to the business needs of their clients or they will not succeed. They have got to be a member of the business community. What you have to have in a law firm, in my opinion, are attorneys who are attuned to the business needs of their clients. Sometimes that is hard to get when you bring an attorney out of law school, who has had no business experience. That is why it is important to get intelligent people who are also street-smart; they have to know what is going on.

SHARP: Are you somewhat in support of lateral hiring in terms of the attorneys and not necessarily everybody right out of law school? I know that is an issue for some law firms.

HAMPTON: Well, when we talk of lateral hiring, we are generally talking in terms of an attorney who has been practicing for several years, either as sole practitioner, or in another law firm. I see nothing wrong with that as long as you are hiring them for a specific purpose, generally to fill a hole in your staff that you are not able to handle within the firm. So, certainly I am in support of that kind of lateral hiring.

I have nothing against hiring a group of attorneys if you are merging their practice into yours, as long as it is not going to be disruptive. So you have got to be very careful in assessing who you bring in here. I would much rather see us hire maybe a new attorney who has had several years of general business experience either before he finished law school or immediately after law school. He may not come in with any years of credit as a lawyer, but he has got some proven business experience.

I am not in a position within the firm to express those views. I do not really think that I should be.

SHARP: I just wondered because you see the firm in a really different way than the attorneys do, because you are dealing with the nuts and bolts of how the firm operates. Your perspective on the firm's growth also is an interesting one because of the period in which you came in, and the use you have made of the job essentially. Interviewing people whose sole concern is administration adds a tremendous amount to understanding what the history of the firm has been. I am glad you had the time for me.

HAMPTON: Glad I could do it, I enjoyed it.

##

APPENDIX

REPRESENTATIVE INSURANCE CLIENTS

Aetna Insurance Company
Aetna Life & Casualty Co.
Affiliated FM Insurance Co.
AIG Risk Management, Inc.
Airclaims
Alexander Howden Ins. Brokers
Allstate Insurance Company
American Building Maintenance†
American International Group
American International Underwriters (New York)
American Reinsurance Company
American Star Insurance Co.
American States Insurance Co.
American Universal Insurance Co.
Appalachian Insurance Company
Associated Aviation Underwriters
Atlantic Companies (The)
Avis Leasing†
Bain, Dawes (Sydney, Australia)
Bellefonte Insurance Company
Bland, Welch & Company, Ltd. (London)
California Union Ins. Co.
Central Mutual Insurance Co.
Cessna Aircraft Co.†
Chubb/Pacific Indemnity Group
Colonial Penn Insurance Company
Combined Insurance Co. of America
Commercial Union Assurance Companies
Consolidated Freightways†
Continental Insurance Companies
Continental National American (CNA Group)
Cravens Dargan & Company
Crum/Industrial Indemnity Group
Deans & Homer
Del Monte†
Delta Airlines†
Employers Insurance of Wausau
Employers Reinsurance Corp.
Equity General Agents, Inc.
Fireman's Fund American Insurance Group
Fremont Indemnity Company
General Accident Group
Great American Insurance Co.
Goethar Allegemeine Versicherung (Cologne)
Hanover Insurance Company

Hartford Insurance Group
Hearthstone Ins. Co. of Mass.
Heath & Company (C.E.) (London)
Hobart Corp.†
Howden & Swann, Ltd. (London)
Insurance Company of North America
Insurance Company of the West
Insurance Corp. of British Columbia
Kemper Insurance Company
Liberty Mutual Insurance Company
London Agency, Inc. (The)
Lloyd's of London (Underwriters at)
Lowndes Lambert Group, Ltd. (London)
Maryland Casualty Company
Mendes & Mount (New York)
National Automobile Casualty Co.
Oregon Automobile Ins. Co.
PEMCO
Pennsylvania Mfg. Assn.
Qantas Airways, Ltd. (Australia)†
Reliance Electric†
Reserve Insurance Company
Rosemurgy & Co., Inc.
Security Mutual Casualty Company
Skil Corporation†
Southeastern Aviation Underwriters
Southern Marine & Aviation Underwriters, Inc.
Southern Pacific Company†
Stewart Wrightson (Aviation) Ltd. (London)
Sun Alliance (London)
Toplis & Harding, Inc.
Toyota†
Travelers Insurance Company
Trans World Airlines†
United National Ins. Co.
U.S. Aviation Underwriters
Universal Insurance Company
United Pacific/Reliance Ins. Co.
Yosemite Insurance Co.

† Self-insured companies

CORPORATE CLIENTS

Federal Deposit Insurance Corporation
Hood and Strong
Schenley Industries, Inc.
Grosjean Rice Milling Co.
Fred H. Lenway Co.
Pacific Coast Holdings
Walter W. Bribbins Co.
Design Workshops
Fritzi of California
Birr Wilson & Co.
California Floral Council
Continental Capital Co.
Council of California Growers
Bank of America
Transit Tank Internal
Green Glen Dairy
Firco, Inc.
The Cannery
Bell Savings & Loan
Allis Chalmers
Skidmore, Owings & Merrill
James Dole Corp.
Marsh & McLennan, Inc.
Arthur Andersen & Co.
Consolidated Capital Corp.
Sierra National Bank
Sanwa Bank and Golden State Sanwa Bank
Ramada Inns
Varian Associates
Bank of British Columbia
A.O. Smith
Albert Bender
Evergreen Helicopters
Grubb & Ellis
Johnson & Johnson
Stone, Maraccini & Patterson
Freightliner, Inc.
Boise Cascade
International Paint Co.
Kaiser Engineers
California Flowerland
First American Title Co.
Kaiser Aluminum
Merck, Sharp & Dohme
Joseph Magnin
Dames & Moore

Commercial Bank of San Francisco
Consulate General of Indonesia
Global Van Lines
Grosvenor International
Rockwell International
St. Helena Wine Co.
Westinghouse Electric

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begin tape 1, side B	7
end tape 1, side B; end of interview I	14
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