Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

Pillsbury, Madison & Sutro Oral History Series

Turner H. McBaine

A CAREER IN THE LAW AT HOME AND ABROAD

With an Introduction by
Charles B. Renfrew

An Interview Conducted By
Carole Hicke
1986

Since 1954 the Regional Oral History Office has been interviewing leading participants in or well-placed witnesses to major events in the development of Northern California, the West, and the nation. Oral history is a modern research technique involving an interviewee and an informed interviewer in spontaneous conversation. The taped record is transcribed, lightly edited for continuity and clarity, and reviewed by the interviewee. The resulting manuscript is typed in final form, indexed, bound with photographs and illustrative materials, and placed in The Bancroft Library at the University of California, Berkeley, and other research collections for scholarly use. Because it is primary material, oral history is not intended to present the final, verified, or complete narrative of events. It is a spoken account, offered by the interviewee in response to questioning, and as such it is reflective, partisan, deeply involved, and irreplaceable.

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TURNER H. McBAINE

ca. 1955

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SAN FRANCISCO CHRONICLE

June 13, 1992

TURNER McBAINE
Specialty was oil and gas law

Turner McBaine — Counsel for Standard Oil

Turner McBaine, a San Francisco corporate lawyer for nearly three decades who also served as general counsel for Standard Oil, died Thursday of pneumonia at the age of 81.

Mr. McBaine went to work in 1948 for the law firm of Pillsbury, Madison & Sutro, one of California's largest firms, and in 1971 became its senior partner. He was general counsel for Standard Oil of California, which later became Chevron.

He retired in 1976.

The son of a Berkeley law professor, Mr. McBaine was born May 5, 1911, in Columbia, Mo., and came to California with his family in his youth.

He graduated Phi Beta Kappa from the University of California at Berkeley in 1932. He was a Rhodes Scholar at Oxford University in England and received his law degree from Boalt Hall in 1936.

He was admitted to the California Bar that year and to the New York Bar in 1947. He worked for a San Francisco firm before World War II.

He served in the U.S. Navy from 1941 until 1945, rising to the rank of lieutenant commander. He was decorated with the Legion of Merit and the Order of the British Empire.

During the war, he served as personal assistant to William J. Donovan, head of the Office of Strategic Services, and served in Egypt and in Asia.

Afterward, he practiced law in New York, then returned to San Francisco in 1948.

He was named general counsel for Standard Oil in 1970.

His specialty was oil and gas law. He represented Standard in major cases involving the Elk Hills oil reserve in California and in Louisiana. After his retirement, he became active in issues of constitutional law relating to memberships in private clubs.

He was trustee for the World Affairs Council of Northern California from 1948 to 1954, a trustee founder of the Asia Foundation beginning in 1954 and a member of the Pacific Union Club and the Burlingame Country Club.

He lived in Hillsborough.

He is survived by his wife, Edith Zsofia; two sons, John Neylan of New York and James Patterson McBaine of San Francisco; and four grandchildren.

Services are pending.

MCBAINE, TURNER H. (1911-) Litigator and Corporate Lawyer

A Career in the Law at Home and Abroad, 1989, vii, 220 pp.

Early practice in 1930's, New York and San Francisco; Elk Hills litigation; Civil Air Transport Case, 1948, involving Chiang Kai-Shek; formation of Iranian Consortium to produce oil, 1954; other clients and cases: Caltex, Safeway, Henry Miller estate, F-310, FTC v. Exxon; general counsel, Standard Oil of California, PM&S Senior Partner 1971-1976; law firm management.

Introduction by Charles B. Renfrew, Chevron Corporation

Interviewed in 1986 by Carole Hicke

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Noel J. Dyer, Lawyer for the Defense: Forty Years Before California Courts and Commissions, 1988.

Turner H. McBaine, A Career in the Law at Home and Abroad, 1989.

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PREFACE

The history of Pillsbury, Madison & Sutro extends more than 100 years. Its founder, Evans S. Pillsbury, commenced the practice of law in San Francisco in 1874. In the 1890s, Frank D. Madison, Alfred Sutro, and Mr. Pillsbury's son, Horace, were employed as associates. In 1905, they and Oscar Sutro became his partners under the firm name Pillsbury, Madison & Sutro.

In serving thousands of corporate and individual clients over the years, the firm helped to write much California history. It played a leading role in landmark litigation in the Supreme Court of California and other courts. In its offices, a number of California's largest corporations were incorporated and legal arrangements for numerous major transactions were developed. In addition to its services to business and other clients, the firm has a prominent record of services to the legal profession and to the community, charitable, and other endeavors.

In March 1985, with the firm approaching 400 attorneys situated in multiple offices, the Management Committee approved the funding of an oral history project to be conducted by the Regional Oral History Office of The Bancroft Library of the University of California, Berkeley. The purpose of the project is to supplement documents of historical interest and earlier statements about the firm's history with the recorded memories of those who have helped build the firm during the past fifty years. It is our hope that the project will preserve and enhance the traditional collegiality, respect, and affection among the members of the firm.

George A. Sears
Chairman of the Management Committee

May 1986

INTRODUCTION by Charles B. Renfrew

TURNER HUDSON MCBAINE

"I do not distinguish by the eye, but by the mind,
which is the proper judge of the man."
Seneca

It is by the mind that Turner Hudson McBaine will be judged, it is by the mind that he has made his mark, at school, in military intelligence, in the practice of law and in his dealings with others. For Turner, Homo sapiens is not only correct generically, but is also apt and descriptive personally. He is the quintessence of a wise man. Turner's extraordinary rationale powers, coupled with an unusual persuasive ability and an easy charm, make him a fearsome negotiator and a formidable advocate.

Like all of us, Turner is a product of a number of influences and experiences, several of which I believe deserve some emphasis: His childhood in Missouri, the undergraduate years at Berkeley, study at Oxford, and his work with the Office of Strategic Services during World War II.

His early childhood and youth were spent in a small town in Missouri. There he grew up, the constant companion of a former slave who introduced Turner to hunting, fishing, and the art of story telling. Although Uncle Scott was illiterate, he, too, was a wise man and a teacher of value and traditions that made profound impressions on Turner. It was here that he learned self-reliance and confidence and where he gained his sense of identity and assurance. This small town was also the home of several educational institutions, including the University of Missouri, whose president lived across the street from the McBaines and was a close family friend. It was in Columbia, Missouri that Turner was exposed to and lived with those who worked with their minds. His father, a distinguished professor of law, was also dean of the law school, a private practitioner and, upon occasion, a special judge on the Missouri Supreme Court. It was with his father that Turner learned to discuss issues, debating points based upon facts and reasoning without impairing or affecting the relationship of those engaged in the process.

His early exposure and adaptation to the world of intellect prepared him well for the University of California at Berkeley. There he grew and flourished in the early years of the legendary president of the University, Robert Gordon Sproul. These were four incredible years in which Turner, knowing all of his professors, as well as almost everyone in the administration, took advantage of the rich variety of courses and activities which were offered. He was challenged and he responded. He was salutatorian of his class of 1932, on the student council, senior track manager, commanding officer of the Naval ROTC and, surprisingly, found time to be a member of two drinking fraternities.

Winning a Rhodes scholarship was the culmination of a brilliant undergraduate career. The years that Turner spent at Oxford had an obvious influence on his later life. It was there he developed his dedication to legal scholarship and the principles of Anglo-Saxon jurisprudence. The last, and a most significant factor, were the years Turner spent with the Office of Strategic Services (OSS) during World War II, first as an assistant to Wild Bill Donovan and then in the Middle East Theater where he was awarded the Order of the British Empire and the Legion of Merit for his distinguished service. Here self-reliance and discipline were essential and Turner's were reinforced. To this day, I cannot imagine Turner parachuting out of an airplane; yet he did it.

Turner's experiences seemed to build upon each other in that one prepared him for the next. For example, his years at Oxford enabled him to better work with his English counterparts in the Middle East Theater in the Second World War which, in turn, helped him during the arduous negotiations with the representatives of the Anglo-Iranian Company, which led to the Iranian Consortium. The relations that he developed with the legal representative of Texaco at the Iranian Consortium became exceedingly valuable in subsequently negotiating the dissolution of CalTex Europe with the president of Texaco, who was the former legal representative during the Iranian Consortium negotiations.

Although attracted by the East Coast -- Turner at one point contemplated going to Harvard Law School and did, in fact, practice in New York City for two years -- he was ultimately drawn back to the West. While he was comfortable in Europe, the Middle East, or on the Eastern seaboard, it was in the West that he was home.

He would have been one of the country's outstanding trial lawyers but for the untimely death of Felix T. Smith, then the senior partner of Pillsbury, Madison & Sutro and general counsel of the Standard Oil Company of California. Turner was reassigned from trial practice to work with Marshall Madison, Felix Smith's successor as general counsel to the Standard Oil Company of California and as the senior partner of Pillsbury, Madison & Sutro, two positions which Turner himself ultimately assumed. Although the demands of his practice precluded him from full time courtroom work, Turner, throughout his career, even while general counsel of the Standard Oil Company of California, handled major pieces of litigation, some involving Standard, such as Buras, F-310 and FTC v. Exxon, others for different clients, Civil Air Transport case, Koster v. Lingan Warren and the Henry Miller Estate litigation. Turner was drawn to these cases. It was here that he could devote himself to a single project, concentrating his talents and focusing his efforts on an intricately complex matter where relentless application of logic and rapid assimilation of facts permitted him to work his way through a labyrinth of facts and theories and concepts to ultimately come to a rational conclusion. His was a disciplined, highly cultivated mind, passionately devoted to the law as develcped in Anglo-American constitutional history. His legal work, like his tailoring, was impeccable: handcrafted from the finest materials, carefully put together in as enduring form as possible with nothing overstated.

Turner's courtroom style was also proper, perhaps more formal than many of today's advocates. His trial preparation and presentation represented countless hours on his part and those of his associates. His powers of con-

centration were remarkable, as well as the physical stamina which permitted him to work with an artist's intensity. Although capable of prodigious efforts, he never worked for work's sake, but only for the result it produced. Despite the demands of the responsibilities of being general counsel to an international oil company, he still found time to have initiated or been one of those primarily responsible for many of the innovations that Pillsbury adopted in the administrative side of the practice of a major national law firm. Mandatory retirement and the phasing out of the practice, the maximum use of Keough, evolution of the Library Committee, the Employment Committee, the Management Committee and the use of computers all were the result of his efforts.

There is one slight caveat -- this oral history understandably deals almost exclusively with Turner's professional career. It does not speak, except indirectly, of his family or personal life. This is not to say that it is deficient because of these voids, because it accurately reflects Turner's total commitment to the practice of law.

Advocate, counselor, negotiator, scholar, and trusted friend: like all great practitioners, a superb teacher. Because of the pressures of specialization, we may never see another like him.

Charles B. Renfrew
Director and Vice President for
Legal Affairs, Chevron Corporation

March 1989

INTERVIEW HISTORY

Turner H. McBaine was interviewed as part of the series of oral histories being done with twelve advisory partners at Pillsbury, Madison & Sutro.

Mr. McBaine was an active member of the firm for thirty years, from 1947 to 1977, when he became an advisory partner. In this oral history he begins with some interesting stories of his youth and education. He graduated from the University of California, Berkeley; studied at Oxford as a Rhodes Scholar, where he obtained a B.A. in Jurisprudence, and received a law degree from Boalt Hall in 1936. While at Boalt, as he recalls, he took a course in Evidence from his respected and popular father, Professor James P. McBaine, and sat in the first row. "I enjoyed debating with him about legal points, so I sort of waded in and had a thoroughly good time."

He began practicing law in 1936, but as a member of the U.S. Naval Reserve, McBaine was called to active duty in 1941. His wartime service with "Wild Bill" Donovan in the office of Strategic Services brought him valuable experience in Washington, D.C., the Middle East, and the Far East. After the war he practiced law in New York for two years, then joined Pillsbury, Madison & Sutro in San Francisco, becoming a partner in 1950.

His law practice, like his war service, carried him around the world. On behalf of General Claire Chennault, head of the World War II Flying Tigers, McBaine cleared the title to airline assets sold to Chennault by Chiang Kai-shek but claimed by the mainland Chinese Communist government. McBaine participated in the 1953 negotiations with Iran allowing a consortium of Western oil companies to produce Iranian oil. He argued cases in Louisiana, where state law is based not on English common law but on the Napoleonic Code.

Pursuing a historical viewpoint in his oral history, McBaine discusses the evolution of both firm management practices and the committee system. He notes the changes in hiring practices -- he was chairman of the Employment Committee for a time -- as they evolved over the years. He traces the growth of the library from the time the firm had no official librarian to the present modern library in its spacious and elegant quarters on the 20th floor of the Chevron Building at 225 Bush Street. And he deals specifically with some of the problems faced by the firm's Management Committee. Speaking of decision-making, McBaine recalls, "[As senior partner] I was simply the accumulator. What I did was reach, as nearly as possible, a consensus. . . Unless I could command the support of a substantial majority of the other seniors in the firm, I never tried to act."

As general counsel for Standard Oil Company of California 1970-1976, McBaine saw the oil company through a morass of Congressional hearings and major antitrust cases.

At the same time, McBaine was senior partner for the firm, overseeing the enormous growth of the 1970s, the arrival of the computer age, and changes in

financial and management procedures. Retiring in 1977, he left a legacy of steady progress and a strong commitment to excellence.

For this oral history, eight tape-recorded interview sessions took place in Mr. McBaine's ninth floor office in the Adam Grant Building, located in San Francisco's financial district. Pictures of his family and of colleagues hang on the walls, along with a Persian-framed photo of the negotiations at work in Iran. Books and briefs line the bookshelves.

The interviews took place on April 16 and 29, June 19 and 26, July 3, 17, and 28, and August 6, 1986. After the tapes were transcribed, Mr. McBaine corrected the edited transcript and selected photographs and illustrations.

Carole Hicke
Project Director

February 1989

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University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

Your full name Turner Hudson McBaine

Date of birth May 5, 1911 Birthplace Columbia, Mo.

Father's full name James Patterson McBaine Birthplace Kansas City, Mo.

Occupation Lawyer, Law Professor

Mother's full name Ethel Hudson McBaine Birthplace Keytesville, Mo.

Occupation Housewife, Mother

Family

Spouse 1. Jane Neylan 2. Edith Zsofia Bokor

Children 2 sons by Jane Neylan: John Neylan McBaine and James Patterson McBaine

Where did you grow up? Columbia, Mo. & Berkeley, Calif.

Education Columbia & Berkeley Public Schools; U.C. Berkeley, Oxford University & U.C. Berkeley Law School.

Areas of expertise Oil & Gas Law; General Corporate Law, and Appellate Litigation

Special interests or activities World Affairs Council of Northern California and The Asia Foundation (one of Founders & now Trustee Emeritus.)

MCBAINE, TURNER HUDSON, lawyer; b. Columbia, Mo., May 5, 1911; s. James Patterson and Ethel (Hudson) McB.; A.B., U. Calif. at Berkeley, 1932; LL.B., 1936; B.A. in Jurisprudence (Rhodes scholar), Oxford (Eng.) U., 1934; m. Jane Neylan, Aug. 2, 1939 (div. 1957); children—John Neylan, James Patterson; m. 2d, Edith Zsofia Bokor, Aug. 30, 1957. Admitted to Calif. bar, 1936, N.Y. bar, 1947; asso. firm Orrick, Palmer & Dahlquist, San Francisco, 1936-39, Cahill, Gordon, Zachery & Reindel, N.Y.C., 1946-47; with firm Pillsbury, Madison & Sutro, San Francisco, 1948—, partner, 1950—, sr. partner, 1971-77; gen. counsel Standard Oil Co. of Calif., 1970-77. Bd. visitors Stanford Law Sch., 1966-69; trustee World Affairs Council No. Calif., 1948-54; trustee Asia Found., 1954—; bd. dirs. Bay Area Council, 1977—. Served to comdr. USNR, 1941-45. Decorated Legion of Merit; Order Brit. Empire. Fellow Am. Bar Found.; mem. Am., Calif., San Francisco bar assns., Am. Judicature Soc., Adminstrv. Conf. U.S., Calif. State Club Assn. (pres. 1976—), Phi Beta Kappa, Order of Coif, Beta Theta Pi. Republican. Episcopalian. Clubs: Commonwealth, Pacific-Union (San Francisco); Burlingame Country (Hillsborough). Home: 1765 Crockett Ln Hillsborough CA 94010 Office: 225 Bush St San Francisco CA 94104

-- Who's Who, 1978-79

I BACKGROUND: FAMILY HISTORY AND EARLY LIFE

[Date of Interview: April 16, 1986]##*

Family

Hicke: I wonder if we could start this afternoon, Mr. McBaine, by you telling me a little bit about your background, about your grandparents and parents.

McBaine: I was born in Columbia, Missouri on May 5, 1911. I don't remember my paternal grandparents, because they were both dead when I was born. I have no memory of either one of them. My grandfather McBaine was born in Missouri. He was a farmer and a banker. He was president of one of the principal banks in Columbia, Missouri, where I was born, and I have as a memento a ten or twenty dollar bill signed by him as president of the bank; banks in those days issued their own currencies. And that's about my only memento, other than a few pictures of him that I have left.

My maternal grandfather Hudson lived in Columbia, in a house next door to our house. It was not quite like a Kennedy compound, but it was a common piece of property with two houses there. My maternal grandfather was a newspaperman and the founder and president of the telephone company in Columbia. I can well remember that when I was a child, whenever he spoke on the telephone, he showed his innate distrust of this new-fangled instrument by yelling at the absolute top of his voice. He could be heard half a mile away without the benefit of the telephone, which used to occasion a great deal of amusement in the family. But I remember him well, and my maternal grandmother.

Hicke: Tell me about the people who have influenced you the most.

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* This symbol, ##, indicates a tape interruption or the beginning or end of a tape side.

McBaine: My grandfather Hudson influenced me in several ways. First of all, there's my version of, I guess, the George Washington cherry tree story. When I was very young, four or five, I guess, I was given an Indian tomahawk for my birthday. One day I was out with my hatchet and some other toys, and having nothing else to do, I sat down by the corner of my grandfather's house, which was built out of yellow brick, and began chopping away at a brick in the corner of the house. By the time I was discovered, I'd cut about a quarter of the brick out of the side of the house.

In due course, I arrived in audience before my grandfather, and he, maintaining his temper but being very serious about it, told me that this was his house built to house his family, and how important it was to him, and that I had damaged his house. Would I please explain myself? Of course, I couldn't explain myself. I had just had an impulse and I hadn't given any thought as to what I'd done. He said well, it was too bad. Obviously, I should never never do it again, but I must realize that I had damaged his property, and I had to make good to him. So he fined me, I don't remember what it was, a dollar or two dollars, something like that. I was old enough so that I had an allowance, which I think was twenty-five cents a week, and I had to pay ten cents out of that twenty-five cents each week for a number of weeks after that. And I can remember that incident today just as clearly as when it happened.

Hicke: I believe it. That was a rather memorable incident.

McBaine: It was, indeed, a memorable incident. You don't think about those things in the course of a life until you get along and begin to reminisce, and then you realize maybe it was a significant happening.

Hicke: That was a little financial planning training also.

McBaine: That's right. And a lesson not to wantonly destroy property, so I never became a graffiti writer or stone chucker. As for other family members, there were numerous of them, but I don't think there was anything unusual about them.

Hicke: What about important family traditions?

McBaine: I think perhaps, without expressly remembering any particular admonitions, in looking back on it, that education was important. Both my grandparents were university graduates. Their fathers, in turn, had been university graduates, and I don't know how widespread that was in the middle nineteenth century.

Hicke: You're talking about your grandfathers?

McBaine: I'm talking about my grandfathers, yes. Both of them were college graduates, and of course my father was. All of my uncles were university graduates. Several of them were professional men: doctors and lawyers. So without giving it any thought at the time, I just assumed that's what one did, and that's the way I grew up.

As for my own upbringing, I hesitate to say it was strict. My mother was the disciplinarian in my family and I think she realized, thank goodness, that discipline was necessary in bringing up a child. She did not wait for my father to come home and administer the discipline; she took the matters into her own hands. And in retrospect, I must have been somewhat mischievous, because I can remember getting switched any number of times. She used to go to the back door and call for one of the old colored people who worked on our place, Uncle Scott Foster, about whom I have told you.

Hicke: I would like to get that story on tape. We were talking about oral histories previously when you mentioned Uncle Scott.

McBaine: Yes, I made the point that you reminded me of him because we were talking about oral history, and he was an oral historian. Both my grandfathers had been slave owners in Missouri, and when I was born in 1911, we still had five or six colored people working on our place who had been ex-slaves of my grandfathers. The most prominent of them was an elderly colored man named Uncle Scott.

Uncle Scott was the greatest influence in my young life, because he was a marvelous, marvelous human being. He was illiterate. If he had been literate, if he had been educated and trained, he would have been an outstanding man, given half a chance, I'm sure. But he was one of the most outstanding human beings I have ever known. I loved that old man as much as I've ever loved another human being in my life, and he was my constant companion when I was small.

He was in charge of the outside of our place. We had a garden and chickens and various kinds of fowls and grew our own vegetables and all that sort of thing, and he was in charge of all of that. I was his self-appointed helper. I probably hindered him more than helped him, but it was a great way to grow up.

Whenever I misbehaved, my mother would go to the back door and call for Uncle Scott, and he would profess not to hear her. So it would take some minutes before she could locate Uncle Scott. Fortunately, most of the time, her temper had cooled by the time he finally showed up. When it hadn't cooled sufficiently, he was directed to bring her a switch off of some tree, which he did, and she used to switch my legs. In retrospect, again, I can't remember a single time when I didn't deserve it. And it certainly did me a world of good, and it didn't do me a bit of harm; that may have influenced my views as to similar matters since then. I think it has.

Hicke: Can you tell me the story of Uncle Scott and the oral histories that he did?

McBaine: Sure. Speaking of oral histories, as I say, Uncle Scott was illiterate. He loved the comic strips in the Sunday papers, but that's the only thing that he read: no books or papers. But he had an

extremely good mind. I don't know just how old he was, but obviously he was well along in years, having fought in the Civil War. He knew the history of all of the families in Boone County, Missouri, which is where Columbia is, and he loved to recite the stories about prominent members or prominent incidents in the county. And he would embellish these stories and spin them out as he told them; he was a marvelous storyteller. He used to regale me and anyone. He loved to talk and to visit.

The president of the University of Missouri lived across the street from us, and whenever he had an important visitor in town, he would usually come across the street and ring the front doorbell of our house, and after being polite to my mother or whoever was at home, he would immediately head out the back door looking for Uncle Scott. And they would have a visit out in the vegetable garden.

He was a terrific character, an absolutely beautiful human being. He was a great influence in my life. He taught me to hunt, he taught me to shoot, taught me to fish. He and I ran a mole-trapping enterprise in my grandfather's house, and I got, I think, twenty-five cents for every mole that we would trap. Of course, Uncle Scott did all of the trapping, but I presented the moles and got the money. I guess I could say I first learned about free enterprise from him.

Hicke: Is there anything about your early education that stands out in your mind?

McBaine: Perhaps I should have said at the outset -- on this outline you have "where and when born" -- I was born in 1911 in Columbia, Missouri. Columbia was a college town. It had about 25,000 people in it, I would say; it also had the University of Missouri and two girls' colleges: Stevens College, which still exists, and I think is still quite a prominent girls' school, and Christian College -- I'm not sure whether that still exists -- a church school.

In any case, Missouri being a border state, as it was, it had a large black population out of that 25,000. When schools were in session, the town expanded and was about 35,000. But at any rate, it was, in my opinion, an ideal town for any boy or girl to be born into, a boy particularly, because we lived right on the edge of town, and if you went out the back door of our house, beyond our back yard, garden, and so forth, there was a field and it just went on out into the countryside. There was nothing out in back of us, so if I wanted to go out and shoot rabbits or something, all I had to do was go out the back door and walk about 200 yards and I was there.

At the same time, with all of the purity almost of growing up in a small town, it was an academic town, so there were academic influences at work all the time. My father was a lawyer. He was a professor at the law school and dean of the law school for most of my childhood there. He was also a practicing lawyer, and he was

also a special judge of the Missouri Supreme Court. So I constantly was subject to influences of that kind and the people that he knew and met and brought to the house in that connection.

Hicke: What was his first name?

McBaine: My father's name? James Patterson. I should also say that tying us further to that area was the fact that my grandfather McBaine established a farm about twenty miles southeast of Columbia in the river bottom land along the Missouri River. And that grew in time, and then a railroad siding was run into there, and silos were built. When I was little, it was a small town that had grown up there called McBaine, Missouri.

The odd thing is that when my grandfather McBaine died, my grandfather Hudson bought the place from his estate. So when I was little it belonged to my grandfather Hudson, but the town was still called McBaine. I think the town has practically disappeared nowadays; I don't know how they take the grain and produce out now. But in any case, that was a very dramatic place to me when I was little.

My grandfather Hudson went in for prize cattle, and he had some tremendous animals there. I can remember once, when I was very little, I was invited, in fact urged, to lead one of his prize bulls there from one place to another by pulling him by the ring in his nose, and I was not very happy about the whole thing, because I can still remember the sensation.

Hicke: You did it?

McBaine: I did it, but I wasn't very happy with it. I think a rhinoceros would not have been any more frightening to me at that time.

Growing Up in Missouri

McBaine: My early education was in the public schools in Columbia, Missouri. As far as I was concerned, I enjoyed school thoroughly. I had a marvelous series of teachers, most of them female -- at least half, maybe a majority. I can remember one very plainly, but I'm sorry to say I can't remember her name. Of course, I suppose -- I know at the time I wasn't conscious of it -- the schools were segregated, and most of the children there were children from families whose mothers and fathers, or at least fathers, were university graduates, and they were mostly educated, middle-class people. So it wasn't a wide spectrum of American society at all. It was really a pretty homogeneous group, but the standards were high, and the work was high, and the behavior of the students was high. It simply never occurred, as far as I know, to anybody to protest about things, or misbehave in class, or defy authority; it just wasn't in our experience. The experience in life came in the play yard during recess

time, as I suppose it does in every school, but I can still remember my first fight in the schoolyard grounds. I suppose everybody goes through that, virtually everybody does, and I think it was extremely good training; it was a good influence.

I was not a great fighter, although oddly enough later on, when I went to a boys camp up in northern Michigan, I did box up there. But in any case, I can still remember some of the lessons in deportment from the school playground.

I also went to high school in Columbia for three years. And again, the high school was pretty much as I have described the grade school, although I think a broader classification of people were there, all white. I think, looking back on it, it's hard to judge, but I'm not sure that the high school was quite as outstanding as the grade school was, perhaps. Although apparently I didn't suffer any by it because I never had any difficulty with any other schools later on.

I do know that my family thought that the athletic facilities were not all they might be. And in later years, it's often caused me wonderment to recall this, because I have no idea whether it was my mother or my father who had this idea, or why they had the idea, but they felt that the athletic facilities were not all they might be. They and some other parents hired a student at the University of Missouri, named Don Faurot, who was a star football player and later became the coach of the University of Missouri football team for many years, an outstanding coach -- I can still remember him vividly -- to coach us in basketball. He also played on the Missouri basketball team, basketball and football.

I took swimming and sports in general, the result of which is that by the time I'd got through, say, three years of high school, I was proficient, anyway, in a number of different sports. I'll come to that in a minute. As a result of taking these sports, I had a much better time in California than I might otherwise have had.

Hicke: Tell me about some of your early memorable experiences.

McBaine: It's hard to realize at the time they're memorable. You have to sort them out and see which ones you consider memorable, but there were a number of possible things. One is I had a grandaunt, or step-grandaunt, who lived not too far from us. She had quite a big house, and she used to give a big party, and I believe it was on Christmas day, a luncheon. Somehow or another it worked out that I had Christmas at my parents' home, I had Christmas at my grandparents' home next door, then I had another Christmas at my grandaunt's. The latter was an enormous party. There must have been forty or fifty people there: there were first cousins and so forth and so on. I did have first cousins in Columbia, and any number of "kissing cousins," many of whom were distant cousins. Nobody knows just exactly what grade the relationship is. In Columbia in those days they were referred to as kissing cousins.

I think that was an influence in my early youth: to see a big and cohesive family. As far as I knew as a child, they all got along very well; they were all good friends. Almost all of them were admirable people. I don't remember a single black sheep in the group, didn't know what a black sheep was, I suppose, at the time. I don't remember any. That's one experience.

I think that my mother was an experience, although, again, I didn't realize it. My mother was a very strong woman, and she did not put up with any nonsense; on the other hand, she was loving and caring, and I think did as good a job as anybody could do bringing up a young boy.

Uncle Scott, whom I've already mentioned, was an influence on me, I'm absolutely sure, because he had one of the sweetest dispositions and biggest hearts of anybody I ever knew, and was loved by everybody. He was one of the most widely loved people I have ever known, received all sorts of kindnesses and affection from all sorts of people.

Another man who was a great influence on me was Dr. Walter Williams, who was the president of the university, and the founder of the School of Journalism at Missouri. I would say those were the principal people. I can't stop, I guess on influences in my early life without mentioning Camp Sosowagaming. Camp Sosowagaming is near Big Bay, Michigan, which is on the upper peninsula in Michigan on the shores of Lake Superior. I must have gone my first year, from Columbia, possibly when I was eight years old. Yes, it would be when I was around eight or nine.

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McBaine: Central Missouri gets very hot in the summertime, and it gets cold in the winter. I suspect this is one of the reasons my family eventually moved to California. When I was little, of course, that didn't bother me any; I enjoyed it.

But perhaps one of the reasons I went to camp is when I was a small child, I had every childhood disease known to man: I had about three or four different kinds of measles, whooping cough, and everything else. There wasn't a year that went by that I didn't miss several weeks of school by being home with something or another. So my family sent me to this camp in northern Michigan. The New England area and the area of northern Wisconsin and northern Michigan are the two principal areas in the country for boys and girls camps, I think.

This camp was run by a man who was the principal of a high school in Kansas City, and was absolutely a marvelous place: quite a big place; they had perhaps 100, or maybe a few more than 100 boys in the summer. It went on for six weeks, then they had two weeks post-season, and I always stayed the extra two weeks, so I stayed two months each summer up there. They had a tremendous plant,

dormitories for sleeping, athletic equipment of every kind. They had a lot of university students and graduate students as counselors, with instruction in everything you can think of: horseback riding, for example, both eastern saddle and western saddle, tennis, softball, all sorts of track events, swimming, lifesaving, and canoeing. The day was just packed with one thing after another, starting with reveille in the morning, when everybody had to line up along the shore of Lake Superior, and at a given whistle, dash forward and dive into Lake Superior, for a morning bath. And I want to tell you that was really cold.

The camp was also on a little river that flowed into Lake Superior, so all of our swimming and canoeing was done on the river because the river was not nearly as cold as Lake Superior. In any case, as a result of that, I again not only learned to have pleasure out of an enormous number of different athletic kinds of things, but I learned how to compete, how to lose, how to win. We had boxing, incidentally, and wrestling. I boxed for quite a few years up there. As a result of going to that summer camp I didn't spend another day in bed for any reason until I had graduated from the University of California and went to England when I was 21, not one single day.

I'm sure that was a great influence on me, from a health point of view if nothing else. Again, I learned a lesson out of it, because the proprietor of this camp -- it was a proprietary camp; Pa Tuton, the owner's name was -- gave a bonus of a portion of the tuition to old boys who would recruit new boys for the camp. After a couple of years there, I began recruiting other boys to come, and the last few years that I was up there, I went free every summer; I paid no tuition.

Hicke: A salesman in the making, too.

McBaine: Whatever the motivation was, it would appeal to any kid to see if he could do that. My family didn't tell me I had to, or anything of the kind, but I enjoyed doing it, and it gave me great satisfaction to do it. I think Camp Sosowagaming was the principal reason I didn't want to come to California when my family decided to come, more than Missouri was.

Hicke: Did you have brothers and sisters?

McBaine: I had one sister, she was older than I, and that's all. She's dead now, died five years ago or more.

Hicke: What was her name?

McBaine: Ann.

Hicke: Are we about up to the point where you moved to California?

McBaine: I'm trying to think of people who influenced me the most. Obviously, my father influenced me, because he attracted me to the law.

Hicke: Did he tell stories about the law?

McBaine: No. My father, as I told you -- I didn't realize it at the time -- but he was an extremely busy man. I don't know how he did all the things he did do, in retrospect. I didn't even realize it, I think, at the time. During his last year in Missouri, he was the dean of the law school. He was certainly one of the, if not the leading practicing lawyer in Columbia. He was a special judge in the Missouri Supreme Court, and he was the president of the Missouri State Bar Association. I don't know how he did all those things. But at any rate, I wasn't conscious of his burning the midnight oil and his not coming home until late; I don't remember that.

No, I think that his influence on me was his logic, his fair-mindedness. He and I always loved to argue. We didn't always necessarily have the same point of view, and I'm sure you've seen other cases like it. Where people are very close, they can get into some good arguments, and people who don't know them well think, "Oh, my God." When my second wife first met him, and we would get into discussions on some legal issues or one thing and another, she thought we were at one another's throats. We were just having a good time.

Hicke: It's hard to have a good discussion if you both agree on everything. [laughs]

McBaine: That's right. And he was an eminently reasonable man. He was conservative, and oftentimes that means the child will be something else, but in my case it did not. I'm also conservative. I don't think I'm quite as conservative as he was.

I can't really say that I think my grandfather was that much of an influence on me, because his activities were strange to me. So I think that's about all I could say about influence.

Education in California

Hicke: What about your education?

McBaine: When I finished my junior year in high school in Columbia, my father decided to move to the University of California at Berkeley, where he was offered a professorship in the School of Law there. We came to California in 1927.

The first thing I did was go to Berkeley High School. Berkeley High School was a big jump for me; that is, it was a big school even then. It did not have the racial mixture it has today, and this leads to one of the stories I'll tell you. But it was still a big

school: I don't know how big, but two or three thousand students, I think. It was a little overwhelming to come from the small schools that I'd come from. But again, I was extremely fortunate. I had several excellent teachers there and, again, the most memorable teacher, by all odds, that I had was a woman, and I do remember her name very well. Her name was Miss Abbott, and she taught mathematics. I was a good student. I didn't have much difficulty with school work, so I got along all right with that, and I was feeling my way around.

I had a couple of memorable experiences. First of all, my first semester there, I was assigned to a physical education class, and it was a period for swimming. When I showed up for the class there was one black boy in the class. I had been brought up in a strictly segregated society, and during my years in Missouri I don't ever remember this being discussed; as far as I was concerned, there was no problem about it, either on the white side or the black side. Everybody was friends, and happy, and I never was conscious of any friction at all, especially surrounded by the black people on our places who, as I say, without exception were really just outstanding human beings.

But I found that I had an emotional reaction to this thing, and I didn't want to go in the pool with him. At least I was smart enough so that I didn't sound off to anybody about that, but I tried to get my swimming period changed, take it at some other time. I don't remember what excuse I made up for it. It probably wasn't very good, because the gym instructor declined to reassign me.

I remember I wound up in the principal's office, and I can still remember him very well from this incident. I guess he suspected the problem, but I wasn't going to admit that, so I had a big go-round with him. The funny thing is, I can't remember now whether I won or lost. I don't remember whether I went into the pool with this boy or not.

But the significant thing was that either at the time this was happening or so shortly thereafter it was almost contemporaneous, I went to the movies one Saturday afternoon with two of my new-found California friends. It was a bright summer's day, the sun was shining full blast, so when we went into the theater -- you know how it is when your eyes are just blind, you can't see anything, you have to grope around -- we groped around for a while, and finally began to see more clearly.

We went down the center aisle, and there were three seats on the right, I can remember, and I went in first, and my two friends came in and sat on my left, the outside one on the aisle. And eventually our eyes cleared, and there was nobody in front of us. We were in the middle of the theater; the screen was absolutely unobstructed. There were a couple of people sitting on my right, but I didn't even notice particularly who they were.

After a few minutes, the kid sitting next to me punched me in the arm and said, "Come on, let's move." And I said, "Move? What do you want to move for?" He said, "Come on, let's move." I said, "No, why move? These are the best seats in the house. What are you talking about?" He punched me again, and he said, "Japs." There were two Japanese boys sitting on my right. I'd never seen a Japanese in Missouri. They were an unknown species to me, just as I would almost say blacks were to these two California boys sitting on my left. And these two kids wanted to get up and move, even though they weren't sitting next to these two Japanese boys.

Hicke: Did you find that attitude prevalent?

McBaine: Oh, yes. The Japanese in those days weren't allowed to own land in California, didn't you know that?

Hicke: Yes, I knew there was that official attitude, but somehow I hadn't related that to actually not sitting next to them.

McBaine: I can only tell you that's what happened to me. The result was it taught me a lesson I've never forgotten. I don't think it helped me solve my problem with the blacks or helped them solve their problem with the Japanese particularly. Your brain can conquer your emotions, but it can't eliminate them. But as I say, it just showed the whole thing as so nonsensical. This comes from the conditioning as a child and your whole lifetime to something you see that means nothing to someone else who has not been conditioned in that way, which leads to a lot of conclusions, one being it's going to take a generation or more to make any dent in this kind of problem. You just cannot take a human being who's been conditioned one way for fifteen or twenty years and then turn him around. Intellectually he can do it, but he won't do it inside.

Hicke: That's a good illustration of that.

McBaine: It was fantastic. Anyway, the second incident that happened to me was, at the end of the first semester -- I don't know, let's say, to make the story as good as possible, I had all A's. When I came back for the second semester, I met my math teacher -- and I think I had her again for the second semester -- in the hallway one day. She stopped me in the hall, and she said, "What are you doing for the school?" in a very vigorous tone of voice. I was somewhat taken aback -- I thought she was a friend of mine -- and I said, "Well, I've been studying hard and trying to do well in my subjects." She said, "I'm not talking about that. You don't have any trouble with that. I want to know what you're doing for your school. What are you doing for your fellow man here in the school? Don't you do anything?"

I don't remember exactly what I said, but I know that I weighed less than 140 pounds; Berkeley High School had a 140-pound-football team, those who weren't big enough to play on the varsity team. But football was over. So somehow or another I mentioned that when I

was in Missouri, I played some basketball because of this coaching by Don Faurot that I told you about.

She said, "Well, then go out for the basketball team. Go play on the basketball team." She so shamed me by browbeating me this way that she made me go out for the basketball team. Well, Berkeley High School was one of the top high schools in northern California in its athletic teams. But here I was, so I went out for basketball, and to my utter astonishment, I made the team. I had a marvelous time, and made my block letter in basketball.

Frankly, I never would have had the get-up-and-gumption to do it by myself; she's the one who made me do it. Of course, it didn't hurt my studies any; I didn't take that much time at it. That's the kind of thing, as I say, that a real teacher does. It isn't how much she knows about her subject, it's how she handles the human beings, how she handles the students.

Hicke: She knew you could easily handle a lot more than your studies.

McBaine: Sure. She wasn't bothered about that, that's what she said, and she was right. I guess I didn't have the self-confidence, I didn't know what I could do. Here were all these kids who had been together for three years in the school, and I was a newcomer in the fourth year. Kids at that age aren't terribly hospitable to newcomers anyway. However, after I made the basketball team, I got to know lots of people.

Hicke: She probably had that in mind, too.

McBaine: She probably did. When I look back on my education, I think I was very, very fortunate all the way through high school. I was in public schools. I think I got as good an education as I could have gotten any place.

When I finished at Berkeley High School, there were no other considerations in mind except the University of California. I think one of the reasons for that is, having grown up in Missouri, I guess Missouri and northern Michigan were the only two parts of the union that I really had seen up to that point in my life, and I'd only been in California a year, so there was no discussion about going someplace else to college. I expect that had my parents even broached such an idea, I would have opposed it stoutly because of having been uprooted once. I don't remember thinking this expressly, but I suppose I would have been reluctant to want to go some other place because California was an attractive place. It was supposed to be the place of the future. So I did go to the University of California.

There again, I think I was very fortunate, particularly when you consider the subsequent history of the University of California, and I mean particularly by that, the college at UC. When I was there, Dr. William Wallace Campbell was the president of the univer-

sity for my freshman year, and he was an old boy with enormous eyebrows, an astronomer, with absolutely no personality. I doubt if he knew an undergraduate. But in any case, he was succeeded by Bob Sproul at the end of my freshman year.

Sproul was not the type of university president that the private universities have. He was not a distinguished academician, but he was a superb president for the University of California or, indeed, for any state university, in many ways. One of the ways was that he was smart enough to have a staff around him who was distinguished academically. The provost of the university, as the number two man was called, was Monroe Deutsch, who was a professor of Latin, professor of Classics, and a very distinguished academician. So between them they made up a tremendous team. Sproul was a terrific man, much as Wally Sterling was in later days at Stanford: same personality, the same ability to appeal to and lead youngsters. As an example, Sproul knew by name and called by name every student on the campus who really did anything at all to distinguish himself or herself. Again, like Miss Abbott in Berkeley High School, "What have you done for your school?" You were assumed to be able to handle the bookwork.

My four years as an undergraduate there, in retrospect, were just marvelous. I think a lot of the problems the University of California has had later on were not incipient at that time. Most of the classes were taught by professors, not by teaching assistants, and most of the students, if they wanted to know their professors, they could get to know their professors. The professors didn't conclude a lecture and then immediately disappear out the back door so nobody could get to them. So despite the fact that it was a big university, there was, at least among the people that I knew, no feeling of remoteness or being shut out by a bureaucracy or anything of that kind. Again, I think I was extremely fortunate.

Hicke: Should we move on to Oxford University?

McBaine: No, I'd like to talk about the undergraduate years at Cal a little.

Hicke: Fine.

McBaine: I can remember quite a number of influential courses and professors. For one thing, I took a very catholic curriculum. I had already intended to become a lawyer, but I really didn't think that I should take nothing but pre-legal courses, so I took a little bit of everything I was interested in. I took a course in anthropology, I took a course in accounting, English courses of course you had to take. One of the most influential courses and professors I had I think was in philosophy, with a German philosophy teacher whose name was Loewenburg, and I want to tell you, if you could stay up with his mental convolutions, you could stay up with anything. But it was a fascinating course.

In addition to that, I did a number of things: one is I joined the Naval R.O.T.C. At that time in Berkeley, all undergraduates were required to do two years of R.O.T.C.. In the Army Reserve Officer Training Corps, only two years was required. In the navy, four years was required. So I signed up with the navy, and there were a number of reasons I did so: one, there were a lot of courses like astronomy, which I took, that fitted in with the naval curriculum. At the same time, I was, as I say, after a broad spectrum, so I liked that sort of thing.

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McBaine: The head of the Naval R.O.T.C. and founder of the unit there, which was founded, I think, only a year before I came to college, was then Captain Chester Nimitz -- later Fleet Admiral Nimitz in World War II -- who remained a friend of mine for the rest of his life as a result of this experience.

Also, the Naval R.O.T.C. unit took a summer cruise each summer, and it must be something about my Scots ancestry that I got into all these things like Camp Sosowagaming and so forth. For three years in a row I made a cruise: first I made a cruise on a battleship to Hawaii in my freshman year. Then I believe in my sophomore year I drove across the country with a friend, had a marvelous trip. We went down through Arizona and New Mexico, and then I went with the Yale unit and two other units on three different destroyers from one of the New England ports to Bermuda. Those were nice places to go on a cruise.

Hicke: Join the navy and see the world.

McBaine: That's why I got into this thing. The third cruise was again on a battleship up to Vancouver. Again -- you were asking about influences -- those were very good influences, in my opinion. On the cruise to Bermuda, I was made the navigator by the captain; of course, they had a real navigator, thank God, not just me. But I was supposed to do what the real navigator was supposed to do, which was that for the 24 hours of my watch I was required to be ready to tell the captain of the ship at any moment the position of the ship.

Of course, as I say, if he had been relying on me we would have been aground or sunk, because off Cape Hatteras I got seasick -- the only time in my life I've ever been seasick. In any case, the responsibility for that, and the work involved in that, having to perform under real conditions instead of a textbook exercise, was good for me.

The other thing is we had gunnery training. We had to learn how to fire the different guns, including the 16-inch guns on the battleships. Again, that's a matter of teamwork involved there, and it's deadly serious teamwork. And the navy's method of teaching you gunnery in those ways was for the instructor to assemble the students who are supposed to learn how to fire a particular gun at that

gun and say, "Now first you're supposed to do this, and second that, and then this and that," etc., etc. "Now remember what I told you. If you don't, and you do something the wrong way, there will be trouble. In 1920 there was an explosion on the battleship so and so, and eighteen men were killed. In 1918 there was an explosion on some other ship, and twenty-five people were killed," and so on. By the time he'd gone through the roster of possible mistakes, you'd think you could blow up the whole U.S. Navy.

Some people concluded from that that they weren't cut out to be gunners, and it's a good thing that they learned it. But I had to go through all this training, which, in retrospect I regard as valuable. I was one of the people who pulled the trigger on a loaded sixteen-inch gun, for goodness sake, which had a reduced powder charge, of course, but it was still quite an experience; it wasn't a full charge of powder in the gun. Anyway, those cruises -- not only were they marvelous times, broadening experiences, particularly the trips to Bermuda and Vancouver, I think they were marvelous training.

I also wound up as the commanding officer of the Naval R.O.T.C. unit my senior year at Cal, which almost caused me to faint. I'd been the third man in the rear rank of Squad Number 4 for three years, just marching around in whatever direction the fellows on either side of me went. When they went right, I went right. When I came back for my senior year in college, I got a call from the then captain, no longer Captain Nimitz, who was head of the Naval R.O.T.C unit. He asked me to come in and see him, so I did. School was two or three days off, and he said to me, "How's your command voice?" I said I didn't know what he was talking about. And he said, "Well, let's hear you give a command." I said, something, I don't remember what it was, and he wasn't very impressed by that, and he told me I'd have to practice a little bit.

He gave me a few lessons: speak from the diaphragm and not entirely from your vocal cords, much like a singer. So he said, "You're going to be the commandant of a corps here, and you have to take them all out and drill them all." Well, I want to tell you that's when I thought I was going to faint, because it's no easy matter. You get several hundred people out there all lined up in squads and companies and battalions, and you start them marching around, and you've got a juggernaut on your hands; if you don't do the right thing, it's going to be the most godawful mess, and that's exactly what I produced the first time I had them out.

Hicke: Did you go to the library and get a book on it?

McBaine: No.

Hicke: What else could you do?

McBaine: They'd been doing this, they'd been teaching, as I say, but it was only the student officers who paid any attention during my first

three years. I didn't pay any attention to it; I was a guy in the rear ranks. The only thing I could quarrel with is they didn't give you any advance notice, they didn't bring you along from year to year. All the officers were seniors.

Hicke: So they all left at once?

McBaine: Yes, so they all left at once, and the new class came in. After I got over that, I enjoyed it a good deal. Again, it was a memorable experience. Now the other thing I guess I did, I did a number of things -- is this getting too long and boring?

Hicke: Not in the least, this is wonderful. I really appreciate your digging back into your memory and recalling some of these things.

McBaine: Some of these things shape one's views, of course.

Hicke: That's why I put all these things on the outline.

McBaine: I was surprised that you did when I read it.

Hicke: Let's keep going.

McBaine: It's fun to reminisce. I was just thinking of some of the other things. I was very active in all sorts of activities. Again, I didn't have any pressure on me; I didn't have to work. I should say I joined a fraternity and I lived in the fraternity house. Again, I have nothing except good to say about that. We had no chaperones in my day, but life is so different now, these undergraduates are so different. But I emphasize that we had no housemothers, no adults in the place at all. During my four years there we never had a single untoward incident. People drank, it was during Prohibition, but there was never a girl in the house except at an approved dance. There was never any gambling in the house. God forbid, it never occurred to anybody that there might be dope. We'd never even heard of marijuana, much less cocaine. The members paid their bills, they kept the house clean, and it was done on a hierarchy system: the freshmen did the manual labor. We had an initiation that involved some hazing, but it was all sensible. One thing that modern people express horror at is tubbing. Did you ever hear of that?

Hicke: Yes. I'm not too familiar with it.

McBaine: It's a method of discipline. You fill a tub with a foot or two of water and put somebody in it on his back, and then put him down and hold him under for thirty seconds. That sort of thing can get out of hand, I suppose, but there were never any untoward results in the whole university; it was commonly done when I was at the University of California. Paddling was not done, but tubbing was. Obviously I don't have any bad recollections of it, because it didn't produce any bad results.

So when I see the lack of discipline and lack of even lawfulness going on now in these student living houses, and even, indeed, in my own fraternity, it just isn't like it was when I was there. I was the president of my house in my senior year, and I want to tell you anybody who pulled anything like that would have been under that water for a long, long time, in my day.

Hicke: That was your method of discipline?

McBaine: You bet it was. And we did it all ourselves. There wasn't any outsider in there doing anything about it; it had to be done by common consent. I look back, as I say, on that as a very positive part of my experience. I'll come back to the no drinking stuff a little later.

I also played freshman basketball for California, and again, my somewhat widespread interests got the better of me. I was invited by a friend whom I'd made in college who lived in Pasadena to come down to Pasadena for the Christmas vacation with him. So I did. I don't think I'd ever been in Los Angeles. The freshman basketball coach took great exception to that; he thought I should have stayed here and practiced all during the Christmas vacation. So he put me on his black list and when I showed up, when I came back for the spring semester, there I was sitting on the bench. He gave me to understand I was going to continue to sit on the bench, so I quit. I don't think I was all that much of a basketball player anyway, to tell you the truth -- all right for high school maybe, but I wasn't going to have any distinguished career in college.

So then I went out for a lot of other things: I went out for track manager. We had a student managerial system at California; I suppose they still have. And again, that was a very important activity among the students. Those spots were widely competed for. You only went out your sophomore year. Any number of sophomores could go out for any sport they wanted to: football, basketball, whatnot. Then a certain number of those were selected at the end of the year as juniors, usually about six; maybe football had eight. They were junior managers. Then one was picked to be the senior manager the following year. They were important positions in the student community, sort of ranked by the sports; the football manager was the most elevated, I guess, football being the prime sport.

I had a marvelous time out of that, and became the senior track manager. As luck would have it, the year I was the senior track manager, we had the NCAA [National Collegiate Athletic Association] track meet, which is for all the colleges in the country, at Berkeley in Edwards Stadium, which was dedicated that year; it was brand new. I was the manager for the meet. I was in charge of the meet.

Hicke: In 1932?

McBaine: In '32, yes. Also, the Olympic Games were in Los Angeles that year, and the American Olympic tryouts were one week later, after the NCAA at Berkeley, down at Stanford [University]. And then two or three weeks after that, the Olympic Games began in Los Angeles. I went down to the Stanford meet. Of course, I was on the field as a visitor down there, the manager of the NCAA meet here. I didn't have anything to do on the field in the Olympic Games, but I went to Los Angeles and went to all the track and field and other events and had a marvelous time. I knew all the American athletes in the various events -- in the track and field events at any rate -- at the Olympics, so it made a marvelous summer for me. As I say, I think that was better than playing basketball.

There was one other thing that I think influenced me all the way through the University of California. As I say, I just can't say enough for the university. I don't think anyone at Williams or Dartmouth -- and I have lots of friends who went to one or the other -- could have had a more personalized, satisfactory four years in college than I did. That may not be a fair comparison, because maybe a wider spectrum of the students at those smaller colleges get all this personal attention, but as far as I'm concerned, I just felt the whole thing was a candy store, looking back on it, with all the professors, the dean of men, the president's office, and the provost who, as I say, was a friend of mine. Of course, all those older men knew my father and were good friends with him, which certainly didn't hurt me any. So it was a thoroughly good experience.

We had one last experience that I think was significant, influential. We had the honor system at Berkeley in those days, and we also had student government. And by student government, we meant just that: students were in charge of everything, including student discipline and expelling and suspending students. To be realistic about it, I'm sure the administration retained the power to act over and above the student council, if you will, if they felt they wanted to, but the student council was charged with those responsibilities.

The student council was made up of three seniors and two juniors. I don't remember how many were boys and how many were girls at this juncture, but I know I was asked to be one of the junior members. At that time -- as I say, it was Prohibition -- I drank. As a matter of fact, I don't think I knew anybody who didn't. Virtually everybody on the campus who really wanted to be anything in campus activities did drink; otherwise you were considered eccentric. The only fellow I ever knew who was a student leader and made a big name for himself but didn't drink was Herbie Fleishhacker, who was at Stanford. He was a teetotaler then and always was until he died.

In any case, that's why I feel I know something about these kids today who get caught up in smoking pot; the peer pressure is there, whether you realize it or not. I didn't realize it at the time, but looking back on it, I can see that there was, because I was obviously interested in a lot of these activities, and if you

get into an activity, you want to do well. So that's part of the game, I guess.

When I was asked to be on the student council, as I say, one of the problems was that it was illegal to drink on campus or to have anything to drink, and that was the kind of thing that came up before the student council for discipline. I was torn about what to do, but I didn't want to give up drinking. I've often wondered if there was something else on my mind: that I just didn't really want to do the dirty job at all, which might have influenced my thinking. So I went to the dean of men and I told him I was very sorry, but I had to decline, because I drank and didn't want to give up drinking, and I was not going to continue drinking and then suspend somebody from school for doing what I did myself.

He didn't say anything, but he called me up a few days later, and I don't know exactly what he said; probably he'd discussed the matter with Dean Deutsch or President Sproul. Anyway, he said he'd make an exception in this case. The committee would have no jurisdiction over drinking offenses while I was on it. I spent two years on that: my junior year and my senior year.

Hicke: He really wanted you to be on the student council.

McBaine: All I can do is recite the facts; I don't know what went into it. And it was not all fun, by any manner of means; it was more non-fun than it was fun. You may think that sounds interesting, but for the average youngster, it's no fun sitting there judging your peers and meting out punishments, even when you get to cases of cheating in exams. That's the principal job we had, the biggest thing, because we had the honor system and there were no proctors in the exams. That's no fun.

Hicke: But it's a slice of life.

McBaine: Yes, it's a slice of life. Just as a footnote to that, in this late day and age, it seems incredible to me, but when I was in college I belonged to two drinking societies: one was during my sophomore year, and one was during my senior year. The second one was called Kappa Beta Phi. I don't know if still exists at Berkeley or not; I hope these drinking societies don't exist any more. That's a reversal of Phi Beta Kappa; it gave me some perverse pleasure that I had it both ways.

Hicke: Yes, I noticed in the files you were Phi Beta Kappa, too.

McBaine: I don't drink hard liquor at all now, haven't for a number of years. It just seems incredible to me that I probably drank more alcohol my sophomore year in college than I ever drank in any subsequent year in my whole life.

Hicke: It didn't stop you, I guess.

McBaine: No, I guess not. As I say, it's hard to think that I could have done that. The object there, in the initiation particularly, was to get everybody drunk, and then see how long it would take them before they could, say, make it to a formal dance which was being given. If you had had a glass and a half of alcohol to drink at 3:30 to 4:30 in the afternoon, what time would you be able to make it to the dance that night? I can't say I'm very proud of that, but at the time I enjoyed it.

Hicke: I see that you graduated in 1932.

McBaine: I did have an interesting time at graduation. I was the salutatorian of the class. They had salutatorians then; I don't know whether they do now or not. The graduation ceremony took place in Memorial Stadium and filled just about one end of it, I guess; there must have been about 25,000 people there.

I had to give a speech, which I reread on occasion and find totally uninspiring, I must say. I don't think I was any young Winston Churchill, I'll tell you that. But it was a big thrill. It was the biggest crowd I've ever spoken to, before or since, I guess. In those days the president of the university handed out a diploma to each graduate, and they had somebody give him the names as they came up. He didn't know all the members of the class, but it was a marvelous ceremony.

Just to digress a minute: when my younger son graduated from Harvard, maybe, fifteen to twenty years ago, I went back to the graduation. To my absolute horror, they gave out not only the undergraduate degrees but the Ph.D's by having the candidates for the particular degree being given rise in their seats, and then the president would intone this speech, "I hereby confer upon you the degree of Doctor of Philosophy," and so forth, and then they'd sit down again. Somebody puts in nine years, let's say, of work on physics or something, and that's the kind of send-off he gets today!

Hicke: You can't depend on graduation ceremonies for recognition.

McBaine: That just horrified me. They didn't do that in 1932 anyway.

Hicke: So you actually shook the president's hand and got the diploma?

McBaine: Yes.

Hicke: Was the diploma actually in his hand?

McBaine: Yes, absolutely.

Hicke: Now I think they give you an empty tube and you have to go and get your diploma later on.

McBaine: Of course, he had assistants handing him the diplomas and telling him the names; it was very well organized. All the families or

guests of graduating seniors were sitting in the stands, and they got to see little Johnny march up and shake the president's hand. That's the way it ought to be.

I can't recall now who it was who first spoke to me about applying for a Rhodes scholarship. There were several Rhodes scholars that I knew. One was Bertram Bronson, who died just recently; he was a professor of English at Berkeley, a former Rhodes scholar. I had him for freshman English, which as you know, was then Iconoclasm IA, and he was a marvel at it. I've tried to think in connection with this history who it was who suggested it to me, and I don't remember, but somebody did, that's the point. I didn't think of it.

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McBaine: I probably knew there was such a thing as the Rhodes scholarships, but frankly, for one reason or another, I was busy having a good time my senior year with all the activities I was involved in, and I always enjoyed my school work. I could say frankly that there wasn't a single course I took in the University of California that I didn't enjoy. Some of them were widely different. Some of them were pretty damn dull, but they were intellectually stimulating if you just bore down on them. The opposite extreme was political science, whatever the number was, from General David Prescott Barrows, a former president of the university, who was the commanding general of the American Expeditionary Force sent into Siberia at the end of World War I. I'm not sure, but I believe he was a National Guard officer. In any case, he was the commanding general, and he had been the president of the university, and had retired and been succeeded, as I say, by Campbell and then Sproul, and he gave this course in political science. I don't know what the title of it was, but all I can remember is that about the second time the class met, he gave the final examination.

Hicke: That was an unusual course.

McBaine: And I want to tell you, it was the strangest course I've ever had at any place, but one of the most fascinating. From an academic point of view, I don't know whether one could say whether or not you learned. It was hard to put your finger on, let's say, because all he did was reminisce about his experiences, but he had a fascinating life. It was marvelous to hear about this particular episode of history: the White Russians fighting against the Bolsheviks. But I never took another course where the final exam was given on the second day of the course. That confused everybody.

Hicke: You didn't have to do much studying for it. [laughs]

McBaine: No. But anyhow, I really did enjoy all of these things. I suppose my professors must have been the principal reason why I was selected for a Rhodes scholarship. I suppose it was the same thing as it is now. You make an application for the scholarship, and you name a

certain number of sponsors, and they write to the committee members, and then you're interviewed by the selection committee. Here again, I really owe this to my teachers, and not to myself. I was so busy with all of these track meets and everything else that was going on, it just really never occurred to me to think about a scholarship someplace else.

Fortunately, somebody did think about it, and I did apply, and was selected.

Oxford University

Hicke: Tell me about Oxford University. I believe you studied Roman Law and Comparative Law, for example.

McBaine: Those are really minor aspects of the Oxford experience. The major aspects are these: in the first place, I want to say that I was fortunate in one way in that a noted Oxford professor, Dr. Cyril Bailey, who was professor of Latin and the Classics -- probably he spoke Greek as well -- had been a visiting professor at Berkeley when I was selected as a Rhodes scholar. Someone told me about him after I was selected, and I met him in Berkeley, and he was a delightful man.

When I arrived at Oxford, he and his wife had returned there, and had a lovely house on the outskirts of Oxford. He was the University Orator at that time, who is an official who speaks at all public ceremonies at Oxford. He delivers the citation for all honorary degrees, for example, all of these in Latin. I don't know if that's still done or not. Through his good offices, I met more of the academic faculty, I suppose, than I otherwise would have met.

The very first thing I should note about Oxford is that I have never been in a community like that where the intellectual level was far above any other place I have ever been, and that includes Berkeley. I grew up in a university town, the University of Missouri, and Berkeley in those days was a small town when I was there with a very high intellectual level, but Oxford was simply incredible.

That includes numbers of people, not only the dons, as they call the professors, but all the other people there: their spouses, for example. If you went among the townspeople it wasn't so apparent, but you didn't see them much. It was the people you saw who were connected with the university community, even the booksellers. There's a famous bookstore in Oxford called Blackwell's. It's been there for a hundred or two hundred years. Just the bookstore is an example. There were lots of salesmen hanging around. The rule in Blackwell's was no salesman would ever speak to a customer -- he waited for the customer to speak to him. Let's say you go in there

and there's some ancient classic there that you have your heart set on; you can go in there, and I don't think they've got any chairs, but if you stand up, you can stand there and read that book from nine in the morning until five in the afternoon and nobody will ever throw you out. So that's point number one.

Point number two about it is it's a totally different method of approaching education, one which is certainly significant here. I don't know how many times I've heard somebody say in this country, "I don't know anything about astronomy, I never had a course in that." You never hear anybody say that in England. At Oxford, and I'm sure the drill is the same -- I'm lapsing into some Briticisms now -- at Cambridge, each student has a tutor appointed, and the tutor assigns readings to you.

Most of the classes are given by college dons, and many of them are given in the particular college. Some of them are given in the university buildings. The university buildings have lecture halls. Those are the bigger ones, where the examinations are given; an examination hall seats quite a number of people. You can go to those lectures, if you want to. You don't have to, there's no attendance taken. And you can take notes, if you want to, but that again is not required. You do have to go and see your tutor once a week, and your tutor assigns a topic to you each week. You report on that the following week, which requires certain reading and presumably also some of these courses that you should be what we call auditing.

The point is you're encouraged to do this reading more or less on your own. And -- most people don't realize it -- Oxford is only in session twenty-four weeks out of the year. Twenty-eight weeks of the year you're on vacation.

Hicke: Is that in quotes?

McBaine: You're absolutely out.

Hicke: You aren't even reading or anything?

McBaine: You're supposed to.

Hicke: That's what I meant.

McBaine: That's what the English boys do, sure. The scholarships are for two years or three years, or were then; you could stay three years, if you wanted to. Some people stayed three years and took a Bachelor of Civil Law, it was called, which is an advanced degree over an AB in Jurisprudence, and then came back here and went into practicing law. I have a friend who is a Rhodes scholar from Stanford who did that.

I didn't do that. My father taught here at Boalt Hall, and with his advice, I intended to come back to Boalt Hall. In fact, I

intended to come back to Harvard and finish at Harvard, but Harvard wouldn't give me any credit for the two years I did at Oxford, and that would have meant three more years at Harvard. I was quite disappointed that they wouldn't let me in, and I thought it was pretty stuffy of them. Anyway, I did come back to Boalt, and I only stayed two years at Oxford. So instead of doing all this reading in the vacation periods, I saw the world, deliberately.

But even so, I had the experience during the school term of going to this tutor and having him recommend reading to me, and then having to converse with him about what I'd read, or even give him, say, a written paper. The papers weren't in the area of questions like, "In what year did William the Conqueror fight the Battle of Hastings?" They weren't like that; they were thematic questions, basic principle questions, philosophical questions or answers, so that you were taught really to educate yourself, and taught how to do it with guidance.

Another point is you were not given an examination in a course at Oxford. They have no examinations in each course; you're examined for a degree. Now the English undergraduates spend three years instead of our four, and at the end of the third year, and only at the end of three years, if you're going to take a Bachelor of Arts degree, you're given an examination. So you've got to perform on the basis of the last three years. Obviously, unless you've got a phenomenal memory, there's none of this cramming business that a lot of our kids do in remembering a lot of dates and places and so forth. You can't do that over a three-year period. You can't even do it over a two-year period. I think that has influenced me and anybody who goes through that process.

Another point of difference is that in England, the law is taught not out of a case book, but out of a textbook. Do you know the difference?

Hicke: Perhaps you could explain.

McBaine: Let's take a textbook on torts. It's a book written by a professor of tort law, and it discusses the different subjects of torts, the different aspects of torts, different kinds of torts that may occur, and what the law is on them. It may have on each page footnotes where it cites cases that substantiate what the author says in the text, but you're studying from a text.

In an American law school, they don't do that for you. You're given that case that's in the footnote, and you're given excerpts from the opinion or opinions in the case, and you have to read those and decide for yourself what the significance is of what the court said.

Hicke: So you more or less write the text part yourself.

McBaine: That's right. That's a very laborious method of teaching. This was originally started by, I think it was Dean Langdell at the Harvard Law School, and was adopted by virtually all American law schools. There's some agitation now to get away from it, because it's slow and it's laborious, but after all, basically that's what you have to do when you start practicing law. The idea of the American law school is to train the student to do what he's going to have to do, certainly as a younger lawyer. The way it is now, if you're a sole practitioner, you're going to have to do it the rest of your life. For that reason, I intended to come back to this country and at least go through that process for one year here.

When I got back, the law school at Berkeley accepted me and gave me credits which, in effect, amounted to a year and a half's credits for the work I'd done at Oxford, but not two years. Instead of staying a year and a half at Boalt Hall, I stayed two years to avoid breaking one year up. It didn't seem there was much point in doing that, and besides, that was 1934, and things weren't economically so hot in '34. Perhaps my father's advice was based partly on that. But I did stay for two years.

Another important thing about Oxford was the people that I met there. I mentioned to you the other day that Dean Rusk was a contemporary of mine at Oxford, and a good friend of mine. He remained a friend of mine, and he still is, although I haven't seen him in a number of years. There were a number of people there that I knew who came into my life later, not many of them in any important matter, but Dean Rusk did. He came into my life in a very important way later on when he was assistant secretary of state.

Another great influence -- I don't know whether everyone would call it an advantage, but I do; anyway, an influence -- were the weeks in between term time. Fortunately, my family gave me a little extra money, it wasn't very much, but it didn't need to be very much. The Rhodes scholarship stipend, in those days, while it was a generous stipend as scholarships go, and enough to maintain one throughout the year, it didn't really allow much extra for traveling, even third class, staying in pensions, and so forth. But with about, as I remember it, maybe a thousand dollars a year extra, I was able to go everyplace I wanted. I deliberately took full advantage of it, knowing, as I say, I intended to come back here to finish law school before I started practicing law. That was my first real experience with the world at large, other than these R.O.T.C. cruises.

I believe that my first Christmas vacation would have been the winter of 1932. I went to Florence with some friends from Oxford, and I was going to meet a couple of others there, and I had a cousin who was going to be there at that time.

To tell you the truth, I don't even remember if the University of Missouri had a fine arts museum or not; if it did, I don't remember it. And I don't think the University of California had

one. And I don't believe I'd ever been in any one of the museums in San Francisco. I don't know what your own experience has been of this thing, but to go from that kind of absolutely unsullied background and be plunked down in the middle of Florence for six weeks was staggering. It was like a bomb blast, and it still staggers me when I think that a city of 25,000 people, which it was roughly in its heyday, could produce the fantastic works of art that they did produce. I think that's got to be one of the most dramatic stories in all of history.

I guess I was there for five weeks. Then I went down to Rome for one week, and there I stayed in a pension. When I arrived in this pension, I said I was from San Francisco, and the woman who ran it said to me, "Well, your brother is already here," and I said, "I don't have a brother." She said, "Oh, yes," and she looked knowingly. Anyway, at dinner that night I was at a table, and there was another redheaded fellow sitting across the table from me. It turned out to be Paul C. Smith. I don't know if you ever knew Paul Smith. He was the boy wonder editor of the Chronicle for many years. It's a long story, but he was a most extraordinary person, had a fabulous career, and was a lifelong friend of mine. So he and I sat on the Pincian Hill and discussed Mussolini and philosophized about everything.

But that's an example of the kind of thing that, had I simply gone to the country and holed up with a lot of books someplace, I never would have experienced. So I not only don't regret it, my plan was to do that. Nothing was quite as dramatic as that first time, but then, for example, in the summertime, I went over to Bruges, and I was going to go from there up the Rhein and down the Danube to Vienna and Budapest. I got as far as Munich, and I never left; I spent about two and a half months in Munich. I think as far as fun is concerned, I probably had more fun that summer than any summer of my life. It was just absolutely great.

During the course of that time I learned to speak German fluently. I spoke it all day long, merely from living in a pension where no English was spoken. The woman who ran it didn't speak English. There was a common table, and if you wanted a piece of bread, you had to learn the word to get a piece of bread, or a glass of water, or whatever it was. I couldn't read a newspaper or the books, because they were all in Gothic script in those days, and that Gothic script is very hard to read. Do you read German?

Hicke: I have studied German, but you're right, the F's and the S's are different.

McBaine: It's very confusing; it destroys your concentration completely. You're so busy trying to figure out what the thing is that you almost miss the meaning of the sentence, much less the thought.

Hicke: It's hard enough to translate without having to read script.

McBaine: That's right. So I never bothered with that, and I didn't bother with the grammar, so I'm sure I would offend any German purists with my subject and verb and object. I followed the English progression. But that was the summer that Hitler became chancellor. So as a result, among other things, I bought and read when I returned to England Mein Kampf, which I still have, which I think is, without question, one of the most significant books ever written.

Hicke: Not nearly enough people read it.

McBaine: No. Of course, history has seen to it that it hasn't had the importance of Das Kapital, but I think it's comparable in a sense. People should have read it and paid attention to it. Of course, Das Kapital was in existence for quite a long time before anybody paid much attention to that, and then I'm inclined to think the only reason people paid attention to it -- I don't know whether it was Lenin or some of his scribes -- was because they saw in it a way to pervert it and create a ruling clique that is more solidly entrenched than any divine monarch ever was in the Middle Ages. Plenty of kings were overthrown despite their divine rights. Nobody's figured out how to get rid of a communist hierarchy yet.

In any case, we were pretty remote from it in Germany, but I had one interesting experience. It shows you how many indicators there were of what was going on in Germany. We were in a beer hall in Munich one night, and we had to go to the urinal. We were all talking German, because we all spoke German of various degrees of proficiency; I was probably the least proficient. But somebody started telling a dirty joke, and not to louse it up in poor German, we switched to English. There were three or four of us standing around.

I have to describe the scene for you. In the men's room, there's a big sort of slate wall and a pipe that runs along the top and the water flows down like a waterfall. So we were all standing there, about three or four in a group, and telling this joke and laughing, when all of a sudden, bam, some fellow in a brown shirt and brown uniform, the Nazi party uniform, hit us from the rear and pushed us all right into the pissoir. When we turned around, here was this rather smallish fellow, obviously drunk, just as drunk as he could be, and he was cursing us in German, and he said something like, "Sombitch, sombitch," [speaks more in German] "Sie sind in Deutschland jetz und Sie Mussen Deutsch sprechen."

Hicke: "You're in Germany, and you have to speak German now."

McBaine: You have to speak German now. He objected to the fact, you see, that we were speaking English.

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McBaine: One of the boys in our group drew back his fist as if he were going to level this guy, and, fortunately, one of the others of us, I

don't remember who it was now, whether it was me or somebody else, remembered that he'd read in the paper a few days before that Hitler had just passed a law, issued a decree or whatever he did, making it a capital offense for anyone to attack, physically attack, a member of the Nazi party or the military units of it in uniform. That was the first time in history for that law since William the Conqueror's day. When William invaded England, he had to make the same sort of a law: it was a capital offense for any Saxon to physically assault a Norman.

In any case, it was supposed to be common knowledge, and we knew that there were several Americans in jail in Munich for unknown offenses. Fortunately, one of our number knew about this and grabbed this fellow's arm and stopped him, so we were sort of at an impasse there, and this storm trooper was still yelling obscenities at us.

All of a sudden we heard a very sharp command from behind us, somebody speaking in a very sharp tone. He had a command voice, I'll tell you that. He said something in German, and this brown shirt looked, and we turned around, and here was, again, a rather smallish man in an impeccably cut business suit, and as I remember, he had a homburg hat on. He barked at this storm trooper, and the man looked at him for a minute, pulled himself up, and sort of came to attention. This fellow barked some more at him in German, and the brown shirt fellow said, "Jawohl, Ja, mein Herr," or something, and off he went.

With that, the newcomer came up to us, reached in his pocket, took out a wallet, took out a card, and he said, "My apologies. My compatriot had had too much to drink, as you could see. I'm very sorry for his behavior, and I must apologize," and he handed us his card. It said whatever his name was, and I don't remember if there was a "von" in it or not, but quite likely there was. But anyway, down at the bottom it said, "Privat Heim Vehr."

Hicke: Private?

McBaine: Yes, private, German army. Now that man was no more a private than Douglas MacArthur was. The significance of that story is that the German army, under the Treaty of Versailles, was limited to 100,000 men. Obviously any ordinary army has got a couple of generals, and then more of each rank as you go down the ranks, and the great mass of them are common soldiers. And here was this fellow who was obviously an aristocrat and obviously a high-ranking person, and he was a private in the army. So what they had was a 100,000-man officer corps. And that was in 1933, I guess it was.

Hicke: That was quite an experience.

McBaine: But nobody paid any attention to it, particularly the English.

That reminds me of another story I didn't tell you about Oxford. I was a member of the Oxford Union when I was at Oxford, and that's the debating society. The Oxford Union is physically built in the style of the House of Commons in the Parliament, and indeed the House of Lords is set up the same way, with a longish hall with opposing parties sitting on opposite sides, the speaker at one end and a table with a dispatch box in the center. The speakers come to that table on either side, left or right, and speak, instead of going to one central place as they do in Congress.

That particular year -- I don't remember whether this was '32 or '33 now -- a motion came up for debate in the Oxford Union, and the motion was: "Resolved: this House will not fight for King nor Country." Students take their national politics very seriously there. I think there's something like a dozen prime ministers who have come from Oxford, and every one, I believe, from the Oxford Union. The Labor Party was solidly in control of the Union at that time, the Conservatives were way, way out, so that when the House adopted this resolution, some historians have said that this was one of the principal factors that led Hitler to do what he did, because he thought the British would never fight him.

In any case, when this happened -- and I was there the night they adopted this resolution -- it created a sensation in the British newspapers and, in fact, all over the Empire. I mean this was really a big thing in European papers.

The first thing that happened concerned [Winston S.] Churchill's son, Randolph Churchill, who had been expelled from Oxford, or dropped, one might better say, from Oxford because he had failed at the end of his first year to pass some examination which was almost, as described to me by the English students, as simple as, "What is your name?" He got dropped.

Randolph Churchill proved in later life to be one of the most universally disliked people that ever came along the pike. He had all of his old man's arrogance and overbearing personality without having anything else to go with it. But having been thrown out of the school, he got a friend of his, another young man named Lord Stanley of Alderley -- I can still remember his name -- to join him, and he issued a challenge to the Oxford Union to debate another motion, "Resolved: that this House hereby rescinds its motion of such and such a date."

The date was set for this debate in two weeks' time, or whatever it was, and feelings ran high. There was a public threat issued by some group of students that if Randolph Churchill showed up at Oxford, he would be "debagged" and thrown into a local pond. "Debagging" was the British method of inflicting the most humiliation on anyone of anything that could be done -- meaning taking his trousers off and leaving him in his shorts.

When the time came, Randolph showed up, and he had two bodyguards with him: huge, great, hulking fellows. The word went out in Oxford for all the undergraduate members of the Oxford Union to be sure and come early and fill up the seats, because retired colonels of the Indian Army were coming from overseas and one thing and another to attend this debate and vote the disloyal motion down.

So the debate started. It turned out to be an absolute shambles. The Oxford students listened to their own speakers, but when Randolph and his friend got up to speak, they just went wild, and somebody finally threw a stink bomb. And I want to tell you it was the worst stink bomb I have ever smelled in all my life; it just was suffocating. It just stopped everything cold. In the middle of this, some English boy walked in the far end of the hall, walked right up the middle aisle in between the opposing parties, walked up to the dispatch box, and turned the page back to two weeks previous where it said this house would not fight for king nor country, ripped it out of the book, and turned around and started back out. He just walked at a normal pace, so nobody realized what he was doing. He was about halfway out before anybody realized what he had done. Then everybody jumped up, and he then broke into a run, and he just scooted out the door as hard as he go. He rescinded the motion all by himself.

Then they settled down and there was an anticlimax to the debate, but it didn't come to anything. Then a few weeks after that -- and I don't know whether this was already tabled, already arranged, because the Oxford Union customarily quite often invites outside speakers, and they invite prominent politicians to come, ministers of the cabinet, quite often, and they come. Whether it was coincidence or whether somebody did this deliberately, I don't know, but anyway, the notices went up that Winston Churchill was appearing in another two weeks' time. Did you read The Last Lion?

Hicke: No.

McBaine: It's a fascinating book. If you're interested in how England used to be run, you should read that book. I don't think I've ever read a book that gives a better picture of how England was run until recent years. It's the life of young [Winston] Churchill.

In that period, he was the most reviled politician in all of England. He was considered a raving jingoist, and nobody had a good word to say for him. He may have had a half dozen close friends, but that's about all. He was terribly unpopular, but he was coming up to Oxford. When he arrived, he brought Randolph, his son, with him, saying in effect, "To hell with all you people."

The Oxford Union Board, the student officers and governors, gave a dinner before each debate, and the officers and the principal debaters attended the dinner. In my day, it was always white tie. Churchill showed up with Randolph and took him to dinner. They'd just run him out of town about two weeks previously, and the old man

just shoved this young man -- he really was a youngster -- down their throats.

I don't know what the debate subject was, but the subject was nothing significant. That didn't really make any difference, because in the Oxford debates, the principal's speeches were fifteen minutes long -- they were then, at any rate -- and for the first ten or maybe even twelve minutes, the idea was to put on a show of verbal pyrotechnics. It didn't make any difference what you talked about, it's how eloquent you were, and how witty you were. The idea is to show off. Then the last two and a half to three minutes, you could talk about the subject. That was the usual format.

So Churchill got up and he started off, with, as I say, this background of animosity of all these students, and the hall packed by the people who had voted not to fight for king nor country, whereas he was a man, the chief jingoist in the country, who wanted to fight everybody. He started out as if he were utterly bored by the whole proceedings, and let out some banal phrase of some kind or another, I don't remember what it was, but it was something like that selected by the professor who gives a prize of the worst opening sentence in literature.

Hicke: "It was a dark and stormy night"?

McBaine: Yes. Churchill said something like "this dear old England of ours where every mother's son's heart beats for dear old Britain," something like this. There was sort of a low groan that came out of the audience. For the first time, he showed some interest in the proceedings, and he raised his head a little bit. He looked around, and he said, "I said this dear, emerald isle of ours where every mother's son's heart beats for dear old England," and everybody went, "Boo, boo." By this time he was standing erect, and he said, "I said this dear, emerald isle of ours," and he went on through the same thing again, and this time they stomped their feet and whistled and jeered and everything else. And he repeated the same banal phrase three or four times more -- at the end of which the whole house rose and cheered! He just took that same corny phrase and rammed it down their throats, psychologically took them by the scruff of their necks and shook them, until they cheered his bull-dog tenacity. It was the damndest performance I have ever seen in human communications.

Hicke: That's a good note to end on for today, I guess.

Law School at Boalt Hall

[Interview continued: April 29, 1986]##

Hicke: Last time, I think we left off when you were studying at Oxford. Maybe we can start this afternoon with what happened after that.

McBaine: I took an A.B. in Jurisprudence at Oxford in 1934. I "came down," as they say rather than "graduated," that year, and returned to California.

As I mentioned before, I had always intended to go to the Harvard Law School, which was the preeminent law school in the United States at that time, and indeed, may well still be. But Harvard had a policy in those days of not giving anyone any credit for any legal education taken elsewhere. So I returned to Berkeley and received about a year and a half's credit at Boalt Hall, the law school at Berkeley, for the work that I'd done in England, which actually didn't save me any time, because I decided to do the last two years at Boalt Hall. But it gave me the ability to pick and choose among the various courses as I wanted, and altogether was of some aid to me.

My father was then on the faculty. He taught Common Law Procedure to first year students, and Evidence to third year students. I'd had no course in Evidence, so I did have him for one of my courses.

Hicke: What was that like?

McBaine: In retrospect, I think I was a bit of a smart aleck, and I may have had a better time than my father did. My father was really a marvelous teacher. I say that not because that's my opinion, but that was general opinion. He was preeminent really among all the teachers in Boalt Hall in his popularity with the students. He was a great teacher rather than being simply a scholar.

At Oxford, I had met many world-renowned scholars, and there was hardly an inspiring teacher among them. It was a purely intellectual process with most of them. For example, Holdsworth, the greatest authority on English legal history, was without doubt the driest and dullest lecturer I've ever heard in my whole life.

On the contrary, my father was a very stimulating teacher, and I enjoyed him immensely. I can remember that I took a seat in the front row. I'm not sure at this late date about my feelings, but at any rate, I had the idea that I wanted to enjoy him, but I also had the idea that I enjoyed debating with him, arguing with him about legal points, so I sort of waded in and had a thoroughly good time. But, in retrospect, it began to occur to me as I got older that maybe my father hadn't enjoyed it as much as I did. He was exposed because he had to stand up and lecture. Except when called on, I had the option of interjecting or keeping quiet.

In any case, I enjoyed the class thoroughly, and often wonder, in retrospect, how much he enjoyed it. In those days -- they still are -- the papers were anonymous; no names were on them. I don't know whether he could recognize my handwriting if he read my examination papers, or whether he assigned it to someone else. I wouldn't be the least bit surprised if he assigned my papers to someone else because he must have recognized my handwriting. He never told me this, but it would be completely like him if he had.

Boalt Hall had what I thought then and still think now was an outstanding faculty at the time. One of the outstanding teachers that I had there was Roger Traynor, who was the professor of taxation at that time. And Traynor, of course, subsequently became the chief justice of the Supreme Court of California and led the Supreme Court of California to unparalleled stature in the eyes of the public at large. It was widely considered the outstanding state supreme court in the United States at that time.

Traynor was a brilliant man. He was a teacher of the old school. His theory was to challenge his students. By that I mean he was rough in class. He would ask the most difficult possible questions, and simply heap scorn, almost ridicule, on anybody that didn't reply adequately. I remember he used to make me so mad, as he did a lot of others, that I would leave class and go and work like hell in an effort to prepare myself so I could turn the tables on him the next time we met.

Hicke: And did you?

McBaine: I doubt it. Later I learned from him, indeed, that this was a technique, that he really was not as irascible as that by nature. But he adopted the technique, which was widespread among top law professors, particularly noted at Harvard Law School, as a method of getting the best out of your students.

Hicke: Was he a trial lawyer?

McBaine: No, he was a teacher of law; as far as I know, he never practiced, no.

Hicke: So this was his teaching method?

McBaine: This was his teaching method. Of course, that's very seldom done in undergraduate work. It's often done in first year English courses. I don't know your experience, but it seems to me that I've had the experience myself, and observed generally that first-year English teachers are there to sort of awaken the minds of the naive young high school students, introduce them to the wider world of ideas and clash of ideas. That's part of freshman English, I think, at least it was at Berkeley, and others have said the same thing.

In law school, they take this a step further. There's no coddling done, on the theory that if you become a practicing lawyer,

you've got somebody on the other side that's, of course, trying to show your arguments up as fallacious, and you've got a judge who's listening to the whole thing, who is impatient with useless material, unpersuasive arguments. So if you get used to combatting your professor, that's the kind of training you need for mature practice as a lawyer.

In retrospect, as I say, I look back on it with great pleasure, because he certainly was an effective teacher, and he did make everybody I knew, at any rate, work their heads off for him, not just for love of the subject, but in order to try to stand up to him or try to get the better of him if possible.

Hicke: He probably didn't win any popularity contests?

McBaine: No, he didn't, but he won an awful lot of respect. He turned out a lot of well-prepared students, I'll say that.

There were many other outstanding teachers there at that time. One of the most outstanding was Max Radin, who was a professor of Legal History and Roman Law, also an outstanding academic and a most colorful man. While I knew him well personally because of my father's acquaintanceship with him, I didn't take any courses from him, because I was heavy on Legal History and Roman Law from my Oxford years.

Another thing that I was heavy on because of my Oxford work was Jurisprudence, which is a study of the science of the law and different systems of law that different peoples have evolved. English writers have done a great deal on that, particularly from the classical side, the development of law in the Roman Empire, and others even more primitive, and then later places.

I did not take any further Jurisprudence courses. I took the more or less bread-and-butter courses, like Criminal Law, Evidence, Procedure, various practical courses; indeed, that's the reason I came back and went to law school here: to prepare myself for the actual practice of law in California courts.

Hicke: Did you have any idea of specializing, or was it pretty much the case that everybody did everything to start off with anyway?

McBaine: No. I can't be sure what the curriculum in the law schools, in the typical law school, is today, but in those days, the idea was to cover the field of the law in general. There were a few very specialized topics, such as future interests, which many people took, and which was so abstruse that you might practice a whole lifetime and never really have a future interest problem unless you became a real estate specialist.

Hicke: It had to do with interest on money, that kind of interest?

McBaine: No. It had to do with interest in properties, deferred interest in properties, future interests, plural. But it was a little like taking Greek in a secondary school or college. It was intellectually the most difficult course in the curriculum, and it was a damn good exercise for your brain -- not the most popular course there. I took it because I had extra credits, and I took it partly because the professor who was teaching it was one of my father's best friends in the law school and a man whom I liked very much.

Hicke: Who was that?

McBaine: Steven Langmaid, his name was. You ask here [looking at outline] about people I remember. I don't want to run through the roster of the faculty, but, both because of my being the son of a professor there and my two years there in the school, I knew them all, really. They were very good. In 1934 to '36, I had a female professor of Family Law, who was one of the first in the United States at a major law school. Her name was Barbara Armstrong. She was an excellent teacher, first class teacher.

Hicke: Mr. Bates was telling me he had her.

McBaine: She had a very good mind, an outstanding woman, and also a no-nonsense teacher. She didn't coddle people; nobody in the faculty did in those days. There wasn't much student revolt going on in those days, especially in the law school. It was a very pleasant time. Relaxation was pitching pennies. The students would all do that when they had an extra few minutes of time in between classes. Normally you went to the library or someplace and did your homework, but if you needed a few minutes' break and went out for some sunshine or something, the prevailing game was to pitch pennies against the steps of Boalt Hall, and whoever pitched the penny the closest won the other pennies.

Hicke: That does bring up another point that I wanted to ask about. This was in the midst of the Depression.

McBaine: Yes, it was. The Depression was, as best I can say, simply unknown to me. We read about it in the newspapers, but it was not a part of the daily life. I'm sure there were students there whose fathers maybe went bankrupt and the boy or girl had to drop out of school, but I wasn't conscious of that. Of course, Berkeley is not a big city, and people were not jumping out of skyscrapers; there weren't any skyscrapers. And generally speaking, most of them that I knew were about like my family: not wealthy, not broke.

Hicke: So it was a fairly normal time for you?

McBaine: Yes, it was fairly normal. And we weren't worried too much at that time about jobs, because by the time we finished school, by '36, things had started to turn up. I don't remember exactly how my class did. I've never seen any figures as to whether everybody got jobs or what they did, but I think it was fairly normal.

Hicke: You said you worked on the Law Review?

McBaine: Yes. The Law Review staff in those days was selected solely on the grounds of class standing, academic standing. I read now that Law Review in some schools is on a voluntary basis, as I understand it, but this is all brand-new to me.

People competed for grades in those days, and again, I wasn't conscious of any traumatic effects of that among the student body. They'd all been brought up that way. It had been A, B, C, D, E, F grades from grade school on; again, I suppose there were cases where pressure was too great for some people, but all the way through college and all the way through law school at the University of California, I was never conscious of that. I don't remember any cases of people that had psychological difficulties or anything like that because of the competitive pressure.

Hicke: It was an accepted way of life.

McBaine: It was an accepted way of life, that's right. People would have been amazed at any other way. Obviously, that's left a residue with me. I just can't really imagine a first class law school having a voluntary Law Review staff, because I have no idea of the quality of the stuff they'd put out.

Now the procedure, if you were on the Law Review, was that you were assigned whatever it might be: either a note, which was the briefest sort of exposition, or a comment, which was maybe a two- or three-page article, and then there were lead articles. Most of the lead articles were written by either graduate students or professors, mostly by professors. I don't think there were any lead articles written by students during the time I was there; they were all notes or comments.

The student was assigned by the editor, who, I suppose, got suggestions from the faculty advisor. There was a faculty advisor to the Law Review. And important current questions of law were suggested by the faculty advisor to the editor, and the editor would assign a note or a comment, often on a recent case on some important principle of law, to the student member of the Law Review, and that member would prepare this note, and he had to get it by the professor whose subject it was. If it was on taxation, for example, you had to get approval from Roger Traynor before the editor of Law Review would accept your note or your comment. I want to tell you that was some job.

Hicke: It was not an automatic rubber stamp?

McBaine: It was anything but. And that was true of all the other professors, too. You really had to do a complete, masterful job, and you had to know and have disposed of one way or the other -- either in a footnote or in some explanation of why you'd not included it in the footnote -- every case that really bore on the subject you were

writing about. It was an exhaustive procedure, so that, among other things, it taught how to research the law exactly the same as if you had a case in the Supreme Court of California or the Supreme Court of the United States. You had to go and research the law and then write a brief. It was marvelous training. One of the reasons, I think, it was based on academic standing was that those students could afford to put in the extra time, which was really very substantial, to preparing these notes and comments, whereas a student who wasn't doing all that well in his or her general classes probably would suffer if he had to spend all these hours on this extracurricular work, so to speak.

Hicke: How many times were you asked to do that?

McBaine: I don't remember, but not more than two or three times a year, I think.

Hicke: That would be enough.

McBaine: That would be enough. It was, again in retrospect, actually work. Mind you, American legal education is arduous. The method is arduous, and it's deliberately so. It's much easier to read a textbook about contracts than it is to have to learn contracts by reading decided cases involving different points of contract law. And you have to read the case to find out what the point is that was decided in the case, and how it was decided, and then you have to read enough cases so that you can put those various points together to make a cohesive whole of contract law; whereas, if you read a textbook on contract law, which is the process used at Oxford -- you won't find the so-called casebook method -- it's all laid out for you. But the point is, at least in the American theory, you don't remember it as well as if you had to dig it out by reading the cases and understanding the opinions of the court. And furthermore, when you go to practice law, you can't go and read a textbook and write a brief from a textbook, because you can't be certain that the author of the textbook is accurate in what he says.

Hicke: So it's really good experience to dig through those cases, and you learn to get the meat of a case, too, without getting bogged down in the details that aren't important.

McBaine: That's correct. I question the value of this movement that I read about now. Students tell me they're bored in their third year of law school. They've already had two years, and that's enough. Frankly, I can't believe that, because the law has expanded a great deal since my day in school. It could be compressed so that it's taught in two years by the textbook method, but you wouldn't get this training that I'm talking about, that comes out of doing all this dirty work, doing all this arduous digging.

Admittedly, I have an old-fashioned point of view on it, but I still think anybody who's lucky enough to be able to afford it should take the three-year approach, and savor it.

Most of the people that I know had a good time in law school. There were some who worked, but they didn't work too much because the school work was too difficult. Among the students, people I remember, I would say two of my best friends, lifelong friends, both now deceased, were both in law school with me. Obviously, you get to know your fellow students, at least at Boalt Hall in those days. I think the senior class was probably fifty, sixty, something like that; it's bigger than that now.

And in any law school, part of the process are the discussions and arguments that go on in the hallways, or outside the study rooms, or in the dormitories, if you're in a dormitory, about what's going on in your classes. In other words, the faculty itself is only a part of the teaching process. The Moot Court process and the Law Review process is part of the learning process, and the discussions with your fellow students are part of it, and a very important part of it. That's true in all the major law schools, and that's why the law schools which are set up for students who really have to work, not full-time, but for a substantial amount of time, they lose a lot of benefit out of it. It's not that they don't get the instruction, it's that they don't have the chance for this interaction with their fellow students --

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McBaine: -- in debating what they've just read in the case material or what the professor has said.

Also, in those days, perhaps that discussion was more limited. But neither the students nor the professors were busy in those days discussing what the law ought to be. What they were discussing was what the law was. The curriculum was not thrown open to suggestions from any and all as to how we ought to reform the world and reform society and reform the law. There was not much of that. In the jurisprudence courses, you discussed what different systems of jurisprudence were, but judicial activism was not really much known in those days. That was not really a part of the process.

Hicke: Was there any sense of trying, not to change the law but to look ahead to see which direction the law was heading, since the law is changing all the time?

McBaine: Yes, some, but that was based on court decisions rather than far-out writers of articles, and so on. And the court decisions did not move all that rapidly, because the courts in those days waited for the legislature, by and large, to make new law. They were not engaged in making new law.

Hicke: But interpretations might vary.

McBaine: Yes, when it was necessary to interpret the law -- not that they went reaching for it. So there's a complete difference in point of view today. And I suspect that's one reason why some of these stu-

dents say that they think two years is enough. If the courts aren't going to follow what the law is, what's the use of spending a lot more time learning exactly what it is? Your impulse, then, is to try to guess what the activist courts are going to make it.

Hicke: Is that somewhat the situation that we are approaching today?

McBaine: From my point of view it is, but you'll hear a lot of old-timers take that point of view, I expect.

Hicke: Obviously you have more to compare it with than somebody who's just coming along in law school today with no historical perspective.

McBaine: Yes. When we were preparing an argument, a case, we very seldom had to worry about whether the court was going to make some new law. It doesn't do you a lot of good to have been to law school and spent two or three years studying what the law of torts is and so forth, if every time you go to court some judge is going to come out with some brand-new rule. But if you think that the court is going to follow the law as it's been laid down by previous decisions, which is basically what our system of law is -- "stare decisis," based on decided cases -- then it's worthwhile to know in detail what has been decided. But this gets us too far afield here.

Hicke: It is a little bit far afield, but what you're saying is you were really standing on a little firmer ground than perhaps people who are coming through law school right now.

McBaine: That's right.

Hicke: That's a good perspective. You were a member of the Order of the Coif?

McBaine: Yes, that was, again, strictly by class standing. I don't remember what it was, top 10 percent of the class or something like that, but it was strictly based on grades. I guess I was eligible for it because I had two years in full at Boalt Hall.

II EARLY PROFESSIONAL EXPERIENCE

Orrick, Palmer & Dahlquist

McBaine: [looking at outline] Learning to be a lawyer is the next item you have here.

Hicke: What I don't have down there is that you first went to Orrick, Palmer & Dahlquist, is that correct?

McBaine: Yes. I came to San Francisco when I graduated from school, and the first thing everybody did in those days, in the Bay Area, at any rate, was to take a law review course given by Bernie [Bernard] Witkin. Do you know his name?

Hicke: It's familiar, but can you tell me a little bit about him?

McBaine: Witkin was a long-time reporter for -- and really he became chief advisor to -- the Supreme Court of California. In the old days, before law schools became the accepted way for legal education, students of the law read law in some lawyer's chambers or in a judge's chambers, and then appeared before a court and were orally examined as to whether they knew anything, and then admitted.

When the bar examinations became essentially as they still are today, various state bars would administer these examinations. The exams generally lasted three to sometimes five days, two three-hour exams a day, to cover the entire three years of work done in law school. Various teachers -- would-be teachers; they weren't formally teachers -- decided that -- I'm sure economic motivation was a part of it -- here was an opening to give a bar review course for students which would be enormously helpful to them, and the good ones were. There was one in New York by a lawyer who subsequently became a federal judge there. And Bernard Witkin is, despite his absence of extended academic background, one of the acknowledged experts on California law in the whole state.

He's done a marvelous job of being of assistance to thousands and thousands of law students. He taught this course lasting six

weeks or something like that in the summertime after graduating, and then you took the bar examination in the fall. He gave that for many, many years, and in fact, his books are still over there on my shelf. Someplace I have Witkin on California law, or did I give it to someone? I don't see it. It was an early edition; I should have kept it.

We all took that. In the meantime, I went looking for a job, and I went to various offices in San Francisco. I was offered a job in one or two places. I think the first job I was offered was at a salary of $75 a month. I didn't think that was as much as I should have gotten. I didn't settle for it, and I looked further. I finally wound up at a firm then called Orrick, Palmer & Dahlquist -- the Orrick name is still in it, and it is still in existence -- for $125 a month; that was much better. That was the highest I had heard of anybody getting paid in 1936 when I went to work. It's a far cry from that today.

I worked at Orrick, Palmer & Dahlquist with Mr. [William] Orrick, Sr., who was then the senior partner, the head of the firm, and with the youngest partner in the firm, Hillyer Brown. Hillyer Brown later became the vice president, legal, for the Standard Oil Company of California. Our paths crossed later when I joined Pillsbury, Madison & Sutro and found him installed in that office.

Hicke: Tell me about your early training.

McBaine: The associates of today would think they were on Mars had they gone to work in a large law office in 1936. My work for Mr. Orrick consisted of the following: he would dictate and have typed a memorandum addressed to me, and the problem would be stated in the memorandum in terms of John Doe and Richard Roe, and White Acre and Black Acre, and all of these anonymous terms used to set up a legal question. I had no idea who the client was. I had no idea where this fit in the larger picture. I would receive this memorandum saying, in effect, "Bring me a case supporting the view that so and so," or "Bring me the cases," perhaps. I said, "Bring me a case," because one of Mr. Orrick's principal theses was you could find a case in the book someplace that held any particular thing you wanted on any given question. I didn't believe it at first, but he made a believer out of me.

That isn't to say that that's going to win, because it might be that some west Texas intermediate appellate court was the only case you could find, and you could find thirty cases by outstanding courts that held the other way. But nevertheless, the point was that with that you went into the library, and you came up with all the various cases, and you came up with the cases that supported the point he wanted to make.

As I remember it, he wasn't much interested, if at all, in the cases holding the other way.

Hicke: He wouldn't have to know about those in order to rebut them or to prepare to rebut them?

McBaine: I'm just giving you my recollection of the earliest work that I had. Hillyer Brown was not the same as Mr. Orrick. Mr. Orrick was a very fine lawyer, and I enjoyed working for him, but he certainly taught me the nuts and bolts of the legal memo process. Of course, I looked at the other cases going the other way, too. What he did about them, I never really knew.

I was there only I think --

Hicke: I have three years.

McBaine: Three years; I was going to say two-and-a-half.

Hicke: That's right, because '36 to '39 are the dates that I came up with.

Working With John Francis Neylan

McBaine: In '39, I married Jane Neylan, whose father was a lawyer here in San Francisco, John Francis Neylan. I went to work for him after leaving Mr. Orrick.

Hicke: He was a very well-known San Francisco lawyer.

McBaine: Yes.

Hicke: Were you involved in any particular cases that you remember?

McBaine: Yes I was. Mr. Neylan had been the lawyer for William Randolph Hearst and became what was called the Chancellor of the Exchequer for Mr. Hearst. As such, he was not only his lawyer but chief financial advisor.

Mr. Hearst was always a very wealthy man, and in those days, he was building San Simeon. I think the evidence showed in this case that he was spending over $5 million a year at that time, which was quite a lot of money, and needless to say, living in a princely style. He had properties and a number of corporations: one that owned the newspapers was called Hearst Consolidated. Mr. Hearst owned a controlling interest, but there were outside stockholders, public stockholders. He had a whole series of other corporations which owned various specific properties: one owned King Features, which does the comic strips; one owned newsprint plants, for example; one owned the Sunday magazine section; one owned real estate, et cetera.

An accountant in New York spent several years studying the Hearst empire, so-called, and wrote a book about it. I've forgotten

the name of the book. Mr. Hearst was, of course, a much-discussed public figure. A New York lawyer picked up this book, read the book, and got the idea that he ought to file a lawsuit against Hearst. I don't mean to say that I knew the lawyer did this, so perhaps I should say some stockholder thought of this, but I had the impression that the lawyer thought of it and found the stockholders.

In any case, he filed a suit against Hearst and all his corporations -- naming Mr. Hearst and Mr. Neylan, and maybe a couple of other Hearst executives -- alleging that they had been fraudulently draining funds from the partially publicly owned company in order to support Hearst's wholly owned companies, from which Hearst was taking money, cash, to support his lifestyle. I did a lot of work on this thing.

Hicke: This was on behalf of a stockholder?

McBaine: On behalf of a stockholder; it was a stockholder's suit, a stockholder of Hearst Consolidated, so it was against Hearst Consolidated and all the directors and Hearst personally.

After this complaint was filed, the attorneys in New York who had drawn up the complaint were unable to serve it on Mr. Hearst, because he didn't come to New York. He was, I guess, sitting out here at San Simeon at the time. Some other New York lawyer went down to the court clerk's office, and got a copy of the complaint, and flew out to California with this copy of the complaint; at least this was the story. He had it put in shape to file in California, and got a California lawyer named Harold Morton, a prominent Los Angeles lawyer, who filed the complaint in the Los Angeles Superior Court, and got service on Mr. Hearst because he was present in California.

About twenty-four hours later, the original New York lawyer arrived by airplane from New York and became the first intervenor in that case, but he was too late because the second New York lawyer and the California lawyer he hired were now in number one position; they had control of the case, and they were the ones who were going to get the major fee out of the case.

Mr. Hearst had personally hired one of the leading lawyers in Los Angeles -- I'm pretty sure it was John Hall of Lawler, Felix & Hall who was Hearst's personal attorney -- and two or three other leading Los Angeles lawyers, whose names escape me right now; I might think of them later. One was also the lawyer for the Los Angeles Examiner, the Hearst paper. There were about four of the most senior members and outstanding members of the Los Angeles Bar, not from either of the big firms, the major firms, the O'Melveny firm and Gibson, Dunn & Crutcher, but other firms there.

I represented Mr. Neylan, my father-in-law. I suppose I thought I was probably going along for the ride with all this legal talent acting for the other defendants.

The plaintiff started taking depositions. Among others, they took Mr. Hearst's deposition. Mr. Hearst did it in the grand style. He invited all the lawyers -- all the plaintiff's lawyers and, of course, all the defense lawyers; there must have been a total of twenty or something like that -- to San Simeon, and we spent three or four days there being entertained by Mr. Hearst royally, with dinner and a movie every night in his private movie theater, and all the rest of it. And being entertained by Marion Davies, who was in residence. Needless to say, we had a most fascinating time.

I remember one story, which I might interject; I don't know if it's ever been told. Mr. Hearst is dead now, and I don't think there's any impropriety in talking about his private life. Besides, as far as I'm concerned, it reflects great credit on him, the story I'm going to tell you. In any case, every night after dinner, there was a movie shown. Then after the movie, we'd come back to the main hall, and Mr. Hearst would ask if anyone would like a beer or a drink of any kind. I think he limited it to beer and soft drinks. As you may know, Marion Davies had a problem with alcohol. Mr. Hearst, of course, was upset about this and trying to help her with this problem. I don't remember whether she was there that late in the evening or not -- it doesn't make any difference -- but somebody would say, "Yes, I'll have a beer." This would be 11 o'clock or maybe later.

To my astonishment, in this huge castle with all sorts of servants in it there wasn't anybody around; at least he didn't call anybody. He would trot out to the kitchen and go into the pantry. When he went, I went with him. I was the youngest there, by far, so I went to help him. When we got into the pantry, there was a great, big icebox, with a hasp and a great, big padlock on it. All of the liquor was in this icebox with a padlock on it. He had a wad of keys in his pocket, and he'd bring out these keys and search until he got the right one for the padlock, and open it, and get the beer, and bring it back in there.

That castle is huge; have you ever been there?

Hicke: Yes.

McBaine: It's a huge place. Nobody in that place could get to that liquor there, and he'd go out and bring this in personally to serve all these people, who were suing him and trying to take millions of dollars from him, just to try to prevent Marion Davies from getting hold of any of this liquor, which shows his devotion to her.

It was a fascinating experience.

The plaintiffs' counsel also took Mr. Neylan's deposition. It turned out that Mr. Neylan, as Chancellor of the Exchequer for Hearst, was the one directly responsible for almost all of the transactions that were being challenged. Mr. Hearst really had only the most general idea of them, so his testimony was not of any great

help to the plaintiffs, nor was it any great help to the defense. He didn't know enough of the details to make it important, but Mr. Neylan did. Not only that, he had all the records.

By this time, the case had been going on for months. I had done a lot of work on it. I had gone all through Mr. Neylan's records, and I really knew more about the details of the various transactions challenged than anyone. There were nineteen "counts," with specific charges of fraud in each count, plus one count to begin with which, I think, was a general fraud complaint without being specific about anything. Then there was one for the newsprint, one for the comics, one for this, that, and the other thing.

The trial started. The plaintiffs put on a case, and it was not a very substantial case. At the end of the plaintiffs' case, we went back to the Biltmore Hotel, where we were staying. I think all of the out-of-town lawyers were staying there. I told Mr. Neylan that I thought we should make a motion to dismiss at the end of the plaintiffs' case on the ground that they had not even made a prima facie case.

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McBaine: Armed with all the background I'd gotten from Mr. Neylan's files, I was convinced that we could put on a convincing rebuttal if we had to present the defense side of the case. It would take weeks; it was long and complicated. I've thought of this lately, and I can't remember why, but none of the other defense counsel, all these eminent senior men representing Hearst personally and the various Hearst companies, had not had access to Mr. Neylan's files. I can't remember now whether that's because they were refused access or because they never asked. I have to think it was because they never asked, because I don't believe Mr. Neylan would have refused them access had they asked, but in any case, they hadn't. So I was the only one in the place who really had any idea whether we could rebut the plaintiffs' case or not if we had to do it.

So all the other senior counsel on this thing were against my suggestion. They were afraid to make a motion to dismiss, because if the motion was denied and then the judge said to them, "All right, now present your defense," they were afraid they didn't have anything convincing to say. They declined to join. They thought it was a crazy suggestion. Maybe if I had been older I'd have been more cautious, too.

Mr. Neylan told me no, they wouldn't agree with it. And who was I? I'd been out less than five years, in practice four or five years, something like that. I remember he told me no, and I was very upset because I felt so strongly about this thing. I'd been working on it for months.

I was just about to go to bed; it was 11 or so, late in the evening. The phone rang in my room at the Biltmore -- and I can

remember it very well -- and he said, "Well, I've been thinking further about what you said, and if you think we should do it, go ahead and make a motion to dismiss tomorrow." So I did the next morning. I made a motion to dismiss the plaintiffs' case, and none of the other defense lawyers joined in the motion. They were prejudiced because they didn't, as I say, know how they were going to rebut the plaintiffs' case. I thought I did know.

Hicke: It also kind of left you standing out there all by yourself.

McBaine: All by myself. So I made the motion to dismiss, and, as I said, there was this general count of fraud, conspiracy and fraud in general, and then nineteen specific counts.

My opening argument on the motion to dismiss was two and a half days long, I can remember that. Altogether it took about five days, the argument on the other side and rebuttal by me, at the end of which time, the judge ruled orally from the bench. He dismissed the first count, which was the general conspiracy and fraud count, and said that as to the other nineteen counts, there was no element of fraud in any one of them; that the only question was an accounting question: whether the transfers from one company to the other had been properly documented and accounted for. It ultimately turned out that there were several errors in these, some going one way, and some going the other, so that they almost cancelled one another out. The whole lawsuit was over.

I don't think I ever quite matched that one with anything I did subsequently. It was not only a great thrill. That afternoon, I think, I got a telephone call at lunchtime, and my wife either had gone to the hospital to have a baby or had had it, I can't remember which right now. In any case, as soon as I finished the argument and got the ruling from the judge, I asked to be excused and asked if I could be relieved of not coming to court the next morning, because I had to go to San Francisco; my wife was giving birth to a child. I think those New York lawyers thought I'd staged that one, and that it was a complete phony.

I left in a blaze of glory.

World War II Years

McBaine: Also, at about the same time, I received greetings from the president of the United States calling me up to active duty in the navy. I was in the Naval Reserve. I never got back to the court. The case was concluded with all of the accounting transfers going on between the parties in all of those other nineteen counts -- it took weeks for that -- but I was sitting up here on Treasure Island in a Sacramento River paddleboat [laughs].

Hicke: You'd already done the major share of the work.

McBaine: It just turned out that way, because, as I say, it was a complete accident. I've never been in a case quite like that since [laughs]. I've never been in a case where the other lawyers let one alone that long. I really don't understand why they did this, but in any case, that's the story.

Hicke: Did you ever get any reactions from Mr. Hall or any of the other attorneys?

McBaine: Yes, they were all most complimentary.

Hicke: Did they express approval?

McBaine: Sure. John Hall was a very good friend of mine in subsequent years. Lawler, Felix & Hall has been for many years Pillsbury, Madison & Sutro's Los Angeles correspondent, so to speak. At that time, I had no connection with PM&S, but subsequently, I certainly did.

And that, incidentally, was the end of my connection with Mr. Neylan because I never went back to his office after the case was over.

Hicke: You were called into the navy right about that time?

McBaine: I was called into the navy on July 1, I think it was, in 1941, because I was a Naval R.O.T.C. graduate and an ensign in the reserve. So then, as I say, I was assigned to a Sacramento River paddleboat tied up out here at Treasure Island. I had to report for duty at 8:30 every morning and then sit all day without a blessed thing to do; they didn't even have a book aboard. They were using it to house a pool of officers. They'd call people up to active duty, and they'd put them in there until they decided what to do with them.

I came closer to having a nervous breakdown than I've ever been in my entire life, after all this hard driving at the court in Los Angeles for the six months that we'd been at it down there, then to come up here and then be cooped up all day long without a single thing to do. I damned near went nuts. The upshot of that was that I wound up being assigned by the navy to what was then called the Coordinator of Information, which became O.S.S. [Office of Strategic Services], which in turn, subsequently, became the C.I.A. [Central Intelligence Agency].

Hicke: Have we finished with your work for Mr. Neylan?

McBaine: Yes, there were several interesting cases, but I don't think they are important for this history of PM&S. And certainly that was the most interesting case I had anything to do with.

Hicke: It would be hard to top that one.

McBaine: Yes, it certainly would be.

Hicke: But still we do want to hear about the other interesting ones also, whatever you think is worthwhile; I'll leave it up to you.

McBaine: Let's go on to the World War II years.

Hicke: Okay.

McBaine: I was assigned by the navy to O.S.S. [William J.] Bill Donovan was the head of it, Coordinator of Information; [pointing to picture on wall] that's him right there, the lower right. William J. Donovan. I don't know if you know about him. He's one of the most colorful characters of modern American history, I think.

Hicke: You worked for him?

McBaine: I did when I was assigned to the Coordinator of Information. My wife and I and one child went to Washington in the late summer of 1941. We had all of our furniture and everything sent there. We found a very nice, small house out in the Calorama Road district in Washington, which is a splendid neighborhood. It fronted on a park, which was great for the baby. We got well set up several months before Pearl Harbor, so we were not pressed for time. We rented a vacant house and put all our furniture in it. After I reported to duty, I was made a personal assistant to Colonel Donovan, as he then was. He was a colonel in World War I and the most decorated American hero of World War I. He's the only man who won all of the decorations that the U.S. had, including the the Congressional Medal of Honor. Even MacArthur didn't have that; he was awarded the Congressional Medal much later.

Another young lawyer from Donovan's office in New York and I were his personal assistants. That was really one of the most interesting times anyone could possibly have. Donovan was a very, very colorful man. He was born alongside the railroad tracks in Buffalo and married the daughter of the town's leading family. It's said, and I'm sure it's true, he even went to elocution school to polish his diction and his speaking voice. He had a beautiful, soft speaking voice, but he was one of the most aggressive and innovative and imaginative human beings you could possibly imagine. He was a really tremendous driver, all in this soft, very nice, not falsely cultivated but cultivated-sounding voice, and the greatest leader I've ever seen anyplace.

When Pearl Harbor happened, it was, of course, on a Sunday, and I heard it on the radio, somehow or another, or maybe some neighbor did; I don't remember who told me. But anyway, I heard about it, and I went down to the office. We were not wearing uniforms in peacetime; we just wore civilian clothes. I went down to the office, which wasn't too far from where we lived, and he was there. He called me in. His door was down at one end of a wing in the building, and his door was always open. I think O.S.S. had 30,000 people in it by the time war was over, and his door was still open. All you had to do was walk down the hall and walk right into his

room, if you had the guts to do it, but you'd better have something worthwhile to say when you got there or you'd regret the fact that you'd ever done it. But nevertheless, I don't think I ever knew anybody else who had an open door the entire time. His personal assistant and senior secretary was in a room to one side of him, so you didn't have to go through the secretary's room.

He called me in, and he said, "Do you know who is the commanding officer in the --" what is the naval district here in San Francisco, California? I think it's the twelfth, but I'm rusty. I said, "Yes sir, it's Admiral Greenslade." He said, "Well, get him on the phone. Ask him what the situation is out there." [laughs] I was an ensign. I'd only been an ensign for, I don't know, I guess since when I was in the reserve, but I'd only been on active duty a couple of months. So I was an ensign, for God's sake, and he said, "Get me this admiral on the telephone."

Hicke: And it was just after Pearl Harbor?

McBaine: And it was just after Pearl Harbor.

Hicke: The admiral might have had a few things to do.

McBaine: He didn't explain why, he just said, get him on the telephone and ask him what the situation is out there.

It turned out, subsequently, that nobody from Washington had been in touch with the West Coast. It was Sunday, and the Navy Department and Department of the Army were shut down. They had a duty officer down at each place, but that's all. Don't you remember General [George C.] Marshall was out riding horseback?

Hicke: Yes. [laughs]

McBaine: And I don't know where the top admiral was. If it had been anybody other than Donovan, I would have said, "Colonel, I can't do that." But I knew if I said that, I'd have some other job the next day; I would not be a personal assistant to him. So I went to a room next door, and I got the long distance operator, and I placed my call. She said, "All long distance lines are blocked; they're shut down all over America," which was true. They just closed down everything when the first word of the bombing came in.

I argued with her, but I wasn't getting anyplace, so I finally decided I'd better pull out all stops, and I'm not going to repeat my language because it was full of profanity by the time I finished. I said, "Listen, blankety, blankety. I am an officer in the United States Navy, and I'm calling at the express request of Colonel William J. Donovan, the Coordinator of Information, who is calling at the express request of the White House," which was true, "to find out what the situation is on the West Coast. Now, you put me through." And I guess I convinced the telephone operator with this -- it was a woman -- so she put me through and the phone rang,

and a voice said, "Admiral Greenslade here." [laughs] I thought I was going to die. I said, "This is uh, uh, uh [mumbles] McBaine." I wasn't going to say, "this is Ensign McBaine," or he'd hang up, or at least so I thought.

Hicke: [laughs] You didn't want to promote yourself on the spot?

McBaine: No. [laughs]

So I mumbled my name, uh, uh, uh, Turner McBaine, and I said, "I'm calling at the request of Colonel Donovan, who is calling at the request of the White House, to find out what the situation is out there on the West Coast." The only explanation I have for his reply is that this was an hour or two after Pearl Harbor, and Greenslade and the others had been sitting out there in absolute silence. Nobody from Washington had called them, and he was so happy to hear from somebody in Washington [laughs] that he finally -- he hesitated, and I could see he was making up his mind whether to talk to me or not. But, finally -- my analysis, as I say -- he was so happy to hear from somebody, he decided to give me the whole story. So he started rattling this off, and I was taking notes, just filling page after page, and he was telling me about how many planes they had, how many ships they had, small ships, and submarine nets they had in the bay, how many submarine sightings had been reported -- all of them false really -- this, that, and the other thing. So I was taking everything down just as hard as I could go.

Finally we finished, and I said, "Admiral, hold on just a minute, will you please? I'm going to get Colonel Donovan." So I rushed into Colonel Donovan's room, he looked up, and I said, "Colonel. You've got to come in the other room, and thank Admiral Greenslade." He looked at me and grinned. [laughs] He came in the other room, and got on the telephone, and he soft-soaped the admiral as only he could do. Within about an hour, we had a typewritten report over to the White House to the president and Admiral William D. Leahy and all their staff , and that was the first news they got of what was happening on the West Coast. They might have been invaded by the Japanese, for all they knew in Washington.

Hicke: That's an incredible story.

McBaine: I've never gotten any official explanation of how this happened, but subsequently I was told it was a navy regulation that nobody under the rank of a captain is supposed to call an admiral. You can't have some junior officers calling admirals all the time. The duty officer down at the Navy Department was not a captain, he was some junior officer, so I guess he didn't take the initiative to call himself, and I don't suppose anybody had asked him. This is one of the reasons why Roosevelt picked Donovan to head the Coordinator of Information. He didn't give a damn for protocol and things like that. His sole idea was, "Get the job done." He was not too popular with the regular army and navy officers for lots of reasons, but that was the principal reason. That's why Roosevelt liked him. That was a bang-up start for me. [laughs]

Hicke: Indeed, it was. And all of this was coming over a civilian line?

McBaine: Yes.

Hicke: Supposedly tappable and so forth?

McBaine: Sure.

Hicke: And who gave the order to shut down the telephone lines?

McBaine: I have no idea, maybe somebody in the White House did.

Hicke: And there were no military lines?

McBaine: No, I don't think so; no separate lines, and we didn't have telecommunications in those days.

Hicke: You really got your feet wet early in the operation.

McBaine: [laughs] It was more amusing than important, but nevertheless, it was certainly an interesting experience.

I might also say, out of order, but when I first got there and reported to Donovan, I was a little glum, having been called out of the law just at the moment of a great success in this Hearst Consolidated case. We were in the Lend-Lease phase of things then, you know; nobody knew we were going to be in a war, so I wasn't very happy about becoming an ensign instead of a practicing lawyer. One of the first things Donovan told me when I got there -- I guess he surmised that I wasn't too pleased -- was, "Don't be unhappy. You'll learn more in a couple of years with me here than you would if you were practicing law." I think he was right.

The second thing that happened was when I first reported for work, I didn't have any regularly assigned job; as I say, I was just a personal assistant to him, and he said to me, "Go out and walk up and down Pennsylvania Avenue, and go into every building that you come to and ask them what they're doing in there." I thought he was crazy. Here's this legendary man that I'd heard about from World War I, because, as I say, he was the most decorated hero in the U.S. Army in World War I. "Wild Bill" Donovan, he was called.

What he meant was this: Roosevelt was creating all these alphabetical agencies, and he was creating two or three a week. That's how often these executive orders were coming out from the White House creating new agencies. They publish a manual of the Government of the United States, which has all the various departments and agencies of the government in it, but the manual was running -- I don't know just how late it was, but it was way behind time. The printer would have had to put on a new edition everyday. There were these agencies that were springing up all over the place, all with authority from the president, some executive order signed, Franklin D. Roosevelt.

I went out, I walked in a building, there'd be maybe a receptionist there, "I'd like to speak to somebody." She'd say, "Who?" "Well, somebody who's in charge, whoever," and maybe I didn't always see the top man. Sometimes I did. Sometimes there were only a dozen people there, and he was the top man. Anyway, I'd ask him what they were doing and find out what they were doing. It was an amazing experience; it's hard to believe.

Hicke: You probably knew more about what was going on [laughs] in Washington than practically anybody else.

McBaine: [laughs] After I finished two or three days of doing this, I think I did.

One of the first lessons in bureaucracy I learned came when I was ushered in to see some rather youngish man who had sort of a bare room, with a desk and a chair. He hadn't had the chance to get the furniture moved in yet, but he did have a desk and a chair. I told him where I was from and asked him what he did. I don't remember exactly what he said, but his manner was terribly important. He was very self-important, and he gave me to understand that he was an enormously important man in the government. But he wasn't very specific about it, and I kept pressing him with, "Exactly what do you do?" He finally said he was a coordinating purchasing agent. "Instead of each agency purchasing desks and chairs and so forth, they notify me, and then we purchase for them on a big order."

I guess I must have shown some amusement at that, or maybe my poker face wasn't so good. Anyway, he got angry, and he said to me, "Listen. If you don't think I'm important, buddy, you just go back to your office and try to get a chair or a telephone or a typewriter and see whether you think I'm important or not." [both laugh]

That's Washington bureaucracy at its best.

Hicke: [laughs] That's a perfect story for Washington.

McBaine: That's right.

Hicke: You were actually in the service there until 1946, right?

McBaine: '45.

Hicke: Were you in Washington all the time?

McBaine: No. First, I guess, after Pearl Harbor -- I'm pretty sure it was after Pearl Harbor, although it could have been before; it doesn't make any difference anyway -- I was sent by Donovan to a British Secret Intelligence Service training school for spies and saboteurs outside Toronto in Canada. In all the books about O.S.S., this is mentioned. The fact of the matter is, the United States had no secret intelligence service at the outbreak of World War II, had not had one since World War I; it had been disbanded at the end of World

Turner McBaine in uniform. 1942

War I. Secretary Henry Stimson has been quoted many, many times as saying, "Gentlemen do not read one another's mail." So we had no intelligence system. The British did. The British cooperated with the United States.

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McBaine: Churchill's great objective prior to Pearl Harbor was to get the United States into the war. Of course, he knew that Britain couldn't win by itself. There was an Englishman named "Little Bill" Stevenson. He was called "Little Bill" and Donovan was called "Big Bill" by those who knew them both. He was a very secretive figure, a very quiet, unobtrusive man, but he was the head of British Intelligence in North America. Canadian-born, but then lived in England.

This was a two- or three-week training course up there in Canada in everything you could think of: codes and ciphers, all sorts of covert activities, explosives, how to do all the things that terrorists are doing today, how to kill somebody silently. It showed you more ways of how to kill somebody than you can believe possible, an astonishing number of ways. It was a complete, professional school in how to do either guerilla work or intelligence work; how to be a spy, or run spies, control them, and operate them. A fascinating business, really.

Subsequently, O.S.S. established its own school of that kind in Virginia, but in the early days after Pearl Harbor, the first people went up to Canada. One of the things that you had to do at the school was to go into Toronto, and using a false name -- you could use your own name if you wanted to, because they wouldn't know, anyway -- get a job in some plant there which was connected in some way to something that was important to the war. And it was astonishing how easy it was to do.

Another thing which left a lasting impression on everybody was that everyone there was given a school name, like mine was Mac, that's all. Others had nicknames of various kinds, but no unique or family names; everything was Mac or Jack or Tom, and you never knew who anybody else was in the school. It was pretty hair-raising. I remember we had target practice there in a basement, and we were in the dark; police training is like this, too. There's a sudden flash of light, and you can see a silhouetted figure if you're really fast, and the question is, can you hit it? They teach you all about how to handle firearms of all kinds like that. In those days, we didn't have all these AK-7s that just spray bullets, portable machine guns.

Hicke: You had to aim.

McBaine: You had to aim, yes, instead of just spraying something. And these plastic explosives, stuff that looks just like modeling clay, that you had to learn to use. It was, psychologically, quite a strain on everybody to be going through all this stuff. Everybody was playing

practical jokes. I don't know if all classes were alike, but mine was like that. They had a Canadian Royal Air Force sergeant up there who was particularly addicted to this, putting a bucket of water on the top of a door, and then when you push the door, the bucket comes down and hits you in the head [laughs] and just douses you with water. This sort of thing was big up there. I think they were trying to lighten up the atmosphere so everybody didn't get too uptight, because everybody did, with all these various activities: blowing up things and killing people.

The last night they had a graduation banquet; everybody had graduated, and everybody got drunk. The help did, too, at least they pretended to. I never knew for sure afterwards. What happened was if you'd made a friend there, after graduation or that graduation night when you'd had a lot to drink, if you'd gone up to somebody and said, "Hey, Jack, my name is McBaine, and I'm so and so and so and so," if they learned about that, you didn't pass. And they had all their staff circulating around eavesdropping and watching you. You hadn't graduated until you finished that night.

Hicke: Did anybody not graduate?

McBaine: That's right, they sure did. It became known after the first few classes, but when I was there, nobody knew that, but that was part of the test.

Hicke: You were among the first class?

McBaine: I was about the second class of Americans there. And four or five classes later, I've forgotten just how much later, they had such a riot that final night, somebody set fire to the place and burned it down. [laughs]

After I returned to Washington, Colonel Donovan sent me out to Cairo as the O.S.S. representative in Cairo for the Middle East theater. I was then maybe a lieutenant junior grade, and I was too junior to be the final representative there, but this was when the office was first established, and when I went out, I was by myself. The significance of that is that Cairo was the theater headquarters for the so-called Middle East theater, and that took in Yugoslavia, but not Italy, because that was in the Algiers theater, where General [Dwight D.] Eisenhower wound up as the commanding general. Field Marshall "Jumbo" Wilson was the supreme commander in Cairo. And that theater included Yugoslavia, Albania, Greece, Rumania, and all the Middle Eastern countries, and they also had several governments in exile there: the Greek government in exile, for example, was housed in Cairo.

Donovan had a method of rotation for people trained specifically for field duty. For anybody who was in not an organized unit job, his theory was you go overseas for about a year, and at the end of a year you were so mad at Washington that you were ready to disown the whole crowd. They'd never answer your inquiries, they

never sent you the things you needed, they didn't do this, they didn't do that. Just about that time, you'd get orders transferring you back to Washington, and they'd put you in a desk job in Washington. You'd sit there for the next year, and about that time, you were ready to kill those guys in the field, who never paid a damn bit of attention to what you told them to do [both laugh], and didn't report back what success they'd had, or failures, and by the time you'd be getting ready to kill them all, bang, out you'd go to the field again.

I made four trips like that. I was out a year, back a year, out a year, and back. Altogether, I spent about two years in Cairo on two different tours, I guess. During the second tour, we'd invaded Europe, and I went into Italy the day after the invasion of Italy took place on August 8, 1943, I believe. I went in behind the invasion troops, south of the invasion troops -- I was not part of the invasion troops -- and the purpose was to create a forward base in Italy for working into Yugoslavia and Greece and Rumania and Albania. The O.S.S. was sending in spies, intelligence people, and also guerillas, and saboteurs to blow up bridges and railways and things of this kind.

I established a base at Bari, on the Adriatic Coast of Italy, and remained there in charge of the base until the end of 1943.

Also, all the Middle Eastern countries were in our theater. During the course of my tour there, I visited every one of those Middle Eastern countries. That was not so highly important, but the general idea was you had to make some sort of plan, or at least lay some groundwork for a fallback position if somethig happened. For example, I was in Cairo when Rommel stopped about eighteen miles outside Alexandria, and I got evacuated; all the allied personnel in Cairo got evacuated. I was sent down to Asmara, which was in what was then Eritrea, and a lot of the British personnel, the WACs [Women's Army Corps], and the WRENs [Women's Royal Navy Service],* I think all the female personnel, were sent to what was then Palestine.

Then I should say, at the end of '43, Christmas of '43, I was ordered back to Cairo from Bari and was sent to the Far East on a sort of survey mission, to go through India, Ceylon, Northern Burma, Western China (because the Japs had Southern Burma and Eastern China) preparatory to coming back to Washington and working on a desk job for the Far East. That's when I saw [General Claire] Chennault's air force out there.

Hicke: You actually saw them in operation?

McBaine: Yes, the Flying Tigers that were out there.

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* An auxiliary of the British Navy.

Hicke: Flying the Hump?

McBaine: No. But I flew the Hump from India into Kunming [China]. Then I came back to Washington on a desk job, and that's where I was when the war ended.

Hicke: Sounds like you were in the thick of things all the way around.

McBaine: Not really, because when I was sent to Cairo early in '42, I became imbued with the British idea that the allies should invade southeastern Europe and go up what they call the Vardar Valley, which is a valley which runs from southeast to northwest up central Europe. If the allies had done that and attacked Germany from the south, they would have been able to take all or seal the Russians off from taking all of Hungary and Austria and all the rest of the eastern European countries.

[Winston] Churchill was thinking of geopolitics. The U.S. wasn't as sophisticated as that; they never have been, either in World War I or World War II. The decisions were made by military men, and they were made solely on the basis of military considerations. I was wrong. I thought we would invade through there, and I don't know that I'd have been able to do anything about it if I'd tried to get out of Cairo, but I never got into the European theater of operations, which, of course, had a lot more action going in it than the Middle Eastern theater did.

So no, I don't think you could say I was in the thick of it. I had a lot of action, but not what I would have had in the European theater. I was never in the European theater, and I was never in the Pacific theater. In fact, at the end of the war, when I was in Washington there, I got the idea that I'd like to be transferred to the Pacific and see if I couldn't get back in the navy and participate in some way in the huge naval action that was going on in the Pacific. By that time, I think I was a lieutenant commander, and I'd lost my deck general rating, which means that you're qualified to be a deck officer on a navy ship. I was a specialist in intelligence, which meant I was not qualified to have a deck job on a ship.

I was told by people in the Bureau of Personnel that if I wanted to be transferred to the Pacific, I'd probably wind up as the governor of some five-square-mile island about 2,000 miles in the rear someplace, [laughs] so I'd better stay where I was. So I gave up that idea. But that navy in the Pacific in the last years of the war must have been a staggering sight. But I wasn't bored to death, I'll say that.

I had all sorts of fascinating experiences during the war years, but that's surely not relevant to PM&S. There's some relevance, perhaps. Of course, in the Middle East, I worked very closely with the British Intelligence people. They cooperated with us. They were way ahead of us, because they had the experience, the training, technique. They had been in it several years longer than

we had been, of course. I made some very good friends among the British people in the intelligence field there, and in fact, was awarded a decoration by the British, with which I was very pleased.

Hicke: The Order of the British Empire?

McBaine: Yes.

Hicke: And you also were awarded the Legion of Merit?

McBaine: Yes. That's an American decoration, which is somewhat the same thing. But I was particularly pleased with the O.B.E. because I feuded with the British pretty strenuously at times, also, because the British were accustomed to commanding and running things, and one of the things that Donovan was not going to be was commanded and run by anybody [laughs] except Roosevelt and the American government. We had a serious struggle over efforts in Yugoslavia, in which, as I say, I tangled with some of my British friends. Nevertheless, they saw fit to award me a decoration at the end of the war, which showed that they understood that I was thoroughly pro-British and pro-Allies. Just because I wanted to stand up for our rights didn't mean that we were anti-British.

I think dealing with them was good experience in dealing with people. British Intelligence was staffed by some intelligence officers from the armed services -- professional officers, navy, army, or air force -- but most of them, I think it's safe to say, were really academics, and there were some businessmen, bankers, people like that, people whose occupation involved the use of the mind, and they used all of those people. They took everybody out of all the universities. They took them into the army, gave them a rank, put them to work in intelligence activities all over the place. The intelligence officer for General Montgomery, for example, as I remember it, was an academician. They were a very bright bunch of people. Although well trained, they still were products of that British system of generalism where you're trained for everything. You learn Greek and you learn Latin. [chuckles]

Hicke: Whether you need it or not.

McBaine: Whether you need or not. You'll never use Greek or Latin again in your life, perhaps, but the brain power is there that is developed that you can use on anything. That has been their theory, and still is, really.

I think that was, in a sense, part of what Donovan said: you'll learn more while being with me than if you were practicing law. There's no question that we had struggles, working with the governments in exile, working with the Zionists who gave us enormous help with personnel. In fact, we were swamped with volunteers. They weren't Israelis then, I think it was called the Jewish Agency that had a shadow government, what the British call a shadow government. They were already planning to take over Israel, although they

wouldn't admit it, and they had these shadow people, and they had an intelligence service themselves.

I was in contact with the man who was running that, and they were supplying these people to us. They'd have these young girls who would come in and volunteer to parachute back into the middle of Nazi Germany with a radio and be spies, which is pretty staggering. It's hard to realize. But if you looked into it, you'd find out that person had lost her whole family, possibly they'd all been sent to the gas chamber someplace, and she really didn't care whether she lived or died. She would volunteer for this kind of thing.

In those days, you couldn't order anybody to make a parachute drop, which I thought then and think now was ridiculous. You can order a soldier, an infantryman, to get up out of a trench and charge a machine gun nest, but you couldn't order him to make a parachute jump. And here I was sending all these people into making parachute jumps.

Especially as I saw females jumping, that got my goat, and I decided to hell with that. So I went to parachute school in Palestine [chuckles]. I guess it wasn't entirely selfish, because there's another aspect to this story, but it was really just so that I wouldn't be put in a position of sending people to do something that I hadn't done myself. And it wasn't all that bad. It's nonsensical, that's all; when you're flying around in an airplane, to get up out of your seat and go to the door and jump out is just simply nonsense. You say to yourself, "Why in God's name am I doing this?"

Hicke: It defies all logic.

McBaine: Yes, it defies [laughs] all logic. And it's a sheer act of willpower to make yourself do it, but once you get in the air and your chute's open, then it's really a very pleasant experience, if there isn't somebody below shooting at you.

The other reason that I went up to Italy was one of our agents destined for Yugoslavia failed to go, three times running; he came up sick each time. I finally concluded that he was never going to go, and I got so mad because we'd been working for months training him that I decided to go myself. I went from Cairo up to Italy, and the British were flying all the planes from the Adriatic side of Italy. The British army was going up the Adriatic side, and the American army was going up the Mediterranean side.

I got up there and the British wouldn't take me. They said that the reason they wouldn't take me was that I had never done a parachute jump before and that I would endanger the lives of all of the others. There were six or seven other people on this particular mission, this jump. They were going to go to the same place; we were going to Tito's headquarters. They told me that I would endanger all of the other people because I hadn't made a jump. I

subsequently concluded that was a phony excuse, but that's the excuse they used, and they blocked me from going.

My temper cooled after I got back to Cairo, and it's probably a damn good thing they did it, because the real reason they blocked me, which they didn't tell me, was the intelligence reports they were giving me. These intelligence reports were coming from code breaking. Have you read any of the stories about the ultra machine. Have you seen any of these things?

Hicke: It's very vague.

McBaine: It's a long story, but the fact is the Americans broke the Japanese code, as you may know.

Hicke: That I know, yes.

McBaine: The British also had broken the code the Germans were using. This was, of course, was one of the most tightly guarded secrets in all of Britain. It is said, and a lot of books say -- I don't know whether it's true or not -- that the British, through their intercepts, got word that the Nazis were going to bomb Coventry. They could have warned the people of Coventry and evacuated the city, but Churchill decided not to do it, because that would give away the fact that they were reading the German radio traffic. Now whether that's true or not, I don't know, but that story has appeared in thousands of publications. And they had been giving me these intelligence reports in Cairo, which, it was perfectly apparent, were intercepts that they had gotten from reading from the German radio traffic. I didn't know if that was worldwide, but I did know that it was true for the Middle East theater.

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McBaine: In intelligence work, the assumption is that if anyone is captured by the enemy, he'll talk, sooner or later. You have to make that assumption. It's often not true; sometimes people can withstand torture to the point of death, but you have to make the opposite assumption, and therefore, anybody who had the knowledge I had was not allowed in a combat zone. I didn't realize it at the time, but it was foolish of me to do this; it was a good thing I was sent back, really.

Hicke: Does that cover the years up until 1945?

McBaine: I think so.

Hicke: I know you retired as a commander, U.S. Naval Reserve. This will be a good place to stop, and we can start again with your joining Pillsbury, Madison & Sutro.

III POSTWAR YEARS: FIRST NEW YORK, THEN PM&S

New York

[Interview continued: June 19, 1986]##

Hicke: I wonder if we could start this afternoon with what happened to you after the war. We had just finished up before with your years spent in the navy.

McBaine: All right. Having been called to active duty before Pearl Harbor, I was eligible to be released the first day after V-J Day, or victory over Japan. I was discharged from the navy sometime in the fall of 1945. I thought some of staying in Washington, D.C., but I didn't want a government job, and the law firms there, which were obliged to take back all their lawyers who had left to go into the service, were not large enough to afford me any opportunity. I wanted to be in the private sector and, therefore, decided to go to New York and look for a job. I did and had a most interesting experience walking around downtown New York and going in to various law firms and asking for a job.

Hicke: Did you just knock on doors, or did you have letters of introduction?

McBaine: No. I just knocked on doors. All I had was my resume with me. New York in those days was, and I'm sure still is, such that a letter of recommendation was really only important if you were a marginal case, let's say; otherwise it was your resume and your record that counted, and, I suppose, perhaps personality and looks counted for a very minor part of any employment committee's judgment.

In any case, I went to work for the firm of Cahill, Gordon, Reindel & Ohl, because I wanted to be a litigator, and that firm was perhaps the leading litigation firm in New York City at that time. I spent two years there in New York. I liked the work very much. I liked Wall Street, the community known as Wall Street: the law firms, the financial firms, the banks, the insurance companies, the accounting firms, all very high-grade people, of course, recruited

from all over the country. It was as fine, if not the finest business and professional community that I've ever experienced, and I enjoyed that immensely and enjoyed the work in the firm. But I had a wife and two small children and that's very difficult on the island of Manhattan.

Hicke: Could you just elaborate on that sense of community, the Wall Street community, a little bit?

McBaine: Yes. The community has been built up of people from all over the country for so many years that I suppose customs have developed based on that. A native New Yorker, unless he brings some important business with him, really has no edge in getting into the big Wall Street law firms. Everybody's from out-of-town, virtually. [chuckles]

One of the most interesting things was that the camaraderie between the lawyers was such that you might meet someone through bar association activities or lectures or some other method and get acquainted and make a friend. I found that lawyers in one firm who had a problem, and had a good friend in another firm, would call them up, and might even say, "Joe, what do you think about so and so?" or "Do you remember you told me once about something, and what was the citation on that?" or something of this kind, and they would respond. To the best of my knowledge, that's not true in San Francisco, and I doubt that it's true in any other city in America.

Hicke: So there was more cooperation than competition between people?

McBaine: It's a curious thing. Of course there was competition between the various law firms, but on an individual basis people would answer and be helpful on a thing like that, because they figured that sometime in the future they would want to call you, and they had an I.O.U. coming if they'd been helpful to you in some way. I don't mean any serious help, or that they would do any work on it, but just something that could be done over the telephone. To me it was a curious habit and custom in New York that I've never seen anyplace else.

The only edge the New Yorkers had on the out-of-towners, I'd say, is that they were used to living in New York [both laugh], and didn't mind the concrete canyons and the heat in the summer and the bad weather in the winter; they were used to it. I wasn't, and, as I say, with two small children and the schools facing us, it was a very difficult place to be. My wife did not want to live in the suburbs someplace. She wanted to live right in the middle of Manhattan. So at the end of two years, I decided to resign from my job. I was not a partner, I was an associate, but I decided to resign my job and come back to San Francisco, which I did. I came back about the beginning of 1947 and joined Pillsbury, Madison & Sutro at that time.

Joining PM&S

McBaine: Let me see if I have the date where I joined the firm.* I might say that one of the curious things is that when I was in New York at Cahill, Gordon, one of the cases that I worked on was a suit against the Standard Oil Company of California, filed in the federal district court in New York. [both chuckle] I worked on that case with John Cahill, the senior partner, and another partner, and in the course of that was sent to San Francisco with a brief which we had prepared to submit it to Mr. Felix Smith, who was then senior partner of Pillsbury, Madison & Sutro and general counsel for Socal, for his clearance before we filed it.

I can remember meeting Mr. Smith, which I think was the first contact I had with anybody from PM&S. I had had a copy of the brief delivered to him -- it had been sent to him; I did not see him -- and I was in the office of the partner who had worked with him on this matter. I had reviewed the brief with him and told him the reason for some of the arguments we made. The door opened, and in walked Mr. Smith. I was introduced by Mr. Smith's partner, and he sort of grumped a "how do you do" and said very few words about the brief; maybe he asked a question or two. All I can remember is his final statement as he tossed the brief on the desk and said, "Well, you can file it if you want to, but I wouldn't file it," and stomped out of the room. [both laugh] However, I'm glad to say the story has a more happy ending, because we did file the brief and it was successful.

So, when I came back to San Francisco and canvassed some of the firms in San Francisco looking for a job, fortunately for me, I guess, I was not ushered into Mr. Smith's office, but into Mr. [John] Sutro's office. [chuckles] Mr. Sutro at that time was the -- I think he was not only the Chairman of the Employment Committee, he was the Employment Committee. [both chuckle] The net result is that I was employed by Mr. Sutro as an associate in the firm and began my tenure with PM&S. I'm sure there're many lawyers who are still available who were employed by Mr. Sutro. That was also an experience of its kind. They had strong personalities in the firm in those days.

Hicke: Can you elaborate on that?

McBaine: Mr. Sutro has a remarkable personality, as many people undoubtedly have told you. He's abrupt in a way, he's gruff in a way. He's very direct, and I've been told that one of his recruiting techniques was that if he decided that he really wanted somebody and offered them a job, and if the candidate -- I know I've been told this happened in at least one or two cases; whether this was regular

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* December 11, 1947.

procedure, I don't know -- if the candidate said, "Well, can I think about it? I'll let you know," Mr. Sutro would say, "Well, you have to tell me yes or no. If you walk out of that door, then the offer is withdrawn." [both laugh]

Hicke: That's not a normal technique, I don't think.

McBaine: And it worked.

Hicke: He was persuasive also, then.

McBaine: Maybe that will give you some idea of the difference between employment in PM&S in those days and employment in this particular day, when the firm takes everybody to the new Marine World/Africa [U.S.A.], and takes them to picnics in the Golden Gate Park, woos them as if they rushing them for fraternities or sororities at college. That wasn't the method in 1947.

Hicke: So you just had the one interview with Mr. Sutro?

McBaine: That's all.

Hicke: And did he offer you the job on the spot?

McBaine: He did.

Hicke: And you accepted on the spot?

McBaine: Yes.

Hicke: That is unusual.

McBaine: I believe so. I believe that's correct. It was not the first firm that I'd been to in San Francisco and so I knew something about the San Francisco firms. But I believe that's correct.

Hicke: Where did they start you?

McBaine: I had been a litigator in New York, as I mentioned earlier. So I was assigned, when I first came in, to Gene Bennett, who was one of the senior litigating partners. Mr. Sutro, Mr. Prince, and Mr. Bennett all were litigators in a sense, although not exclusively trial lawyers in those days, but I was assigned to Mr. Bennett. I might also say that in those days, which is a great change from conditions today, young associates were told what to do, they weren't asked what they would like to do. They were assigned to whatever the firm thought was the best for the firm and for them, and I think it would have been unthinkable for any young associate to say, "Well, I don't want to do that kind of work, I'd like to do something else." I think most likely he'd have been out on the street if he'd had that attitude.

Hicke: Do you attribute that to perhaps the size of the firm now and the fact that there are more different things to do, or is it just a change?

McBaine: No. No, I think it's just a different psychology. Perhaps size has something to do with it, but -- this shows that I'm very old-fashioned -- but I don't think it's an open-and-shut case that our present method is the better method. I think that young lawyers ought to be given a couple of years or so of experience, and varied experience if possible, but I'm not at all sure that they know what's best for them, better than some of the older lawyers.

I cite my own case in that regard. As I say, I was assigned to Mr. Bennett as a young lawyer, and Mr. Bennett was a notoriously difficult taskmaster. He was very meticulous, very methodical, expected a great deal of people who worked with him, was not after flights of fancy or imagination from his assistants; he wanted bone-solid work and that's all. He was not, therefore, the most sought-after senior partner for whom to work.

Before I really got any experience at all with him, Mr. Felix Smith, who was the head of the firm and the general counsel for the Standard Oil Company of California, died suddenly. As a result, Mr. Marshall Madison became general counsel to Standard in place of Mr. Smith. Now Mr. Smith was a remarkable scholar and legal practitioner of the old school, a brilliant man intellectually in many ways, with an enormous amount of knowledge in his mind. He worked with very few assistants. Of course, the law was changing as he died and becoming more complex every day, with the enormous importance of taxes and governmental regulations of all kinds, really problems that previous generations had not had to deal with in the way a modern lawyer does. So Mr. Madison badly needed some staff to carry on this job in place of Mr. Smith.

I don't remember whether it was a matter of weeks or maybe several months that I was assigned to Mr. Bennett, but then I was told one day I was transferred and I would work for Mr. Madison on the Standard account. Well, as I say, I wasn't asked if I wanted to, I was told that's what I was going to do. Looking at it from this point of view, that wasn't at all a bad thing [chuckles] since, of course, twenty-five or thirty years later, I can say that I not only enjoyed enormously representing an oil company with all the problems of the oil industry, which I found and still find a fascinating industry, but wound up as general counsel to Standard myself. If I'd continued with Mr. Bennett, who knows, I might not have had nearly as much fun and enjoyment out of my experience with PM&S as I did have.

Hicke: That's a good illustration of your point.

McBaine: It's a good illustration of my point.

Early Partners and Expansion of the Firm

McBaine: Now then, as to the early partners that I worked with, as I say I did work with Mr. Bennett, which was certainly good experience for anyone too -- maybe difficult, maybe a bit of a grind, let's say, but it was certainly good experience. Mr. Madison was a different type all together. Mr. Madison was the finest general counsel and the finest legal administrator as a head of a law office that I've ever known. He had an enormous breadth of outlook and enormously broad and varied experience, both of the law and of people and their affairs, an outstanding man in every way. I think as a head of a law firm he was an ideal; there just couldn't be a better person, in my book. I've seen a number of heads of various large firms in New York, and while I never knew anyone as intimately as I knew Mr. Madison, I don't think any of them could touch him as the head man of a large law firm.

Hicke: So, would you attribute a large measure of the success of that period to his leadership?

McBaine: Yes. In those days I don't think there were any formal committees. There was an informal de facto committee of the four senior partners in the firm: that is, Madison, Prince, Bennett, and Sutro. Mr. Sutro was by some years the junior member of that foursome, but still one of the top-ranking partners, of course, and everybody knew they ran the firm. As I say, there was no other management committee, and those four men had the problems. What went on between them is not known to me. I know that they must have had differences in views, but Mr. Madison kept them all going in harmony and unanimity, and I'm not at all sure that any other one person could have done it. I'm sure they couldn't have done it with the success that he did.

Hicke: Do you happen to recall any anecdotes about either Mr. Bennett or Mr. Madison or any of these others that would illustrate what it was like to work with them, or the way they ran the business?

McBaine: For one thing, it was the first of 1947 when I joined the firm, and that was just two years after World War II ended. The great economic expansion of those postwar years was under way, and with it the proliferation of government intervention in every aspect of life, which, as I say, just meant grist for the mills of the lawyers. It was Mr. Madison who really saw this development and who adopted a policy of expansionism in the firm and recruiting of new lawyers and new members in order to take advantage of the opportunities that economic expansion was creating.

I can't remember any specific instances, but I have the recollection that various people disagreed somewhat with that. There's a natural tendency in some people not to want to change things; why should we bring a lot of newcomers in? Mr. Madison had a big view. He could foresee beyond our existing boundaries. He was persuasive

enough to convince everybody else that that was our proper course of conduct. Of course, some other lawyers were that way too. Bigness didn't frighten me as much, because I'd come out of a big New York firm, but some of the other people were uncomfortable with it, and if it hadn't been for Mr. Madison and his position as the head of the firm, his prestige as the son of a founding member of the firm and his skill and personality, we never would be the firm today that we are. It was he who led the expansion of the firm and created really a new firm.

This is my own view. I don't know that all my partners would agree with that, but this is my point of view.

Hicke: I've heard him referred to as the architect of the modern firm.

McBaine: Yes. I think that's correct.

Now, the other thing that he did which is concomitant to this expansionism and the large firm size was that he was responsible for the adoption by the firm of the present advisory partner system that we have. I believe that we are one of the first few large law firms in the United States to have an advisory partner system, which is, in effect, a pension system. But if you stop and think about it, you can see that when you have 100 or 200 or 300 lawyers, you have to adopt institutional rules. You cannot solve everything on ad hoc individual basis; it's just too big and too complicated. And if you're creating a large law firm like this, you are creating an institution, and an institution can die unless proper measures are taken to see that it flourishes and progresses.

Hicke: So he really could get the whole picture of the effects on the firm as well as the individual.

McBaine: That's correct.

Oddly enough, in a way, I played a small part in that. I was in a car pool. We had a taxicab which took us from the Southern Pacific Station at Third and Townsend to the financial district; I commuted by train from Burlingame. One of my cab-mates in that thing was the then senior partner of Price Waterhouse & Co. in San Francisco, and in discussions in the cab one morning -- this must have been sometime in the '50s -- I learned that Price Waterhouse had had for some time a pension plan with mandatory retirement for the partners in that accounting firm. And, as I remember it, most of the major accounting firms had retirement plans of this kind, and pension plans.

I mentioned this to Mr. Madison, and he was taken with the idea which, as I say, to me is concomitant with the expansion and the building of a big major firm. He took it up, and I don't think any one of the other partners, even Mr. Sutro, let's say -- I don't want to make personal comparisons -- could have gotten that plan through without some sort of revolt: somebody quitting or objecting.

Because after all, it was saying to each of the senior partners, "At the age of sixty-five you have to step down; you've spent your life building this firm, and at age sixty-five you have to step down."

Hicke: But the way it's set up -- I don't know if this is unique or unusual -- but you don't have to step all the way down.

McBaine: No. That's part of the, I think, success of drafting the plan.

The second thing we did which was, I've always thought, really more good luck than good brains was then when the Keogh Plan was authorized by Congress, we were fortunate enough to provide that each partner in the firm had to contribute the maximum amount permissible to a Keogh Plan in his name. Now the reason that's important is that as time goes on, the Keogh Plan contributions of the individual partners to their accounts will provide their retirement benefits. I don't think this is any secret that shouldn't be in the history of the firm, but the pension paid by the firm to an advisory partner is reduced by the amount of the benefits from the Keogh Plan of that particular partner.

Now I don't think Mr. Madison participated in it at all, and some of the other older partners maybe were in the Keogh Plan one or two years before they had to retire. So what they had to deduct from the firm's pension was very minimal. But for somebody who contributes for fifteen or twenty years to the Keogh Plan --

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McBaine: -- then the amount of an annuity based on his Keogh Plan contributions when offset against the firm pension amount, reduces it, and so it eventually superseded the firm pension entirely. This saves us from any kind of economic crisis so far as the firm is concerned.

I think those two things are, in a broad general sense, two enormously important things that Mr. Madison did.

Hicke: How about Mr. [Maurice D. L.] Fuller, [Sr.]? Did you work with him at all?

McBaine: Yes, I did. Mr. Fuller and I had offices adjoining one another for quite a number of years. The chief recollection that anyone in such a position must have is that Mr. Fuller never closed his door into the hallway and whenever he talked over the telephone he talked at the absolute top of his voice [chuckles], and anybody who was sitting in a room next to him had a hard time thinking about anything [both laughing] and disregarding what he could plainly hear Mr. Fuller saying.

Mr. Fuller was a delightful man, one of the most charming and interesting human beings anyone could be. He was a business lawyer, and he was extremely good at it. I don't mean to deprecate his intellectual accomplishments in any way, but the average business,

including banks -- he was bank counsel for the Bank of California -- has a myriad of daily problems, and they need answers and they need them right now. When anything of really underlying significance or importance came along, sure, Mr. Fuller had to slow down and maybe get someone else in and turn the job over to them, such as litigation and so on, but he turned out an enormous amount of legal advice and accomplishment in a way that I don't think anybody in the office could match.

Hicke: He not only talked loudly, he talked fast? [laughs]

McBaine: He talked fast. And he'd cover a lot of subjects.

Hicke: He had a lot of background knowledge that he just carried around in his head?

McBaine: That's right. That's right. Of course, he wasn't a book lawyer, he wasn't an appellate lawyer, he wasn't any of those things. He was a business lawyer, and if you were a businessman running a business and trying to make a profit, he was ideal.

Hicke: Let's talk about Gene Prince.

McBaine: Yes, and Mr. [Sigvald] Nielson.

Well, Mr. Prince was a scholar. He was a very scholarly man, a very learned man. Again, a gentle man, in the truest sense of the word. He was considerate of young and old, he never was rough or demanding. He never yelled at anybody in my experience -- I'm sure he never did at anyone -- and he was a really brilliant man.

I had the pleasure of working with him on a number of things. One was on the Elk Hills problems for Standard Oil Company of California. But except for a few major items of that kind, I did not have all that much professional contact with him, although in those days the firm was much closer socially.

Mr. Prince used to give a party each year at his ranch down near Los Gatos; it was a picnic. The whole firm and all the partners and associates and their spouses were invited, and it was the social highlight of the year for the firm. Mr. and Mrs. Prince were a wonderful host and hostess, and everybody had a marvelous time -- all sorts of games, from horseshoes to softball games -- just an all-around good time, and everybody used to enjoy that immensely.

Hicke: Did he live there?

McBaine: No. That was just a country place. Mr. and Mrs. Prince lived in San Francisco.

Mr. Nielson also worked on Standard Oil Company matters. He had been a tax lawyer and, as I remember it, a professor of tax law. Again, I did not work directly with him very much, but knew him very

well. He was concerned with Standard's lobbyists in Sacramento and in other states wherever Standard Oil Company had interests. Mr. Nielson supervised the various lobbyists, answered their legal inquiries, kept them on the straight and narrow as far as conforming with the laws was concerned. He became very sophisticated at this.

Standard Oil Company had a paid lobbyist, of course, in Sacramento, as all the major industries and companies did, and we used each year to assign a young associate from the office to go up to Sacramento during the sessions of the legislature and assist this lobbyist. It was a wonderful experience for the young associate chosen to do that. We had to keep track of all the bills that came in, read them, and see which bills might affect the interests of our clients. It's gotten to be such a herculean job these days, with 5,000 bills a session or something, I don't know how it's done today, but they managed to do it in those days, and Mr. Nielson was the overseer of all of that. As a result, I would say, he was a realist. I don't think I'd go so far as to say he was a cynic, but he didn't believe in fairy tales -- let's put it that way. [quiet chuckle]

Hicke: Would the Socal lobbyist be full-time for Socal, or would he or she have other clients? Would one lobbyist be representing several oil companies?

McBaine: I'm not aware of all the details of that kind, but I'd guess it'd probably sometimes one, sometimes the other. A former partner in our firm resigned from the firm and took on that job. His name was Al Shults, and he represented Standard and several other firms up there. Due to the training he received while working for the firm and under Mr. Nielson's supervision, Mr. Shults became one of the outstanding legislative representatives in the state of California and had one of the most elevated reputations for integrity and honesty and truthfulness: qualities which aren't <u>always</u> notable among legislative representatives. [chuckles]

Hicke: I know you've worked with Mr. [Francis] Kirkham on many occasions.

McBaine: Yes. I worked with Mr. Kirkham on many occasions -- really, almost from the beginning; I don't remember exactly. Mr. Kirkham was an antitrust specialist for as far back as I can remember. I don't know whether he was concerned with Standard Oil affairs from the time he came into the firm or just when he became the specialist, but my recollection goes back an awfully long time. As I say, I started doing Standard Oil work within a few months after I joined the office.

He's an absolutely outstanding man: superb intellect, marvelous personality, ability to get along with people, and a man full of enthusiasm for what he was doing. His habits were not always regular, in the sense that no matter what time he started working in the morning, if he got into something, he might well be there at three the next morning. [chuckles] And he produced, time after

time, legal miracles. He was just about as fine a -- I'd say a nonjury lawyer, litigator on these special subjects, and in appellate work as well, as there was.

His legal writing was excellent, as was Mr. Prince's, they were both masters of it. Their briefs were not only technically outstanding, but artistically outstanding, as a matter of the English language. I don't read enough briefs now, but one of the things that bothered me during my active practice was the fact that the law schools of this country do not consider it a part of their responsibility to turn out literate legal draftsmen. I used to argue about this with my father, who was a law professer, and he took the position, which apparently all law schools do, that it's not their duty to teach their students grammar or composition, but only the law.

We had Mr. Kirkham and Mr. Prince and Mr. Marshall, among others, a lot of people in the office in those days who were really first-class draftsmen. I mean their works were, as I say, not only technically sound but they were a pleasure to read.

Hicke: Well, I would think also this penchant for clarity would contribute to their success.

McBaine: It unquestionably does. Unquestionably it does.

Hicke: I'm sure we'll be hearing more about Mr. Kirkham as we go along.

McBaine: And of course I worked on many things -- I can't even begin to enumerate them now -- with Mr. Kirkham during the period when he was general counsel for Standard. I was, I guess one would say, his next senior associate in the Standard group, and there were numerous cases in which I worked with him and for him. In some cases I did more than I did in others, and in some cases he did more or even had other people working with him.

But I had a long association with him and I enjoyed every bit of it. I enjoyed it intellectually and enjoyed it personally. And I stress both, because sometimes you can enjoy people personally that maybe you don't enjoy intellectually and vice versa, but Mr. Kirkham is one of the outstanding lawyers that I've ever had any contact with in combining those two qualities.

Hicke: Could you tell me about Al Tanner?

McBaine: Well, Mr. Tanner worked on the Standard Oil account, but Mr. Tanner's penchant was somewhat different than these other men I've talked about. He was, again, a very careful and meticulous person, but he had no flare for the dramatic, let's say. He generally inherited most of the jobs which others might have considered tedious and did them up with a bang. He was a first-class lawyer in that sense, but he didn't have the personality and he didn't have the verve, he didn't have the imagination that many of these others did.

It takes all kinds of people to make a great firm, so when I say some of these things about these people, I don't mean they didn't pull their weight at all, but it does take different people. And -- this is sort of an aside -- I think it's probably always been true in New York that business getters are the most important people in the law firms. I think that's less true here. Certainly I'm positive that it's less true here than it is in New York, and it may be that it's less true here than in most places, because the dominance of the business getter really reduces the law firm or the practice of the law by groups to sort of a commercial level: profit-making and who brings in the bucks is the all-important thing.

I think with a major law firm like PM&S that has not been true, and I think if it had been true, it would have been destructive. And I think that's true of all major firms. A great deal of the business that comes in to lawyer "X" in the firm comes in partly because of lawyer "X" but mainly because lawyer "X" is a member of PM&S and is backed up by PM&S and the reputation that PM&S has established over the years, so that it's the firm that really attracts the business, except in very special cases.

Hicke: But then it's the good work of the members of the firm which makes the reputation.

McBaine: That's right. And somebody's got to do that work, and the more a man is engaged in drumming up business, if you will, by attending bar association meetings and community group meetings and so forth and so on, the less work he can really do. You might have the most brilliant appellate lawyer, for example, where the knowledge of the law and all the details of it become supremely important, who doesn't have the personality to join such and such an organization and become one of the boys and slap everybody on the back, but without that appellate lawyer, the firm couldn't win these cases.

My theory always was and still is that if you're going to have a great firm as an institution, you have to recognize the services of the appellate lawyer I was just speaking about. I'm not saying all appellate lawyers are like that; I'm saying you might have one like that who's absolutely invaluable to the firm and yet is, let's say, so shy that he's virtually unknown outside the firm. And it's always been true with this firm: we have recognized these varied skills and varied contributions, and I'm convinced that's part of the reason we're where we are today.

Hicke: All these talents and skills are complementary, so that you don't have ten experts of one variety and none of the others.

McBaine: Yes. Exactly.

IV MAJOR RESPONSIBILITIES

Elk Hills

Hicke: Okay. Well, maybe we should get you back to your beginning responsibilities and what happened next.

McBaine: When I was switched to Mr. Madison from Mr. Bennett and to the Standard Oil account, I think in a matter of weeks, I was called in by Mr. Prince because the Standard Oil Company of California had a problem with Elk Hills. [looking through papers]

Hicke: The general agreement had already been written? Is that what we're talking about?

McBaine: Yes. [still looking through papers] The so-called Unit Plan Contract.

Now Elk Hills was a Naval Petroleum Reserve. I think I can best read out of a brief that I filed in the Ninth Circuit on an Elk Hills matter and I'll quote:

> Naval Petroleum Reserve No. 1. The reserve was established in 1912 and was located in the Elk Hills in Kern County, California. At the turn of the century, government lands in the West were rapidly being turned over to private ownership. At the same time there was a growing realization of the importance of oil for the navy, which was then changing from coal- to oil-burning ships. Accordingly, President [William Howard] Taft withdrew large tracts of potentially oil-bearing public lands in California and Wyoming from eligibility for private ownership, and in 1912 set aside Naval Petroleum Reserve No. 1 by Executive Order. While the Executive Order establishing the reserve affected the future use and disposition of the government lands included in the reserve, it had no effect on the privately owned land, and the owners of those lands remain free to use or dispose of them as they saw fit. In 1944 there were approximately 44,000

acres within the reserve. Approximately one-fifth were owned by Standard and the remainder, approximately four-fifths, by the navy. The Standard lands were not [and are not] in one block, but are checkerboarded throughout the reserve. Also in 1944, there were [and still are] three geologic zones underlying the reserve known to be commercially productive of oil and of gas.

Now the reason for that is this: you may remember that when the railroads were built, the lands were handed out to the railroads and for schools in Calfornia -- mostly, I think, they were school lands. Alternate sections were given to the states for school purposes. This means that you wound up with a map looking like a checkerboard, and every red square would belong to the government and every black square would belong to private interests. Maybe it was sold to raise money for the schools, for example.

The net result was that you had the government sitting there with all these checkerboarded sections, and their policy was to preserve the Elk Hills Reserve to produce oil for use by the navy in times of war. Long after 1912, the air force came along, and the air force was using enormous amounts of petrol, as well as the navy and all the mechanized vehicles of the army. While the navy had administrative control over it, the reserve really was for the armed forces. It, in a sense, had to be, since all of them required oil.

Standard, on the other hand, had lands on which they had discovered oil and they wanted to produce the oil, but the navy said, "No. We don't want you to do that, because if you produce oil from your section of land, which is a mile square, you will drain oil from one or more of our sections, and we don't want that. Any oil you produce will be partly ours."

Hicke: Were they also worried about slant drilling?

McBaine: No. That would have been a trespass. To slant drill into somebody else's lands would have been a trespass. But to simply "suck on your straw" -- it's like you shared a milkshake with your friends, and you put your straw in your side of the milkshake and began sucking; if he didn't start sucking pretty quick, [both chuckle] the whole thing would be gone.

Hicke: Excellent description.

McBaine: This was a big problem. So the parties then got together, and they entered into a unit plan contract in which it was agreed that the navy would control the rate of production from the land and that Standard would be allowed to withdraw a certain amount of oil, no matter where it came from, as compensation for entering into the contract. They wouldn't bother about that -- which section it was sucked from -- until it got to be a certain amount of oil, and then after that, Standard could produce only enough oil each year to pay their out-of-pocket costs in the reserve. But apart from that,

after this initial production, the reserve would be essentially shut in.

Well, then problems began to arise. For example, if as time went on, new wells were drilled with the consent of the navy to find out how much oil was in the reserve, what the navy could count on, and new wells were drilled not for production but for information, then you might have a question as to, "Well now, does this underground pool of oil I'm drilling into extend outside the boundary of the reserves?" If so, another question arose. No matter whether the well was on private land or government land, the navy would say right away, "We want that area in the reserve," and Standard's interests would be to say, "No, it isn't part of the reserve. It shouldn't be in the reserve. You only drew the reserve boundaries here."

Hicke: They would want to purchase that, or lease that?

McBaine: No. First you had a contractual argument, as to whether the lands had to be included under the Unit Plan Contract. Then you had a legal argument of condemnation -- whether they wanted to condemn it. Then you had another question if somebody else discovered a well. There were lots of people drilling in Elk Hills around the reserve, and if somebody, not Standard or the navy, drilled a well two or three miles away from the boundaries of the reserve and discovered oil, query: were they producing from a pool which --

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McBaine: -- extended within the reserve? And if so, then of course the navy again wanted to do something about it to protect their interests in the reserve. So there was a constant succession of questions that arose all during the course of the history of this thing. All during my time, which was twenty-five years or thirty years, a constant succession of questions arose concerning this Reserve.

Hicke: Were there suits or were these all questions negotiated?

McBaine: Both. There were long negotiations and arguments and, oh, constant travels back and forth to Washington and to Denver. The Office of Naval Petroleum Reserves was in Denver for quite a number of years, and we'd make half a dozen trips a year to Denver over various matters; then the office was moved back to Washington again, and we made trips to Washington all the time.

The difficulties in administering the Elk Hills contract stemmed from what was known as the Teapot Dome Scandal in the early 1920s, during the administration of President Harding. In 1921 Harding transferred control of the naval oil reserves at Teapot Dome, Wyoming, and at Elk Hills from the navy to the Interior Department. The Secretary of the Interior, Albert B. Fall, then issued oil and gas leases without competitive bidding in Teapot Dome to oilman Harry F. Sinclair and in Elk Hills to Edward L. Doheny.

After a Senate investigation it was found that Sinclair and Doheny had both "loaned" substantial sums of money to Fall, interest free. The leases were cancelled, the reserves were transferred back to navy control, and as a result everything Socal did in administering the Unit Plan Contract at Elk Hills was subjected to the most minute inspection by the navy, Congress and the media.

The whole subject of naval petroleum reserves became sort of the Watergate of its time, if you will. I mean, everytime the Standard Oil Company wanted to do anything at Elk Hills -- and almost everything involving this thing depended on highly technical and scientific information and also involved factual situations which were complex and difficult to state and to make people understand -- immediately somebody would rise up again and say, "Oh, they're trying to steal another naval petroleum reserve."

So the whole business for twenty-five years was carried on in a climate of anything but intellectual objectivity. Somebody would make a political stump speech everytime we had a question of this kind. And as I say, within I think a few weeks, or maybe a couple of months at the most, after I was assigned to the Standard Oil account, the secretary of the navy published an announcement that he was enlarging the Elk Hills Reserve No. 1 by taking in thousands of acres adjoining the reserve, and without saying boo to Standard or anybody else who owned lands in this area.

Well, as I say, Mr. Prince called me in to discuss this problem. There was present a vice president of Standard at the time named Floyd Bryant, who was in charge of the company's interests in Elk Hills. Incidentally -- another small-world bit -- he was one of the Rhodes Selection Committee for the Western District who had selected me for a Rhodes Scholarship in 1932. He was a former Rhodes scholar himself. So here in '47 I came back to him and found myself working with him on this Elk Hills matter.

In any case, we instigated a hearing before the House Armed Services Committee on this matter. The chairman of the House Armed Services Committee was Representative Carl Vinson of Georgia, who was the watch-dog of the naval petroleum reserves, and he made a holy crusade out of his entire tenure. Possibly one shouldn't say things about the dead, but I am convinced it was true that he succumbed to Lord Acton's dictum that all power corrupts and absolute power corrupts absolutely. He ran the House Armed Services Committee with an absolute iron hand. It was simply a one-man committee; nobody else on it had any say, and he'd punish anybody that even thought of taking an independent position.

He was obsessed with the idea that the Standard Oil Company might get a barrel of oil out of the Elk Hills Reserve that it wasn't entitled to, or even if it was entitled to it. He thought the naval petroleum reserves were the single salvation of the security of the United States: an extremely difficult man.

Hicke: Would you say he got a lot of mileage out of that?

McBaine: Yes. Oh, yes. Sure. He got enormous press coverage out of it, and he rode it for all it was worth.

I won't go into details, but he boobytrapped Standard one time. Standard wanted a certain revision of the contract. They proposed the revision to Mr. Vinson, because of course you had to talk to the chairman of the committee, you wouldn't dare talk to anybody else, and he said, "Well, I'll give you a hearing before the committee on your proposal. I don't think I like it, but I'll give you a hearing before the committee."

So the company and we, the lawyers, went to work on this thing. We prepared this proposal -- it took us about a year to do it -- with engineering and other studies and sent forty or fifty copies of the proposal back to the committee several months before the hearing; actually we sent the forty or fifty copies to the chairman for distribution to the members of the committee, so that they'd all have this thing well in advance of the hearing and understand what it was all about.

We got back to Washington to participate in the hearing and make our case before the committee, and were told later by a member of the committee that the first time he had ever seen the report which we were presenting that day was on that morning when he came into the hearing and took his seat on the committee; the volume we had prepared was on the bench in front of his place. Otherwise he had not read one word of the whole thing.

The committee session then began. The chairman called in the committee to order and said, "Before there's any testimony, I'd like to read a statement." He then read a statement, which was about thirty minutes long, in which he blasted the proposal as iniquitous and everything else you can think of, condemned it from top to bottom. Of course, the members of the committee didn't know what he was talking about. They couldn't follow him because they didn't have our presentation of our proposal, so they didn't even know what the proposal was. So when I say that power corrupted, that's what I mean. That's the kind of thing. [quiet chuckle] I think you can imagine that hearings like this produced a lot of interesting questions over the course of twenty-five or thirty years.

Hicke: Interesting is probably a polite word [quiet laughter] for the kinds of questions you had to deal with.

McBaine: That's right. The only other incident that might be mentioned in a history such as this regards this first session where the secretary of the navy had simply unilaterally announced an expansion of the reserve, and so many lands belonging to Standard and other private owners had been taken into the reserve. When we went back to Washington for the hearing before the House Armed Services Committee, I was the lawyer that went along with Mr. Bryant, and a staff man he had with him. Mr. Prince sent me back there. Mr. Prince had reached the age where, I think, he didn't jump at

every chance to get on an airplane and fly across the country; that's a characteristic of age in the lawyers involved, except for Mr. Kirkham. He'd still go anyplace, anytime. [both laugh] But mostly as the lawyers got older, they were happy to delegate that to some younger people.

So I went with eagerness and, I think, on only about one day's notice; we had very little time at all. I got a copy of the Constitution, and I was looking at the copy of the Constitution. There is a provision in there that says something about the Congress of the United States shall decide what shall be done with public lands of the United States, or something of that nature.* I don't remember the exact phrase in the thing, but it covered this situation, and the secretary of the navy had simply arrogated the power to himself. We really made the point; we threw this up to Mr. Vinson and his committee that here the secretary of the navy was poaching on their prerogatives.

Hicke: That might have appealed to him.

McBaine: That appealed to them and, in fact, he directed the secretary of the navy to withdraw that order forthwith and gave him quite a dressing down. [both laugh] That was the first time I'd ever seen Mr. Vinson.

And one of the most interesting things is that one of the members of the committee at that time, the first time I'd ever heard of him, was Congressman Lyndon B. Johnson from Texas. I well remember that during the course of a presentation of this argument on the Constitutional point, which set it up for Mr. Bryant to make the argument that we were looking to this committee to decide these questions, not to the secretary of the navy, I got into a discussion with Johnson. I won't say it was an argument -- I don't remember exactly the technical points -- but I do remember that Johnson jumped on me about something, and I had an exchange with him for four or five passages back and forth. I wish I could remember the exact details, but I don't, but anyway I really succeeded in maintaining my position. He said, "What if so and so?" and I said, "Well, in that case the matter would come right back to you for decision."

Hicke: Again because of the Constitution?

McBaine: Again, because basically, of this same argument. But he was so pleased about that idea that he dropped his interrogation. [both laugh]

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* Article IV, Section 3(2): The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .

So in retrospect, I thought I was very fortunate that I didn't get run over completely by Lyndon B. Johnson [both continue to laugh] He ran over a lot of people before he finished.

Hicke: And probably not too many people could say they held their own in an exchange with him.

McBaine: So anyway, for a long, long time Elk Hills was a continuing legal problem. The odd thing is that when in 1973 with the formation of OPEC [Organization of Petroleum Exporting Countries] and the shortage of oil, which led to the lines you remember at the service stations and filling stations --

Hicke: I remember well.

McBaine: -- eventually, and I suppose partly because of Mr. Vinson's death, because I think he was dead by that time, the government of the United States changed its position entirely. One of the basic things they've done [chuckle] is they're producing oil from Elk Hills now and, of course, when they allow production of the oil, Standard gets its share.

So all of this haggling over the years finally resulted in Elk Hills being opened up, so to speak, and the government has been taking its share of the oil and piping it down to the Gulf Coast and pumping it down into depleted salt domes underneath the Gulf of Mexico as a strategic petroleum reserve. In other words, they are getting oil closer to the Middle West and the East Coast and not leaving it clear out here on the West Coast, where it's pretty difficult to move it. You have to take it clear down to Southern California to get it through a pipeline; you can't run a pipeline over the Sierra and the Rockies. So all of these epic struggles that we had over this thing [hearty chuckle] are a thing of the past.

Hicke: But it also paid off in the long run, in a sense, didn't it?

McBaine: Oh, yes. Oh, yes.

Hicke: Does that finish Elk Hills, at least for the moment?

McBaine: I think so. I think that any more would be not of any general interest.

Reporting to Senior Firm Members

[Interview continued: June 26, 1986]##

Hicke: I thought we might just start this afternoon by my asking you a little bit about how you reported to other senior members of the firm, what you reported and how much they wanted to know.

McBaine: Well, that differed, depending on the senior member of the firm. Different men had different habits and a different method of approach. As I told you, the first major matter that I had when I came into the firm was the Elk Hills expansion that we talked about last time, and I reported to Mr. Prince on that, because Mr. Prince had been the attorney in a suit involving the title to some of the lands in the Elk Hills field some time before and, therefore, had the background on the whole Elk Hills situation, whereas Mr. Madison, not having been a Standard Oil lawyer, did not have the background.

As soon as that matter was over, I began reporting to Mr. Madison as the new general counsel to the Standard Oil Company. Mr. Madison's idea was that -- I'm not sure whether it was spoken or unspoken -- he did not want to be kept apprised of all details of a given matter. He had more than he could possibly do on that kind of a basis. He wanted to know what the important and significant developments were and that's all. That meant that the younger lawyer who was working on a given matter had to use his judgment as to what was significant and what wasn't.

I would say -- I think I've said before -- that I thought Mr. Madison was the finest administrative head of a law firm one could possibly be, and part of that ability of his was the ability to delegate and to keep from being overwhelmed by a lot of minutia. I'm sure that if he, for some reason or another, lost confidence in a younger lawyer that he'd assigned a given job, he'd monitor it more closely and if necessary make a change. But as long as the client or the representative of the client with whom the younger lawyer was working was satisfied and made no objections and so forth, Mr. Madison was happy to have the younger lawyer do everything he could do.

Hicke: Now as you developed your own group of young lawyers working with you and then became general counsel, what were your feelings about how much they should report?

McBaine: Well, as far as I'm concerned, I approved thoroughly of Mr. Madison's method of operations and tried to model myself on it. It was an object lesson for me, and I think I was very fortunate to have the training in that regard.

Hicke: Because you didn't have to spend all your time supervising, you were able to do a lot of work?

McBaine: Yes. I don't know that I can give an accurate estimate of Mr. Madison's time, but he did not limit himself to Standard Oil affairs. When he became general counsel to Standard, he had a number of important lifelong clients, and he continued to represent them and supervise their work as well. So all the more reason why he had to build up a competent staff of attorneys in the office to service the Standard Oil account. All the more reason why he had to rely on them not to overwhelm him with a lot of intricate, really

immaterial facts. He only wanted to know, as I say, the important things.

The same was true of myself, and I think true of every one of the men that I've known who had the job. Mr. Kirkham was the same way. All of us did work other than Standard Oil work. I'm going to discuss one or two cases in which I participated that had nothing to do with Standard. But it varied. Certainly Standard took the great majority of the time of all of us on that account.

Hicke: Well, thank you for answering the question.

Civil Air Transport Case

Hicke: Now, I think we're about ready for the Civil Air Transport case.

McBaine: All right. Well, after my experience in the Elk Hills expansion matter, the next major item that I remember came along when I received a telephone call from a friend who had been an associate of mine in O.S.S. during the war and was then a lawyer in the office in Washington, D.C. of Thomas G. Corcoran, "Tommy the Cork," of New Deal fame. He retained me in connection with the matter that I'll tell you about.

When the Chinese Communists drove Chiang Kai-shek and the Chinese Nationalists off the mainland of China to Taiwan, there were two Chinese airlines operating on the mainland: China National Aviation Corporation and Civil Air Transport Corporation (CNAC and CATC). In addition, U.S. General Claire Chennault had, as you may remember, been commanding and operating a group of American fliers in China before and during World War II called the Flying Tigers. At the end of the war, he had organized a civilian airline in China principally to carry freight in China called, I think, Civil Air Transport (CAT).

In order to avoid the Chinese Communists taking over all of the assets of the two domestic Chinese airlines I referred to, CNAC and CATC, as they expanded over China, the Chiang Kai-shek government sold all of the assets of those two airlines to a U.S. corporation organized by General Chennault. The better known part of the story involved the planes of those two airlines, which the pilots of the airlines flew out of mainland China -- they flew all of them out, as far as I know -- and flew them to Hong Kong to prevent their seizure. They were sitting in Hong Kong. However, that's not a part of my story.

My story comes in because the two Chinese airlines had several million dollars in banks in San Francisco plus about a million dollars worth of spare engines and spare parts at San Francisco airfield. The question was: to whom did those assets belong? The

Chinese Communist government made a claim on the banks here in San Francisco for those monies and also for the assets at San Francisco airport: the engines and spare parts.

Interestingly enough, the attorney in fact for the Chinese Communist government in the U.S. was Frederick Vanderbilt Field, who was well known in University of California circles because he was one of the founders, I believe, of the Institute for Pacific Relations, which involved a number of University of California officials and which attracted people interested in foreign affairs. I'm not sure my memory is correct, but I believe that President [Robert Gordon] Sproul was at one time a member of the board of the Institute of Pacific Relations. That may not be correct, but the University of California was involved with it. There were others who subsequently thought that the Institute of Pacific Relations was essentially a subversive group manipulated by Mr. Field, who was a well-known Communist sympathizer.

In any case, Field on behalf of Communist China made a demand for all of this money and these engines and spare parts, and Mr. Corcoran's office retained me to make a counter-demand and to recover these assets, get the title to them cleared, and get the money and get the engines and spare parts.

Hicke: On behalf of Chiang Kai-shek or General Chennault?

McBaine: On behalf of General Chennault's airline, which had bought these assets from the Chiang Kai-shek Chinese government. Well, the problem instantly, of course, was how in the world could we prove title? I should say before we get into this that approaching the banks was useless, because the banks followed their normal procedure, which it seemed to me they took great pleasure in doing, of saying, "Well, we have conflicting demands; so we won't pay either one, we'll just hold the money." [chuckles] So the longer that went on, the happier they were. [both laugh].

As I say, the problem immediately arose, how in the world do you prove in a court of law -- in the federal district court here in San Francisco -- a title passed on the mainland of China when the Chiang Kai-shek government was fleeing from the mainland of China, actually on the move to Taiwan? It was impossible at that point, of course, for any American lawyer or investigator to get a visa to go into mainland China to look for any evidence or obtain any evidence, and almost surely any crucial documents would be impossible to locate. So the question was what in the world to do.

Well, that drove me to the library. After plowing through the books for a while, I came up with what's known as the Act of State Doctrine, and solved the problem in this way. What the Act of State Doctrine required was that, in the first place, the United States government had to continue to recognize the Chiang Kai-shek government as the legal government of China, which it did, of course, for some months after the takeover by the Chinese Communists. If the

U.S. had ever recognized the Chinese Communists and withdrawn their recognition from Chiang Kai-shek, it wouldn't have been possible to apply this Doctrine. So there was some urgency about the matter. But, it worked this way.

First of all, I got the Chinese ambassador in Washington to write a letter to the secretary of state of the United States informing him that the government of China had on such and such a date sold all of the assets of these two airlines to General Chennault and his American company, the ambassador saying to the secretary of state, "I understand there is a controversy over this matter in the courts of the United States, and I would appreciate it if you would call the facts I've stated to you above to the attention of the court."

Next the State Department, accepting the [Nationalist] government of China as the legal government of China, formally accepted the word of the Chinese ambassador as true. This turned the whole matter into an affair of state -- of foreign relations between sovereign states. With the three branches of the government that we have, legislative, executive, and judicial, the conduct of foreign affairs is a question within the competency of the executive branch. This took it out of the judicial branch of the government and made it a diplomatic matter -- an affair of state -- to be decided by the executive branch.

Now I made the arrangements with the State Department rather easily, because the assistant secretary of state for the Far East at that time was Dean Rusk, who was a classmate of mine at Oxford [chuckles]. He later became secretary of state, of course, and actually during the war had been in the China-Burma-India theater in Delhi as a staff officer. So I arranged this all with Dean Rusk.

When the State Department got this letter, the State Department then addressed a letter to the attorney general of the United States and said, "Dear Sir, we have received this letter from the Chinese ambassador. We accept the Chinese ambassador's statements as true. Will you please notify the Federal District Court for the Northern District of California?" The attorney general of the United States then wrote a letter to the judge in the Federal District Court in Northern California and recited the whole story to him, whereupon the district judge held a hearing of the court and announced that the matter had been taken out of his hands and that the United States recognized the Nationalist Chinese government, they recognized the truth of the statements made by the Chinese government, and the property belonged to General Chennault's airline.

Hicke: So, in effect, the court had no jurisdiction.

McBaine: They had no jurisdiction, so that all of that bypassed the absolutely insoluble problem of proving a transfer of title to these assets by any normal legal means. Otherwise, I don't think we'd ever have gotten them.

Hicke: Where in the world did you find this Act of State Doctrine?

McBaine: Well, just beating the books to find out something that would enable us to win the case. Now, the funny thing is, when the matter first came in, I got hold of Dean Roscoe Pound of the Harvard Law School and retained him as an expert on Chinese law, thinking that we would need someone like that, because at the end of the war he had gone out to China and revamped the entire law of China. This was before the Communists had ousted Chiang Kai-shek. So I had a very expert witness.

In fact, we got a deposition, a statement from him -- I don't think it was in the form of a deposition -- on some questions we asked. When we received his statement, it was any number of pages thick, and when I read the statement, it opened with his qualifications, of course, and [laughs] it went on for page after page after page about the degrees that he had and the books that he had written and the honors that he had received. It was absolutely incredible. About the size of the encyclopedia [both laugh]. The opinion as to the law of the matter occupied about half of the final page. I've never seen another one like it in practicing law.

But in any case, when I discovered this seemingly miraculous way of solving the whole problem, I telephoned Dean Pound, because I'd concluded we wouldn't need his services, and I told him what my theory was. He immediately said over the telephone, "Oh yes, you mean the Act of State."

Hicke: So he was familiar with this?

McBaine: Oh, yes, he was familiar with it. Well, a student of his caliber would be. He had an encyclopedic mind, tremendous mind. He knew more law than virtually anybody in the country.

Hicke: What kind of a law was it? I mean, who promulgated it?

McBaine: It comes under the heading of international law. I can only assume we never had that taught in law school or I would have remembered it. But once I learned the doctrine, I noticed that it's applied regularly. But Corcoran's office apparently hadn't thought of this approach, or otherwise they wouldn't have had to retain me.

Hicke: It was probably applied more regularly after that.

McBaine: Yes. In any case, the lawyers for Mr. Field -- Mr. Field retained a San Francisco law firm here to represent the Chinese Communist government -- were no end frustrated, as you can imagine. But there wasn't a thing they could do about it. The federal district judge, I think, entered a judgment in our favor, and the banks paid off and the custodians of the engines and spare parts turned over possession of them to Chennault's airline, and everybody lived happily ever after. [both laugh] That was a very interesting experience and also, as I say, there was the coincidence that a key man in the State Department on this thing happened to be a friend of mine.

Hicke: I think you told me also that you were an associate at this time.

McBaine: Yes.

Hicke: And you said that this was one of the few cases that the firm had ever taken on contingency. Am I correct here?

McBaine: Yes. The Chennault airline was barely surviving with all of the upsets that had gone on, being driven off the mainland where they had been operating, and they really were strapped for money. I've forgotten exactly what our conversations were. My recollection is that they asked me if I'd take it on a contingency, because they were short of funds, short of cash. If they could get their hands on this $5 million or whatever it was in San Francisco, they wouldn't be short of funds, but if they couldn't --. It was an interesting case, and whatever senior partner I spoke to -- maybe it was Mr. Prince; I don't remember -- approved the thing, and I did take it on I think it was a small payment advance, but mostly on a contingent basis. The net result was I made a very, very handsome fee because of the contingency. The interesting thing, in a way, was that as an associate, I received none of that fee; the fee went to the firm [chuckles].

Hicke: I think it was one of the largest single fees that had ever come in at that point.

McBaine: Well, it was, at that time, I believe. My recollection is it was something like a quarter of a million dollars.

Hicke: Well, we're talking about the late forties now?

McBaine: Yes.

Hicke: And you did become a partner in 1950?

McBaine: Yes, I believe that's right. It was January 1, 1950. Yes, I wasn't complaining about it. I would say that I expected that, that was normal procedure, and I think during the course of the next thirty years I got my share back again, and more.

Hicke: Well, certainly you were a popular man about town [both laugh].

McBaine: Well, it was an interesting case; it did interest a lot of people. Of course, the papers were interested in it too. So it was a very interesting and satisfactory episode. Needless to say, the Corcoran office was very pleased too.

Hicke: I should think so.

Iranian Consortium

McBaine: Well now, perhaps the next matter -- in rough chronological order -- was the formation of the Iranian consortium, which took place in 1954, I believe. You may remember a man named Mossedeq led a revolt in Iran against the Shah, eventually ousted the Shah and then seized all of the assets of the then-called Anglo-Iranian Oil Company in Iran. The Anglo-Iranian Oil Company had a concession for most of the southern part of the country and had discovered oil there and then built what was then, I believe, the largest refinery in the world at Abadan.

Hicke: This was a British-controlled firm?

McBaine: This was a British firm. That in itself has a fascinating historical background. That came about because of the British conversion of the British navy from coal to oil, and that was made possible only by the fact that the British had this concession in Iran and discovered enormous amounts of oil. Incidentally, the man who made that decision was First Sea Lord Winston Churchill.

Hicke: This was about the time of World War I?

McBaine: Yes. So around 1952 Mossedeq not only ousted the Shah but then seized all of the Anglo-Iranian Oil Company assets and drove all of the English out of Iran. The Iranians really weren't set up to operate the oil industry themselves, so the thing sort of went into mothballs for the time being. Then a period of considerable agitation followed, and Mossedeq took to his bed and wept, as opposition to him arose and increased.

Hicke: I noticed in your speech --

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Hicke: -- you called him the weeping Mossedeq, or something to that effect.

McBaine: Yes, well, he was famous for that and undoubtedly it was his idea of appeal, because he was a very wily and intelligent old boy; he wasn't a fool and incompetent. Some say that the United States had the principal hand in it through the O.S.S. -- the C.I.A. by that time -- represented by Kermit Roosevelt. But in any case, there was a counterrevolution, and Mossedeq was driven out of office, and the Shah returned to Iran and assumed the throne again.

Well, then the question was what to do about the Anglo-Iranian concession and refinery in Iran. Despite the fact that the Shah was back on the throne, the anti-British feeling was so high in Iran that it was deemed impossible for the British to simply go back in and resume control of the oil industry in Iran. There would be public disorders; it simply wasn't possible to do. So under urging, I'm sure, by the British government, who had a controlling

interest -- a majority interest, in fact; Anglo-Iranian belonged to the British government; a minority interest in the company was publicly held -- the chairman of the Anglo-Iranian Company at the end of 1953 wrote a letter to the six major or five major American oil companies. [looks through papers] I'll have to correct that number; I've forgotten the exact number.

Hicke: That's okay, I have it here. I think there were five. I even have a copy of the letter.

McBaine: Five Americans and one French.

Hicke: Is this the letter? That's from Ted Lenzen's book,* and he included the letter.

McBaine: Yes, that's right. This is the letter. There were five American companies and one French company and one additional English-Dutch company, the Shell Oil Company. Shell Oil Company was in an advantageous position: where politically it was advantageous, they were Dutch, and where it wasn't politically advantageous to be Dutch, then they were English. [both chuckle]

Hicke: Convenient.

McBaine: Sir William Fraser of Anglo-Iranian invited the heads of the American oil companies to come to London for a meeting to discuss what to do about reactivating the oil industry in Iran. Well, the Americans, conditioned by life with our antitrust laws, wouldn't even reply to the invitation without first obtaining a clearance from the Antitrust Division of the United States Justice Department. But having obtained that clearance, they did go to London.

Now, here again is a case where even though Mr. Madison was the general counsel to Standard of California, he couldn't possibly devote himself to this matter single-handedly and continue to discharge his duties as general counsel. So I was assigned to go to London with the Standard representative. First Mr. [Gwin] Follis went for the meeting of the heads of the companies; Mr. Follis was then the chairman and the chief executive officer of Standard. And then, once they decided they would meet with the English and the other invitees, I was assigned to this job, and I accompanied a vice president of Standard, a long-time officer in their international and foreign relations and foreign enterprises, T. L. Lenzen. We were sent over along with some other staff members as permanent representatives of Standard Oil. Well, just to give you an idea why I say that this simply couldn't be for Mr. Madison, I spent nine months of 1954 abroad, either in London or in Iran -- in Teheran.

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* Theodore L. Lenzen, Inside International Oil, 1972. The five American companies were Socal, Texaco, Standard Oil of New Jersey, Gulf, and Socony Mobil. See following page for Fraser's letter.

A. E. C. DRAKE
610 FIFTH AVENUE
NEW YORK 20, N. Y.

REPRESENTATIVE IN U.S.A.
OF THE
ANGLO-IRANIAN OIL CO., LTD.
LONDON, ENGLAND

Urgent and Confidential

3rd December, 1953

Mr. R. G. Follis
Standard Oil Company of California
225 Bush Street
San Francisco 20, Cal.

Dear Mr. Follis:

Since Mr. Hoover returned from his visit to Tehran, I have had the benefit of exchanging views with him on the general lines along which a solution of the Persian oil situation might be sought.

Mr. Hoover has informed me that the ideal solution, in his opinion, would be for the Anglo-Iranian Oil Company to return to Persia alone, a view which is, of course, held by me and is, I think, shared by you. He has, however, said that he doubts whether it is possible to achieve this, and his conversations in Tehran led him to the view that a solution might be found through the medium of a group of companies rather than through a single company.

As you will have seen from the press, efforts are now being made to restore diplomatic relations between the British and Persian Governments, which, if successful, would lead to the resumption of direct talks on the oil problem between the British and the Persians.

Whilst I should have preferred to have seen these measures brought to conclusion first, Mr. Hoover has stressed the urgency in the situation as he feels very strongly there are inherent risks in it which might become dangerous if the situation drifts. He has suggested to me that valuable time could well be saved if discussions could be opened with representatives of companies able to make some contribution to a solution of the problem who might, in the interests of progress and stability in the countries of the Middle East, be ready to participate in such a group. He has also suggested that these talks might take place on the footing that the subject to be discussed was at this stage entirely hypothetical and without commitment of any sort to any of the companies taking part in them.

On this understanding, and recognising as Mr. Hoover and I do, and I am sure you will too, the vital necessity of avoiding unwarranted speculation lest the moves now in train at official levels should be prejudiced by rumours leading to preconceived notions of a specific form of settlement, I would be very pleased to know if you would be ready to discuss with me and my colleagues the possibility of your company participating in a group. The discussion would range over the wide

area not only of the conditions under which such a group might be formed, but also of the terms and conditions under which the members of the group would be prepared to enter into commitments to dispose of Persian oil. These terms might later become the subject of negotiations with the Persian Government.

In conclusion, I should mention that I am addressing similar invitations to take part in these talks to Mr. E. Holman, Sir Frederick Godber, Mr. B.B. Jennings, Mr. J.S. Leach and Mr. S.A. Swensrud, as I have felt that the companies which could make a constructive contribution to a solution are those who are now engaged in the production of oil in the Middle East and in the marketing of it on a large scale internationally. So long as the discussions are purely hypothetical, it seems desirable to confine them to the smallest possible circle of representatives drawn from the above groups.

If it would suit you, I would suggest that the discussions should take place in London at your earliest convenience and in the meantime, might I again ask you to do all you can to avoid unwarranted speculation as to future developments.

With kindest regards,

Yours sincerely,

WILLIAM FRASER, CHAIRMAN
ANGLO-IRANIAN OIL CO., LTD.

Per: A.E.C. Drake
A.E.C. Drake

The first question was what were the consortium members going to get, or going to take over, of the Anglo-Iranian concession and refinery, and what were they going to pay, if anything, for what they took over. Consortium was an English word that is now used in American English as well as English English, but then it commonly was not. But it's obviously derived from the Latin and simply means a group of companies.

Just as a starter, it was agreed by all hands -- and the British themselves agreed to this, which really means the British government agreed, because as I say, the British government held, I believe, a 51-percent interest in Anglo-Iranian, and whatever Anglo-Iranian did of this kind of magnitude was done only after approval by the British government. So it was agreed that the British could not remain in control of it; they could not have a majority interest. Politically speaking that was impossible; it wouldn't go down.

Hicke: Wouldn't go down with the Iranians?

McBaine: That's right. It wouldn't be possible. As I say, there'd be public disorders and they simply wouldn't be able to operate. The Americans took the position that they would pay Anglo-Iranian the market value, or rather the fair value, I guess -- perhaps there wasn't a market -- of the interest they took, really without taking into account the impossible political position that the English were in. So the first job was to negotiate what that [fair value] was.

Sir William Fraser was a Scotsman who still wore high-button shoes in 1953, so he was a bit on the conservative side [both chuckle], and actually so much so that this was probably what cost them the concession. He was not very flexible and not very modern. He didn't recognize the changing world. In any case, that was a long and hard-nosed negotiation, I can assure you.

Hicke: Before you go on, tell me a little bit about the day-to-day routine.

McBaine: Well, for the important matters, for instance, when they had key sessions of this thing, the chief executive officers of the companies would all come. Mr. Follis would come from San Francisco, and the chief executive officers of the other companies came. They would bring their staffs. Mr. Lenzen was Mr. Follis's number one assistant on this thing, but he might bring with him a financial man or a marketing man or other adviser of this kind, according to whatever kind of advice he felt he needed at the moment. They had these periodic meetings of the principals, and then when those meetings were over, it was up to the lawyers and whatever other staff people there were to put the decisions into whatever form was required. We had to work out an agreement. We had a written agreement [among the oil companies], of course, on this thing, before we ever went to Iran.

So we had to arrive at this settlement, and the settlement was in the billions, even in 1953. The settlement wasn't cash out of the pockets of the consortium companies; most of the settlement came from the oil that was to be produced when the consortium put the Iranian properties back into production. But it did amount to billions of dollars.

After reaching that agreement, then the next thing we had to do was to go to Iran and negotiate a settlement with the Iranian government, and that was a long and tedious affair, and an extremely ticklish affair.

There were three Iranian negotiators. The principal one was a member of a former royal family there, and then the finance minister was one of them, and then a so-called elder statesman was one of the three. Now their job was not all that easy, because while the Shah was then back firmly on the throne and the Mossedeq supporters really had lost complete political power, nevertheless, there was this enormous anti-English feeling still in Iran. The Iranians, by and large, have a great deal of anti-foreign sentiment anyway, not in the way they do now -- that is, this fundamental Islamic point of view had not arisen at that time -- but they just basically are a very old civilization, as you know, a very great civilization in ages past, and many people like that really resent these brash newcomers who are only 100-200 years old and according to them have little culture. So these negotiators had to be willing to make a deal, but they could not make a deal so good for us that the Iranian public would be stirred up, or the whole thing would blow up and they wouldn't accomplish anything.

Hicke: They didn't want to lose face.

McBaine: Well, yes, they couldn't. At the same time, Western tradition is that a good contract is a contract in which both parties get what they want. This may sound odd to talk about, but it does make a difference. Most Westerners will not negotiate a contract, a long-term contract anyway, which simply skins the other party alive, even if they can outwit him and overcome him, because all that means is they've got trouble on their hands at some point. Nobody is going to stand still for that. It's like the Treaty of Versailles at the end of World War I. You clobber Germany and impose sanctions on them and impose reparations on them, you really grind them into the dust, and what you do is produce a Hitler. So this was the general approach that the consortium companies took to this. We had to have an agreement which would meet their requirements and an agreement which would meet our requirements.

Hicke: Ted Lenzen says that Mr. Herbert Hoover, Jr., who was assisting and consulting, kept saying something "about the contract has to be done with mirrors."* [McBaine chuckles] I can get the quote out of here,

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* "He repeatedly referred to the necessity of working out an

but anyway, it has to appear one way to one side and the same contract has to work the other way for the other side.

McBaine: Yes.

Hicke: And, I might just add here something else that Mr. Lenzen says. [looks through book] To quote from him, he says: "The days became weeks of meetings, with the most difficult matter the drafting of a management agreement that by a choice of words would give the consortium effective control but would appear to the Iranians that this was not the case. The legal groups, with McBaine taking the leading role, finally came up with a draft that satisfied all the participants and hopefully could be sold to the Iranians."

McBaine: Well, that's right. When we went out to Iran, of course, Anglo-Iranian had their lawyers there; they were British lawyers, and they had a prominent barrister, a Q.C., as their lead counsel. The Shell Oil Company also had English counsel there. The Americans, of course, had American lawyers. The French had a distinguished French counselor there.

The consortium group took over a villa in Teheran which had a big garden surrounding it. It was warm; these meetings were mostly during spring and summer months, and we'd meet in these beautiful surroundings. [looks at pictures on wall].

Hicke: There's a picture on your wall indicating, I don't know how many -- eight or ten, maybe more than that --

McBaine: [Counting] I think eleven.

Hicke: -- men sitting there with lots of papers.

McBaine: That's right. We were drafting the agreement and proposals for the consortium negotiating team, which consisted of a couple of the chief executive officers with one chief negotiator, selected by the chief executive of Exxon, which was the largest company.

I believe that I was fortunate or unfortunate enough to have to [chuckles] raise this point at the very first meeting: I said, "This agreement is going to be in American and not in English." Now there was a very serious reason for that; this wasn't simply nationalistic pride. Again, the feeling against anything English was so strong in Iran. A lot of the Iranians, such as the chief lawyer for the Iranian negotiators, were educated in England, spoke perfect English. Not American, but English English. But the English English, as a matter of form in a contract, is quite different from the form that the Americans use. The language is quite different, and

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agreement 'by using mirrors' -- things must appear one way to certain parties and another way to others." Ibid, p. 86.

also the English language, as used by the English barristers who write up these agreements, is much more difficult for a non-English speaking person to master than American English is. American English is more straightforward.

I don't want to take time to go into the details, but there is a basic difference, and we were doing everything we could -- with the agreement and wholehearted cooperation of the British -- to downplay their preemiment part, because they still had the largest single interest in the Iranian oil industry. Even though they had given up a controlling interest, they still had a larger interest than any one of the American companies did.

Hicke: Forty percent, I think.

McBaine: Yes. So part of that, as I say, was not to stir up the Iranians and get them emotional and heated up. So we drafted the agreements in American English. [chuckles] We, the negotiators, also met daily in another villa in Teheran, and oftentimes one or more of the lawyers would attend there -- I think there was always at least one -- and the Iranian team of negotiators -- the three -- also had lawyers there. I think all three of them spoke English, and the Iranian lawyer spoke perfect English, but all of the negotiations were in Pharsee on their side and translated and in English on our side, of course.

Hicke: I suppose that gives everybody time to think.

McBaine: Well, it gave them time to think. You see, if the American negotiators could understand Pharsee, they would understand the original answer, and then by the time the translator finished giving the English version you'd have had all that time to think about it, which is probably one reason why they proceeded as they did. They really understood what our negotiators said in English, but they had the opportunity then to wait for the Pharsee translation. They stuck to that all the way through.

Hicke: That's right, but it wouldn't have worked in reverse.

McBaine: No, it wouldn't work in reverse. I think we had one person there who spoke Pharsee, a former Anglo-Iranian employee, but that's all.

Well, in any case, that went on for quite a long time and then we reached an impasse and broke off negotiations. We all went back to London, because the consortium negotiators had reached a point where they couldn't go any further without exceeding their instructions, and the Iranians had come to a dead end; they said they simply wouldn't accept what was being proposed. So we had a break and had to go back to London and again summon the chief executive officers of the member companies in the consortium. We made some adjustments -- I've forgotten now what they were -- and then went back to Teheran again.

After another couple of months, we finally reached an agreement. In general, it was agreed that Anglo-Iranian would retain a 40 percent interest in whatever could be worked out with Iran, and the seven other members of the consortium would have 60 percent, divided between them. So we had an agreement as to how Anglo-Iranian should be compensated for giving up 60 percent of their erstwhile concession. It was nine months later, as I say, when we finally concluded this thing. It really was an extraordinary achievement, and the negotiators for both sides did a marvelous job. There was the best of feelings on both sides when the thing was concluded. Nobody was upset or angry when the agreement was concluded. The ageement had to be ratified by the Iranian Parliament or Majlis, which it was, and the agreement then lasted for twenty-five years.

Hicke: That is truly an amazing conclusion.

McBaine: In the international oil business, that is a long time. So it was a fascinating experience. It was somewhat limited, because the Iranian public were not informed. I don't know what the Iranian papers said, but I know all of the details of this thing were not carried in the papers, like we carry it here.

There had been so much anti-English feeling that each of us was assigned a car and a driver in Teheran. We were not really permitted to go around on our own, and we were not permitted to travel anyplace. We were not permitted to go to Isfahan or to any of the ruins. We had one excursion planned to go up to the Caspian Sea, where they have some resorts and also where they process sturgeon and caviar. At the last moment, that was cancelled. So the net result was we spent the entire time in Teheran.

Hicke: Oh, what a shame.

McBaine: Yes, it was too bad.

Hicke: [chuckling] You certainly jumped from dealing with one old culture, that of China, to another old culture.

McBaine: [chuckling] That's right. Well, I'd been in the Middle East for two years during World War II, and actually I was in Teheran during World War II for a brief period, just before the Teheran Conference. So I did have some familiarity with them and their sense of culture.

It was a fascinating experience for me. I made some very good friends. We had an interesting conclusion when the agreements had been signed. They had to be then taken around and signed by the chief executive officers of the various consortium companies, and that meant all around to France, London, New York, San Francisco.

The consortium companies chartered a plane to fly us back to London from Teheran when work on the agreement was finished and all that remained was the signing, the execution. We decided that obvi-

ously the thing to do was to load up on caviar; so we got a chest -- a big chest -- filled it with dry ice and put it aboard the plane. Everybody went out and bought caviar. I went out and bought as much as I could hold under one arm. Caviar is treated with salt -- salt is a preservative -- and the farther it's going to travel and the longer it's going to be on shelf in a store someplace or another, the more salt you have to put in it. The really superb caviar you buy locally and eat locally has very little salt in it: just enough to taste, but not enough to act as a preservative. So it sort of limited the amount you could buy, to be sure none of it would spoil. I had a great big package like this [gestures] that would just fit under one arm.

We got out to the airport, and the Iranian negotiators were all at the airport -- the prime minister from the ex-Royal family, and the finance minister, and the senior citizen.* They were all out there, and the goodbye gifts to the members of the consortium party were caviar [hearty laughter by both]. So I got aboard the plane with two packages as big as I could carry, one under either arm. When I got back to London, I couldn't possibly eat all that caviar before it would spoil [more laughter by both]. So I was giving caviar away for several weeks.

Hicke: Oh dear. Well, I'd say you deserved it, at least.

McBaine: Well, it was a fascinating experience and turned out very well. You've read Mr. Lenzen's book. He gives you a full account of it.

Hicke: There's a picture that's also in his book of the signing of the agreements. I don't know if seeing their faces would call to mind any more stories [shows picture].

McBaine: Well, for one thing, the situation was so delicate that after the negotiators reached agreement and the final texts of the agreements were approved, it was felt that it was essential not to let this thing get out. Of course, there was great interest in the world as to what was going on, especially in the oil industry, but interest in the governments too, because, for one thing, where was the British Navy going to get its fuel oil? The companies thought it was absolutely essential to maintain complete secrecy, and I suppose they were thinking about speculators in stocks and so on.

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McBaine: In London the Anglo-Iranian, now called British Petroleum -- they changed their name from Anglo-Iranian as a result of the formation of the consortium -- hired an inn on the outskirts of London, I've forgotten the name of it, a very attractive place, and everybody congregated there. It looked like a meeting of the Mafia chieftains

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* See following page.

Turner McBaine and Samuel L. Wright.
1955

Turner McBaine being interviewed in his office.

Photograph by Carole Hicke

all arriving [both chuckle]. We also held the signing of the Dutch and the English companies there. You see, if it had taken place at Anglo-Iranian headquarters, undoubtedly there would have been news people snooping around. The same thing was true in New York; it had to be carried out with secrecy. There was no release on it until everybody's name was on it and nothing could go wrong.

Hicke: [laughing] You recognized participants by the amount of caviar they were carrying?

McBaine: [chuckling] Well, everybody was loaded up, I'll tell you.

Hicke: So then was there a general, simultaneous, worldwide press announcement, or how was that handled?

McBaine: Oh yes. I don't remember the details of that, but sure, there were announcements made, probably in New York and London simultaneously, I would guess. I didn't participate in that. But I made some very good friends there.

Hicke: Do any particular names stand out other than the ones you've mentioned?

McBaine: Well, no, I don't think so. The principal English barrister became a very good friend of mine there. He's deceased now, but he remained a friend of mine for the rest of his life.

Hicke: What was his name?

McBaine: Milner Holland. Also John Loudon, the principal representative of the Shell companies, remained a friend of mine, and I see him occasionally here in San Francisco when he comes here. I saw him maybe six months ago. He is a Dutchman but you'd never know it; you'd think he's an Englishman. He's one of the international Dutch.

Hicke: There was somebody named Snow?

McBaine: Yes, Bill Snow was the senior representative of Anglo-Iranian out there. I think he was the oldest man there. But the head Anglo-Iranian representative who was there, in and out, and certainly in London, was Billy Fraser, as he was called, who was the son of Sir William Fraser and later became the head of the company.

Hicke: Of British Petroleum?

McBaine: Of British Petroleum, yes. I've forgotten his peerage name, but I think the custom in England was to award a knighthood to whoever became the chief executive officer of what is now British Petroleum. Then when he retired he was granted a peerage. Billy Frazer's father, who sent out that letter to the companies that you referred to, was known as Willy Fraser. After he was knighted he was called Sir Willy [chuckling]; his son was Billy. His son was much more Americanized and much more flexible than Sir Willy was. Sir Willy was a gentleman of the old school.

Hicke: Then there was Mr. Orville Hardin from Jersey.

McBaine: Yes. He was the original chief negotiator for the consortium and he became ill in Iran and had to retire, resign the post. He was succeeded by Howard Page of Jersey.

Hicke: And then there are some others [looks through papers].

McBaine: Have you got some other names in there?

Hicke: Let me see who else I have here. Lilley from Texaco, Salzar from Gulf, Grove from Socony Mobil.

McBaine: Yes. Neil Lilley I knew; he was from San Francisco originally. The best friend that I had out of that was Epley of Texaco.

Hicke: Marion?

McBaine: That's right, Marion Epley. Marion Epley was at that time a relatively young lawyer from Louisiana, where he'd been a Texaco lawyer. Then he was brought to New York and sent out to Iran on this mission as a lawyer advising Lilley, who was the Texaco representative there at the time. Epley and I roomed together for several months and became very good friends -- a delightful fellow. Subsequently, when this was all over and he went back to Texaco, he ultimately became the president of Texaco. He left the legal side and went to the business side and became the president of Texaco. He's retired now and living in Florida.

Hicke: James O'Brien was then the legal affairs vice president for Socal?

McBaine: No, not at that time. He was a PM&S lawyer. We also had a London group. I should have mentioned this, but I really didn't participate in it. After the original settlement as to how much Anglo-Iranian was going to give up and how much the consortium members were going to pay them for it, our group went out to Teheran to negotiate the government agreement. Meantime, at that time a second group was established, again in London, and it was their job to draft what was called a participants' agreement. That is, assuming that the government agreement was reached and that the Iranians agreed that the consortium should take over the oil industry, how was it going to be operated -- inter se, i.e., among the consortium members. James O'Brien was the PM&S lawyer in that group.

Of course, when we came back from having signed up the government agreement, that work was still going on, and I joined that group at that time, but basically they had done most of the work by the time the Teheran group finished the government agreement. So that's where he fitted in. He went to Standard some years after that.

Hicke: Oh, I see. Then at the end, after all that was done, five percent of the American share was given to the independent companies.

McBaine: Yes, as a sop, if you will, to the antitrust division of the U.S. Justice Department, because they really had to approve all these things. I don't know whether this was necessary to get their approval -- I don't remember the details -- but I think it was voluntarily put in so that the major international oil companies, who were often targets for attack in the media, could try to convince people they weren't trying to hog this whole show. As a matter of fact, several of the consortium members were very leery of this thing. They thought they were taking an enormous responsibility in an enormously unstable situation and they were probably throwing away millions and millions of dollars. They were not all that keen about this. This wasn't a great windfall in the eyes of everybody, by any means.

Hicke: It was actually done at the request of the government?

McBaine: That's right. It was done because the United States government wanted it done. In any case, five percent of the interest in the consortium was set aside for other, smaller and independent oil companies. They had a number of people that bid for that, and it was decided by the government of the United States who was an eligible bidder and who wasn't.

Hicke: Were you involved in any of those agreements?

McBaine: No, just the language as to whether this would go to them. But if they have their own agreement among themselves, which I doubt -- I don't know -- they had to take the other agreements as they were. We had enough people in the act [chuckling] to try to negotiate agreed-upon text without including them. So they were simply told, "Here's an interest if you want to buy it," and they all did. As far as I know, there's never been any complaint on the part of any one of those companies. It turned out, as I say, beautifully. They had twenty-five years of uninterrupted production.

Hicke: Were there consultations with the antitrust division during the negotiations?

McBaine: Oh, yes, yes. The agreements were submitted to the antitrust division and approved by them. Not only was the original meeting with Sir William Fraser approved, but the texts of the agreements were approved, particularly the participants' agreement. Because, you see, just take one major question: you've got all these parties who together own 100 percent interest in the oil industry in Iran. Well, the question is, who decides on how much oil is going to be produced next month or next year?

Hicke: That's a good question.

McBaine: Yes, and how do you decide that? Well, that presents not only a very difficult legal and economic question, but it presents a question of great interest to the antitrust division.

Hicke: And all of that then was made part of this?

McBaine: Made part of the agreement and approved by the antitrust division before we signed it.

Hicke: Do you happen to recall who in the antitrust division you were dealing with?

McBaine: No, I don't, now.

Hicke: Does it actually conform pretty much to American antitrust law?

McBaine: Oh, yes, sure. As far as the American companies were concerned, that's all they were interested in. The British have a very rudimentary antitrust law compared to ours, and the Iranians had none at all, of course. Oh, yes, each company had to make sure. The French, I'm sure, had to make sure that the French government was agreeable, and the Dutch that the Dutch government was.

Hicke: Another thing that Lenzen says is that a number of independent and government-affiliated companies have developed oil since then, other than, I guess, the British Petroleum, in Iran.

McBaine: How do you mean, developed?

Hicke: He says, talking about the consortium, "This is still by far the most important entity in the country, but the government's own national Iranian Oil Company is increasingly important, and there are now a number of independent and government-affiliated companies that have developed appreciable oil." I guess in Iran. Does that mean that there are other oil companies now in Iran? [leafing through book] Here's the page before, if you need that.

McBaine: I don't know what he's referring to there. You see, this is the whole history of these concessions in the Middle East. When they start out, they don't even know they have any natural resources. Westerners, by and large, came in, and geologists and others prospected and said this was possible oil-bearing country. By and large, the Middle Eastern countries did not have the money to do anything about it, even if somebody did tell them they thought there was oil there. So then the Westerners came in and they drilled and found oil and they produced the oil, and then as time went by, they employed local people, especially the American companies. They trained them, they gradually acquired expertise, so pretty soon they said, "Well, you're developing all this oil and you're taking it, selling it all over the world. We want to get into that business." [chuckles] That's the whole history of this thing.

There's also the psychological aspect, which perhaps most Americans don't understand. I believe that of all the major countries of the world, this is the only one where mineral resources, including oil, are privately owned. They are owned by the state everyplace else. Now part of this, I suppose, stems from the old idea of countries that had royalty. The crown owned all the natural resources. Private individuals didn't own them. Therefore,

national pride -- which was present in that thing you read about doing it with mirrors -- requires that these things all belong to the local crown or successors to the crown and the government. For a foreigner to own them, you see, is contrary to their basic sense of propriety.

Here it wouldn't make any difference. Either A has a lease or B has a lease, but you're not offending the government by having a lease on some minerals. In fact, the government leases out minerals to people, if it's government land. But if it's private land, the private owner owns the minerals. That's one of the reasons that a lot of these agreements are difficult to negotiate, you see, because of that psychological difference there.

Hicke: Maybe this is an impossible question, but how were you able to negotiate it so that everybody was happy and all these mirrors faced in the right direction?

McBaine: Well, I think it's our training here that produced this. I believe the American lawyers made the suggestions, again, probably because the British lawyers didn't have the experience and the background we did, but we have oil and gas leases here -- the oil companies do. They don't own the oil; they have a lease and they have a right to produce the oil. So we used the same concept in Iran. The Iranians own the oil in the ground. We recognized their ownership in the ground. What we had was the right to drill for and produce the oil. The oil only became ours when it reached the surface.

Hicke: Oh, so it really does work both ways?

McBaine: That's right, it does.

Hicke: But this is not a concept that is well known anyplace else?

McBaine: No, because of all these places, as I say, where the crown owns the oil, and they really don't have lots of oil and gas companies with leases. All they have are these big international agreements, these concessions, so-called.

Hicke: I see. Well, that's really a fascinating story.

McBaine: So it was commonplace to me as an oil and gas lawyer, but a new idea to the Iranians. That recognized their sovereign right that they owned these resources. They were their resources. They weren't ours; we weren't poaching on their resources. For a given amount of money, we were authorized to drill for oil, produce the oil, pay them for doing so -- the proceeds went to them -- and the oil only became ours when it was in a barrel on the ground.

Hicke: Beautiful. [both chuckle] But I expect it was difficult to get them to understand this concept at first.

McBaine: Well, yes, except basically they wanted to make an agreement, of course. That gave them the talking points they needed and the face saving they needed, the arguments to satisfy the nationalists, who said that "these foreigners can't own our oil, those are our God-given resources," and so on. We said, "Sure, they belong to you; we're not tinkering with them."

Hicke: When you were called to work on this, did you just drop everything else you were working on? Turn it over to somebody else?

McBaine: Oh, I had to. I had to. I don't remember what was involved, but somebody else had to take it over, because I was tied up for nine months solid.

Hicke: Did you get back here at all?

McBaine: I think so, maybe once or twice.

Hicke: Just on a quick visit?

McBaine: Yes, but here again, the question about reporting back to Mr. Madison comes up. Mr. Lenzen, for one thing, was a meticulous reporter. He kept a daily journal really, which he forwarded to Mr. Follis. Mr. Madison, of course, was in constant touch with Mr. Follis and Mr. Follis with Mr. Madison. So that relieved me of a great deal of necessity of trying to keep Mr. Madison involved, and in fact, Mr. Madison really wasn't interested in all of these details -- I mean, as long as he was in charge of servicing the Standard Oil account, as long as Mr. Follis was happy in the first place, Mr. Lenzen was happy and told Mr. Follis he was happy [chuckles], and Mr. Madison didn't have any complaints with Mr. Follis [both chuckle], he only wanted to know the results, really. For goodness sake, if Mr. Madison spent nine months of his life listening to all this detail coming in, he would have lost his mind. So, how it worked depends on the circumstances.

Caltex

Hicke: All right, where shall we go from here?

McBaine: Let's take the Caltex [California-Texas Oil Company, Ltd.] breakup in Europe and the Caltex Operating Agreement. Although that's skipping way up chronologically, I think that skips up to the --

Hicke: Early sixties isn't it? I'm not sure.*

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* 1967.

McBaine: We'll look up the date and put it in. Caltex is a jointly owned marketing and distribution company in the Eastern Hemisphere, owned 50-50 by Standard Oil Company of California, now Chevron Corporation, and Texaco. Basically when these concessions have been taken around the world, they've been taken by the parent companies. That is, Standard Oil Company of California, as you may know, discovered oil in Saudi Arabia. They had at that time no markets in the Eastern Hemisphere. They had no marketing companies because they hadn't had any oil. Texaco on the other hand, in the very early days when they discovered oil in Texas, for reasons I don't know developed a trade with Europe. They sent refined products -- gasoline, kerosene, and all that sort of thing -- all the way from the Gulf Coast of Texas to Europe, and they established marketing companies in the various European countries.

So Standard said, "Well, we've discovered this oil in Saudi Arabia, and obviously if we're going to keep the Saudi government happy, we've got to move the oil; we've got to sell it. Otherwise they'll take the concession away from us." The first thing Standard did was go to Texaco and say, "Look, we'll give you a half interest in our oil if you give us a half interest in your marketing companies." There's a famous story that the agreement to do this was made by the two chief executive officers of the companies on the back of an envelope [both chuckle]. That's how large events were concluded.

Hicke: [chuckling] The good old days.

McBaine: Yes. Then more oil was discovered, for example in Iran when both Texaco and Socal were participants in the Iranian consortium, and the supplies of oil grew and the Caltex marketing companies grew, and they became one of the biggest marketers of crude and products in the world. Well, obviously there were a lot of problems that arose between the two partners. There were differences in points of view. They had different interests in different places.

Over the years, those increased in intensity. There were a lot of difficult legal questions there. I'm not going into any right now, but suffice it to say that at one time in the early sixties, I guess it was, the idea, which I believe originated with Texaco -- it came more from Texaco than it did from Socal -- was to break up Caltex and split it between the two parent companies. In any case, it was decided to break up the Caltex companies in Europe, but to leave untouched the Caltex companies in what's referred to in the oil industry as East of Suez.

Hicke: Indonesia, I think was there.

McBaine: Well, that's part of it, but anything further East [of Suez]. Indonesia is another different story, because that's a producing country, you know.

Hicke: That's right, not the marketing --

McBaine: Yes, it's also marketing, but it's a big producer. So in any case, it was decided to break up Caltex in Europe. Well, I've forgotten exactly how many countries there are; perhaps we should do a little editing on this one to get there. Something like eleven countries.

Hicke: We can check it.*

McBaine: Yes. To negotiate this was a protracted proceeding which took about two years. Mr. [Gwin] Follis was still the chief executive officer of Standard at the time, and Mr. Otto Miller was the president.

Hicke: Gus Long was still the head of Texaco?

McBaine: Yes. Mr. Augustus C. Long -- I think it's C. -- was the chairman and CEO of Texaco, and the president was Marion Epley [chuckles], my friend from the Iranian consortium days. Mr. Follis appointed Mr. Miller as the negotiator for Standard and Mr. Long appointed Mr. Epley as the negotiator for Texaco. So we started out on this thing, and we had one break of about six months, where we broke off negotiations, but apart from that, for about two years Mr. Miller and his principal staff man, a man named Fred Boucke -- he was what's referred to as a numbers man --

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McBaine: -- for two years Mr. Miller and I would regularly get on a Chevron jet. It was a North American Sabreliner, I believe; it was a small jet which was very fast. We'd go across the country with one stop, usually in Kansas someplace, and we'd fly, let's say on a Sunday, back to New York, and we'd spend four or five days negotiating with Mr. Epley. He really didn't have a Texaco lawyer with him all the time, being a lawyer himself. Then we would fly back to San Francisco, and each side would work on its own papers and figures, judgments, and so forth.

It was a complicated process, because Caltex had not only marketing companies, that is the terminals where you deliver the products and the filling stations where you deliver gasoline, but also they had refineries, they had wholesale terminals, they had barge fleets to transport the products: the whole panoply of a huge operation throughout all of the European countries. So, as I say, we'd all regroup and do a lot of staff work.

The following week, the Texaco people would fly out here. We'd negotiate for a week. Usually Mr. Epley would have somebody with him, but not always, as I say, a lawyer. Usually there were only

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* Chevron Oil Europe, Inc. assumed ownership and operation of facilities in Belgium, (including Luxembourg), Denmark, Germany, Greece, Holland, Ireland (Eire), Italy (including Sardinia), Norway, Sweden, Switzerland (including Liechtenstein), and the United Kingdom.

three or four of us in the negotiating sessions, including Mr. Miller and myself. They'd fly out here, and we'd negotiate for either four or five days. Sometimes they'd go home on Saturday, sometimes they'd go home on Friday.

We reached an impasse at one time and broke off for about six months, and things got very tense at that time because of accumulated feelings on both sides that the other side had not been fair in something -- had not been a good partner. Then we finally got over whatever hurdles there were, and the parties decided to resume negotiations and finally went back to work.

It was a very difficult and delicate negotiation. One of the reasons was that the Caltex trademark was in effect an adaptation of the Texaco red star. Obviously, Texaco felt that this was really their trademark and felt a proprietary interest in it, even though it had Caltex on it instead of Texaco. Whereas Standard said, of course, "We bought half of your marketing company, and one of its principal assets is its trademark -- the Caltex star." That was a problem.

It was never ultimately solved one way or the other, but it was the source of a great deal of difficulty and friction between the two companies. In a way, it was sort of an insoluble problem, because Texaco was certainly not going to give up its trademark for Texaco Inc., and neither party wanted to cancel Caltex's trademark and start with some brand new one; they'd both suffer from that in the countries where Caltex was to continue to operate. So it was sort of an insoluble problem, and a very troublesome one. Well, anyhow, finally we reached an agreement on what should be done, how the Caltex countries in Europe were going to be split, and was a given country going to be split between the two companies or was country A going to Texaco and country B going to Standard?

Hicke: You take France, I'll take Germany.

McBaine: Yes, that sort of thing, you see. That's what took so long, and of course, everybody was trying to figure out what the future was going to bring, sort of like trying to play a poker game. I think in view of the OPEC developments, of course, all the masterminding that had gone into that [chuckling] was all over the waterfall. I mean, OPEC just changed the economics of the whole thing and wiped it all out.

After this was decided, after Mr. Miller and Mr. Epley had finished their work, then the lawyers had to go to Europe and carry out the agreed division in each one of the European countries. That was a very interesting experience, because each company, Socal and Texaco, had a team: a lawyer, a businessman, usually a tax man, and a technical man, that is, one who knew the technical problems of the oil business. The local Caltex representative would make the

arrangements, and we'd fly into a given country and sit down with the local Caltex people and the local lawyers -- each side had a local counsel in each country -- and we would expect to conclude

this thing in three or four days. We'd go to Zurich and hole up in the Doldar Grand and expect to finish this thing in four days.

My impression was the Europeans had never seen this kind of an operation before. For example, I remember particularly that in Belgium -- I don't know if this is still true; this was thirty years ago -- a Belgian lawyer is not allowed by the customs of his profession to call on a businessman client in his office. Most Belgian lawyers were solo practitioners, by themselves, and their offices are in their homes. A lot of them are at any rate, and the one we had to consult there was. So we had to go to his house. Well, you can imagine these people storming in like this with say, eight lawyers or eight groups with a lawyer in each group, and saying, "Sit down, now, we're going to have all this thing done in three days." [both laugh]

Hicke: You must have made [Henry] Kissinger's shuttle diplomacy look pale by comparision.

McBaine: [chuckling] Well, I think we did, and I think we made some local people unhappy too, probably.

Hicke: They just weren't used to this speed, and large groups.

McBaine: Yes. But we knew what we wanted. It had been agreed between the two parties what we wanted. There wasn't anything to negotiate. The question was putting it into effect and making sure that it complied with all the local laws; from our point of view, we should be able to do that with dispatch. Occasionally there were quirks that came up because of the law that had to be settled between the parties as a matter of negotiation, but my recollection is that the representatives of the company there had the authority to do that. I don't remember that we had to consult back to San Francisco and New York to settle anything. Maybe we did, but I don't remember it. So anyway, we went [chuckles] roaring around the place and broke up about, I don't know, $2 billion worth of assets, or something like that, in a matter of weeks. It wasn't too long.

[Interview continued: July 3, 1986]##

Hicke: Let's go back to the Caltex story, which we were right in the middle of before. You had just finished talking about the trips to various European countries, finalizing the change.

McBaine: As I said, the Caltex reorganization was a breakup of the jointly owned Caltex companies in eleven European countries. Some of the countries went to Texaco, some went to Socal, now Chevron, and some assets in a given country were divided between the two.

Hicke: Now is it worth explaining why countries such as France, Spain, and Turkey were not included?

McBaine: Yes. That was purely a matter of business judgment. It was felt that in those countries the political and governmental situation was such that the interest to both parties would be better served by continuing the joint operations. There were a number of arrangements there in those countries that were with the governments of the host countries, and it was felt unwise to possibly prejudice those by changing ownership and operation of those assets.

Hicke: By arrangements, you mean such things as, I think, in France the government owned part of a concession or something like that? So the government itself was actually involved in the marketing?

McBaine: Well, in the judgment of the parent companies, Socal and Texaco, it was inadvisable to attempt to make a major restructuring in those countries, so they were exempted from this general principal. However, there were provisions agreed upon as to how they should operate.

Now in addition to the breakup of the Caltex companies in the eleven European countries I have referred to, at the same time, or subsequent to major agreement on the Caltex reorganization, the parties, Socal and Texaco, entered into an agreement defining and providing for how the remaining Caltex should be operated. As I mentioned earlier, Caltex was to continue to operate as a jointly owned company east of Suez and that means in -- I've seen someplace, I believe -- some sixty different countries in the Eastern Hemisphere.

The very first thing the parties did then was to agree on what should constitute the Caltex area, to prevent any misunderstanding or argument. It was worked out, agreed, and then we very carefully set down a listing of the countries which should constitute the Caltex area. It was provided that the Caltex area should mean the geographic territory within the then existing boundries of the named countries. It's important to realize, of course, that in a jointly owned company of this kind, whatever operations Caltex had, 50 percent of those operations benefited Texaco and 50 percent benefited Socal. Whereas if one or the other of the parents could take that business or perform that service by themselves, then that parent's profit from doing so would be 100 percent instead of 50 percent. This was a problem which was constantly present and made necessary some agreement to try to eradicate disputes as to whether one or the other parent company had a right to do something in such and such an area rather than or in competition with Caltex.

Hicke: In fact the whole thing was started, if I remember rightly, by Texaco buying into some British company?

McBaine: Yes. Texaco was much more aggressive at that juncture than Socal was in doing such things, and Caltex did market in the United Kingdom and Texaco bought 100 percent interest in a company in the Caribbean, Trinidad Leaseholds, which also had interests in Great Britain. And this was probably the major cause of the difficulty between the two parties, which resulted in the breakup of Caltex in

Europe and the creation of the operating agreement. But, to return to the operating agreement --

Hicke: If I can interrupt once more, you have the agreement there on your desk, and it looks to me like it's at least an inch and a half thick, and maybe two inches.

McBaine: No, the operating agreement itself is only thirty-nine pages long. There are several other subsidiary agreements which are probably of equal length, but basically it's a charter as to how Caltex is to be operated.

To take another example, if a parent company should supply something to Caltex, e.g., some crude oil, and Caltex then markets that, the parent who makes that supply benefits because it has moved a certain amount of crude, for example. Even though it benefits by only a half in Caltex's sale, it gets 100 percent of the profits in the wholesale prices to Caltex. So the very first thing you have to do is to provide how the parents are going to supply Caltex and make sure that that is done with equal fairness to both of the shareholder or parent companies.

Similarly, there are problems if Caltex, for example, wants to take some particular business in a given country, and, let's say, one of the parents thinks that that business is no good -- the customer is not reliable and it's not worthwhile, or "We might not get paid," and so forth. The other parent says, "No, we should take that business. Caltex should take that business." Well, if the party who takes the negative view has a complete veto, then neither Caltex nor either parent gets the business, and some competitor of the two parent companies will get the business. So you have to have some arrangement whereby the so-called "fast horse" -- slang language was often used -- could take the business if the Caltex management did not want to take it, or one shareholder said he wasn't going to participate in the business.

These are just some of the complicated problems that had to be worked out. And they led to, as I have said before, about eighteen to twenty-four months of negotiations, with one quite long break, before all these things were worked out.

Hicke: Was there a lot of give and take?

McBaine: Oh, yes. There certainly was. But, you see, Caltex is a gigantic company and its sales were in the billions of dollars annually. So these were enormously important questions that were being debated and worked out. I am sure each shareholder had in mind its own objectives as well as those benefiting Caltex and thereby each 50 percent shareholder in Caltex. But one must keep in mind that 100 percent is always twice as good as 50 percent. And this sometimes led to a difference in point of view. There could be a legitimate difference of opinion as to whether the shareholder's interests were more important in a given situation or Caltex's interests were more important, particularly on a long-term basis.

Hicke: Had there been a shift in the companies' positions relative to marketing since the Caltex formation? I know that when they were formed, they were formed because Texaco had the marketing and Socal had the crude. Is that correct?

McBaine: Yes.

Hicke: Now had there been a shift in this balance, so that Socal had developed more marketing expertise and Texaco had more crude?

McBaine: No, I don't think so. Caltex had expanded enormously since those early days when that original agreement was made. Here again, this had been working, and working satisfactorily. I say satisfactorily, not perfectly, but satisfactorily for many, many years. But the operating agreement was really the first time that the parties had sat down and written out just how things were to be done with Caltex. Most of the things had been done in the past. But there was no legally binding agreement that they should be done. So that led to uncertainty on the part of one or the other of the shareholders, on occasion.

Oftentimes one shareholder felt that the other shareholder was not doing everything it could for Caltex, whereas the first shareholder was doing everything he could for Caltex. In the operating agreement one of the most important provisions at the very beginning of the agreement was a statement of general objectives. I am not going to read them all, but it was agreed by both parties that "It is intended that Caltex be a strong, viable, and competitive company with aggressive sales objectives."

The whole bundle of agreements, the Caltex reorganization agreement and the Caltex operating agreement, are about an inch and a half thick and represent many, many months of negotiations in New York and in San Francisco and many weeks', if not months', travel in Europe, working out all the details in the eleven different countries. It was really a monumental task. Basically, however, it's worked well. The agreement worked out still exists, although, interestingly enough, after the formation of OPEC and the change in world crude oil prices and the change in economic conditions, particularly in Europe, the setup provided for in the reorganization agreement no longer exists. Chevron has sold some of its interests in Europe, but the agreement as to operating Caltex still stands, still operates, and has settled many an incipient argument, I am sure.

Hicke: Did we talk about who worked with you on this from PM&S? And also Socal?

McBaine: Well, there were quite a number of people who worked on it in Socal. I think I said in the beginning Mr. Miller's number one assistant was Mr. Frederick C. Boucke.

Hicke: Yes, you did talk about him.

McBaine: He was a so-called "numbers" man. Mr. Miller of course, called on all sorts of people in the company who were familiar with the particular questions that came up from time to time. But basically it was a rather small group of people that worked on this. There were tax questions, of course, and Socal had its own tax department, headed at that time by Scott Lambert. He worked with some of the PM&S tax lawyers. I don't remember which ones particularly right now; the tax lawyers were a separate group, really. They investigated everything from a tax point of view to make sure they weren't providing something that would have adverse tax consequences. The people who were helping me at that time were Tom Haven, Jim Wanvig, Joe Bare, who helped with the drafting of various things and worked with Socal's people as needed. But it was basically a fairly small team on both sides as compared to the Iranian consortium affair, which involved so many more companies and many more personnel.

Hicke: What kind of previous experience or precedent was there to draw upon? Any?

McBaine: No. Only the operations of Caltex over the years and the experience gained by both sides. They told us what the problems were and things that needed to be addressed. I would guess that because of the long period of time over which that operation had taken place and the fact that there were two 50-50 owners of Caltex with nobody having the final say, that between them they had unearthed just about every problem and question that could be unearthed. [laughter]

Hicke: Equal partnerships can be difficult.

McBaine: That is right. No, I don't think that any experience other than that was really required.

Hicke: I had one more thing that I wanted to ask. Were there differences of opinion within each parent company? For instance, would perhaps the technical marketing people have one objective that might not fit in with perhaps the financial people's view of the problem?

McBaine: Well, I don't know. I can't speak from any personal knowledge of that, but of course, that is always true. I mean, I am sure that was true in each company. So the different points of view had to be put together and decided by an officer of the company who was far enough up the ladder to be senior to both or all of the points of view to be represented and therefore could make a decision. That goes on constantly.

Hicke: But that would have been resolved before it got to you?

McBaine: That would have been resolved before it got to the negotiators, yes, who were, as I say, Mr. Miller and Mr. Epley.

Hicke: Also, Germany and Greece were reorganized a little bit differently. Is that something that's important to talk about?

McBaine. Oh, I don't think so. There were special problems there which had to be met by special provisions, but those too were worked out, and I don't think they are of historical interest.

Hicke: Okay. Well, have we covered Caltex?

McBaine: I think so. The general story is about all that is worth giving, because to start into any of the details of this thing would be not only probably inadvisable, but would be voluminous. I don't think it's really relevant to this history.

Hicke: Could we say that it was a unique undertaking and probably not much else like it has ever happened since?

McBaine: Well, so far as I know, it certainly was. But I am not a student of all of the reorganizations or breakups that have happened. But the oil business, of course, the international oil business, is a very large business. It deals in billions. As witness the recent acquisition of Gulf by Chevron. I think, so far as we knew at the time, this was probably, in monetary terms, the largest business arrangement. We were dealing with the largest business arrangement that had ever been dealt with. I have no idea what the exact valuation was of the properties divided, but it did run to several billion dollars worth. The problems remain the same, whether you are talking about a thousand dollars riding on something or a million dollars riding on it. The legal problem is all the same. So I think that is about everything I can say about that.

The Safeway Case

Hicke: Okay. Shall we move on to the Safeway case?

McBaine: Yes. Another interesting case which I participated in was entitled Koster v. Lingan A. Warren, et al.,* including Safeway Stores, Inc., in the federal district court in San Francisco. In 1959, the controlling shareholders in Safeway, principally Mr. Charles Merrill, the founder of modern Safeway, felt that a change of management of Safeway was essential. As a result of this, Mr. Warren, the president, and several vice presidents resigned. A new management team headed by Mr. Robert Magowan was elected by the directors to manage Safeway's affairs. Subsequently, a holder of 200 shares in Safeway brought a suit on behalf of all the shareholders against the old management and the new management of Safeway and Mr. Warren alleging that certain long-term contracts entered into between Safeway and the former officers and employing them as consultants violated the fiduciary obligations of the directors and were payments for

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* 176 F.Supp. 459 (1959)

nonexistent services, which constituted a waste of corporate assets. The plaintiff also complained about the payment by the company of a fine of $75,000, which had been levied on Mr. Warren under an anti-trust action and the sale of a certain --

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McBaine: -- unit of Safeway for a sum alleged to be less than the true value of that unit. I was retained to represent the defendants, Safeway Stores Inc. and Robert A. Magowan, the new president. And as such, I was the lead counsel in the litigation. Other lawyers represented other defendants. This was what was sometimes called a stockholders' derivative action brought against the corporation as a nominal defendant but in reality for the benefit of the corporation.

The defendants then moved to require the plaintiff to post security pursuant to the California Corporations Code for the payment of the expenses incurred by the defendants in the event the suit proved to be groundless. The security asked for was $240,000, and in order to prevail on these motions, the defendants had to prove that there was no reasonable probability that the prosecution of the cause of action alleged in the complaint would benefit the corporation or its shareholders. We undertook to do so before the trial court and did so successfully. Possibly this sounds simple, but it wasn't quite so simple in the doing. But nevertheless, we did do it successfully and the plaintiff declined to put up the security and therefore the case was dismissed and ended.

An appeal was taken from the decision of the United States District Court for the Northern District of California, and again, on appeal, we were successful, and the court held that there was no reasonable probability that the alleged cause of action would benefit Safeway or its shareholders and the dismissal of the action was upheld.

There were numerous arguments made that I think are of no particular interest except to a lawyer concerned with shareholders' actions. But it was a very interesting case because of the human elements involved and because of the size of the corporation and the relative size, at that time, of the consultants' contracts, given the old management and the complexity of facts needed to bring out that these were not simply payoffs but were good faith commitments of the corporate assets. In the light of some of the cases one reads about in the papers nowadays of the so-called "golden parachutes" given to officers of corporations which have been taken over by some other corporation, it seems strange that in 1959 a case like this would even be brought.

Hicke: That raises the question I had: the plaintiff was a stockholder?

McBaine: Plaintiff was a stockholder.

Hicke: She was a woman?

McBaine: Yes, it was a woman.

Hicke: Was she representing other stockholders? I guess my curiosity is aroused as to why she would bring this action.

McBaine: Yes. As I say, any recovery obtained in this action would have been for the benefit of the corporation and its shareholders and therefore would have benefited her, although it would have been pretty minuscule recovery by her. She had only 200 shares, and I don't know how many millions of shares Safeway has outstanding or had at that time. But oftentimes -- I am not commenting on this case -- these are lawyers' cases. In other words, the lawyers are far more interested in the outcome and the possibility of fees in obtaining an outcome than the named plaintiff is. There is nothing wrong in such a suit as this, or a lawyer's interest in a fee in it, because this is one way that a small shareholder can assure justice to his or her company without financing it entirely by herself.

Hicke: But she was taking a financial risk, it seems to me.

McBaine: No, she was taking no risk, because if plaintiff had succeeded, the court would have awarded fees to her attorney from the corporation.

Hicke: But if she had gone to court and lost, she would have had to pay the fees.

McBaine: No. In all likelihood the lawyer simply wouldn't have gotten any fees.

Hicke: It was on a contingency?

McBaine: Probably on a contingent basis.

Hicke: You have picked out this case among many, many others that you have handled, so can you explain why you consider it so significant?

McBaine: Well, for one thing, I guess I considered it significant because Safeway was a very large corporation. Mr. Magowan, who succeeded as the president of Safeway at this time, was a long-time friend of mine. As a result of this, Safeway became a client of Pillsbury, Madison & Sutro. Still is today. We have done an enormous amount of work for Safeway. So this was a significant case and I dare say a significant result for that reason.

Hicke: Did you continue to handle cases for them?

McBaine: No, not all of them. Some in the early days. But as I got more and more involved with Standard's matters, I simply didn't have time enough to do too many things like this. Not when I was general counsel for Socal. Others of my partners took over the Safeway matters.

They next had an antitrust case. They came to us and we represented then in that case and handled it successfully, and I think my memory is correct in that Mr. [Richard] MacLaury, who was an antitrust specialist, handled that case for them. Since that time, Mr. [Richard] Odgers has done a great deal of Safeway work, and in the last ten years possibly other partners, whom I am not aware of, have done Safeway work. It has been one of our outstanding clients. As far as the present management is concerned, Mr. Magowan's son, Peter Magowan, is now the chairman and CEO of Safeway. But so far as Mr. Robert Magowan's management was concerned, this was where it started: with the Koster case.

Hicke: Did he come to you because of the friendship that you had?

McBaine: No, I don't think one can say that. I think he came because of the reputation of the firm.

Hicke: And your reputation?

McBaine: That I am not able to judge. I think that -- at least, I hope that -- he knew I wasn't incompetent, because of having known me.

Hicke: I don't think he would have come if he thought that.

McBaine: I don't think he would have either. He would have objected. But I think it is impossible to say when you're representing a firm as prominant as ours and with a record of work that we have. I think the background of the firm helps every partner in the firm get business.

Hicke: Can you elaborate a little bit on what the firm's national reputation was at that point?

McBaine: I think that we always had a national, and indeed international reputation because of our representation of Socal. As one of the major international oil companies, Socal had interests throughout the entire United States and throughout much of the civilized world, and in almost all those places some lawyer from Pillsbury, Madison & Sutro had been there and knew people there. So we had a wide acquaintanceship with other lawyers elsewhere. Our representation of Socal over the years has been extensive. I don't know what our batting average is, but it is pretty high. And I think that sort of thing meant that we were known in many, many places that otherwise we probably would not have been known in. Known favorably.

It is a sort of accumulative process. A reputation builds up over the years if a firm has been in business for a long time, as ours has, and represents stability, competence, experience, knowledge, and all the things that a businessman or client is going to take into account when selecting lawyers. Have I answered why I included that in the list of significant cases?

Hicke: Yes.

Buras v. U.S. and Chevron

McBaine: The next case I might discuss is Leon Buras, Jr., et al. Petitioners v. United States of America, Chevron Oil Company, et al.* This was a case brought in the federal district court in Louisiana to recover title to a parcel of land in Louisiana then standing in the name of the United States of America, on which the United States had issued an oil and gas lease to Chevron, and on which Chevron had discovered and was producing from an oil field valued roughly at $500 million.

The facts are very complicated. In the 1880s Leon Buras and a brother-in-law began hunting and trapping on marshlands near the mouth of the Mississippi River then belonging to the United States. In 1894, the brother-in-law gave to the Register of the Land Office of the State of Louisiana a sum of money, part of which was contributed by Buras, to buy a part of these lands in the event they were later conveyed to the State, which they were. The Register, who had no authority to accept such payments, stole the money. In 1894, the crooked Register, to satisfy the brother-in-law's repeated demands, apparently gave him what purported to be patents from the state for the lands. There was no record of these in the State Land Office. Nevertheless the brother-in-law had these "patents" copied into the conveyance records of the county in which the lands were located.

After this, the facts got even more complicated,** leading up to the claim that the Buras heirs now owned the lands in question, and not the United States.

If this claim was upheld, Chevron would lose its oil and gas lease and might even be liable to the Buras heirs for the value of the oil and gas removed from the field.

There are really two major points of interest in this case, at least to my mind. The first is that all these questions as to title to these lands in Louisiana were, of course, governed by Louisiana law, which is not like the English common law and the statutes prevailing in the remaining states of the United States, but is based on the Code Napoleon introduced by the early French settlers in Louisiana. The case was tried in the district court in Louisiana with Chevron being represented by a New Orleans lawyer, a long-time attorney for Chevron in that area. The United States was represented by an attorney from the Lands Division of the Department of Justice in Washington.

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* In the Supreme Court of the United States, October 1972, No. 72-1562.

** See Appendix C.

The federal district judge in Louisiana decided the case in favor of the plaintiffs. The exact grounds of his decision are not relevant here, but because of the importance of the case and the size of the value of the property involved, the decision was made not to turn the appeal over to Louisiana lawyers. Instead it was decided that we should take on the appeal ourselves, that is, PM&S.

After reviewing the record of the trial and the judge's decision, I went down to New Orleans and holed up in the Sonesta Hotel with Don Peterson of our firm, who had sat in with the Louisiana lawyer during the trial. We spent several weeks working out how we would appeal, and then writing the brief for the appellate court. We were assisted during our stay in New Orleans by lawyers from the New Orleans firm which had tried the case, but Don and I put the brief together and assumed responsibility for the approach taken in the brief and for its presentation.

Perhaps because of my study at Oxford of Roman law, from which the Code Napoleon is derived, I concluded that the Louisiana law is not as esoteric as most outsiders are led to believe, but differs more in its terminology than in its concepts. With the technical aid and advice of the New Orleans lawyers as to both terminology and concepts, I found it quite possible to work out an appellate argument and write an appellate brief based on the Louisiana statutes and decided cases, rather than common law cases.

The second point that I think is of interest to the case was that there was a myriad of different arguments that were raised by the plaintiffs in the case.

Hicke: What was that rule of thumb you were telling me about complicating things?

McBaine: Yes. There is an axiom in the law that all lawyers know and, I expect, practice: if you have a bad case, make it as complicated as possible. If you have a good case, try to keep it as simple as possible. And that was certainly true in this case. As you can see from the statement of facts, there are many, many points on which a legal argument can be made. But the rather surprising thing is that after I waded through all of these points, the case in my mind really came down to a single, simple, first-year law school point: namely, burden of proof.

You may recall that from the facts stated above, the jury made findings in favor of the plaintiff on virtually every point, except that when the jury was asked to decide whether the governor of Louisiana had in fact signed a patent to the land to Buras's predecessor, the jury said they could not answer. The basic principal of law is that one claiming a piece of property held by another has the burden of proving that he, the plaintiff, has title to that property. And when the jury answered, "We cannot say whether the governor in fact signed the patent," the plaintiff Buras failed to meet his burden of proof. And all of those other complications, with all of those facts -- generation after generation and transfer after

transfer and recordings in the county recorder's office and who paid the price of the land, et cetera -- all of that was beside the point. The essential element of the case the plaintiffs had failed to prove.

Hicke: That's a classic example of taking his bad case, which he complicated, and reducing it to your simplified good case.

McBaine: That's right. And it was just about as simple a thing as you could possibly reduce it to. Well, on that basis I went to Fort Worth and argued the case before the Fifth Circuit Court of Appeals and submitted our brief, and the Fifth Circuit then held unanimously that the plaintiff Buras had failed to prove his case and affirmed judgment for the defendants. That meant that the United States retained its title and Chevron retained its oil and gas lease.

The lawyers for Buras then filed a petition for a writ of certiorari with the Supreme Court of the United States, in effect asking the Supreme Court to hear the case on appeal. Don Peterson and I then wrote a brief in opposition to the writ of certiorari, which was successful. The Supreme Court declined to hear the matter and so the case ended. I may say that this sounds simple, but a petition for a writ of certiorari and a brief in opposition to such a writ is one of the most ticklish things --

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McBaine: -- there is to do in the law. There is a strict limit on the number of pages that may be filed. I believe it is twenty-five pages in the brief in opposition. The Court hears or reads probably a couple of thousand a year now. So it's a very dangerous thing to have a case that has some human appeal in it up before the Court and have to win purely on a point of law. It is always a very ticklish matter. We were delighted to have the Supreme Court decline to issue the writ of certiorari or appeal.

Hicke: The human appeal on the other side was because these people had thought that they had a claim to the land?

McBaine: Yes. The Buras family is a numerous family in Lousiana. They lived down in the delta country, and they were trappers and fishermen down there. And, as I say, this was land claimed by the United States. The United States had title to it and Chevron had an oil and gas lease. So it was a classic case of David and Goliath and one that was, as I say, very touchy. At least we felt it was.

Hicke: Did you often go out of the Ninth District to argue cases?

McBaine: Not often, but sometimes. Normally that's all right, because you are dealing with a state law which may have some different rules but essentially the same basis and philosophy as California state law. Or it's federal law. While courts in different circuits may have different rules on the given question, basically a lawyer outside

that circuit can read those cases as well as one in the circuit. The terminology is all the same. So there is no difficulty in that.

Louisiana terminology is quite different. They use a lot of French phrases and some of the rules of law are different. But as I say, my conclusion was that for anyone who had even a little experience with comparative law, that is, comparing different legal systems, it wasn't all that difficult. Now I say that only because I had expert help from our Louisiana lawyers, who were guiding us every step of the way.

Hicke: But they weren't able to find the solution that you did?

McBaine: Well, as a matter of fact, there was some difficulty, because the attorney who tried the case and regrettably lost it did not agree with my analysis of the trial and decision and did not agree with the arguments and approach that I wanted to make on the appeal. He declined to have any participation in the appeal when he found that he did not agree with my analysis. I stuck to my burden of proof point as our crucial point on the appeal over considerable opposition, and as far as I was concerned, the basic law involved there was precisely the same in Louisiana as it was anyplace else on that. You can put a French term to it if you want, but the burden of proof, the basic principle, was the same in every jurisdiction. And the Court of Appeals for the Fifth Circuit had no difficulty with it at all. So it was an interesting experience from that point of view. I was fortunate that it came out the way it did, because having intervened in a local matter down there and taking over myself, it's a good thing for me that it turned out well. [laughter]

Henry Miller Estate Litigation

McBaine: The next matter I might refer to is the litigation arising out of the trust and the will of Henry Miller.* Henry Miller was the founder of the firm of Miller & Lux, Inc., which anyone familiar with California history will know as one of the two great land companies formed by the early settlers in California, the other being the Kern County Land Company. Both the Kern County Land Company and Miller & Lux owned hundreds of thousands of acres, some said extending all the way from the southern to northern boundary of California.

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* Lombardi v. Blois, Nickel, and Bowles. In the Supreme Court of California, No. 21,690 (1964).

Henry Miller died in 1916 leaving an inter vivos trust and a will, both of which left his trust estate to his daughter, Nellie, and her husband during their natural lives. On the death of Nellie and her husband, the income was to be paid equally to the children of Nellie and her husband "per stirpes," and upon the death of all the children of Nellie and her husband, the corpus of the trust was to pass to the decendents of Nellie and her husband "per stirpes and not per capita" absolutely and free of all trusts. The Miller trust had caused some difficulties before the final termination of the trust, pursuant to that last provision that I referred to.

Nellie and her husband had four children: Henry Nickel, J. Leroy Nickel, George Nickel, and Beatrice Nickel. Beatrice Nickel married a man named Bowles. Henry and J. Leroy Nickel had no children. George Nickel had four children, and Beatrice Nickel Bowles had three children.* When the trust terminated on the death of the last living life tenant, Beatrice Nickel Bowles, the corpus of the trust was then to be distributed to the George Nickel and Beatrice Nickel Bowles children I have referred to.

The question arose as to whether the corpus of the trust was to be divided into seven shares, one to go to each of the children, or whether it was to be divided into halves, one-half to the children of George Nickel and one-half to the children of Beatrice Nickel Bowles, which would mean one-sixth to each of the Bowles children and one-eighth to each of the Nickel children.

Nobody knew at that time what the value of the Henry Miller estate was, because it consisted of thousands and thousands of acres of California land, the value of which was problematic. But it was variously estimated that it might well be worth $100 million and perhaps more, depending on what was done with it, of course, so that even the difference between a one-sixth and a one-seventh share could mean several million dollars.

One of the Nickel children retained counsel who gave the Nickel children an opinion that the proper division was one-seventh to each of the several children, and one of the Bowles children then came to me and asked for an opinion. I concluded that the proper distribution under the trust and the will was one-half to each branch of the family or one-sixth to each Bowles child and one-eighth to each Nickel child. Incidentally I had represented Mr. Henry Bowles, the Bowles child who came to me in this case, in an earlier question involving the administration of his grandfather's trust. So I was well aware of the provisions of the trust and will and had also done some research on the whole matter. The conflict of the two opinions, one for the Bowles family and one for the Nickel family, led to litigation.

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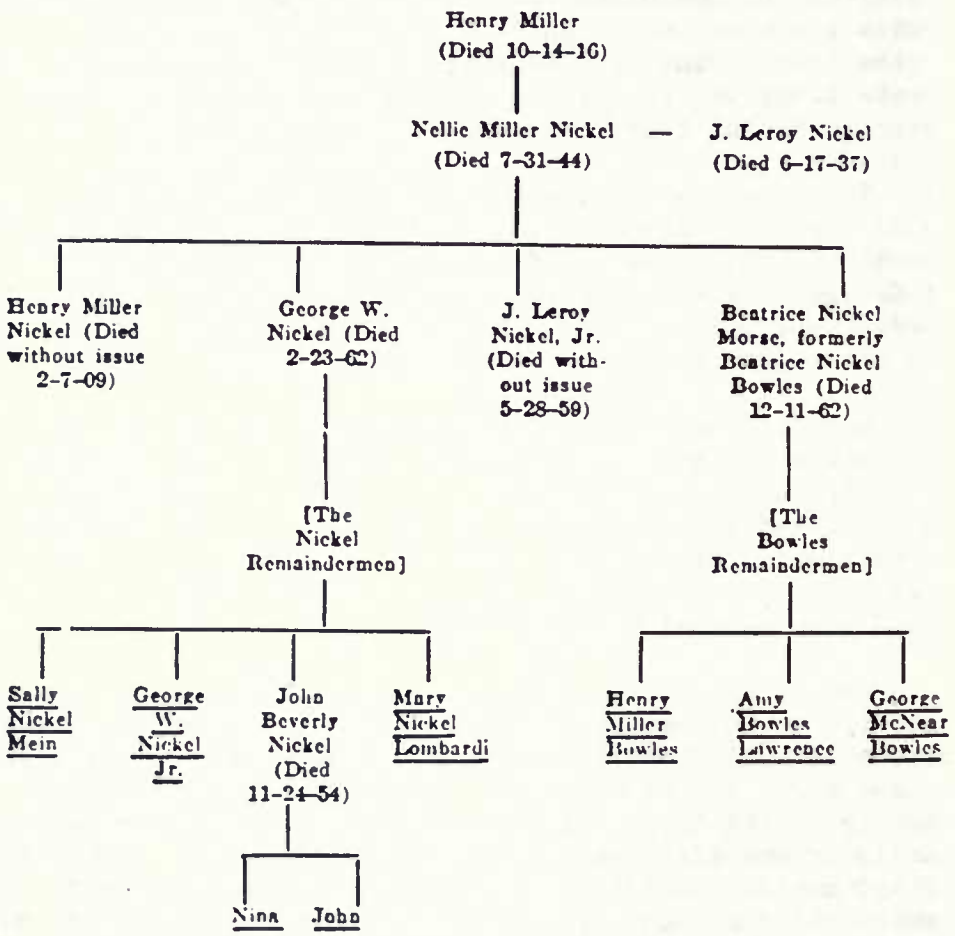
* See following page.

MILLER & LUX FAMILY CHART

The following chart shows the above-mentioned descendants of Nellie Miller Nickel and J. Leroy Nickel, including the beneficiaries of the Henry Miller trust and the two groups of remaindermen now before the court, the names of the last mentioned being underlined. All data appearing therein, including the identities and relationship of the persons listed, was stipulated to in the proceedings below by all parties to the present action.



[Interview continued: July 17, 1986]##

Hicke: You indicated that this afternoon you wanted to start out by elaborating a bit on the Henry Miller estate.

McBaine: Yes. I am not sure that I made the issue in that case as clear I should have made it. As I stated before, the Henry Miller trust, both the living trust and his testimentary trust, provided that his estate should pass to the descendents born in lawful wedlock of his daughter Nellie and her husband "per stirpes and not per capita." Stirpes means root and capita means head or person. Therefore the question was how to apply that formula in this case.

Henry Miller's daughter, Nellie, had four children, two of whom died without issue: Henry Miller Nickel and J. Leroy Nickel. Of the remaining two children, George W. Nickel had four children and Beatrice Nickel Morse, formerly Bowles, had three children. The life estate to Nellie Miller Nickel's children was to end, of course, on the death of the last of the four children of Nellie and the remainder then go to the descendents of Nellie and, of course, of Henry Miller. The question was: at what stage should the provision that the property was to pass per stirpes or by the root and not per capita to take place?

The descendents of George W. Nickel, the children of George W. Nickel, the Nickel remaindermen, the four of them, took the position that the descent of the property per stirpes was to take place beginning with their generation. In other words, each member of their generation was to be a root stock. They obtained an opinion from counsel to this effect. The Bowles remaindermen, the three children of Beatrice Nickel Morse, formerly Beatrice Nickel Bowles, took the position that the root stocks were the children of Nellie, namely George W. Nickel and Beatrice Nickel Morse, so that in effect the descendents of George W. Nickel took one part and the descendents of Beatrice Nickel Bowles Morse took another, equal parts. The Bowles remaindermen asked me for an opinion on this matter, and I gave them an opinion stating that that was correct. This is what produced the litigation.

The litigation was filed in the Superior Court for the City and County of San Francisco and the State of California, and I represented Mr. Henry Bowles. Other lawyers represented the two Bowles children. Several different lawyers represented the various George Nickel children. So there was a veritable platoon of lawyers participating in this from the beginning.

The matter was resolved in the superior court in a somewhat unusual way. Without getting technical about it, there was not a full-fledged trial because at an early stage in the proceedings, I made a procedural motion, which in effect would dispose of the case at that level. The reason I was able to do that was because I had given an opinion to Mr. Henry Bowles regarding the administration of the trust several years previously and so was thoroughly acquainted

with the will and its provisions, whereas perhaps some of these other lawyers were not.

Mr. Henry Bowles had come to me because he and the other remaindermen were dissatisfied with the way his uncle, J. Leroy Nickel, Jr., was administering the trust. Mr. J. Leroy, Jr., was, I believe, not the sole trustee but the sole family member acting as trustee. The next generation, Mr. Henry Bowles and Mr. George Nickel, Jr., in particular, were dissatisfied with the fact that their uncle would not permit them to participate in the affairs of the trust in any way. Mr. Bowles wanted to know if there was anything he could do about it legally.

After studying the matter carefully, I advised him that there was not. That is, that there was not anything that he could do about complaining about his uncle's position unless he was willing to bring a suit against his uncle charging him with mismanagement of the trust. I can speak freely about this, because my opinion was placed in the record in the public hearing of the suit which soon thereafter took place.

Mr. Bowles advised me that he did not wish to bring such a suit and, in effect, carry this family quarrel into the public domain. But Mr. George Nickel, Jr. apparently reached a different conclusion, and he retained an attorney who did file a suit againt Mr. J. Leroy Nickel, Jr., and charging mismanagement of the trust and illegal favoring of the life tenants, that is, J. Leroy Nickel, George W. Nickel, and Beatrice Nickel Morse, at the expense of Mr. George Nickel, Jr., and Mr. Henry Bowles and the other remaindermen.

This litigation went on for some time without really much activity, as Mr. J. Leroy Nickel took every step possible to avoid giving his deposition. Mr. C. Ray Robinson, an attorney in Merced, was representing Mr. Nickel, Jr., and kept pressing to obtain a depositon. He ultimately, after about a year's time and various court orders, obtained a court order compelling Mr. J. Leroy Nickel to give his deposition, but soon thereafter Mr. J.Leroy Nickel died, thus ending this litigation.

I give this background only as an explanation of the fact that I was already thoroughly familiar with the Henry Miller will and trust and able to proceed immediately in court on the litigation instigated by the Nickel remaindermen as to the proper division of the estate. As I said, I think some of the other attorneys were not, and Mr. Robinson apparently did not anticipate an early showdown in the case. He was an accomplished trial lawyer and a jury lawyer and I think anticipated getting his case before a jury. I felt that that was not in the interest of my client, Henry Bowles, and the Bowles remaindermen, and decided that we would put our fate in the hands of the law and motion the judge on technical motion.

Hicke: Can you explain how you came to that conclusion?

McBaine: Well, it is just what I have said. It is more difficult to go before a jury when the case is as complicated as this, where the legal arguments were extremely complicated, but the personal situations were not so complicated. For example, what would someone unconnected with the matter consider fair? An equal division of the property between all seven children? Or would they consider it fair or fairer to have the property go half to four children and the other half to only three children? The law was that the desires of the testator in the will were to be followed. But where there were complicated legal arguments in support of both positions, the jury might well conclude that an even division to all seven children was fairer and make that finding.

Accordingly in my judgment, we were far better off if we could get a decision by the judge on a purely legal basis, which would mean that the judge would follow what he thought were the desires of the testator, Henry Miller, who was long since dead, of course.

It worked, and after our very protracted arguments on the pleadings -- lasting two days, I believe -- the judge ruled in our favor and entered an order that the estate was to be divided one-half to the four Nickel remaindermen and one-half to the three Bowles remaindermen.

The losers then took an appeal to the district court of appeal, and after the matter was thoroughly briefed and argued there, the district court of appeal confirmed the judgment of the superior court. Before that appeal, additional attorneys were brought in for the matter. A hundred million dollars attract a lot of attorneys or make people think that it is worthwhile to employ a lot of attorneys.

After the district court of appeal affirmed, the next step was then a petition by the losers to the Supreme Court of California to hear their appeal, which was not mandatory on the part of the Supreme Court but discretionary with that court. The Bowles remaindermen, including myself on behalf of Henry Bowles, of course opposed this, so there was another round of briefs at that point. The Supreme Court granted a hearing.

Briefs and an argument were then held before the Supreme Court of California on the matter. On this appeal, a close friend of mine and an outstanding trial and appellate lawyer in San Francisco, Arthur B. Dunne, was retained by the children of the Nickel remaindermen. This produced a very interesting problem. Mr. Dunne, as I say, was not only an eminent attorney and well known to the court and well known in California, but an outstanding scholar. He wrote a brief which I still remember very vividly. It was an Encyclopedia Britannica on "per stirpes" and "per capita" and filled with every kind of reference anyone could conceivably think of. There were footnotes on every page, about half a page worth.

The problem was that the time for arguments before the Supreme Court was strictly limited. I have forgotten whether it was twenty minutes or possibly half an hour. But I think it was only twenty minutes at that time, and the number of pages of a brief one could submit were limited. If I had tried to make any answer at all to all this myriad of points that Mr. Dunne had raised in support of his position, the confusion would have been such that it would have taken superhuman effort for anybody to retain a sense of clarity out of the whole thing. So it was a very difficult matter to get rid of the brief with that limited time and not have it do damage.

Hicke: His brief was not limited?

McBaine: Oh no, his brief was limited, but only in number of pages. It was not limited in the number of points he could make or the number of esoteric and abstruse authorities that he could cite for it. The brief was just filled with that sort of thing. In any case, we had the argument before the Supreme Court, and the Supreme Court again affirmed the holding of the superior court, and so the squad of eight or ten attorneys involved in this thing for months, months, and months finally went home.

Basically, the case was a long shot. I really thought that the case should have never been brought at all, but then of course that was an opposing opinion. It was a long and bitterly fought struggle, I think largely because of the very large sum of money involved. All the attempts to complicate the issues in the end failed, and I think common sense as well as the express words of the trustor-testator prevailed.

Hicke: What was it like to work with this platoon of lawyers as you did?

McBaine: Oh well, you get used to that in any major litigation, especially if you are representing a major oil company like the Standard Oil Company of California. In most cases there are platoons of lawyers. Most of the matters involved are major matters and so I was very used to that and most of the attorneys involved were, or perhaps some of them weren't, thinking back on it. But in any case that sorts itself out all right.

Hicke: What does it involve in the way of conferring with each other and deciding who's going to do what?

McBaine: Well, that's a problem, and in major litigation often produces rivalries which are difficult to settle. In this case, for the Nickel remaindermen, Mr. George Nickel, Jr.'s attorney filed the original complaint. Therefore his attorney, C. Ray Robinson, was the lead attorney, so to speak, for the Nickel remindermen.

As for the Bowles remaindermen, Mr. Henry Bowles was the senior member of the Bowles remaindermen. He had a younger brother who was ultimately also involved with Miller & Lux, Inc., and a sister. But as the older brother of the Bowles remainder, he was the senior man

there, and therefore his attorney was more or less automatically the lead attorney for the Bowles remaindermen. What differences of opinion there were, were worked out. Actually, I don't remember that there were any serious differences of opinion on our side. What problems the other side had, I really don't know.

Hicke: Would you do most of the talking in court?

McBaine: Well, the time was divided up. Here again, the principal lead attorneys were given a larger share of the time. If they didn't agree among themselves, the court would allot the time.

Hicke; I see. Had you worked with or against Mr. Robinson before?

McBaine: No, I had not. In the suit that Mr. Robinson brought against J. Leroy Nickel, Jr., for mismanagement of the trust, I did not appear as counsel for anyone, because my client, who had obtained the opinion in this matter from me, Henry Bowles, while he was named as a party in that suit, did not actively participate in it.

Hicke: There had been a lot of litigation throughout the history of this trust?

McBaine: Yes, there had been.

Hicke: And is there still more going on, or did that finish it?

McBaine: No. To the best of my knowledge, Miller & Lux still exists, and they may have had some litigation -- I'd be surprised if they didn't -- over different land questions or other legal questions that may have come up. But there is no sort of major litigation that has come up involving the properties that I know of.

Hicke: Okay. Does that wrap up Miller & Lux?

McBaine: I think so.

The F-310 Case*

Hicke: All right, if we are finished with Miller & Lux, let's go to the F-310 case.

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* In the Matter of Standard Oil Company and Batten, Barton, Durstine & Osborn, before Federal Trade Commission, Docket No. 8827 (1971).

McBaine: Yes, all right. F-310 was the name Socal -- and I'll say Socal because it was known as Socal at that time -- had given to an additive that Socal had developed for its gasoline, which would reduce the dirt that built up in the carburetor and some other parts of a gasoline engine and thereby reduce the dirty emissions from that engine.

In the '60s, you may remember that there was a tremendous interest in the environment and tremendous interest in reducing the pollution in the environment, attributable mainly, I think, to the appearance of smog in the cities of the United States and including, certainly, Los Angeles. Environmental groups like the Sierra Club and many other environmental groups were zealously campaigning against all forms of pollution, and the automobile became in their eyes a terrible manifestation of progress in the modern world. There were enthusiasts who took to the hills and did away with all plumbing and such things as that. Lived off of nature. Didn't want any pollution of any kind. No smoke, no nothing. This was a very strong wave of opinion in the United States.

So Socal thought when they developed this gasoline additive that they had done something which would be of great public interest and would give them a lot of credit with the public and at the same time, of course, increase their gasoline sales. So, in order to advertise this thing properly, they had conducted a whole series of very elaborate tests. One they did with several hundred automobiles in the Rose Bowl in Pasadena.

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McBaine: They carefully measured all the results of the test. Then the problem was how to advertise this test. Well, of course, the advertising agency got hold of it and they, with the company engineers, devised some more tests. One of them was a test with a balloon, where a balloon was attached to the exhaust pipe of a car with a dirty engine. The balloon filled up with dirty gray or black smoke, soot from the exhaust and various other other pollutants. Then they took a similar car which had run on Chevron gasoline with F-310 and hitched it up to a balloon. They then pictured that balloon when it was filled with exhaust, which was apparently clear and certainly white. There were others, but that was sort of the key ad.

Well, certainly to my astonishment, and I think to the astonishment of most of the people in the company, the public reaction, instead of being pleasure and enthusiasm that there was something that would reduce smog and pollution, was almost overwhelmingly negative -- a thing which frankly I couldn't understand then and I don't understand now. Other gasoline companies reacted negatively because they saw this as a real competitive advantage to Chevron. And, in fact, some of them had had detergents of some kind that kept the engines of their users cleaner than they would otherwise be. But I think subsequently it became clear that none were as effective as F-310. The Sierra Club and others went into sort of a frenzy

over this new development, complaining about it and raising every conceivable sort of an objection to it.

It's extremely difficult for me to understand any logical basis for all of this. I tried to think why this enormous negative reaction. There were such extreme statements made as that automobiles ought to be banned, the automobile was a terrible thing, we could get along without it, and so forth and so on. Not very many people believed that, but it shows the extremity of the feeling against this whole thing.

Also, the environmentalists were at that time trying to persuade the United States government to put pollution limits on the car builders of the United States, so that you couldn't build a car unless it was clean and free of all pollution. Of course not all pollutions were visible in the way that soot is, that black dirt that comes out as soot. Some of this other pollution, such as carbon monoxide, is also very serious because, while it may be translucent, it can combine with other chemicals and form smog.

Ultimately the FTC [Federal Trade Commission], responding to all of this public criticism and, I regret to say, I think complaints from other oil companies, which can't have been motivated by anything other than competitive dislike, the FTC started to investigate this thing.

Hicke: Could it have been that the advertising just brought the pollution problem prominently into view?

McBaine: Yes, it did bring it prominently into view. I think there were a great many people who believed that if it became established that detergents in the gasoline of the millions of automobiles in the United States could really reduce these pollutants in the air, so that smog was no longer a major problem, all of these efforts to control the automobile builders in Detroit -- to make them redesign their engine so they would not emit any pollutants -- would evaporate and go away. At least, this is my own analysis. I can't understand any other reason why people would object to something which really obviously was doing good. The environmentalists were afraid that the doing good would dampen all of the big national movements. They really wanted to compel the automobile builders -- General Motors and Ford and Chrysler and American Motors -- to build different engines.

Hicke: That makes sense.

McBaine: They never admitted that, but this is, to my mind, the only sensible reason for this to me totally surprising and surprisingly intense comdemnation of this new development.

So the FTC sent investigators out. Typical of the FTC, they sent a young man from the Los Angeles office up here and he wanted some information from me.

You asked me about how one decides who does what in our office. Well, I was the general counsel of the company and it seemed to me and to the officers of the company that this was something I should handle myself. And I did, right from the word go. The thing had started just before Mr. [Francis] Kirkham retired, and I had just succeeded him. The FTC hadn't instituted any investigation when Mr. Kirkham retired. But as soon as they did, I got into it, and I stayed with it all the way through.

Anyway, this young man came up, and he was very nice. He said he was just making an investigation; he said was very pro-Socal. He was a stockholder in Socal himself. Well, this kind of approach didn't impress me much, and particularly in light of subsequent circumstances, I don't know what his purpose was, but I can't say anything good for it.

Hicke: He just came in for a friendly chat?

McBaine: Yes. And he was pro-Socal because he was a stockholder in Socal. Anyway, soon afterwards he recommended that a complaint be issued for misleading advertising. The FTC in those days issued every kind of a complaint. When they issued a complaint, they put in everything they could think of. In other words, there was no attempt to be judicious on their part. They acted, in this case and several others -- and I will come to the FTC v. Big Eight Oil Companies -- the same way. They acted as if they were investigating Al Capone's organization.

As another example, I believe it was after the complaint had been issued and two FTC attorneys assigned to the case, one a woman, Socal had a press conference in Los Angeles and introduced F-310 there. They had it at the Century Plaza Hotel. They took a big ballroom and invited, I guess, gasoline dealers and newspaper people and various environmental groups, the public that would be interested, and made a presentation about F-310. They were very proud. They thought they had made a real contribution to the smog problem and the problem of air pollution in this country.

These two FTC attorneys walked in; it was open to the public. I saw them; I had met them and knew who they were. After the presentation was over, the company served a buffet lunch in the adjoining room, free to everybody who had come to the press conference. I was standing near these two lawyers when the press conference terminated and the luncheon was announced. I said, "Would you like to have lunch?" So in they went and had this buffet luncheon. It was reported to me sometime later that this woman lawyer, one of the two of them, had gone back to Washington and had told her cohorts in the Federal Trade Commission that when she was out in California, Socal had attempted to bribe her by giving her free meals.

Hicke: That's unbelievable!

McBaine: Well, I cite this, and I will cite it again, because this is the kind of an attitude that permeated the entire Federal Trade Commission at that time. You wouldn't believe it. I mean, you thought you were a law-abiding American citizen, and you were treated as if, as I say, you were an acknowledged member of Al Capone's gang.

Ultimately the Congress even got onto this thing. Some years subsequent to this, as a result of that kind of behavior on the part of the FTC staff, the Congress cut off the funds of the Federal Trade Commission. You may not remember this; but it was in the daily newpapers. The whole staff of the Federal Trade Commission didn't go to work for four or five days because Congress refused to appropriate any money for them and left them without any pay and without any jobs for about four or five days.

Hicke: Probably wasn't nearly long enough.

McBaine: It wasn't, was it? [laughter] I think it sort of brought them back to some common sense. But it was that way all through this F-310 case, which I was particularly sensitive about, because, as I say, I couldn't understand the reasons for it in the first place. And then to have these people behave this way seemed to me outrageous. It still seems to me outrageous.

Hicke: Even in court, aren't you supposed to be innocent until proven guilty?

McBaine: Well, that's supposed to be. As I say, they became so partisan. Instead of conducting themselves in a dignified way, they went at it as if they were dealing with drug smugglers and people like that, instead of the cream of American business.

So we had a long investigation about this thing, and the commission did issue a complaint. The complaint again exemplified this kind of attitude I am talking about. They found everything wrong conceivable. They charged that these ads were fraudulent and misleading in every conceivable way. They never once in the complaint admitted that F-310 did clean up dirty engines and would keep a new engine clean if used in it, more than ordinary gasoline without any such additive in it would do.

Basically what it finally came down to, in the case tried before the Federal Trade Commission, is that the Federal Trade Commission did recognize that all these tests were valid, that the additive did help clean dirty engines and did keep clean engines cleaner than if it were not used. Nevertheless, they found that the pictures of these two balloons, where one was almost black and the other one was almost white, were misleading, because people would think there weren't any pollutants at all in the white balloon. Well, the ads didn't say that, and no such claim as that was made. The idea was to contrast clean air versus dirty air. There was no language that said that the air was absolutely clean. Nobody ever made such a claim. But in any case, caught up in all of this

national, almost-hysteria over this smog problem and air pollution, the Federal Trade Commission did make this order and banned all further advertisements of this kind.

Well, of course, that in a sense killed the product. I mean, it was no good if the Federal Trade Commission said, "You can't use these ads," and there was all the publicity about these ads, because the whole matter received publicity all over the United States. The fact that you had a good product, which did contribute to cleaning up the air -- cleaned up the engines and thereby contributed to cleaning up the air -- that just went by the boards in all of this hubbub.

As one interesting example, the automobile manufacturers, as you may know, have to make mileage tests on their new models and then they are able to advertise an estimate of so many miles per gallon on their new cars. All three of the major motor companies at that time -- I am not sure whether AMC was in this or not, but General Motors, Ford, and Chrysler, all three -- used Chevron with F-310 gasoline to conduct their tests on their new automobiles so they would get the cleanest engines and the highest possible mileage ratings. That gives you some idea of what those people in the business thought about it.

But that didn't slow down the FTC at all. There was never one word of, not only no word of appreciation, but not one word even of acknowledgment that the company had done anything good at all, you see. They [Chevron] were just a "bunch of crooks, crooked America," for having phonied up these advertisements.

As you can see, I am still upset about it. I was upset about it then. I still am now. And, as I say, the attitude that they took and their actions were so bad that ultimately Congress cut them off with no appropriations and told them, "You have got to clean up your act."

Well, that was the case. So they entered an order. The order was then appealed. I did not conduct the appeal and now I have forgotten what I was doing.

Hicke: Did someone from PM&S take it?

McBaine: Yes. The net result was that the court of appeals, while they affirmed the Federal Trade Commission's order, really eviscerated the order so that it came to very little. And in their opinion, they did recognize the validity of this product, that it was a genuine product and did do genuine good. But it did affirm the finding of the Federal Trade Commission that these balloon ads showing the white and the black balloons were overdone. So after a couple of years of struggle and a tremendous amount of effort and a lot of money spent, it came down to virtually nothing, except that they economically ruined what every fair person admitted was a good product.

Hicke: And F-310 is no longer used?

McBaine: It's used, but it's not used under that name. Various other companies have other additives, too. And how they compare in efficiency, I have no idea.

Hicke: Well, did the ad agency then come in for a fair amount of criticism?

McBaine: Oh yes. Very much so.

Hicke: They had actually done the balloon ad?

McBaine: That's right. And of course, any ad man is going to press for the most dramatic thing he can get. And I expect they probably pushed the engineers harder and harder and devised more dramatic formats for the ads.

Hicke: Do you recall who the ad agency was?*

McBaine: No, I don't.

Hicke: Okay, we don't have to worry about that. I am also interested in the FTC hearings. After you had a hearing before the FTC and they gave you an order, then it sounds if you went into the regular court system from there.

McBaine: Yes, the regular federal court system: to the federal court of appeal.

Hicke: Is it true of most regulatory agencies that you can appeal to the regular court system for a hearing?

McBaine: Yes.

Hicke: And then from then on, it's the normal procedure?

McBaine: Yes. It is treated as another case in the federal courts. I don't think either side asked for a hearing in the Supreme Court. I think by that time the Federal Trade Commission was ready to be done with it. I think by that time they were coming under so much criticism that they didn't continue. And the appellate court's order was, as I say, almost innocuous so far as Socal was concerned.

Hicke: What are the differences in preparing for a hearing case as opposed to preparing for a court case?

McBaine: Well, let's discuss that a little more when we get to the next one.

Hicke: Okay. Fair enough.

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* Batten, Barton, Durstine & Osborne, Inc. of San Francisco.

FTC v. Exxon

McBaine: The next matter that I was going to mention was what we called the FTC v. The Big Eight.* In the early '70s, the Federal Trade Commission filed a complaint against the eight major United States oil companies charging them with unnamed and unspecified violations of the antitrust laws. Under the antitrust laws in this country, both the Antitrust Division of the Justice Department and the Federal Trade Commission are charged with enforcing certain antitrust laws. Theoretically, the Justice Department is to complain of accomplished violations and the Federal Trade Commission is to prevent incipient violations.

In any case, the FTC filed this complaint against the eight major oil companies, who, I believe, were Exxon, Mobil, Texaco, Shell, Gulf, Amoco (Standard of Indiana), Atlantic Richfield, and Socal. We'd better check that, as to whether that is exactly right, but I think that is correct.** So another major FTC proceeding was under way. Again this was obviously something for the general counsel to concern himself with, and I did so, with a team, of course. My number two man was George Sears, who was and is one of our senior litigators in the firm and had done Socal work. Several other younger lawyers in the office were on this case for Socal.

Again we had squads of lawyers, as you can well imagine. Each of the eight different defendants had their own lawyers. Some had both company lawyers and Washington lawyers. Some had both outside lawyers, such as New York lawyers, and company lawyers. Again the hearings were held by the Federal Trade Commission in Washington.

Hicke: How was the lead counsel determined?

McBaine: The judge, or the hearing officer in this case, undertakes to appoint a lead counsel himself, if the counsel really don't agree among themselves. It sort of depends on who is the most important client. In this case, Exxon was largest and most important oil company. It also depends on the lawyers involved. In this case, we really didn't have a lead counsel at that time. But it worked out all right.

In addition, while we are on the subject of counsel, the Federal Trade Commission had a staff attorney, and he had one or two assistants, who were at counsel table. I think every time we had a hearing before the hearing officer in Washington, there were from twenty to thirty FTC staff people in the audience. So when you

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* FTC v. Exxon, et al., Docket #8934 (1973) also known as Exxon Corp. v. FTC, 665 F.2d 1274 (1981).

** Verified correct.

count the company lawyers plus the FTC lawyers plus the FTC staff people, the number of man hours and woman hours that were expended on this thing was absolutely staggering.

Now you asked me about how the Federal Trade Commission works. Well, the Federal Trade Commission has a staff which includes engineers and marketing specialists, special economists, and so forth, and it also has its own lawyers. The commission itself is appointed by the president and confirmed by the Senate, and the staff reports to the Federal Trade Commission. So the staff is professional civil service. The commission is politically appointed and confirmed. The staff does all the investigatory work and comes up with either a request of the commission to issue a complaint or a report to the commission as to why not. Perhaps some member of the commission asked for such a report.

Once the staff has made its recommendation and the commission orders a complaint issued, the staff draws it up and the commission authorizes it and it is issued and served on the defendants. It is then assigned to another branch of the staff of the commission, namely the hearing officer's branch. In other words, they have their own judges. These are civil servants and they are usually people with some experience and outstanding abilities. Many of them are well versed, of course, in a general subject that the commission has to deal with, in the appropriate laws, like those regarding misleading advertising or antitrust law violations. But in the last analysis, the administrative judge, the hearing officer, is an employee of the commission.

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McBaine: So the hearing officer is at best, I say, semi-independent. Maybe that's a little too harsh, but he is not completely beyond the influence, let's say, of the commission.

Hicke: Not like a judge.

McBaine: Not like a judge, yes, exactly. The litigants who have to come before him are always disturbed by this. The commission, of course, is not disturbed by it. They have confidence in their objectivity. But at any rate, that's the kind of position that you're in. You have a feeling that staff counsel, who have known the judge well, have got a leg up on you.

Well, as I have said before, but it's important to emphasize this, the complaint in this case simply charged a violation of the antitrust laws without being specific. The first thing that happened was the Federal Trade Commission wanted to look at all the records and files and reports of each of the defendant companies. So we started the tremendous process of investigating all these records and the building up of the factual data of all these companies.

We'd have a session before the judge. All of the lawyers would congregate in Washington and we'd meet in a big hearing room, just the same as a courtroom, and have a hearing. That would be maybe one day, two days, and then everybody would go home and do a lot of paperwork and come back for the next meeting. Well, this went on all the time until I retired in 1977, I guess it was. So that was four or five years. I have forgotten the exact date it was started.* The Federal Trade Commission has power to issue subpoenas and require the production of documents and records of people against whom a complaint been filed. During the course of this time, the amount of material that had to be produced by all these companies began mounting up into the millions of pages. It was just absolutely fantastic. It was perfectly obvious it was going to be a gigantic clerical problem to produce all these things, to keep track of them, to know what had been produced and where they were.

Everybody, I believe -- I know we did -- immediately began looking into putting all this data into a data bank in a mainframe computer. It was my first experience with trying to get outside computer help. We weren't very sophisticated; we weren't sophisticated at all. We didn't have anybody who had used a computer as a backup for a lawsuit in our group.

We had represented IBM in some local litigation out here, and IBM had attorneys in different places in the country where it had lawsuits, and each of them had a computer in the office. They were hooked up by telephone wires to the major IBM computer someplace in New York or New Jersey, I've forgotten where it was. Armonk is where the headquarters is, and I think maybe the computer was there. Their basic data bank was in New Jersey. I am not sure. It doesn't make any difference. It is all done over a telephone wire. So obviously IBM had a setup that was priceless. Really, they had been accumulating that data bank for some time. And you see, none of the oil companies had all their records on a computer at that time.

We spent a long time talking to Control Data people. I myself felt that I barely understood what they were talking about. They had some very good salesmen. They were very articulate and very convinced themselves. But we finally concluded -- at least I concluded, and I think my associates did as well -- that their program or services that they wanted to sell to us, the proposed procedure they want to sell to us, was really designed for a plaintiff in a major lawsuit and not a defendant. That was because they had designed the whole system when Control Data brought a suit against IBM a number of years before. They had written their own complaint against IBM. Of course, they were the plaintiff. They had assembled their material to support based on their own complaint before they even filed it.

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* 1973.

But here we were in a situation as defendants, where we were accused simply of violating antitrust laws. From the very outset, one of our objectives was to find out how we had violated the antitrust laws, according to the Federal Trade Commission. Specifically, "What are your charges? What did we do that was illegal? Did we get together and fix prices? What did we do?"

Hicke: They didn't tell you that?

McBaine: They didn't tell us. And I spent four or five years going back to Washington and going to these meetings. We had to set up a big program in Socal facilities in Concord, where we copied documents from Socal's files and then had them all typed into a computer data bank. Every time we'd meet with the administrative law judge, we would demand a specification of the particulars in which we supposedly violated the antitrust laws. The FTC counsel would always hem and haw. Ultimately one of the FTC counsel admitted in open court there, before the hearing officer, that they didn't know and they weren't about to specify. What they wanted was a look at all the records that each of these gigantic companies had. After they had pawed over all those records for a year or two, then they would decide whether they could find any violations of law or not.

Hicke: That sounds medieval.

McBaine: Well, I give you my word this is what happened. And the transcript of the hearing back there will show that at one point, when I was arguing with the commission counsel, I think he unwisely, having been pressed and pressed and pressed, finally sort of gave up. He said they hadn't specified and weren't going to specify until they got all the records. Of course, they spent a year or two getting our records and looking at them.

Then we also had certain documents that we wanted to request of them. In other words, what complaints had they received from competitors which led them to issue this complaint? What did the competitors have to complain about? What was behind this lawsuit? Supposedly, we had a right to discover what they had as well as they had a right to discover what we had.

We asked the Federal Trade Commission hearing officer repeatedly to let us discover against them at the same time they were discovering against us. But the hearing officer would never permit that. He said, "No, no. After the discovery by the plaintiff, by the commission, is completed, then the defendants may have discovery against the plaintiff, the commission." Well, you know after he spent three years or four years with the commission's discovery against the companies, the likelihood of his giving us equal time against the commission was very remote.

So this went on for about five years. There were a lot of interesting and stimulating incidents and occasions, arguments and conflicts between various counsel for the defendants. Sometimes one

would think it was wise to do something and the others would not think so. But at the end of about five years, absolutely nothing had happened.

When I retired, I turned it over to Mr. Sears. He had been with me all the time, and he succeeded me as the senior counsel for Chevron, or Socal. Then about two years later, I guess, I'm not sure just how long it was -- I think after the Federal Trade Commission had come down out of its ivory tower in response to some of these public attacks on it and the congressional slaps at it -- they dismissed the whole thing. We had spent eight years and I can't tell you how many millions of dollars -- millions and millions and millions -- for absolutely nothing, and admittedly on the basis of a complaint that had no specific charges as to how we violated the law. All they wanted to do was to rummage through the defendants' records, and you can imagine what the records of a company like Exxon consist of. I think Exxon is the biggest. It's just absolutely fantastic. This was bureaucracy at its worst, really. It wasn't costing them any money. It costs all these American companies money. It costs their customers money. The companies had to get that money from someplace, and the only way they could get it was from the products they sell.

Hicke: The people who buy gas paid for it and the people who pay taxes paid for it. Those are the ones who paid for it.

McBaine: That's right. And it was really just a terrible boondoggle.

Hicke: What right do they have to subpoena all these documents without any charges?

McBaine: Well, they said they had a legal right to do so. I mean, a defendant could go and fight about it in the court every time. But in the first place, it took several years to get them to admit they didn't have any specific charges in mind, you see.

Hicke: Isn't there something like a writ of habeas corpus that would apply to somebody who doesn't know what the charges are against them? [chuckles]

McBaine: The courts are very reluctant to hamper administrative agencies. But it has to be pretty bad. In any case, here was a major matter that took quite a few years and came to absolutely nothing. I take it that their dismissal was a tacit admission on their part that they didn't know of any violation at all on our part. They had all this time and they hadn't been able to discover anything they really wanted to pursue a lawsuit on.

Hicke: Did you ever get any discovery?

McBaine: No. Never got to that point.

Hicke: Mr. [Wallace] Kaapcke was telling me yesterday something in regard to this case, and I don't have the cite that he read from now but it was, in effect, memoranda from Senator [Henry "Scoop"] Jackson to Mr. [Lewis] Engman.* That, I think, was actually the initiation of this case. Are you familiar with that?

McBaine: Yes. Oh, yes. I'm specifically familiar with that. Of course, now there is a great deal of interest in the various administrative agencies. The greatest interest is in the government accounting office. These so-called independent agencies -- nobody quite knows where they fit in the constitutional scheme of government. You see, they aren't really in either one of the three branches: legislative, judicial, and executive. That was the trouble with the Gramm-Rudman Act.**

The money for these agencies comes from Congress. There isn't a single member of Congress in either the Senate or House of Representatives that doesn't know that the one who holds the purse strings is the boss. So when some Congressman has got a pet peeve, and many of them do, against a major U.S. oil company -- they have been whipping boys for politicians for years and years and years -- they make a big hullabaloo and write a letter to the Federal Trade Commission. The Federal Trade Commission people are under a lot of pressure to respond, as witness the fact that as I said when Congress got really mad at them, it cut their funds off entirely. So it's a problem that continues in our government, and it's not all crystal clear.

Hicke: That's really interesting. I wonder if Congress is going to address the problem now?

McBaine: Probably not, because Congress is the one that basically controls these agencies. The executive doesn't.

Hicke: They are not going to do anything about this kind of no-man's land, where the regulatory agencies are in limbo?

McBaine: No, because, you see, the other watchdog in the antitrust laws is the Justice Department. Well, the Justice Department is under the control of the president. That is part of the executive branch. So the Congress says, "I'm not going to cut out the Federal Trade Commission, because then if we write a letter to somebody in the

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* Engman was Chairman of the Federal Trade Commission. The letter refers to a possible conspiracy and requests a report on the relationship between the structure of the petroleum and related industries and the shortages of petroleum products. Letter dated May 31, 1973.

** The Gramm-Rudman-Hollings Act was passed in 1985 to limit federal budgets.

antitrust division, they are not going to jump the way they do when we write a letter to somebody in the FTC."

Hicke: Then there is just no recourse. One just has to bite the bullet.

McBaine: No. But of all the litigation that I ever had anything to do with, that's got to be the most wasteful.

Hicke: Are you familiar with Anthony Sampson's book The Seven Sisters?*

McBaine: Yes.

Hicke: Do you think that writing like that has something to do with what goes on?

McBaine: Well, it's a little like Elk Hills and problems arising from Elk Hills. As I told you, they really go back to the impression left by Teapot Dome. Teapot Dome was such a scandal that it sort of infected anything to do with any naval petroleum reserve with a cloud of suspicion and skepticism. Senator Jackson's letter that you mentioned a few moments ago goes back to the early days of the international oil business. In the early days, you see, none of the other countries, neither the English nor the Dutch with the Shell Oil Company nor the French, had any antitrust law. The United States was the only country that had any antitrust laws. These major businesses would get together and create a cartel or do things of that kind which now virtually all countries forbid. But the antitrust laws in Europe are still fundamentally different than our own. Anyway, that sort of casts the background. It seems you are dealing with a bunch of sinners, you see. The question is: have they reformed in the last seventy-five years?

Hicke: Guilty until proven innocent.

McBaine: Yes. So psychologically, a lot of people have that attitude. For example, I have a partner who came out here. He joined us, and he was sort of a [Robert] La Follette liberal, in that school. He somehow or other got assigned to do some Socal work. I don't know what his attitude was, but I suspect that he was not pleased with that, but as I say, a La Follette liberal.

Then he went up to Sacramento for us as a young lawyer to assist our lobbyist. At that time we had a partner from this firm who went to Sacramento each year during the session of the legislature to act as a lobbyist for Socal, and at that time, maybe one or two others, as well. Anyway, this young man came back from Sacramento and he said to me, "My God, my eyes have been opened."

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* Anthony Sampson, The Seven Sisters (New York: Viking Press, 1975). The author strongly believes in controlling the major oil companies.

He said, "I have a completely different point of view on things. I have seen so many petty, would-be crooks in Sacramento, and the Standard Oil Company of California is like a Knight of the Round Table compared to all these hustlers I have seen in Sacramento. I have changed my mind completely." [laughter]

I think that The Seven Sisters, to go back to that, is sort of popular with the kind that foresee all sorts of clandestine meetings and agreements that don't exist, as far as I am concerned. My experience of the oil industry is that certainly the American companies are very much aware of antitrust problems. And I think their record is pretty good, as compared to a lot of other industries. There have been very few things that have been proven against them.

Hicke: Well, we have been talking about ethics for Standard Oil, which reminds me of a question that I wanted to ask you at some point -- I might as well throw it in now -- regarding ethics for lawyers and law firms. I think that certainly PM&S has very high standards, and most law firms probably do. How does this come about and how is it continued?

McBaine: Well, ethics, in the broadest possible sense, comes from your childhood, I guess. You don't lie and you don't cheat. But other than that, lawyers supposedly have canons of ethics. I think we made a great mistake in that a number of years ago. It used to be, when I was young, that the American Bar Association had canons of ethics. They were sort of the equivalent of the ten commandments. They were very broad, very brief.

I think one of the characteristics of American life, possibly led by the lawyers, but certainly participated in by everybody, is to tinker with everything in an endless search for perfection. Somehow or another, it seems to me, most of the American people think that if they only try hard, they can make things be perfect. Well, I don't believe that. I think that that leads one to a point where common sense really begins to disappear.

The American Bar Association, a number of years ago, maybe fifteen or twenty years ago, decided that they would spell out this whole thing. Arguments might come up under the so-called ten commandments I referred to. So they did what Napoleon did when he tried to formulate a code setting forth all the laws, in contrast to the common law in England, which as you know is simply precedent based on the usage of the people. Napoleon said, "Here we will sit down, and we will write out the whole law of the country." He had the Code Napoleon compiled. Well, others had tried it before, such as Hammurabi and Justinian.

The American Bar decided that they would do this. So they sat down and they wrote, oh a great, big code -- I don't know how many pages it is -- with fine print and point one, subdivision A, subdivision A.1, subdivision this, that, and the other thing until you get down to about the sixth or seventh subdivision. Psychologi-

cally, it seems to me that that's just an invitation to somebody who may not have the broad general standards right to go combing through that and see if he can find something that hasn't been forbidden. I think it encourages that sort of an approach to things.

I think it's a basic mistake. Most people, when they meet something in life, know what's right and what's wrong. And if they fudge on something or pull something that is too fast, if they trick somebody, they know it's wrong. You don't have to have a twenty-five page booklet with fine print to tell you it's wrong.

Now we have a bar examination in legal ethics. I don't know if you know this. But in addition to the general examination on the law, contracts and tort and antitrust law, and this, that and the other thing, there is a separate bar examination on legal ethics. As I say, I rather question what good that does. Now the English don't have any such examination, but in their legal education, they start out with Roman law. At least when I was at Oxford, I had to do two papers on it in my final examination, which were in Latin. One paper was on the Roman law of sales and one was on the Roman law generally.

I came to a conclusion about the purpose of this and their courses in jurisprudence, which discuss the different systems of law that different civilizations have had. The point was that the graduate of that comes out, whether he consciously realizes it or not, with an inherent knowledge that he is a successor to a long tradition of people that have made various civilizations workable. Therefore, as I say, when you get up all this complicated code about you can do this, but you can't do that, it seems to me sort of the opposite way to approach it.

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Frankly, I can't remember a single ethical problem that ever came to my attention in the firm during my thirty-odd years, or whatever it is, here.

Hicke: That's a very unusual and wonderful record. Well, I don't know if it is unusual, but it seems unusual to me, and I just wonder how that can come about. Let's say it's unusual for a firm to be this old with this many lawyers and not ever have a problem. Just by sheer weight of numbers.

McBaine: That's true. I can remember a very interesting case I had. It involved an oil field down in Louisiana of which Standard was the owner or the oil and gas leasee. Some question of, again, Louisiana law came up. I believe we won it in the trial court and in the appellate court. During the appeal, the opponents retained a professor of either Louisiana law, because it was a point of Louisiana land law, or of Louisiana oil and gas law. Anyway, they retained him as an expert witness to give an opinion on a particular point of Louisiana law that was crucial to the case.

By happenstance, purely by happenstance, I learned that the professor had been promised a contingent interest in the oil and gas lease if our opponents won the case. I've forgotten exactly how I did it, but I filed some papers with the court and set forth these facts to the best of my knowledge and belief and asked the court to require the professor to divulge his interest in the lease on the grounds that this disqualified him as a so-called expert witness. Because otherwise, let's say a man shows up as an expert -- say he was a professor of law -- and he shows up as a professor of law and you find out that the man has a chance to become a millionaire if the case goes his way. It seemed to me that we were entitled to have the court know that. Well, of course the court did know that, or knew the possibility of that from the fact that I filed these papers.

He refused to answer, and I demanded that he answer and he wouldn't do it. He kept ducking it. It is my recollection that I don't think I ever got him to admit or deny it. But the court decided the case in our favor anyway.

Hicke: Did he give an opinion?

McBaine: I don't think so. I am not sure. I don't remember whether the court refused to hear his opinion or they just decided the case before our quarrel was settled.

Hicke: In any case, you put him off?

McBaine: Yes. But that was sheer happenstance. Well, to me, that was a question of ethics. He wasn't acting as a lawyer, but that was a question of ethics. It just seems to me a question of common sense. Now, if you paid the man as an expert a reasonable fee of $1,000 for his opinion -- win, lose, or draw -- there is nothing wrong with that. But to give him an interest in an oil field contingent on his side winning is certainly unethical, from my point of view. It's unethical for the lawyer as well as the law professor to do that.

Hicke: Right. It's not only the professor who is at fault.

Well, there is all of this insider trading scandal now on Wall Street.

McBaine: Oh, well, that's not only unethical, it's illegal.

Hicke: Well, that's true. But it brings to my mind the whole question of how a sense of ethics is acquired. You said it's learned in childhood, and that's true, but is it also taught in schools?

McBaine: It was in my day. But my impression is that it is not now.

Hicke: And apparently the Roman law and the weight of centuries is not taught either, giving a long perspective on the law as an honorable profession.

McBaine: No, I don't think so.

Hicke: So do you expect that there are going to be more and more problems like this?

McBaine: I don't really know. So far as I know, there are prominent lawyers in every city that don't meet the same standards that I have in mind. There are biographies about a lot of them, most of them criminal lawyers.

There was a man named Rogers who was an outstanding criminal lawyer. His daughter was Adela St. John Rogers. I think she wrote a biography on him, I am not sure. I remember that he was very proud of his reputation because he said he had never bribed a juror. And then the book tells some of the tricks that he had used in planting false evidence: you know, at the scene of a murder, taking out a gun and throwing it in the corner and confusing everybody and that kind of stuff.

Hicke: But he stopped short of bribery?

McBaine: Yes. He was very proud he had never bribed a juror. [laughter] Well, as I say, you raised a question that simply has not been a part of my experience at Pillsbury, Madison & Sutro.

Hicke: That says a lot for the firm. I guess there just isn't any complete explanation for it. Do you think the leadership of the firm, for instance, has something to do with it? Is it stressed anywhere? Is it taken for granted?

McBaine: Well, I am ten years out of date on that.

Hicke: Okay. I am really asking you about the time when you were active.

McBaine: Well, I am not quite sure that this is true, but I would like to think that if a question had come up by one of the younger lawyers, or even an old lawyer, where he was considering doing something which would have been advantageous and he thought maybe it was a little tricky or unethical, he would have discussed it with somebody else, somebody directly interested in the matter at hand. If the original person had any ideas, he probably would have dropped them. But I don't know that that ever happened. I don't know that anybody ever discussed that with me.

As far as I know, in the years I have been at the firm, there has never been a reprimand by any court to anybody in the firm. And that often happens. Somebody gets carried away. They may not be really crooked or anything of the kind, but they get excessively zealous. Many lawyers do. I don't know of any instances of that kind here.

Hicke: That's really impressive.

McBaine: Well, I don't know. Maybe I am just not savvy enough or something. It has been ten years I have been out, but I don't think that has changed. And there have been some very distinguished law firms that have gotten in trouble sometimes. But it's an honest difference of opinion. I don't think any of them have been out-and-out crooks. Sometimes they do something in advocacy that the judge's courts object to, really. I don't know of any incident like that. I am not ducking, I just don't know anything about it. I think our attitude is pretty well defined. I don't think the problems are too damned difficult.

Hicke: So it's pretty clear to a person when he is getting close to the line. He wouldn't have much question.

McBaine: I think so.

Hicke: That makes it easy. It's when you get into those gray areas that the trouble occurs.

McBaine: That's right.

General Counsel Socal

Hicke: I want to hear a little bit more about your work as general counsel and then I want to get into your time as senior partner.

McBaine: I think I was general counsel one year before I became senior partner.*

Hicke: Until your tenure ended, it was normally the case, was it not, that the two went together?

McBaine: No. Because my predecessor as general counsel was Mr. Kirkham, while Mr. Sutro was senior partner.

Hicke: That's true.

McBaine: But before that time, one man had generally had the same job. Now, of course, one man does not have the two jobs. And they didn't before: Mr. [Frank] Roberts was general counsel, but he was not senior partner.**

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* McBaine became general counsel for Socal in January 1970. He became senior partner in 1971. See following page.

** Frank Roberts became Chevron general counsel in 1977.

TURNER H. McBAINE

TURNER H. McBAINE, a senior partner in the firm of Pillsbury, Madison and Sutro, has been appointed General Counsel to Standard Oil Company of California, succeeding Francis R. Kirkham of the same firm.

Born in Columbia, Missouri, McBaine was graduated from the University of California at Berkeley in 1932, received a Rhodes Scholarship for study at Oxford University in England, where he received a B.A. in Jurisprudence in 1934, and received an LL.B. degree from the University of California School of Law in 1936. He has been a partner in his firm since 1950.

McBaine was on active duty with the United States Navy from 1941 to 1945, serving the entire time with the Office of Strategic Services, both in Washington, D.C., and in the Middle East and China-Burma-India Theaters. He attained the rank of Commander, U.S.N.R., and was decorated by both the United States and British governments, receiving the Legion of Merit and Order of the British Empire.

Active in civic affairs, McBaine has served as a director of the San Francisco Bar Association, and is currently Chairman of the Association's Judiciary Committee

Hicke: Also true of Mr. Kaapcke. He was senior partner but not general counsel.*

McBaine: Right. I can't really say why that was so. I suppose the facts are probably different in each case. I just don't know enough about it now to know whether the job has gotten to be more than one man should reasonably bear or not.

Hicke: I should think that it always had been.

McBaine: Well, I didn't really find it so. But that depends on how good a staff you've got. The responsibility of the general counsel of the company is to see to it that there are competent people in the firm expert in the types of things in which Chevron engages and the kinds of problems they have, to see that somebody is available to cover. Now during my time with the firm, we have always had sufficient people, sufficient manpower and womanpower, to make sure that's true.

Sometimes, very rarely, the client may come to the general counsel and say that a new man has been put in charge of the work for some department of the company, and maybe the former man in charge of this department was perfectly satisfied to have lawyer A do his work, but the new man doesn't like him. Or he would go to the vice president for legal affairs for the company and say, "I would like to have a change." In that case, it is up to the general counsel to make whatever rearrangements are necessary. It doesn't mean that the general counsel isn't also in a sense the personal counsel, if you will, to the chairman and chief executive officer. Now Chevron has got a vice chairman. In my day there were only really two officers in charge: the chairman and the president.

Hicke: Who were they?

McBaine: Well, Mr. Follis was CEO when I was made general counsel, and then Otto Miller and then H. J. Haynes. I believe I worked with all three of them. My tenure with Mr. Miller was the longest of those three.

I considered I had to be available for whoever was the chairman and CEO. If he wanted additional help, I would tell him who was assigned to it. I didn't always do all the work or be directly involved in it. But I had to make sure that the firm had somebody to cover every possible situation and did so adequately. How much I was involved depended on the people I was working with.

When I worked with Mr. Madison, he was, as I have told you before, a superb delegator of powers. When you're working for someone like that, if you know you've got the answers to your

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* Kaapcke was senior partner 1977-1980.

client's problem and you're confident that your answer is right, you tell the client so and send Mr. Madison a copy. If it's a tricky business and if there is any kind of thing about it that requires some explanation, then you have to ask to see him, and you tell him what you are proposing to do. Well, that's exactly what I had to do.

Most of our people I had been working with for quite a few years, you see. And I had confidence in them or I wouldn't still be working with them. If I assigned one of them a problem, unless it was a direct problem for the chairman or CEO, they would do the job. They would give a memorandum or an answer, and if it was an oral answer, they would have to reduce it to writing and send a copy to me. They also, under the practice in those days, had to send a copy to the vice president for legal affairs of the company. They had to send me a copy as general counsel. So I might pick up something that I didn't agree with, in which case I might overrule it. But basically if there was any question about it, usually the man or the woman would come and see me. We didn't have any women on the Standard account at that time, I think, not any that I was concerned with. But anyway, it's a matter of delegation and supervision, really. If you do it right, it isn't all that time-consuming.

These special cases that I talked about were cases where I felt I myself wanted to get personally involved. It wasn't always because I didn't think anybody else in the firm could do it; it was sometimes that I thought it was a matter of such interest to the officers of the client that they would expect me to do it. It was a combination of things like that. The example of this was when I was assigned to the Iranian consortium business, I was gone for nine months. Well, I have no idea how many communications I sent to Mr. Madison during that period, but I sure didn't send him one every day. [chuckle]

Hicke: You only sent him a communication when something special came up?

McBaine: Yes. That's right. Or if I got a request from him, which I don't ever remember getting. So it's not an overwhelming job. You'd have to see the papers that come in every day from Standard to see what it involves. I don't know if anybody has told you, but the way it worked is that Standard's land department worked from a lot of prepared forms approved by Pillsbury, Madison & Sutro: leases and that sort of thing. If something came up where they didn't have a form that had been approved, then they had to come to some lawyer in Pillsbury, Madison & Sutro and get it approved. The ultimate responsibility at all times rests with PM&S, and so far as Standard was concerned, in essence that rested with me. Because if anything went wrong and the chief executive officer learns about it, he was going to call me.

Hicke: So did you have to read everything?

McBaine: No. I didn't try to. But I read enough. I remember one incident. I don't mean to sound immodest on this, but you just asked me how the thing worked. One of the younger lawyers was assigned a problem about which I was not an expert at all. He did prepare an opinion and did send it to me before he sent it down. I suppose I may have asked him to do so particularly. I read it and I wasn't happy with it. So I made some comments, called him, and made some comment to him. He went back and wrote another one. I think I saw that about three times and I still wasn't happy with it.

So finally I just sat down and started right at the very beginning and went over it with him step by step by step. There was a particular statute that he cited in the course of his reasoning that led to this conclusion. The result that he had reached was, I thought, just impermissible. I mean, it was so restrictive. It was just unreasonable. I couldn't believe that that was the law. He cited the statute and everything. I said I would like to see that. "Well," he said, "I know what the statute provides. I work with that statute all the time." I said, "I don't care. I want to see the statute. So get whatever statute you're talking about here and let's read it."

When he put it in front of me, I could see it was a question of his being too close to it. He had read this thing -- in a different context -- many times and he thought he knew it cold. When we looked at the statute in the context of this particular problem that we had, it didn't say what he thought it said at all, which was just lucky.

The reason I refused to accept it was not that he didn't know anything about the law, but that the answer that he gave was an answer that would have infuriated the client. It was just so restrictive and unreasonable that the executive in the company who got it would unquestionably complain to his superior about what those damned lawyers were doing to them, and so on.

Hicke: You would have gotten it in the end anyway [laughter].

McBaine: I was going to make sure that if it had to go that way, I was prepared to answer why. [laughter]

Hicke: So you were alert for things like that rather than trying to actually monitor every single thing that happened?

McBaine: Yes, that's right. What really started me there was the fact that I felt that this client would be appalled at this answer. It didn't make common sense. But it took me the longest time to ferret out where the flaw in the opinion was. It was a complicated chain of reasoning.

Hicke: Just as a digression here: you have used the words "common sense" several times, maybe three or four this afternoon, and I'm gathering that you find a connection between the practice of law and good common sense.

McBaine: Well, I certainly do. I certainly do. I regret to say it, but I think a lot of our legislation these days violates common sense. It is partly because of all these special interest groups who have such an intense interest in something that they tend to take a point of view which satisfies their particular narrow interest. But it has lost common sense. I think that's a failing in our present national system. This, plus several things.

One, this proliferation of rights, as I mentioned to you the other day. Everybody has rights. Animals have rights. Birds have rights. Everybody has rights. And then secondly, the absolutely unquenchable tendency to tinker with everything and want to perfect it, until you carry it out with one little narrow objective in mind, which you have perfected down to the nth degree, but you have forgotten that in the general context of life as a whole it's nonsense. I think we have far too much of that in this country. I really do. I think a lot of lawyers are responsible for it, lawyers as legislators.

V SENIOR PARTNER OF PM&S, 1971-1976: FIRM ADMINISTRATION

Growth of Committee System

Hicke: At the same time you were general counsel, you were working on these cases -- for instance, I think you were handling the Henry Miller estate. That was in the '70s too, wasn't it?

McBaine: Yes.

Hicke: So you had the three major cases you've talked about today, and you were also the senior partner at PM&S.

McBaine: Well, yes. The F-310 case and the FTC v. The Big Eight were both Standard cases, of course. But I think that every general counsel has done that. I am sure Mr. Kirkham will tell you that he spent an appreciable percentage of his time on non-Chevron matters. When you accept this job as general counsel, you are not required to pledge that you will give your total time. I mean, the CEO of Standard puts that up to you, to your common sense.

Hicke: You just have to see that the work does get done.

McBaine: Yes. You have to see that you are available to him whenever he wants you, too, or have some damned good reason why not. I never had any trouble along that line.

Now, you are asking me about the management of the firm, too. We were not, of course, the size we are now. For some time we had divided up the work into a committee system. That just came about as we grew. In other words, as we grew, we had more people who came and asked for jobs as summer clerks. As the problem of employing people increased, we formed an employment committee. It was the same with the library. When I was a young partner in the firm, we had no librarian. Office boys just went in and put the books on the shelves as they arrived.

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McBaine: Somebody put all the advance sheets and all the loose leaf services, like the tax services or labor relations law and that sort of specialized things that lawyers in that field had to keep up with, somebody put all those things on the floor behind a desk in the library. Someone found about three or four months' supplies of them which hadn't been opened, much less filed in the loose-leaf services in which they were supposed to go. I guess a secretary was supposed to come in there and do that occasionally. She hadn't done it for about four months. That sort of broke the logjam on having a secretary do that work. We had to have a library committee appointed to find a librarian. So we created a library committee. As I say, these things sort of grew haphazardly. Then we had an insurance committee when it became apparent that we had to have libility insurance and various other kinds of insurance.

Hicke: Up until the '70s you didn't have any insurance?

McBaine: Oh, yes. But we didn't have any malpractice insurance, no.

Hicke: Yes, but you had other insurance?

McBaine: I don't know when we first had it. We had regular liability insurance, but no malpractice insurance.

The Management Committee

McBaine: Then there was the perennial question of who does one take in as partners? How many do you take in and who are going to be selected as partners? Well, I felt that -- and this is the way I was brought up, and my attitudes were formed by a lifetime of experience -- I felt that the lawyers that had been here the longest and had risen in the firm, showed their competence as lawyers and also, along with that, showed their ability to work with other people, were obviously the best members to have on the management committee. You might have somebody who is absolutely impossible to live with or deal with individually who is such a brilliant lawyer you couldn't keep him out. But we didn't have any such people as that.

My basic philosophy was that even Mr. Madison had had a workable committee of the four senior partners. It wasn't formal, but Mr. Madison and Mr. Prince, Mr. Bennett and Mr. Sutro were the four senior people. They were sort of an ad hoc committee. Mr. Sutro also had a committee, but I don't remember who was on it. He can better speak for himself. Anyway, my theory was that, as I say, the older partners, who had risen to the top of the firm, had the experience, the proven ability, should make up the management committee. The idea apparently held now of having a cross-section of different ages, which we do much more than we did in my day, was not prevalent in the firm during my time. Nor was it held by me, nor am I convinced today that that's necessarily a wiser way to do it.

So we did go to a management committee system. Some of the senior partners were not on the management committee because they really had no interest in it. They didn't want to be on the management committee. But as far as I was concerned, I thought they had a right to be if they wanted to be.

Our management committee was drawn from the seniors in the firm. We didn't so much attempt to have all ages represented. We didn't really, at that time, attempt to have the different practice groups represented. I have forgotten exactly how many there were on the committee -- maybe eight or ten -- so you'd almost automatically have the representatives of the various groups anyway. I also had a practice which Mr. Kaapcke discontinued but which I still think would have been wise to continue: I made the last succeeding senior partner an ex officio member of the management committee.

Hicke: That would have been Mr. Sutro.

McBaine: Yes. I thought that gave a continuity which was useful. Why Mr. Kaapcke discontinued it, I don't know. It's never been reinstituted. The committee is made up differently nowadays. There was only one senior partner when I was a senior partner -- that's what we called it then, not chairman or any other title. One of the jobs as the senior partner was to canvass all the members of the partners in the firm as to (a) who should become new partners in the firm, and (b) who among the partners deserved advancement and, theoretically, demotion. I can't really recall any demotions other than for health reasons.

Hicke: This would be financial demotions you are talking about?

McBaine: Yes. And that was unquestionably the most arduous job that the senior partner had. It was difficult because everybody had his or her favorites -- but only "his" in those days; we didn't have any senior female partners. Everybody had a favorite. Also you had to take into account that some partners thought that everybody he had working for him was a genius. The next partner that you talked to thought that everybody he had working for him was a dumbbell. [laughter] You had to balance, in your own mind, what they told you with their known tendencies either for praise or for lack of praise. It's absolutely true, although it sounds funny.

Hicke: I can see it would be a real problem.

McBaine: Some of those were brilliant men and some were our dearest friends, but some of them went one way and some the other. One of them had never in his life seen a fellow who wasn't an absolute genius -- I mean one working with him. The other one couldn't give anybody any credit. So that was a very difficult job, and I don't know how well I did it. I don't know whether it was considered successful or not. My successors felt that the day for one senior partner had passed.

Hicke: You made all these decisions yourself? I mean, at least the final decision.

McBaine: Well, I was simply the accumulator. What I did was reach, as nearly as humanly possible, a consensus. I did not regard it as an individual prerogative, ever. And I don't think anybody ever thought I did. I had my own views on who should be promoted and who not. But unless I could command the support of a substantial majority of the other seniors in the firm, I never tried to act.

Hicke: Your views just went into the pot like everybody else's?

McBaine: That's right.

Hicke: You started to say that after you then it was changed.

McBaine: Yes. There were three partners next senior to me who were all equal. Just below them were three other partners who were equal to one another. They decided that they would make all six equal and that they would have a plural executive, like the Swiss. They would have six equal senior partners. I was against that and told them so. One of the reasons was that all a lawyer has to sell is his time, and to have your six highest-paid men all sitting together on a committee discussing every administrative problem that comes up in the firm was simply a ghastly waste of time and money in my book. I thought it was a very foolish way to go at it. I told them so, but they all insisted on it.

I had not yet retired. I had a year to go. I said, "Well, I'll appoint you all to an ad hoc, senior partner committee for this coming year. Whenever any problem comes up in the firm, it goes to the six of you and you all, without my participating, decide what should be done. Then come and tell me. I am reserving the last say for myself, but let's see how it works out." They reported it worked fine. They had no arguments. So, they became six equal senior partners. After all, when I ceased to be the senior partner, I had no authority to say who was going to be next. There is no reason why the retiring senior partner should have that authority. The remaining active members of the firm have got to decide it. And that's what they decided.

They only did it for I think a year. Then they got disenchanted with it themselves. Have you talked to Mr. Kaapcke yet?

Hicke: Yes. But we're not up to the '70s yet.

McBaine: Well, you ask him why they became disenchanted. So at some stage they discontinued that. They went back to a single senior partner. As I say, the basic reason for that is that if you have a single partner, you don't want a tyrant in there, but nobody was in a position to be a one-man band after Messrs. Madison and Sutro. After all, their fathers were founders of the firm, and they had great, long-standing prestige. After they passed on or out the problem was

different, psychologically. We had no disaffection, so far as I know.

I can't really say what's happening today. But there was a period when the young sort of felt that soon as they became partners, they ought to start running the firm. I tell you, there's something more to it than perhaps you think. My theory was an institutional theory, if you will. Because that's what this firm is. It's long since ceased to be a personalized practice of the law. It's an institution. We have some people now who were in the Korean war, or maybe they were late for some other reason. They didn't come in until age twenty-seven or twenty-eight. But generally, they come in now at maybe twenty-five, out of law school. Well, from twenty-five to sixty-five is forty years. That means the lawyer is going to be here for forty years.

Now within five years after he comes here, he reaches an X-dollars level and he is participating in the management, let's say. What in the world is going to keep him interested for the next thirty-five years? I was afraid, and I still am, that if one follows that sort of procedure, you'll find middle-aged people who suddenly say, "To hell with it, I am going out and do my own stuff." Now practicing law, you can't quite do that the way the engineers do down in Silicon Valley: just march out and start their own companies. But it certainly is a possibility. If that sort of thing happens, you damage the firm badly. So my theory was to bring them along so that each year, somebody felt he was advancing, getting more money and more responsibility and more position in the firm.

Hicke: And he would also have something to look forward to.

McBaine: And had something to look forward to. What the current thinking is I don't know, but at the time I was not in a majority.

Hicke: Well, there are still a few wrap-up questions that I would like to go over, so let's put those off until the next time.

The Employment Committee

[Interview continued: July 28, 1986]##

Hicke: I thought we could just start this afternoon with a few things left over from last time on law firm management. Were you on the employment committee in the early 1950s, or did you start that committee?

McBaine: When I came into the office, Mr. Sutro was a one-man employment committee. He interviewed everybody that came to the firm looking for a job. I don't know whether he was the senior partner at that time, but he was one of the four top partners who really were the de facto management committee of the firm, not legally, but in actual prac-

tice. It really was a highly uneconomic thing to do to have one of the most valuable partners in the office spending his time interviewing every applicant, and as the firm grew, the number of applicants, of course, grew. It just became the wrong thing for him to be doing, so he gave up being the sole interviewer and employer [chuckling] and we formed an employment committee.

I'm not quite sure whether I was the first chairman of it or not, my memory is not that good, but I was the chairman of the employment committee for a number of years when the job was not as big as it is now -- nothing like it, probably a third the size, a third the number of people. I traveled around the country going to various law schools. I went to some law schools in the East. I particularly enjoyed my visits to the University of Virginia Law School. Charlottesville is a beautiful place and the University of Virginia campus, as you know, was designed and built by Thomas Jefferson. It is one of the beautiful historical buildings in America. I enjoyed the whole thing thoroughly.

The only part of it that was really not enjoyable was that as the volume increased, most of the law schools -- I'm not sure the law schools limited the time, but I guess it was the interviewers and the law schools together -- reduced the time that you talked to a student to thirty minutes and then to twenty minutes. To try to make some judgment about somebody in a twenty-minute interview is extremely difficult to do. If you started about 8:30 in the morning, and just saw one after another until you'd seen maybe fifteen people in the course of a day, the whole thing just becomes a blur. It's very difficult to do even if you take notes, little personal notes afterwards, trying to remember who that particular person was. Spending, say, two days at a given law school like that, it's very, very difficult to do. But during my time on the employment committee, that became the thing to do.

Hicke: Are we talking about the '50s now?

McBaine: I'd have to verify that.

Hicke: It was before you became senior partner?

McBaine: Oh yes, I was a younger partner then. It used to be that when students graduated from law school, they went around looking for a job, went to various law firms and tried to get letters from people to friends, to somebody in a law firm. But after World War II, the whole process changed, and the law firms began going out looking for the students. I think it was inevitable and it was probably the only way to do it, but I'm not sure that had the best effect on the people involved. Perhaps it did.

Hicke: Was that the law of supply and demand that was working?

McBaine: Yes, there was a period of growth of law firms all over the country, not only our own but all firms almost everyplace, and there was a

competition for the better students. Everybody wanted the law review people, and in those days egalitarianism had not struck the law schools to such an extent. Law review students were selected on the basis of grades: the top people in the class in grades were named as editors of the law review.

During the '60s -- I think it was during the '60s -- this changed in some law schools. Some law schools went so far as to refuse to tell an interviewer, a would-be employer, what the grades of their students were. They took the position, which seems to me wholly specious, "All our students are first-class lawyers and therefore it's immaterial what their grades are." They wouldn't tell. Also on the law review they began to select law review editors not on the basis of grades but on the basis of whether they were interested in it. Then the student editors would pick new editors from the next year's class. Whether that still goes on or how it is now, I don't know. But anyway, the interviewing process was really the lifeblood of the law firms and it was very enjoyable, but because of the volume plus the shortness of time with each person, it was not a picnic.

Hicke: Apparently the written record was not all that complete either. Or did they furnish you grades in writing if you asked them?

McBaine: Oftentimes, yes. But many law schools would say that the person was in the upper third of his class, or the middle third of his class or her class. It was mostly "his" in those days. I have never made any study of the correlation of success in the practice of the law with grades. It's perfectly obvious that anybody who has been a practicing lawyer will tell you and instantly cite you many cases where there's no correlation between success in the practice of the law and the grades in school. A person with top grades in school might well make the best lawyer-professor, I don't know, but on the average I would think that there would be a difference between the better students and the lesser students, let's say.

Hicke: You have to have something to go on.

McBaine: You have to have something to go on when you employ them. It's part of the interviewer's problem to make a judgment on whether somebody's got the interest, the determination, the balance, the maturity: all those things you have to try to judge. So it was very interesting work which I did for quite an extended period, I guess.

Hicke: And then did you eventually have other people helping you?

McBaine: Oh yes, we organized a committee, and in the early days I think we only had four or five people on it. I can't even say for sure how it's done now, but at that time they were all partners. It included maybe the chairman and one or two middle-aged partners, let's say, but mostly younger partners. And oftentimes we'd use a partner who came from a particular law school to go back and interview at that law school.

Then the law schools began to get swamped because they had firms coming from all over. For instance, at the Harvard Law School, firms would send interviewers from all over the country. I don't know how many they had but probably two or three hundred in a year. They had to provide space for those people to interview the students. They would put up on the bulletin board a notice that so-and-so from such-and-such a firm was coming in to interview on a certain date, and those who wanted to interview for a job would sign up on the bulletin board.

Then some of the law schools said, "This is costing us money. We're out of pocket to go through all of this business." So they sent out a notice to all the law firms, "If you want to interview at our law school, it'll either cost you X dollars a year or you will be expected to make a contribution to the school of X dollars." [both chuckle] So how that sorted itself out I don't know; I don't know what the practice is right now.

Hicke: By the time you left in '77, what was it like? Who was doing the recruiting?

McBaine: Well, I can't tell you that. I don't even remember who succeeded me as the chairman of it, to tell you the truth.

Hicke: But by that time were the summer clerks coming in?

McBaine: Yes, but in nothing like the number they do now. I mean, when I was last concerned with the employment committee, the number of summer clerks might be ten or maybe twelve. Now we have forty or fifty. Another thing that has influenced all this are these national magazines on the law, which didn't exist when I was a younger lawyer. In fact, they're only about ten years old, I would say.

Hicke: You mean like The American Lawyer?

McBaine: Like The American Lawyer and so forth. The American Lawyer -- how they go about getting it I don't know -- runs surveys on the summer law clerk programs and then they publish in their newspaper which firm in San Francisco or Atlanta or whatnot has a good summer program and which has the worst summer program. So it turns into sort of a -- well, it depends on one's point of view, but from an old-fashioned point of view, it's sort of hucksterism. I mean that it isn't an intellectual relationship between the lawyers and the would-be lawyers. It's sort of a selling job to see if you can sell your product to a lot of prospective buyers, and there are entertainment events and various things staged for all the summer students. As I say, when I went to work practicing law, that didn't exist anyplace in America. You just walked around the street and went in and called on the law firms and asked for a job and hoped somebody would talk to you [both chuckle].

Hicke: You've mentioned some of the qualities that you were looking for when you were interviewing, I believe. How did you go about determining whether the person you were talking to had these?

McBaine: I don't think there's any catalog of virtues or that anybody put it down in writing, at least not in my day. Although we did, during my time on the employment committee, write up a resume of the firm telling what the firm was all about, what kind of law we practiced and what the procedures in the firm were. That was, again, a part of this sales tool. We not only gave that to summer law clerks who accepted a job for the summer, but we sent it back to the law schools. In the placement offices in the law schools they would have these resumes of the firm, and if somebody said, "I might be interested in going to San Francisco," the placement officer could give them this resume and at least they'd know what kind of a firm they were dealing with.

But as for the interviewers, we did not systemitize it to the point of listing the qualities to be looked for because, really, I don't think you can do that, as I say. It depends on whether you want what in the brokerage business they refer to as back office employees. I don't mean to denigrate them in any way, but the same thing is true in law, and -- I think I've mentioned this before -- you can get a lawyer who is very shy, very reserved, very withdrawn, who is not a salesman in any sense of the word but who is perfectly brilliant and might perhaps be one of the finest appellate lawyers in the United States. If you start out with a judgment, say, that he's got to look like a Lucky Strike ad and he's got to have personality and white teeth and all that kind of thing -- it isn't done that way, you can't do it that way.

In a firm like this, there are lots of different kinds of jobs to be filled, and you look at everybody from that point of view. I hadn't thought it necessary to say this, but perhaps I should: every person that we employ, we employ with the idea that he or she is going to be a partner and a senior partner in the firm eventually. Nobody is employed with the idea that he is a hired hand and employed to be a hired hand for life. We just don't employ lawyers that way.

Hicke: I'm glad you pointed that out.

McBaine: And I may say also, another thing which enters into this. I can't speak for a lot of other firms, but this firm -- I don't think there's any secret about it -- has never required a capital contribution from any lawyer to become a member of the firm. Many of the financial firms do. They require very substantial capital contributions for someone to become a partner in the firm. But those firms have substantial capital as part of their operating tools. We don't, of course. You have to have a certain amount to keep up the cash flow, to keep the organization going, but basically, we don't operate off money, we operate off the brains of the people -- the lawyers in the firm. Money's never a consideration, and it doesn't make any difference whether the person you're talking to is a son of John D. Rockefeller or someone still owing $20,000 in loans from his student days.

Speaking for myself, and I think I generalize for most of the people who've done this job, you look at every person. The first person you look at you think may be suited for such-and-such kind of a job, and the next one might be totally different. One who's going to be a trial lawyer, for example, has got to have certain attributes that someone who is going to do trusts and estates, let's say, doesn't necessarily have to have. We've never been a specialist firm; at least in my time with it, we've covered the whole spectrum of the civil law -- not criminal law -- except domestic relations matters, and we've never undertaken those. If our clients need help in that field we usually refer them out to lawyers who are specialized in that field, and we don't do criminal law except insofar as it may be involved in antitrust matters.

Hicke: Are those both deliberate decisions?

McBaine: Yes.

Hicke: And are there some specific reasons?

McBaine: Well, yes, I think so. I think a business firm, which basically we are, just does not have the kind of surroundings or the contacts that the criminal law bar does, and this is common. I mean, there is a criminal law bar, and the business law bar is really separate. There are very few firms where they cover both. I think domestic relations law is really not practiced because most of the lawyers in the firm are simply not interested in it. They don't have to do it for economic reasons, to make a living, and they find it distressing or stressful, an unpleasant occupation, and they simply don't want to do it. And, to an extent, that is true of criminal law practice as well.

Hicke: Okay, well, back to the employment situation. When did affirmative action start to play an important part in the employment policies?

McBaine: Well, I don't know, not in my day. At least we had no affirmative action plan as such.

Hicke: I think that came in actually when you were the head of the firm, in the 1970s.

McBaine: Well, yes. I remember something of the kind, but I must say that we had an affirmative action plan -- not formally and officially -- but we had an affirmative action plan in our firm in the real sense ever since the days of President [Dwight D.] Eisenhower, because I remember that President Eisenhower's attorney general, Herbert Brownell, called Mr. Sutro one day and asked if we were approached by a qualified black applicant for employment as a lawyer, would we employ him? I think it was in terms of a "him" in those days. Mr. Sutro talked to several of the more senior partners, and my recollection is that unanimously the answer was yes, and this was relayed back to Mr. Brownell. But it was quite some time before we had a black candidate for employment -- I don't remember exactly how many years.

I think one thing that was tacitly agreed to, or expressly agreed to -- I suppose it may have differed with some people -- was that since we were a service profession that depended entirely on the quality of our work, and because of the very intimate relationship between a client and a lawyer, and because of the reputation of our firm which had been built up over the many years and which we were not about to allow to be besmirched in any way, and because, as I say, all a lawyer had was his intellect and his abilities, we were not going to lessen the quality of the firm by taking people who really didn't meet our standards just for some social reason. We felt that that would be really a fraud on our clients, and as I say, damaging to a reputation that had been built up over many years. So while we made the express decision at that time as far as minority groups were concerned that yes, we were open to them, we were not going to take in some minorities simply so we could say we had some.

Hicke: That's an important point. I found an affirmative action plan, which I think probably was required or at least expected of businesses in the 1970s, and the idea of the plan was to try to hire people according to percentages of minorities in the population. But it's clear that a law firm could not undertake that kind of program.

McBaine: Well, I'm not familiar this plan offhand -- I'd have to read it to refresh my recollection -- but all I meant by what I said before is that long before this thing, we had, of our own action, developed an affirmative action plan in that we specifically and expressly made the decision that we would employ minorities if they met our standards, and when we interviewed at law schools and received candidates off the streets looking for jobs, that was part of our basic principles all this time. I don't remember that we ever had any plan where we said, "We've got ten spaces for next year and we're going to reserve those for somebody or another."

Hicke: Well, that's the point: you really can't do that when you are trying to hire the most qualified people.

McBaine: That's right. I may say we had some minority lawyers, but it took us a long, long time to get sufficient minority associates so that we could produce some minority partners in the firm, and there were two unfortunate reasons for this. One, the best ones -- I can think of several -- left us. They didn't stay with us. They came as associates and were here two or three or four years, and they went with some foundation or they went into a government job where they got an immediate promotion and more money. These were often jobs where people were affirmatively looking for minority groups for public relations reasons and gave them an enhanced salary which lost them to us. With our program of six or seven or eight years' work as an associate until you reach eligibility for partnership status, they didn't stay the course.

The other reason that we lost very promising people was pressure from their own racial groups, who in effect looked at them as

sort of Uncle Toms because they had joined an establishment law firm which was predominately white, and put pressure on them to come and do something with and for their own people. I am absolutely positive in several cases I knew intimately that they received a lot of pressure like that and eventually dropped out of the firm, either --

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McBaine: -- to do some other job or go and form a small firm of their own with an opportunity to serve their own people, their own group, to serve as clients, because we didn't have a lot of minority clients here among the major business establishments. But the progress over the years has been slow. I know it's slow, but I think when you're working with an intellectual activity and with highest possible standards, it's bound to be slow.

Hicke: What about women?

McBaine: Well, that's exactly what I was going to talk about. [both chuckle] Women had the same problem, but the women progressed much more rapidly because they didn't have the alternative of going back to their own kind. As for the other element, they didn't have as many jobs open to them where people wanted somebody for public relations reasons. There was a period, and there still is, I suppose, when people were looking for female directors of companies. We had several very able women lawyers who left us and went to work for various companies, some of them clients of ours, and became a director of the company. Several of our partners with careers much like the male lawyers in the firm have become directors of various client firms.

The law schools were turning out more and more women lawyers every year. Of course, women are not a minority group, they're a majority group. [chuckles] So you can't talk about them as minorities. The numbers in the law schools were up to where in many places 50 percent of the entering classes were women. Obviously there was really no end of qualified candidates among the women. The problem wasn't the same. I don't know -- these things changed and varied from time to time -- but I think over the past twenty years we've been one of the top firms in the country in percentages of women lawyers we've hired, and I believe now in percentage of women partners.

I know very few of the younger ones that we have now. I know all the older ones, of course, and they're superb lawyers and superb partners. They fit right into the heretofore all-male partnership.

As far as I know, there's never been any difficulty at all, and certainly during my time, I never had a complaint of any kind from any woman lawyer in the office who felt that she was being shunned or put down or something of that kind. I hadn't thought of that before, but during the seven or eight years that I was a senior partner, I never had a single complaint by any woman lawyer that she

felt she was being unfairly treated in any way. Now they may have felt that way in some instance in their own group and in their practice, but if so, they handled it the way the men did: they fought it out right in their own groups. I don't say that happened, but I'm just saying no complaint came to me. The more I think about it [chuckling] the more extraordinary I think that is, really.

Hicke: Yes indeed. Because certainly in the '70s women were not known to keep silent when they had a complaint.

McBaine: Well, we had some incidents that maybe some of them took more seriously than we did. I don't want to stir any smoldering embers, but there was one period when the younger women in the office petitioned the firm. You know we have an attorney's manual that gives all sorts of forms and instructions. The younger ladies wished to be called Jane Smith, Esquire. The old English custom is that lawyers are called Esquire in the British system, which of course was their highly classified society. Esquire was a little above just plain Mister. But unfortunately Esquire is a purely male term, historically speaking [both chuckle], and it's a bit incongruous. We felt it would cause more laughter outside the firm than it would do good inside the firm. [more chuckling] So we didn't respond to that. We tried to make them understand our point of view and it died down after a while, but that's about the only sexist problem that I can remember in my term.

Hicke: That is truly a remarkable record. Wonderful.

McBaine: I'd like to review that affirmative action plan, then maybe I'd have some more comments for it.

I know the lawyers told us we had to do this, but my feeling was that we were ahead of the game as far as women were concerned, and as far as blacks and American Indians were concerned, we were already trying our best, and that includes Spanish-surnamed Americans and Orientals. I'm not sure that we had any Orientals in the early '70s. But we have some now who are extremely bright, and we're going to have more, I'm absolutely positive. Wait until all these Southeast Asians get through law school. We're going to have plenty of them.

Hicke: They are really hard workers and extremely intelligent.

McBaine: Bright and extremely intelligent. When they learn the system and learn the law, they're going to be very effective.

Hicke: To go back to the employment of women, I'd like to ask you about hiring Toni Rembe. I believe she was the first woman to become a partner. She wasn't the first one hired, because you said there were some women lawyers during the war.

McBaine: During the war I was not with the firm. I didn't come to Pillsbury, Madison & Sutro until about the first of '47, but I understood that

the firm did, as many of the firms did, employ some women lawyers temporarily during the war years. None of them stayed after the war was over. I don't want to make it sound unfair to them, but you have to remember that by law, businesses and law firms were obliged at the end of the war to offer returning veterans their jobs back, and they had, by law, priority over any temporary help that had been hired during the course of the war; so they were hired on with that understanding. So by the time I joined the firm in '47, none of these wartime lawyers, so to speak, were left.

Hicke: I see.

McBaine: In my earlier years there were only a handful of women in law schools in the country, but it was growing and there were women graduates coming out, and capable women graduates, and it was perfectly obvious they were going to be a major factor in the profession. I was the chairman of the employment committee at that time.

I've forgotten how we made contact with Toni; I remember that her father was a doctor in Seattle -- that's my recollection, at any rate -- and why she came to San Francisco and how we got hold of her I don't remember now. But I do remember that she was the first woman we employed after the war, and she certainly was an outstanding candidate.* You can put down all the qualities you'd be looking for in an associate you'd want to hire, and she'd rate very highly in every quality you can name, including personality and agreeableness, the ability to relate to people, as well as being a first-class lawyer. Not only that, but I think she's mastered all of the skills that so-called all male schools used to teach; that is, principally the logical process. At the same time, she has not lost or dulled in any way her feminine superiority and intuition and innate wisdom.

Hicke: She sounds like one of those superwomen.

McBaine: Well, in my book she is. [light laughter] She's absolutely outstanding and she's a perfect example of why some women lawyers are really outstanding because, as I say, they have an advantage on a lot of the men. Intuition is virtually nonexistent in most males, and certainly with smart females it's a real weapon in their arsenal.

I'm perfectly frank to say that, for example, if my wife and I meet someone new, on short acquaintance I would far rather trust her judgment as to just what kind of a person that is than I would trust mine. I've learned over the years that she is a lot better at sizing people up on brief acquaintanceship and new acquaintanceship than I am.

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* Rembe was employed in 1964.

Hicke: Did you interview Toni?

McBaine: Yes, I did. I did. I wish, as I say, I could remember whether someone referred her to us; I sort of think someone did. I think when we hired Toni we did not go to the law schools recruiting people; I don't believe that had started yet. People came to the offices looking for jobs. I think somebody wrote a letter and recommended Toni to us.

Well, I was just going to say she was the start of what's proved to be a very successful, well, we don't regard it any longer as a program. I mean, we might have to put in an affirmative action program for male lawyers here pretty soon. [both laugh]

Hicke: That was actually what I was going to ask. Then did you have women coming along to be interviewed?

McBaine: Oh, sure. They followed along. Oh, yes. We employed quite a lot of them and they've done very, very well. Nobody, I'm sure, has ever made any study or comparison between female lawyers and male lawyers; at least I don't believe we ever have. I certainly never did. In approaching this thing, we knew the percentage of females in the classes was rising every year, and therefore we got more applicants. When we interviewed them, it was a matter of luck. How many really outstanding people come to be interviewed, and how many duds come to be interviewed or do we get when we go to law school to interview them, either way?

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McBaine: With more female lawyers coming out of the law schools, you just automatically get more female hires. I think that's all there is to it, as far as this firm is concerned. I know that I've seen some figures at times. Of course the number varies: there may be a year when for new hires we take two-thirds women and one-third men, or there may be another year where we take two-thirds men and one-third women. It's sort of happenstance. But I don't think this process was scientific, or that we said, "We're going to hire this one because she's a woman." We hired her because we thought she was going to be a good lawyer, applying exactly the same criteria that we applied for the males.

I think the net result has been that we have more female lawyers in this office than any office in town, and I think percentage-wise we're way up at the top. As I say, I'm not claiming any great credit that we did this because of any devotion to any ideological idea; we simply hired them because they were good lawyers and we wanted good lawyers.

Hicke: Well, that's a better reason.

McBaine: I know! In my opinion it is. That's the way it ought to work and, as far as we're concerned, it has worked.

Hicke: We have talked some about minorities, and I don't know if you have anything to add to that or not.

McBaine: No, I don't think so. As I mentioned, we did make, over a period of years certainly, affirmative efforts to recruit minorities. Different partners in the office undoubtedly had different views. Some people had the idea that this was the thing to do, socially speaking, and therefore for that reason certain affirmative actions should be taken in connection with minorities. But there were others that were perhaps more hard-headed who simply said, and I think accurately, at any law firm for major clients and established clients, the clients would be pleased to have capable minority lawyers employed in their law firm. So there are a combination of reasons why any sensible major law firm would look for and try to find qualified minority lawyers.

All I'm saying is that it wasn't from an eleemosynary point of view this was done, or even a social point of view, a social liberal as against a social conservative, but it was done because those are the kinds of things our clients would not only object to but that they would affirmatively like, given only the criterion, as I mentioned before, that they met the same grade everybody else met, had the same qualifications that our other lawyers met.

Of course, there's just no comparison between the success of women and the success of the minorities. Now we get women minorities, but the idea of women in the field of law has been so pervasive that it doesn't seem to me anybody really has to bother about it much. Minorities is a difficult question and a different question. For one thing, as I mentioned to you before, there are all sorts of "pulls" on the better minority students who come out of the law schools, pulls to other things rather than to a firm such as this. We lost a lot of people that we would like to have had because they thought other opportunities were more attractive. Unquestionably, the same thing is going to happen over the period of the years. We're going to see these people in the law, and as long as they are in the law and want to practice the kind of law we practice, well, they're going to be here.

I think, for example, right now today, possibly the best mind, the quickest mind, and at the same time the most mature and the most deep mind of any young associate, and I mean in the first two-three years now, that I've have ever worked with in PM&S is a young minority lawyer in the firm who's still here, but that I worked with for several weeks a few years ago. He's just absolutely outstanding, a brillant mind. They're going to prevail, no question about it.

Hicke: And carry on the traditions of PM&S.

McBaine: That's right. I hope so. He's certainly going to be trained that way.

The Library Committee

Hicke: I wonder if you would elaborate on the work of the library committee?

McBaine: Well, to show you how far back in the firm I go, when I went to work for Pillsbury, Madison & Sutro, we had a large library, but we had no official or trained librarian. There was a girl who, I think, came from the stenographic pool who had a desk in one corner of the library and was supposed be in charge of the library, but she had other duties as well. As I mentioned briefly before, one time one of the lawyers came into the library looking for some up-to-date information about a matter of tax law, or some field of law for which there is a loose-leaf service where supplemental pages come in every week or on a regular schedule and are filed in these reference books.

He went to the loose-leaf volume on the shelf, and looked for it and couldn't find anything, and then suddenly looked behind her desk, and there were stacked, unopened, what proved to be three or four month's accumulation of pocket parts [chuckles], or these loose-leaf services that she'd not only not filed but hadn't even opened as yet. Well, that created a bit of a crisis and led to the creation of the library committee, or if it had been created previously, it led to the activation of it.

The net result was we hired a professional librarian, but she had no staff; I think she was alone in the library at that time. However, that was the beginning of our modern library. I'm not sure whether my memory is correct or not, but I can't recall a chairman of the library committee preceding myself.

Hicke: Do you know about what time period the librarian was hired?

McBaine: No, but it could be identified if necessary. It was in the old library on the 19th floor of the 225 Bush building. I don't know if it's been mentioned in anyone's interview yet, but that space on the nineteenth floor, in which the entire firm was originally housed when it moved into 225 Bush Street, was expressly designed for PM&S. The executive floor of the Standard Oil Company was on the 18th floor and the floor above that, the 19th floor, was especially assigned to PM&S. The space, as I say, was designed with lawyers' offices, a business office, and the library, which was really the file room. Whether there was a messenger room I don't remember, and there was probably a duplicating room, but those were the basic areas of the law firm at that time.

Hicke: Well, just a digression here: was there much going upstairs and downstairs? It was very easy access between PM&S and Socal.

McBaine: Oh, yes. Yes, there was a great deal of back and forth traffic. Over the years, and especially during my time, as the firm grew it

got so that every year or two we would have to ask Standard for more space. They were always very good to us. We leased our space from the company, which of course owns the building, and we were their prime tenant, but they had other tenants in the early days as well as ourselves. The building wasn't completely full, but then all the other tenants were eliminated and we were the only ones left.

We kept pressing them for space, so for a long time we thought it would be a good idea if we got some space elsewhere. The company did not want the lawyers who were servicing its account to move away, because then when they asked to see somebody or needed help of some kind or needed advice, there would obviously be a delay and it would be not nearly as efficient as it was having the lawyers right on the floor next to the executive floor. We investigated several possiblities of acquiring an equity interest in a building, but it had to be in the same block and right next door to 225 Bush, where we could have a bridge across an intervening courtyard or something of that kind. We tried for several years to find an arrangement like that, but were unable to put one together that we thought was reasonable economically for us.

We just kept growing and we were pushing at the seams at 225 Bush, but the chief executive officers of Socal at that time did not want us to move out of the building without, as I say, that immediate access. Later on, with new and different chief executive officers, they changed their point of view and, in effect, consented to the firm's taking space in other buildings as long as the lawyers that were servicing their account remained easily accessible to them. It was at that time that we took additional space in the Russ Building, where we have several floors, as you know, and to the space in the Adam Grant Building, where I am today.

But to go back to the library committee, and this is part of the story of all this growth, we soon outgrew the facilities of the 19th floor library; they simply weren't big enough. Consequently, we moved down to the 4th floor at 225 Bush and set aside the west wing of the 4th floor, had the space remodeled, and created a library there with walnut paneling, which was, I thought, quite beautiful and a very good library.

I was the head of the library committee at that time and became the chairman of the ad hoc committee to get the new library constructed. It was a very interesting job which really I enjoyed very much. I learned more about libraries than I'd ever known before. [both chuckle]

Hicke: Did you have anything to do with determining how the books were selected?

McBaine: Oh, yes. That went on constantly. That was a matter of filtering requests from the lawyers in the office. The standard basics were the reports of the decided cases, and of course there are many volumes of those, and we had all of the federal courts and many, if not all, of the state courts as well.

In addition to that, we have the specialized reporting services, the kind I referred to where you have a loose-leaf service and the supplemental parts come in periodically and have to be filed in volume, and those things plus other current materials of that kind were ordered really on the request of lawyers. If the lawyers had a need for something, they made a request to the library committee. The library committee would approve it and the librarian would then arrange to purchase it. So, as I say, the library reflects the requirements and requests of the practicing lawyers. That's basically how it ran.

Now I don't know how many volumes we have today. The librarian could tell you, but it's probably 50 to 60 thousand volumes. One has to keep in mind that, even with ourselves the largest firm in San Francisco and having, as far as I know, the largest library, we still rely on the county law library to have things that we don't have. For example, law reviews by out-of-state law schools. We have the Harvard Law Review and the Columbia Law Review and the Yale Law Review and so forth, but we don't have law reviews of all of the law schools, and the county library has a lot more than we have.

But as I was saying, we outgrew the space on the fourth floor as well. It wasn't so much that we outgrew space for the traditional text case reports and loose-leaf services, plus the current materials. Being retired for ten years now, I haven't kept up with the figures, but it was certainly my impression the times I went there that there were plenty of work stations for lawyers who were doing research. What we really ran out of was room for the library staff. That began to be a problem, and we started expanding down the front hallway on the fourth floor.

It really was pressure there that led us to move again. Now we have computerized research tools, Lexis and Westlaw. When I was active on the library committee, we had Lexis only, just the one service. A lot of things of that kind in the modern library took additional room, so about a year or two ago, we moved again to the twentieth floor in 225 Bush and took over the space of the old Standard Oil Company cafeteria, which the company had decided to close. They therefore were looking for something to do with the space and agreed to lease it to us.

I should say that my term as chairman of the library committee ended when I became the senior partner. It may have occurred before; my memory is not precise on that point.

Hicke: Were there other responsibilities of the library committee besides the books and the space?

McBaine: One of the things we were always struggling with was how to make use of the intellectual output of all the lawyers in the office working on scores of different questions at any given time. I'm not sure we've satisfactorily solved that problem yet, but at least we made an attempt at it.

For example, if some lawyer was assigned a research project on a given point of law, say the law of contracts, he might spend a week in the library researching it, write up a definitive memorandum, and give it to the lawyers he was working with. It might be that a couple of months later another lawyer somewhere else in the office would get a similar problem with a similar question of law. Not knowing that the first lawyer had just done all this work, he'd go in and do another week's work on his part. So we tried to set up a legal memoranda file and index it so that it would be useful to the lawyers that follow. It's a very difficult thing to do, and I'm not sure, as I say, that it's adequately done yet; you'd have to ask the current library committee their opinion on that. I don't think we ever got it adequately done, certainly not perfectly done, during my time. [chuckles]

That type of thing engaged the attention of the library committee constantly to see if we couldn't make it more efficent.

Another thing was that we were always trying to find ways in administering a law office to have the work done by the least expensive personnel. If research could be done by library assistants rather than by an associate, a young associate or older associate, or a younger partner, obviously his time on an hourly basis would be worth more than the time of a librarian assistant, who's probably a student or a recent graduate, or perhaps studying a postgraduate course of some kind. We tried constantly to have research that could be done by library staff done by them. Besides, the efficiency of that is far greater because they are dealing with that all the time, whereas the lawyers aren't.

A young lawyer might go a couple of years without having to know anything in that particular field, and then all of a sudden he gets pressed. Well, then he has to know where the source materials are and who the source authorities are and so on. The library staff knows that. It used to be that a lawyer simply went into the library and did the work on his own. The first few times he might ask the librarian where the books were, but twenty years ago he didn't ask the librarian for much more than to tell him where the books were.

Now the librarian gets all sorts of requests from the lawyers for location of materials, reference materials, special things they want. They may even tell the librarian the problem that they're trying to research, and the librarian will tell them what source materials there are, which the lawyer won't know. That is a constantly expanding demand on the librarian's time. So we have now a head librarian and quite a few -- I don't know just exactly how many -- assistants that help lawyers with that kind of thing, which increases the efficiency of the office as a whole and lowers our cost that we have to bill to our clients to cover.

The library committee was an interesting job, at least to my mind it was. I suppose some people wouldn't like it, but I think it

was and is an interesting job and it really goes to the heart of the process in the firm.

Hicke: Who else was on the committee with you, do you recall?

McBaine: Well, there were different people on it at different times and I have difficulty recalling any given time. No, I don't really recall now. As I say, I can't identify what years I was on it and what year I got off.

Hicke: I'm sure it occupied a fair amount of your time, but then you were doing so many other things all the time that I don't know how you really kept track.

McBaine: All these things are very difficult if you're not up-to-date on all of them, but if you're up-to-date on them, you're really on top of them, then it's not too difficult to meet the next day's problems or choices. If you think of it as starting from scratch, yes, the answer is it's an awful lot of work. But if you're really on top of it, it's not.

Hicke: That certainly was a magnificent project to be on.

McBaine: It was, and it was a great satisfaction. I know Allan Littman is the chairman of the library committee now, or at least he was a couple of years ago, and it really was principally his project to get the new library on the twentieth floor built, which I'm sure you've seen and is a perfectly beautiful library, and quite a layout; it's much more modern than our old library.

The old library was more traditional, as I say, with paneled walnut shelving, which incidentally we were able to afford because in working on the plans for the library, I soon found we couldn't -- I didn't think we should -- afford solid walnut lumber to build all these things, but then we we discovered veneer. The whole library is done in a walnut veneer about an eighth of an inch thick. Of course, when it's put on right, you don't know that. So it looked like a very opulent library to me, but it was within affordable limits. [chuckles]

Hicke: Well, it looks elegant.

Growth of the Firm in the 1970s

Hicke: Maybe we can just go to the next topic here. [looking at outline] During the '70s there was enormous growth of the firm. I don't know whether you want to comment on it in general, or if you can tell me a little bit about whether that was planned for and how it was planned for.

McBaine: Well, yes, I can comment on it. As I think I mentioned to you, Mr. Madison receives the credit, in the minds of most people in the firm, for thinking long-range after the end of World War II and realizing that growth in law firms was inevitable. Some partners, even at that time, were loath to see it, but others welcomed it, and I expect probably the majority felt that it was inevitable and they'd take whatever came. Basically, that really went on from 1945 to the present day. We had no policy setting any maximum number of attorneys that the firm would have of partners or attorneys, either one.

The way we did it while I was active was this: each year we would survey each of the practice groups within the firm, that is, those people doing probate and estates, those people doing tax law, those people doing labor law, litigation groups -- there are a number of those litigation groups -- informal groupings and informal structuring really, but with an older partner generally recognized as the head of the group. We would survey each group head and ask him if he thought -- he or she; heads of the groups at that time were "he's" -- he needed any additional associate lawyers for next year. If he wrote down no, or five, or ten, or whatever it was, we'd add them all up and give those to the employment committee.

The employment committee then, when they interviewed in the spring -- they interviewed in the fall or the early spring -- for the people to graduate in May in June of the coming year, they tried to produce the number of candidates that this aggregating procedure had led to by the survey of the firm, and that went on every year.

Hicke: Isn't that kind of tricky, to plan a year ahead for the number of people you need?

McBaine: Yes, but you see, what's made it easy and what is really astonishing is that every year we have grown. You see, if you had some years where one year you grew and the next year you fell back, then you'd be very leery about projecting more growth in the third year. If you'd grown in the first year but declined in the second year, then you might well not employ anybody the third year.

The fact of the matter was, we grew, and I mean grew in the amount of work we had, grew in the gross billings that we had, hours expended in clients' time every year. I don't believe there's been a year since the end of World War II where we haven't had growth. How long that'll go on, nobody knows. As far as I know, the only really conscious decision that's ever been made on the subject was when Mr. Madison persuaded his co-partners, the senior partners at that time, that there would not be any artificial limitation put on the growth.

Hicke: During this time, particularly in the '70s, you continued to grow every year, but there was a change in the way many corporations handled their legal work; there was a great switch to in-house counsels. I believe I'm correct that Bank of California and

International Harvester both began doing a lot more work in-house, and I think PT&T also. And yet, PM&S continued to grow, although these were major clients. Can you comment on that?

McBaine: There are those in the firm who looked on what you're talking about as a mixed blessing. As I told you, Standard never had a legal department of its own as such, so we were accustomed to having a major client who didn't have its own legal department, but we also had work done for many clients -- national clients and local clients -- who did have their own legal departments.

Some of the major firms in New York really don't want a client that doesn't have its own legal department, because the legal department, generally speaking, does matters that are usual and normal to that particular business, not necessarily purely repetitive but that come within their area of experience and expertise. And really, that's not the kind of business that a major law firm with specialists in the different fields with ten, twenty, thirty years' experience is best suited to handle. And so the New York firms say, "Well, that's fine, you do all the in-house business that you want to but when you get into real trouble, you come to us."

When the client is in real trouble is when you're most assured of getting paid, so that I, for one, having had some experience in New York -- maybe that affected my attitude -- was not particularly concerned about either the Bank of California or the telephone company. For example, we still do work for the telephone company. I don't know what our billings run, but I wouldn't be a bit surprised if they ran as much as our total billings did before they put their legal department in. That's because of the growth in business and the inflation in the dollar in that length of time, but I don't think that made any serious difference. Now there may have been some years when the firm's income didn't grow appreciably, I don't know about that, but probably the work did.

Hicke: Doesn't it make it somewhat more chancy, though, if you wait for the major crises to come along? It's less steady in your expectations, probably. Or did you have so many firms coming to ask for help that you turned many away?

McBaine: Yes, we certainly did turn many away. One of our major problems is to be sure that we don't get into a situation where we have a conflict of interest. You see, I don't know if you've asked anybody, or I don't know whether this is privileged information or not -- what the firm's current management would say about it -- but we have several thousand clients on our client list and in our client files.

Hicke: I've seen a computer printout -- it's huge.

McBaine: Yes, it's huge. So when business doesn't come in from one quarter, it comes in from another. There isn't any great peak and valley, normally, in it, if you've got a client base of that size. If you had a smaller firm with four or five attorneys, sure, you can get some terrific upheavals.

But the size and variety and complexity of our clients requires care regarding conflict of interest. For instance, when we were general counsel for the Bank of California, we didn't represent any other major bank here, although the Bank of America had asked us to numerous times. When they created their own legal department -- I'm not familiar precisely with the Bank of California account, but it may well be they were giving some of their business to other lawyers -- we felt free to take some Bank of America matters which we never had taken before. So one of the very important things that you have to do when you reach any size like this is to make very sure that you don't get into a fix where you're representing a client, for example, whose interests are in direct opposition to another one of your long-standing clients, even though at that moment you might not be actively engaged in anything for that long-standing client.

If some company has been coming to you with their major legal problems -- let's say they have an in-house legal department, but they've been coming to you with their major legal problems for twenty years -- and then some new company has suddenly blossomed and now is doing a tremendous business -- worth hundreds of millions, and it comes to you and wants you to bring a suit against the first corporation, you say, "I'm sorry we can't do it." What with the complications of various subsidiaries with different names, it's a terrific job to be able to keep track of all those things.

Hicke: How did you keep track of it?

McBaine: Well, if we didn't have a computer it would be extremely difficult, I imagine, to do it. But the computer makes it easier. A check has to be made when every piece of business comes into the office, and particularly any new piece of business or for a new client, a conflict of interest check has to be made before we can answer either "Yes, we'll do it," or "No."

Computers

Hicke: Speaking of the computer, was it while you were senior partner that the firm got a computer first? Or were you involved in that at all?

McBaine: Well, our first use of computers was when we were representing IBM.

Hicke: Yes, for the lawsuit backup.

McBaine: Yes. Then the first information for a client other than IBM, where we sort of had to do it on our own, was for the antitrust cases against Standard Oil of California. My memory is not all that accurate on exactly when the use of computers in our office procedure -- what we call the business office -- began, but my recollection is that we started out with IBM. I don't think that I had anything to

do with the selection of an IBM computer. I think that was handled by what we called in those days the managing partner. This was before we had a professional business manager for the firm.

Hicke: This was Mr. [Bud] Dapello?

McBaine: Mr. Dapello was the office manager. But the partner who was the boss of the office manager and the business staff was called the managing partner, as distinguished from the senior partner, or head of the firm. This was general in most major law firms. He was usually a fairly senior partner who got the job for whatever reason -- whether he liked the work, or was made available because somebody had to do it, because he often spent half his time on doing that rather than practicing law. Once you reach a certain size, it obviously doesn't make much sense to have one of your top partners, drawing one of the major participations out of the firm, supervising the office manager. So we don't do it anymore, but then we did. I think the managing partner and Mr. Dapello were the ones who probably made this decision.

It gradually grew. We put it in originally to do the payroll. You could really talk to the people in the computer room. But then I think the second thing they did was to put on the computer the time sheets. Each lawyer in the firm is required -- and should at the end of each day -- fill out a time sheet which records how he spent his time during the day, and for what clients. A record is kept of all that, so that when periodically -- every month for some clients, every three months for some clients -- time comes to bill those clients, the billing partner can review the time spent on a printout. It shows just how much time has been spent by each lawyer during the billing period, whatever it is -- the past week, past month, past three months -- on what matters. It was obviously a great step forward to be able to keep that much data in there. You can imagine doing that for 450 lawyers. So it gradually extended to covering everything done in the office except for the calendar desk.

We called it the calendar desk, because by that time there were at least two or three people on that job. They are the people who keep a record of all of the dates when various legal procedures have to be performed. To give you the simplest possible example: a complaint is served on Mr. X. Mr. X comes to us and says, "I've been sued, please represent me." We would say we'd be happy to.

So the first thing you do is you create a file and enter that complaint in the file. You note the date on it and the date it was served. Let's say you have thirty days in which to plead to that complaint, answer it or make some motion; otherwise, if you don't do anything at all, the plaintiff will take a default judgment against your client Mr. X. So someplace in the office, you've got to put down on there thirty days from now, "Answer due to complaint against Mr. X," by whatever lawyer it is that's handling that -- say Mr. Smith.

Then at a certain time, say a week before that date, the calendar office sends out a notice to Mr. Smith on pink paper [chuckles] -- pink or reddish paper so it won't get lost -- in which this case is listed for Mr. Smith. There is a tabulation of names up at the top and you look for your name on there. For Mr. McBaine it says seven and eight, let's say. Then you look down here on these listed matters, and seven says, "Answer the complaint against Mr. X by such-and-such a date." Here again you can imagine what that is now with the size of the groups we have. I think about half the lawyers in the firm are litigators nowadays, so that means 200 or something-odd litigators. I believe some law firms do have that on a computer, but at least in my day, and this includes me, we just didn't quite have the nerve to put that on a computer.

Hicke: You didn't trust the computer or the person who was doing the work on the computer?

McBaine: I didn't trust the computer. I mean, the consequences of a breakdown in the computer were so catastrophic that we just didn't dare do it. Whether the firm does it now or not, I don't know, because there are now supposedly foolproof computers. Tandem Computer has a computer system where they have three or four computers in tandem. Supposedly, if the first one breaks down, the second one immediately takes over and you don't lose your databank and you don't lose your access to your data. But whether those who succeeded me have had the courage to put the calendar on a computer or not, I don't know. [both chuckle]

I believe that we were one of the first firms in the country to go to computerizing our business office operations. Milbank, Tweed in New York was a leader in New York in this field, and my recollection is that Francis Marshall was interested in this at the time and also was involved in this.

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McBaine: I would say we are in sort of midstream now. We have not, so far as I know, put all our files into a computer database. I don't know how many volumes we have and how you define a volume exactly, but the number of pages in our files must be astronomical, and whether it would be economically worthwhile to put all those into a computer database, I really don't know. I must say I'm highly skeptical of it. But I suppose it could be done beginning with current material, and ultimately then the noncomputerized material would get so out of date that it wouldn't make any difference. I don't know what the firm has done about that.

We didn't tackle that problem, nor did we tackle the problem of individual computer consoles or terminals on each attorney's desk, which is done in some firms so that they have access to the files. Instead of asking their secretary or calling up the file room themselves for some reason or another, they punch it up on their own terminal. The economics of this thing is unknown to me. But it's a

little like the research for legal materials when you're doing work. Has anyone talked to you about that? This is part of the revolution that's gone on in the practice of the law, and we at least were modern enough to do this.

You see, our legal system is supposedly based on the principle of stare decisis, that is, that courts are supposed to decide cases on the basis of previous decisions, the way they have been decided particularly by superior courts higher in the hierarchy than the deciding court. That means that you have to keep a record of all previous decisions. This goes back really to pre-Constitution days.

We have a library of -- I don't know what it's up to now, probably 50-odd thousand volumes. In order to find what's in that library, many years ago commercial publishers started publishing excerpts from each case by an editorial staff of lawyers employed to do this. Each point decided in a given case was put down in a brief sentence or two and those points were then congregated together. Let's say you have a case that decided a point in contract law. You'd put this under Contracts and then you'd put it under a subheading. There might be a question of whether you did have a contract, such as the recent Texaco-Pennzoil imbroglio that you may have read about in the papers. Was there a contract between the two parties? Was there, let's say, an offer and acceptance to constitute a contract? Well, you'd put that subheading under contracts.

Up until the advent of computers, students who went to law school were taught in the very first year, as soon as they got to law school, how to use the American Digest System so as to get into all these case reports which are put out by each state court and by the federal courts, the federal district courts in each district, the courts of appeals, and the Supreme Court of the United States. So you have all these various series of cases, thousands and thousands of volumes, and that's the way you look up the law. You go into the American Digest System and you look through their periodic reports.

Hicke: It's indexed?

McBaine: Yes, it's all indexed by subject. Criminal law in one volume, constitutional law in one volume, contracts in one volume, property law in one volume, tax law in one volume, and so forth. Now when the computers came in, some commercial companies, again, undertook to take all of the decisions and put them into a computer database as they came out. Then they went back, and I don't think anyone has done it for all the state reports and so forth, but just to make it simple, let's say they went back and took all the Supreme Court of the United States cases and they put those into the computer database _in haec verba_, I mean, word-for-word.

Now computers can't think, so you cannot ask the computer to give all the cases on a given subject. All the computer can do is to pull out for you what's in it and that means the exact words.

There are two commercial systems, Lexis and Westlaw, which came along later. What you do is, you have to think of phrases and words that the court must use in deciding a case on the subject that you have before you, that you want to research the law on.

Hicke: So it's done by key words.

McBaine: It's done by key words or key phrases. The first thing you have to do is you -- there's an art in this, really -- pick out a key phrase or a key word. In our library here there are several terminals, and the base computer, I think, is in New Jersey; I don't know where it is, but it doesn't make any difference because it's hooked up by telephone wire. You subscribe to this service and pay a charge for it, a base charge, I suppose for rental, and then a charge based on usage. You turn this thing on. You say, "How many cases are there in the Supreme Court of the United States cases in which the following phrase is used and or -- either one -- the following words are used?" Just say one phrase.

Hicke: What might be a typical phrase?

McBaine: Well, let's say you're representing a passenger who got on the commute train down here and who started to commute home. The train hit a rough section of track, and somebody had put his suitcase in the baggage rack up above you and it fell off and hit him in the head and damaged his spine, let's say. Well, the very first thing you want to look at is "railroad." You can start with that, and then you can say, "overhead rack," or "neck injury." You can start with a very broad classification and you say to the computer, "How many cases are there in the database that contain these words?" If you just say "railroad," obviously they're going to come back and tell you thousands, so that doesn't do you any good. You've got to narrow it down some more. You keep narrowing it down by thinking of phrases that the court must have used in an opinion in deciding a case like yours until it comes up with whatever number you're willing to look at, twenty-five or ten or whatnot.

Hicke: So you would say "railroad" and "neck injury" and "spine damage"?

McBaine: That's right, and maybe, "rough track." Then it comes up and it says, ten. Then you ask for the names of the cases, and the computer will spell out the names of the cases. Then you punch a button and it prints out the names of the cases, and you've got a sheet with ten cases on it, you see. I suppose there are some people who don't have basic libraries like we have, so those cases are in the computer, as I say <u>in haec verba</u>, word-for-word, and you can get the whole opinion printed out if you want to. It's expensive and takes some time, and we don't do that. You take this list of cases and then you go to the library and pull out the books where these cases are -- there's a volume number and a page number and a title number for each case, you see -- and then you read them in the reported cases.

When Lexis was first put in the office, each partner was given an introductory session in how to use it. As you know, one of the problems with computers and lots of people is that the computers are not "user friendly" [both chuckle], that's the terminology that's used. It's like the first time you're asked to dictate into a dictating machine, you simply [more chuckling] freeze up. I know if I have something I want researched, I write out the phrases I want and give it to the librarians. They're familiar with the system, they do it all day long, and they know how to start the machine and get it on line.

Hicke: Much more efficient.

McBaine: It's much more efficient that way. The younger lawyers I'm sure are much more adept at this than we older lawyers. I don't know what they do in law school now, but I think they must train law students in how to use these in law schools now, so that lawyers coming into the office now probably are already knowledgeable about computers. It's not very difficult but it requires a totally different thinking process, you see. Instead of thinking of subjects, like if you were talking about the case I gave you, the accident to the passenger on the railroad car, you'd think immediately of torts, which is a personal injury, you see -- a compensable personal injury. But the subject has nothing to do with the Lexis method, it's just the words and phrases.

Hicke: That's very interesting. Well, with the number of cases expanding so much every year, obviously it would be impossible to look up all of them.

McBaine: That's right, and as this thing goes on, in another fifty years, with the number of cases that are decided each year -- I don't know what they are, but they're in the thousands -- the American Digest System is going to become enormously unwieldy and yet the computer will be no more unwieldy than it is right now. It does all that work, sorts it out for you.

Hicke: Makes you wonder how we would have ever made it without the computer.

McBaine: Well, that's what the young ones will think, probably. [both laugh]. But they lose something, mind you, because you don't have that constant refresher of the various subdivisions of the law that you had by using the American Digest System. It requires you to think in terms of subjects: now what kind of law is it that would cover this particular thing I'm talking about?

Hicke: Will that have an impact on the law?

McBaine: I don't know. I don't know whether it's of any importance or not.

Hicke: But it is a different structural way of thinking.

McBaine: Yes. A mental block occurs to older lawyers when they first meet this requirement for thinking of terms in words or phrases instead of in concepts, in subject. So I imagine the younger lawyers are going to be much more facile than the older ones are in using this phrase and word technique to find what they want.

Well, what's next?

Financial and Business Procedures

Hicke: We're still talking about growth and change here, and one of the other changes that took place in the 1970s was that I think some clients began to ask for more specific breakdowns of charges. Did that come about during your term?

McBaine: I wasn't conscious of that in the way that you put it. It's always been true, was in my day always true, that some clients asked for more of a breakdown than others did. Whether that practice grew so our clients were asking more for breakdowns, I don't really know. Let's put it this way: I don't really know if we've ever sued a client for nonpayment of a bill. I can't remember that we ever did in the time when I was active. But obviously we would want to be able to do so if necessary, if for some reason we felt we'd done some serious work and the client simply said, "I'm not going to pay you," for some reason.

If we did bring a suit, we would obviously have to demonstrate the work we'd done. And that means that we've got to have these records that I was describing to you, these so-called time sheets, which detail the amount of time spent on what, with some description of the work on which the time was spent. What was the work? Was it drawing up a complaint, was it preparing an answer to the complaint, was it taking a deposition, was it spent in trial in a courtroom? So we have always kept track of work, and certainly in great detail since the advent of these modern time sheets, and have been prepared to demonstrate that. So if a client asks for it, we have the material.

Now whether more clients have asked for it or not, I don't really know. Firms differ in their practices on that and it has its pros and cons. If some client thinks that the firm is sort of padding its bills in the sense of maybe spending an unreasonable amount of time on research or something of the kind, obviously you have to be prepared to justify what you've done. Basically, it's one of the virtues, one of the advantages of practicing in a firm like this. You have to use your judgment, but most of our clients who employ us for matters of any importance, employ us on the implicit or express understanding that we're really going to research the law as far as research is possible -- that we're going to leave no stone unturned. People who want a cut-rate job don't hire us. That's the kind of service we offer and that's the kind of service our clients expect.

Our theory would be, or certainly was in my day, that we would not expect any PM&S lawyer to go into court and file a brief, let's say, and argue a given point and have the opponent come up with some case that had any bearing on the matter at bar that we didn't know about and hadn't dealt with in our briefs. Now, if you've got a small practitioner, an individual practitioner, dealing with personal matters, obviously they can't afford and their client can't afford to do anything like that depth of work.

VI OVERVIEW OF PM&S

Characteristics of the Firm

Hicke: Well, you may have contributed part of the answer to my next question, which is: why is it that PM&S has been so successful? Actually, you've contributed a lot of answers all the way along [both chuckle], so maybe you could just sort of sum up in an overview.

McBaine: Of course, there are thousands of law firms in this country, so you're going to find all kinds of law firms. I think we have been successful and I think we deserve to be successful, so if I discuss why, in a sense I am rather saying praise for what we've done, the way we've proceeded. The American Lawyer and such current magazines about law firms and lawyers -- I don't know what the general public thinks of them or whether only lawyers read them, but I'm not quite sure that they are good for the profession. Maybe that's an old fogie talking, but that's the way I feel about it.

For example, one of the phrases that they use and the attention they focus is on so-called "rainmakers." Well, rainmakers are lawyers found anyplace. They can be in small towns, such as some of the great criminal lawyers that we hear about, that are hired all over the country, and so on. But they are people who attract clients, people who attract notoriety. I don't mean that in a derogatory sense, but their names do become widely known and they attract business. Sometimes they don't properly staff themselves so as to take care of the business, especially as it grows. I think maybe one of the basic characteristics of this firm and many others that I can think of is that we have never featured rainmakers.

Some firms take the attitude that the fellow who brings in the business is entitled to all of the fees earned on the work for that client, no matter who does the work, or he's entitled to a cut of it. He's the important man because he brought in the business. I don't think we have ever adopted that point of view. I think I may have mentioned to you earlier that you may have the best appellate lawyer, the best brain, the best writer and the most logical and the most persuasive writer who has no personality at all, who couldn't

attract anybody to do anything. We know that he's a superb lawyer, and it's always been our policy that he's entitled to be treated like a superb lawyer and entitled to be compensated like a superb lawyer, even if he didn't bring in any business.

Now you can't have everybody in the firm be a back office lawyer, so to speak, again in no derogatory sense, not getting out to the public. He doesn't join all the organizations and make speeches on politics, he's just a damn good lawyer who does the work. We have always balanced all those factors together. We don't have any arithmetic formula for doing it; it's a matter of common sense and balance. But too many firms, in my opinion, have internal difficulties because they don't really make a fair distribution of the monetary results of their work.

Hicke: That's got to be a crucial decision.

McBaine: That's right, and you can't have a firm where every man is working for himself and he says, "I don't give a damn about my partners, I don't give a damn about the firm," and obviously the fellow who is capable of attracting business is more able to say that than the other type, who may say, "The hell with it, these guys don't like me. I'll go someplace and start my own firm and hire another bunch of lawyers, and we'll run my firm my way." Despite all of the emphasis in The American Lawyer on dollars and how much gross income firms have and how much each partner gets, we've managed to maintain the idea that this is a profession and it really is a partnership.

There's a spirit of or a recognition of some sort of gratitude owing to the firm that was created before most people came here. They didn't create this firm. When you come to work for Pillsbury, Madison & Sutro, the next day you go out on the street and people are going to receive you with more deference, if you will, or pay more attention to you than they would the day before. It takes a very large ego to say that I'm more important than all of that. We've managed to instill that idea of partnership, I think, in people.

I can't speak for other firms. You read about the firms that do not have that institutional sense, if I can use that term, where they simply think, "Well, I'm here today, but if I don't like it, I can go someplace else; if I've got so many clients, I can go anyplace." I hope that institutional sense continues. It's been mutually beneficial over many years. You asked me about interviewing for new associates. I think this professional attitute is -- consciously or unconsciously -- one of the things that our interviewers look for. Somebody who is really out for a fast buck, if that's his major objective, is not the kind we're looking for.

We also are not looking for the kind who merely wants to come to us and get the experience of working for a first-class firm for a couple of years and then leave and go someplace else. Now we can't avoid that, because they don't tell us that, even though that's what

they have in mind, but if we get that impression, we wouldn't employ somebody. We don't want somebody for two years. He's just using us as a post-graduate course, and then leaving.

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McBaine: We've done various things to try to promote this feeling of camaraderie, this multiple identity. For my own part, one of the things that I was responsible for was based on an experience I had as a former Rhodes scholar. When I came back to San Francisco, there was an older, former Rhodes scholar, a senior partner in another law firm in this city, as a matter of fact, who gave an annual dinner to other Oxonians in San Francisco each year at the Bohemian Club. He gave it in one of the big dining rooms with portraits of former members of the club and so forth. It's a very elegant room, and he had a marvelous dinner with beautiful wines and I think probably port and after-dinner liqueurs. It was a black tie dinner. While it's commonplace in England, let's say, it was the kind of thing that was not too common in this area, at any rate, and yet it created an enormous feeling of civilization, if you will, of what we were there about.

When I became the senior partner, I decided that we ought to do the same thing for the partners in this firm, and so we did. I instituted an annual dinner of the partners and everybody had to dress up -- black tie -- and then we did the same thing. We had some sherry to start with, cocktails too, I'm sure. We had some beautiful wines, we had some fine brandies afterwards, or some old port. I expect some of our partners had never had port in their lives, and it is delicious [chuckles], if you're familiar with good port.

Anyway, I was trying to instill the same sort of feeling that these previous dinners had instilled in me: namely, that we were the partners in a firm that would hold an event like this. As I say, it was a highly civilized occasion and representative of an organization of achievement. I don't know what the attitude of most of the partners was. Some of them liked it enormously, and I think that over the years it did create something that I was trying to create. I hope it did. It's still going on.

Then we added to that, when under our advisory partnership plan, the first advisory partners came up for retirement, so to speak. Then the dinner was given in honor of the partners who had retired at the first of that year. Mr. Madison, Mr. Prince, Mr. Bennett, I believe had all died before this took place. I think Mr. Sutro was probably the first one.

In any case, each year we honor the partners who have just become advisory partners, and each one is asked to give a little talk. They differ, but basically all of them are reminiscences. Some are humorous and some are more serious; some are mixed. In any case, I hoped it helped to create the kind of firm I've been talking

about, where you're not sitting there thinking how you can cut the throat of the guy next to you so you can get a bigger slice out of the firm. I think it's been quite successful. That's why I asked you if you'd read the talk that I gave when I retired.

Hicke: I'd really like to see it, if you could find it for me.

McBaine: I'll give it to you and you can read it.*

Hicke: Yes, I'd like to very much. Mr. [Charles] Prael told me about the talk that he gave, but he didn't have a written copy. [chuckles] His was off the top of his head.

McBaine: Yes, that's right. Well, he was one of the wittiest and most amusing of the whole bunch. I remember it very well. Maybe because I had been the senior partner, I thought a little bit more in the terms of the kind of things you've asked me about. My talk was a little more serious than that.

Hicke: Well, that's the sort of historical tradition that is an example of what I suppose in a corporation would be called corporate culture. Every firm has its own kind of feeling, and that's what I really am asking about.

McBaine: Well, that's right. Of course, there are going to be different personalities in any organization like this, and I think that we've long since been too big to really socialize together. That is, two partners may become fast friends and they may see one another socially with their wives and exchange dinner parties, but that's never really been done by the firm as such, and we're far too big to even think of anything like that. So you have to do something to give this sense of commonality.

I think I may have mentioned earlier that we used to have picnics down at Gene Prince's place. Nobody has a ranch now where they invite everybody, and again, there'd be such a horde of people I doubt if it could be done. [both chuckle]

Hicke: You'd have to get an environmental impact report first.

McBaine: That's right. But we've never had any major trouble in the firm, which is something I hope we continue. We've had people who split off, of course, but we've never had anybody split off because of any differences within the firm.

Hicke: There are obviously ways that the people at PM&S have of working with each other that hold the partnership together. But there's also such a thing as being prepared and leaving no stone unturned,

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* Remarks of Turner H. McBaine to PM&S Partners' Dinner, Bohemian Club, March 25, 1977. See Appendix I.

which is part of the culture too.

McBaine: Yes.

Hicke: And is that passed down from the older partners?

McBaine: Oh yes, there's no doubt about it. There isn't a formal program of that kind, but of course there is the idea. I look back on my early days in the firm. You don't have to think of how it works from the top because everybody has come up from the bottom, and that's why I said to you earlier that my theory was that the management committee ought to be composed not necessarily of the people at the absolute top of the firm. But it ought to be composed of senior partners who had put in their time, who had shown they were people of this kind who believed in the principles of the culture that we have. If you take on someone who's only been made a partner a couple of years, you have no idea what he will want to do. It's like when you appoint somebody to the Supreme Court of the United States -- you may think you're appointing a conservative and he turns out to be a raving, tearing liberal when he's got a life appointment [hearty laughter from both], and vice versa. So, I think that's about all that I have to say about that.

Intel's Public Offering: An Aside

Hicke: Okay. Just incidentally, were you in on the formation of Intel at all?

McBaine: Yes.

Hicke: I wanted to ask you a little bit about that, and also something about your community activities.

McBaine: I can tell you about Intel very quickly. I don't remember whether it was Mr. [Frank] Roberts or Mr. [Bruce] Mann who spoke to me about Intel, but we've never had any firm program about investments or anything of that kind. We have often discussed -- or we did in my time -- whether the firm should seek to attract clients who were new ventures and do work for them on a noncash basis. That is, do the work and then be paid in stock which might or might not be worth anything. There was always a wide difference of opinion on that. Quite why, I don't know. It didn't cause any real difficulty in the firm, but there were enough people who were not in favor of it so that we never did it.

There are numerous stories of law firms who have had clients that blossomed into an IBM or something of that kind, and people have made a lot of money by being in at the beginning. So individually, people who were interested in that sort of thing would talk about it. You haven't talked to Mr. Roberts yet, have you?

Hicke: No.

McBaine: Well, as I say, I can't remember whether it was Roberts or Mann. I know that Bruce Mann did some work for Intel, and I'm pretty sure it was Bruce Mann who called me one day regarding a friend or friends in Intel, which was, as you know, really the first semiconductor company in Silicon Valley and were engaged in something that was absolutely nonunderstandable to anybody outside. [chuckles].

Hicke: Microchips.

McBaine: Yes, microchips and all that. The owners who started these companies got money from the venture capitalists and authorized a million shares. But they weren't making any money and they hadn't gone public yet, so they were struggling to keep the business going. They didn't have any income, no cash flow. They had to live someplace and supply the groceries to their families.

Hicke: Starting in their garage --

McBaine: Yes [both chuckle], it was almost the garage stage, not quite. So anyway, they said they wanted to raise some money and would some of us be interested in buying shares at so many dollars a share, whatever it was.

Hicke: Would the firm be interested?

McBaine: No, no. Just individuals. I don't think that the proposition was made to the firm, because previously when we had discussed this sort of thing there wasn't enough unanimity of opinion for the firm to do it. People didn't want to do it, so it sort of broke into individuals doing it.

Hicke: So he would just call on various individuals and ask them?

McBaine: That's right, and there were five or six of us, as I remember it, that put up some money. Of course, it turned out very well, and we've also been counsel for Intel for years. We still are, as far as I know. I think they have their own legal staff, general counsel; as I say, in some matters I think we've still represented them.

Hicke: PM&S represented them when they went public, is that correct?

McBaine: I can't tell you whether we represented Intel, who was the issuer, or Hambrecht & Quist, who I believe was the underwriter. Different people represent the issuer and the underwriter. Now, Hambrecht & Quist is a client of our firm's and has been since the early days. I don't know if you've talked to anybody about that.

Hicke: No, nobody has ever told me about that.

McBaine: Someday you ought to do a story about them.

Hicke: Yes. Do you have time to tell me a little bit about that?

McBaine: Well, yes. Hambrecht & Quist was started by two local young men. One of them, Quist, was the head of the small business investment company, whatever the exact name of it was, of the Bank of America. I don't know whether Bill Hambrecht had any investment background. He was a stockbroker. I'm not quite sure of his previous background. They formed this firm and really set out to be and became investment bankers for Silicon Valley. They became, in a very short time, a very few years, one of the leading investment banking firms in the country, starting from scratch, very much like some of the Silicon Valley companies.

At that time, Al Brown was our senior securities lawyer, but Bruce Mann was the next senior and also very active in getting around the community. My younger son had joined Hambrecht & Quist some years previously -- I've forgotten exactly when it was -- and is still there. I met Hambrecht through him. I didn't know him well, but I knew him because of my son Pat's employment there. I had nothing to do with attracting their business, I'm sure, but in any case, Hambrecht called me up one day and said he would like to see me. He came over to see me and said that he would like to retain Pillsbury, Madison & Sutro as counsel on some of these things: maybe it was the Intel registration statement; I don't remember that now. I, of course, referred him to our securities boys and he did retain them and still does to this day.

In the beginning and for a long time, I think we did virtually every underwriting they did. One year -- I've forgotten what year it was, sometime in the '80s -- they had more initial public offerings than any investment banking firm in the country. I'm not sure it was the biggest in volume, but it did the largest number of them. So they've been remarkably successful and we've been their attorneys ever since the very early days.

Dean Witter & Co. and Blyth & Co. -- while they haven't disappeared from the scene, they are no longer local companies. Hambrecht & Quist, and there are several others, have sort of taken their place. So the economy is dynamic. [chuckles]

Community Activities

[Interview continued: August 6, 1986]##

Hicke: The next thing I want to ask about is community activities.

McBaine: That's another difficult subject, and it has varied at times in the firm. Different people come and go, I mean who are senior in the firm, and therefore they may have slightly different ideas. It's a very difficult question as to how much community activities should

be taken on. Normally speaking, younger lawyers go out and get involved in community activities. If they are on their own or are in a firm of younger lawyers without an established client base, obviously the pressure is on many of them to engage in community activities, because it's a way of getting to know people in the community and bringing themselves to the attention of people in the community, hopefully making a favorable impression and advancing their professional careers.

But when a young lawyer comes into a firm like Pillsbury, Madison & Sutro, our client base is such, and has been for many years, that the young lawyer feels almost no pressure at all to go out and get new business, because usually he's so busy trying to take care of the jobs that are assigned to him by the older partners from our existing client base that he doesn't feel any need to go out and involve himself in the outside world.

There's a danger in that, because you can get too many 8:30-to-5 lawyers, if you will, who live all over the Bay Area, in various communities in the Bay Area. I don't know what the percentage is who live in San Francisco now, but it's really not much higher than the percentage that lives in Marin County or the East Bay or San Mateo County, and if all the lawyers in the office simply come to the office and work from 8:30 to 5:30 five days a week, or even six, and go home, that's not going to be good for the firm.

On the other hand, there's a fine line to be drawn here, because some outgoing, gregarious people may get so interested in civic activities that their partners and associates are going to feel that they're just having a good time and not really pulling their share of the load in the office. So there's a fine line to be drawn here. It's not always easy to do it and it has different results in different cases.

I've sort of had the feeling, the final few years of my active participation in the firm management, that economic pressure really had been put on our lawyers too much by some of the seniors who were over-concerned with chargeable time and the economic results of the firm, and that we didn't have enough people doing enough community service jobs. It's the kind of thing that would be very difficult to take a vote on, and I don't think any such vote has been taken, but it is a question that concerns the seniors in the firm who are responsible for the firm management.

Again, this thing is without much specific planning. I'm not sure that any lawyer in the office has ever been asked to go out and do some specific civic thing for the good of the firm. If he wants to do it because he likes to do it and he knows that the firm generally would think that we want our people to be known in the community, that's fine, but I don't think anybody's ever said, "You've got to go do so and so."

Again, we haven't been very scientific about all this. I think it's one place where perhaps we could do better.

Hicke: So do you leave it up to the individual lawyer?

McBaine: Pretty much, yes, it has been. There may be general talks of the kind I'm giving just now [chuckles], made to people that they ought not to simply come into the office at 8:30 in the morning and go home at 5:30 in the afternoon, so that nobody even hears or sees of them after that except their immediate family and neighbors, let's say. It would be pretty hard to maintain a great law firm like this if everybody did that. Some people have got to do some activities. That's about as far, I think, as we've ever gone: to make a few pep talks like that.

Hicke: And certainly examples are set, so that younger partners and associates can see the kind of thing that the senior partners do.

McBaine: Yes. Correct. And the senior partners are quite different in that regard too. Some are much more active than others are. But I would say, during my time in the firm I think we've been perhaps about average in community activities. I'm not sure that we've been outstanding.

I'm not talking about pro bono legal activities. We, like most other firms today, do have more or less a program for pro bono activities, at no charge. But it all depends on how you define pro bono activities. For example, I think ever since it was founded we have done the legal work, including until fairly recently all the labor negotiation work, for the San Francisco Opera Company. That's gone on for many years, and I don't know how many hours have been involved in that. Now so far as I'm concerned, that is pro bono publico work. I don't suppose Ralph Nader would call that pro bono publico, and some of these liberal young lawyers who really want to reform society, as some of the public interest law groups would want to do, would not call that pro bono publico; I do.

Hicke: That simply means for the good of the public.

McBaine: For the good of the public. I think supporting and helping the arts is for the good of the public. It doesn't always have to be some oppressed minority or something of that kind, although we've done plenty of that kind of thing as well. We've done things like the opera long before it became fashionable to be doing pro bono publico work. We still send a young lawyer at our expense out to the Public Defender's office. He's on our payroll. He does a six-month stint, I believe it is, in the Public Defender's office, assisting the Public Defender, who is swamped and doesn't have enough lawyers.

We take pro bono publico cases. I know we've had several which have involved prison conditions, allegedly harsh and unreasonable prison conditions. That kind of activity goes on all the time. Our lawyers have participated in that for a long, long time; we partici-

pated in it long before the federal government got involved in it through subventions to these local groups.

Now, you've asked about my community activities. The World Affairs Council of Northern California, I guess, was one of the earliest that I participated in. When I came back to San Francisco in 1947, I almost immediately joined the World Affairs Council and was active in it.

Hicke: How did you get interested in that? Obviously you had a lot of international experience.

McBaine: From my time in college on, I had always been interested in world affairs, never in any specific or serious way, but certainly aware and interested in all that was going on. Then as a result of my wartime experience in the O.S.S. all during the four and a half years, being all through the Middle East and in all the Middle Eastern countries, then in the Far East in all the Far Eastern countries, I was acutely aware of the conflict between the Nazis and the Fascists and the Chinese Communists and the Western world. It was just sort of a natural thing.

I was on the board of directors of that for many years. I remember one of the most interesting things that we did: we had section meetings at that time. I've forgotten how many groups there were and just how they were set up; I think they were each devoted to a particular subject, that is, a particular area. People would sign up for one and then the section leader, which I was for several years, would assign a subject to a given member of the group. We'd meet, let's say, every two weeks, and somebody would have, let's say, six weeks to prepare a paper on a given subject and then would have to come in and read the paper to the group and then have a discussion with the members of the group. It was interesting because this is the kind of thing you expect to do in college, and I was still in my 30's then, I guess.

I remember that we had one woman that was a good friend of mine, a most admirable woman, she must have been in her late 60's then, I guess, and she was sort of a pillar of the community and a great supporter of the World Affairs Council. She enjoyed this sort of thing immensely; she had a good mind. She signed up for some section of which I was the leader.

At the first meeting or so I assigned the paper to her; I had the termerity [chuckles deeply] to say, "Mrs. So-and-So, you prepare the next paper." She said, "Oh, no, I can't do anything like that," and I said "Of course you can." She was very uncertain about the whole idea, very upset about it. She didn't expect to be called on to do anything, she'd been so much the grande dame of the place. I kept the heat on her, and I'm not sure that she did it in time, but eventually she did do it [chuckles], and once she did it, she really enjoyed it. She had a very good time out of it.

It does serve a useful purpose, this World Affairs Council. There are World Affairs Councils in cities all over the country, you may know, and they bring to a local community a kind of information that doesn't really get to them much in any other way. Of course, it's changing year by year. As the years go along, more Americans become more sophisticated about foreign affairs. Forty years or so ago there were a lot of Americans who weren't very sophisticated about foreign affairs. That means they were easily taken in by foreign propaganda. Almost all Americans seem to think that everybody in the world is good, basically. I'm not saying that everybody in the world is basically bad, but I think there are an awful lot of people that are basically bad. [chuckles]

Hicke: America has something of an idealistic outlook.

McBaine: That's right. They really do. And the World Affairs Council was not only interesting, but I think it seemed worthwhile because it did make us more sophisticated about current world affairs and better able to judge them.

Now we were talking about community activities in the firm. I wasn't even a partner yet when I joined the World Affairs Council. I didn't do that because somebody told me it would be good for the firm if I did it. I did it just because I was interested myself. I didn't do it to such an extent that it interfered with my duties at the firm. What the seniors in the firm thought about it, I really had no idea.

Hicke: They knew you were in it?

McBaine: Some of them did and some of them didn't, I would guess. But we do try to encourage lawyers to have enough self-initiative to do something; it doesn't make any difference what it is, whether it's a charitable organization, Red Cross if you will, or the California Academy of Sciences, or what it is, but something. I think that's a little broader than just being in a law firm; it's being a good citizen. Everyone should do something.

Another thing that I got involved in which has been the principal outside activity I've been involved in for many, many years is the Asia Foundation. I got involved in that about 1955 because of a close friend and associate of mine in O.S.S. during the war years. Some of the people in O.S.S. got the idea of organizing on the West Coast -- and picked San Francisco -- an organization that would be comparable to Radio Free Europe.

This organization was to be composed of private citizens who would be the directors of a nonprofit California corporation, which would be financed by the C.I.A. -- I said O.S.S., but by now it was the C.I.A. -- to do two things: one, to create a radio station for broadcast into Asia, because mainland China was communist-dominated by this time, and second, to select and send to the various countries of Asia which were not --

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McBaine: -- already communist-dominated representatives of the foundation, whose job it was to contact local citizens and to encourage and assist indigenous groups whose point of view was to support nontotalitarian and nondictatorial forms of government. Now it's important that at no time was the organization or its representatives ever to engage in any kind of espionage or any kind of subversion. That was not the purpose of this group at any time. Although it was generated by and financed by the C.I.A., it was completely controlled by the San Francisco directors of the organization and it had no covert or subversive purposes or activities.

The amount of money was not very large and so, in contrast to A.I.D. [Agency for International Development], the U.S. foreign aid administration, we didn't deal in millions of dollars, we dealt in what might almost be called seed money. It varied from country to country as to who these groups might be. The Boy Scouts, for example, was considered to be an organization which was worth support because that was really contrary to a totalitarian point of view to have an organization anything like Boy Scouts. They taught them to be independent and taught values that were nontotalitarian.

Hicke: These were Boy Scouts organizations in Asia?

McBaine: In Asian countries, that's right. That's just an example.

One of the examples of the things we did in the very early days, the most dramatic, was during the war in Korea. You may remember the North Koreans at one time swept down into the South and went almost all the way, almost drove the South Koreans and the Americans out into the ocean. Then MacArthur's forces pushed them back north again, back to the borderline between North and South Korea.

When the communists swept south, they systematically destroyed every school book in every school in South Korea and printed books with the communist line to stock all the schools. When, a few months later, MacArthur's army swept back north again, there wasn't a primary school in all of South Korea that had anything except the communist textbooks.

Well, the Asia Foundation was organized, as I say, at the request of the C.I.A., and the official in the C.I.A., as I say, was a wartime friend and associate of mine in O.S.S., and he got hold of me on a personal friendship basis.

Hicke: Can you tell me who he was?

McBaine: Well, I don't suppose there's any reason why I shouldn't. His name was Frank Wisner. This became well known. I don't want to publicize this, because some people always have been suspicious of what I say when I say there were no espionage or covert activities involved in this. There were not, because I was in it from day one.

In any case, three individuals were selected here besides myself. One was Brayton Wilbur, Sr., one was Charles R. Blyth of Blyth and Company, and one was David Zellerbach, who was then the senior member of the Zellerbach family and head of the Zellerbach Paper companies. These were three, I would say, of the top leaders in San Francisco. And the only reason that I participated in that elevated group was, as I say [chuckles], because of my background in O.S.S. and because of knowing Frank Wisner. I did the work and organized the corporation, and I was the secretary of it for many years, as well as a member of the Board of Trustees.

But to go back to Korea now: as I say, they were left with no textbooks. We had a representative in Korea; and we sent someone out there to find out about this whole situation and uncover what had happened. When he returned we got together and Dave Zellerbach, who was in the paper business, got us -- and I don't remember whether it was a gift or whether we paid cut-rate for it -- reams or rolls of newsprint, which is printable paper but is pretty cheap paper. Brayton Wilbur, who was in the export/import business and knew all the shipping lines, got the ships for us. We got a man in the State Department who spoke Korean as well as English on loan from the State Department, so that we could send him out there and make sure we would not be duped into printing up a lot of textbooks that said something that we were not expecting to be said. [chuckles] We got some printing presses someplace; I don't remember whether they were in Korea or we had to ship them there. Within a matter of two months or three months, in a remarkably short time, we had thousands of primary school textbooks on basic subjects in printed Korean and distributed in the Korean schools.

Now any governmental organization that had tried to do that would have been lucky to do it in five years, which was a perfect demonstration of the reason why this organization was created the way it was: run by private citizens with <u>really no interference</u> from the government -- the C.I.A. They supplied our yearly funds, and in the last analysis, of course, if we had done something that they didn't approve of, I guess they could have cut off the funds. But they never did, and the agreement between this local group and the C.I.A. was that we were going to, as I say, encourage noncommunist indigenous elements.

Hicke: Other than that they just left you a free hand?

McBaine: They just left us a free hand.

Now sometime later -- I've forgotten how much later it was -- it was revealed that the C.I.A. had organized numerous organizations of various kinds throughout the United States and one was called Student Affairs, or something like that, some student organization; I've forgotten exactly what it was called. This held itself out as being an independent student organization with no connection or anything to the government. They were engaged in public meetings that had annual conventions, made speeches, and attempted to -- and I

guess they did -- influence legislation and the course of the country. It was revealed suddenly that the C.I.A. was putting up the money for this thing. Well, there was a terrific uproar about this, which you can well imagine.

I should specify that the Asia Foundation did nothing in the United States, absolutely nothing. We later printed a newspaper which was distributed to Asian students in the United States. It was mostly editorials and articles from Asian newspapers, sort of keeping them in touch with home. But that's the only thing that we'd ever done in the United States. We help place Asian scholars in the various universities in the United States, but nearly all our activities are in the Asian countries.

So over the years, it has had a remarkably successful time. The big reason for that was, as I say, that the people that we sent out as representatives were selected and trained as people with a passion for anonymity, to use a phrase that Mr. Roosevelt was fond of. He used to say that the assistants he wanted in the White House should be people with a passion for anonymity. Most of our representatives have been at one time academics, and they have done a fantastic job. Most of them are very sincere people, most of them know the countries where they are, many of them know the language where they're stationed.

We only have two or three people in any one country; we don't have big staffs, just a few local secretaries. They get to know the community, know the people in it, know the local organizations in it, and, as I say, try to encourage the ones who will be helpful in maintaining the freedom of the people as against any kind of a totalitarian state. That's expressed in the broadest possible terms and that's the basic idea of this thing.

This is not public and I don't want all of this to get to the media right now. The Asia Foundation is still going strong and they're really a long ways from where they were in those days. It's more of a philanthropic organization purely now than it was in those days.

Hicke: What about the student group that was backed by the C.I.A?

McBaine: Yes. I started to tell you about that. There was a hullabaloo about that, which I can well understand. [Lyndon B.] Johnson was president at that time, so Johnson, I think, panicked and he simply announced, without knowing what he was doing -- I doubt if he even got a list from the C.I.A. of things they were doing -- but he suddenly issued a Presidential Order that no U.S. Government funds would go to any outside organization; he just cut them all off.

I doubt very much if he knew what the Asia Foundation was or what it did. He just reacted politically because there was such a hubbub about the student organization that he had to be able to get up and say, "We're not giving anybody anything." You know, Ameri-

cans are very touchy about the government subventions of anybody in private life. They're always talking about it, like the time they found out that the government paid some Harvard professor to write a book about something. Someone can give a scholarship or a MacArthur grant or something like that and it's okay, but when the government does it, the media immediately goes into orbit.

These Foundation representatives, as I say, have a remarkable record and over the years created a remarkable acceptance. Among other things, they were accepted by the State Department in every country in which they worked. As Americans in an American organization, of course, they have reported to the local ambassador; they certainly kept the local ambassador informed of their purpose and activities. How many reports they had to make in detail, I don't know -- it may vary from place to place -- but they had to have the ambassador's approval everyplace, otherwise they'd be sent home. Over the years the ambassadorial corps became one of the foundation's biggest supporters.

After Johnson cut off the government funds this way, there was a period there where the question was what was the foundation going to do? Ultimately, Congress passed an act, called the Asia Foundation Act, in which they recognized the work that the foundation has done over the years, because it's the most influential Western organization in these Asian countries that there is. The Ford Foundation has given up and gone home in almost every one of them. I don't know of any other foundation that's really active in any of the Asian countries. The missionaries went home, almost all of them. They went certainly out of Red China.

The Asia Foundation has done an enormously important job and done it superbly well. Our representatives in various countries have received all sorts of honors and medals from the various local governments. Of course, sometimes we go in and out. There've been periods when we've been in India and there're periods when the government of India says, "No, you can't be in India." That's been true in some other countries. In some other countries we've been accepted and worked there because, as I say, we're not subversive in any way and we're encouraging local organizations which do exist according to the law of the local country.

It's been an interesting thing. I'm no longer active in it; I'm a trustee emeritus now, since either last year or the beginning of this year, anyway, within the last year. That I did for quite a long time.

Hicke: Where does the funding come from now?

McBaine: From Congress.

Hicke: Oh, that's what the Act was?

McBaine: Yes. You see, the psychology of this thing has a lot to do with it. If the money comes from Congress, nobody particularly thinks that's dirty money. But if you say the money comes from the C.I.A., there are going to be a certain number of people who immediately say: "Oh, that's dirty money." In our case, it's exactly the same. It's government money and all the governments in Asia, I'm sure, knew that this was government money, but there were many Asian governments who could deal with a private organization like the Asia Foundation, American though it was, who could not because of local politics deal with an American government organization. That would be either demeaning to them or impossible politically. While this was not publicized, it really couldn't very well be kept secret.

So it was a very interesting thing. It's been one of the most successful international organizations that I know of. Because, you see, if A.I.D. supplied some materials to somebody, the package would come with an American flag on it, often in order to prevent the local communists from getting hold of the crates first and stamping a hammer and sickle on them. [both laugh] Well, it's often done. But we never did that, you see. We didn't put American flags on anything. We dealt with a local group and they got all the credit. It wasn't our man who got the credit for providing this, that, and the other thing, or starting this or stimulating it. It was the local leaders of whatever group we were working with who got the credit. Therefore they all liked to work with us. It was sort of the antithesis of the "ugly American" most people have in mind.

It was really a fascinating thing to do and, I think, has done a tremendous amount of good over the years.

McBaine: We had, for example, just to continue with this, a representative in Afghanistan for many years, in Kabul. He was a retired textile manufacturer from New England. He'd retired at a fairly early age, and went out there for a short period of time and got interested in the project. He stayed for a long time, I think perhaps as much as ten years, and became a very important man in that community there. He'd been there such a long time and was always perfectly straightforward. He had dealt with all of the local people in complete honesty and truthfulness and straightforwardness, had no ax to grind except their own advancement, which they became convinced of. He didn't represent any government so he didn't represent any threat to them and achieved really an enormous position. Now when the Russians invaded Afghanistan, then the whole thing collapsed, but maybe if the Afghans ever get their country back, we are going to have a representative there again.

I was on the Bay Area Council, a local organization, mostly business leaders, and it's object is to discuss and try to advance solutions to Bay Area problems, rather than local city problems: city of San Francisco, or city of Oakland, or city of Richmond, or whatnot. It's headquartered here in San Francisco. I was a member of that council for a number of years. I didn't think I made much of a contribution to it, although it was of great interest to me. I think I got more out of it than I put into it.

I was also a member for several years of the Industry Education Council of California, as I believe it was called; I'm not sure that's the exact name. It was a group of people from all over the state, again, industry leaders mostly and some lawyers, I suppose other professional men, and it combined industry representatives with educational representatives. For example, the Superintendent of Schools for the State of California would be there at the major meetings, and the representatives of the teachers unions in California would be at the meetings and would discuss the problem of education in California. This was a number of years ago; it must have been fifteen or twenty years ago. I know that Wilson Riles was the Superintendent of Public Instruction at that time, a really very impressive man, I thought. I've been off of the Council for at least fifteen years. But it was extremely interesting and, again, I thought a worthwhile organization. I've forgotten exactly how many years I was on it, but it was a very worthwhile thing to do and I assume it's still in existence.

Hicke: What about bar associations?

McBaine: I never was active in the American Bar [Association]. I was active in a minor way in the Bar Association of San Francisco; I say a minor way: I was a director of the Bar Association for a period of years and I was also the chairman of the Bar Association of the San Francisco delegation to the Conference of Delegates, which is a conference of local and voluntary bar associations held each year in conjunction with the State Bar convention. That was interesting work and most of it highly controversial -- well, not most of it, but enough of it so that [chuckles] it seemed to gather most of the attention.

I was also, for a term -- I've forgotten exactly how long -- the chairman of the local bar association's Committee on the Judiciary, the function of which was to investigate and report I believe to the governor's office on local candidates for appointment to the Bench. That's a very important function. The State Bar has a similar committee for the state level, and the American Bar Association has a similar committee for the federal level.

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McBaine: Those are, of course, the more important committees, and if you've interviewed Mr. Sutro you'll know that he is an ex-chairman of the ABA committee and still involves himself with work concerning various judges and so forth.

Hicke: He was quite interested in the merit selection of judges, getting some kind of legislation on it.

McBaine: Yes. Legislation on it, that's right. Yes, that's a struggle that's been going on for many, many years in different states all over the country. Some states do have merit selection statutes and other states resist.

I was a trustee of the World Affairs Council in Northern California from 1948 to '54. I was a trustee of the Asia Foundation beginning in 1954. I was a member of the Bay Area Council from 1977 to, I believe, 1980. I was also a member of the American Judicature Society.

Hicke: What does that do?

McBaine: That's a society devoted to the advancement of the science of jurisprudence. I was not very active in it, but it's generally regarded as, rather than a political lawyers organization, more of an intellectual organization. You have to be invited to join; it's not open to all applicants. I didn't really do much serious work in it, but I was a member of it here for some time.

I was also on the Board of Visitors to the Stanford Law School from 1966 to '69. I don't know if I mentioned that.

Hicke: No.

McBaine: Well, that was a very interesting experience. In my opinion, all law schools would benefit to have such a thing. The board of visitors is composed of about forty-five or fifty members, I guess. They're not all from Stanford Law School. The majority of them are, or maybe two-thirds are, but a third or so come from other law schools, and they serve for terms of I believe three years.

The law school has annual sessions of two days. During the first day and into the second day, the board of visitors hears reports from everybody in the law school, from the dean of the school, the dean of admissions, various members of the faculty, and from the heads of student organizations in the law school. A complete presentation is made to the board of visitors of everything about the school, with statistics, how many applicants they had, where they come from, how many they took, what their admission policies are, what the records are of their students as compared to other schools. It's the most complete educational course you can think of.

They provide luncheon with a speaker and dinners and a speaker, and then the second day there's another luncheon, and I've forgotten whether there's a dinner the second night or not, but at any rate on the second day the board of visitors goes into executive session, so to speak. They have a couple of hours or so, and everybody is free to make speeches, ask questions, and debate in the group as to what their comments are on what they heard and whether they think the law school is doing the right thing, or offer suggestions for something else they might do. Then there's an executive committee on the board of visitors which is supposed to write a report to the school summing up, synthesizing the various views that have been expressed in this executive session.

Well, the first year I went there and went through all of this I enjoyed it thoroughly, but I kept thinking to myself, my God, these people have spent all this time, taking all their time away from their other duties, and they've given us all this tremendous, terribly well-done presentation, and any contribution that I can make, or that we the board of visitors can make, is really minuscule compared to all this. I really felt sort of embarrassed about it.

I concluded, after thinking about it a little, maybe the second year, that -- I don't mean to be cynical about it, but I think one of the things that the school really had in mind in doing this was the public relations effect of it. They might hope to get something worthwhile out of the comments of the board, but whether they did or didn't, the fact is that they sent forty-five or fifty people out of there, one-third changing every year, as really top-notch boosters for the school. They made me a booster for the Stanford Law School, although I didn't go there. I thought it was a very enjoyable experience and highly worthwhile. I hope it did some good for the school. [both chuckle]

Hicke: Well, they gathered their thoughts together anyway.

McBaine: Yes. It made them put everything together, there's no question about that; that's another benefit to it. Wallace Sterling was the president of Stanford at that time, and I believe the invitation came from him. He was a friend of mine and I remember when I saw him after receiving the invitation I said to him, "You made a mistake. You must've thought I graduated from Stanford Law School, but I didn't; I went to Cal." [both laugh] And he said, "No, no, I knew that, but I want you to be on it anyway." So I've been trying to get my own law school to adopt such a program; they haven't done it yet. I think they're mistaken in not doing it.

Hicke: I wanted to ask you if you could comment on something that interested me, which is why a law firm like PM&S is not publicly held.

McBaine: In the first place, we're a partnership, not a corporation, and there's no legal mechanism by which the public can own a partnership. The partners own it and that's the nature of a partnership. In order to have public ownership you'd have to have an incorporation and issue securities and sell the securities to the public.

Hicke: But then that's my question. Why is that not a way for a law firm to operate?

McBaine: Well, it might be, but for ourselves -- I'm just giving you my personal reaction -- in the first place, we've never needed to do that. A corporation is organized and it has a business and it has a business plan and ideas of something owners want to do, something they want to make. They need capital to buy the machinery and rent the premises and do the research and develop the thing properly. Unless their creators put up their own money and have enough of it to do the whole thing, they have to go to the financial markets to get financial backing.

Now we've never been in that position, I mean, we don't need any capital over and above what we generate by our own efforts. We run this firm based on what we get from our clients, and it's a continuing business. The only reason to sell securities to the public would be to raise a lot of money. Then the partners, who would get all the shares if we incorporated, could then sell their shares to the public and pocket the money. Well, that's contrary to the idea of practicing law and I'm almost positive that it wouldn't be permitted; I'm not quite sure now by reason of what law, but it's contrary to the basic idea of a legal partnership for the practice of the law. In other words, a lawyer has a duty to his client, and I don't think he should be able to dilute that by selling shares to the public and then running the risk of tailoring his efforts for his clients because of some kind of financial considerations based on the idea of selling shares. It's just contrary to the whole idea: the practice of law is, in the old language, a profession, not a business. I haven't really thought of this, it never occurred to me before, but I'm not at all sure that that would either meet the canons of ethics or the American Bar Association requirements.

Some law firms are incorporated nowadays for tax reasons, but all the shares are owned by the lawyers. Instead of a partner with a 50 percent interest in the firm, if you incorporate that firm, that same partner would become a stockholder and hold 50 percent of the shares of the company. But I doubt very much if he'd be allowed to try to sell some of those shares to the public.

Hicke: Well, I really thank you very much for all the time that you've given to me. It's been a most informative series of interviews.

McBaine: It's been very, very interesting. Much more interesting than I thought it would be. I didn't look forward to it particularly.

Hicke: [laughs] Well, that's wonderful. Thank you very much.

End of Interview.

Transcribing and revisions by:

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APPENDIX A

Remarks of Turner H. McBaine to PM&S Partners' Dinner, Bohemian Club, March 25, 1977

Ladies and Gentlemen:

Those of you who are old enough to remember when Time Magazine was the innovative sensation of the publishing world will also remember that Time developed a distinctive and sonorous introduction to its obituaries: "As it must to all men, death came to so-and-so last week." Well, as it must to all men, sixty-five came to me last year, so I stand before you tonight as an advisory partner, with a license to reminisce - at least briefly.

I suppose my first connection with PM&S - and, oddly enough, with Standard - was when I was selected as a Rhodes Scholar from California. Vincent Butler, a member of the firm who was later killed in an airplane crash, and Floyd Bryant, an officer of Standard with whom I later worked closely and for many years on Elk Hills and other matters, were both members of the Rhodes selection committee. Thus even before I was out of college, both PM&S and Socal began what was to prove a long contribution to my good fortune.

My earliest recollection of PM&S as such dates from my days with Cahill, Gordon in New York right after World War II. Cahill, Gordon had been retained to represent Socal in a case brought in the federal court in New York by a company called Winkler-Koch, alleging that Socal and several other companies had infringed a Winkler-Koch crude distilling process, and I was assigned to the case. We moved to dismiss Socal on jurisdictional grounds, and I had what I thought was the good luck of being assigned to bring our brief in support of the motion to San Francisco to clear it with PM&S and Felix Smith, then Socal's General Counsel. On arrival, I was shown into the office of Henry Hayes, which was where Hugh Taylor or Wally Kaapcke has been the last few years. I went over the brief with Henry, and had gotten at least a moderately favorable reception when the door burst open and in strode the redoubtable Felix. After acknowledging my introduction to him in a perfunctory manner, Mr. Smith threw on the desk in front of me his copy of our brief and said - and I'm sure I can quote his words exactly after all these years - "Well, you can file this brief if you want to, but I wouldn't sign it," and with that he turned round and walked out - leaving me, I may say, in somewhat of a quandary.

Well, we did file the brief, and fortunately for us, our motion was granted and we got Socal dismissed from the suit.

This case also gave me an early lesson in practicality, however. After getting Socal out of the case at considerable expense to it, the company later and voluntarily contributed to paying off a judgment obtained by the plaintiff against the other defendants, and never again thought it worthwhile to contest jurisdiction over it in New York.

My next recollection of PM&S is being interviewed for a job, when I returned to San Francisco at the beginning of 1947, by that famous one-man PM&S Employment Committee, John A. Sutro. The experience was memorable, and one I know a number of you here have also had: Bang, bang, and the next thing I knew I was at work - in my case, in a room in the "attic" on the 21st floor that Stan Madden referred to last year.

In New York, I had been a litigator, so on joining PM&S I was assigned to that imposing and deliberate master trial lawyer, Col. Eugene D. Bennett, as a litigator. In a few short weeks, however, I was transferred to the Standard Oil group, which had just been taken over by Marshall Madison, on the death of Felix Smith - a move for me that I subsequently came to regard as doubly fortunate.

Almost immediately I received a summons to the office of Eugene Prince, in the room Kirk has been occupying the last few years, and there I first became acquainted with what was to become a perennial producer of more problems than petroleum - Elk Hills. You've all heard the story of the young lawyer who closed the estate on which the firm had been subsisting for years. Well, I didn't make <u>that</u> mistake with Elk Hills! Elk Hills has certainly required more lawyers' time since that day than any other single property Standard has or ever has had in this country, and it's still going strong. I started out on an Elk Hills problem in 1947, and I'm still working on several Elk Hills problems right now, so you can see I've done my part in sustaining the firm. As I turn Elk Hills over to my successors, Tom Haven and now Al Pepin, I'm not sure whether I should say "Good luck!" or not - or, if I do say it, precisely what that would mean.

Another benefit flowing to me from Elk Hills was the opportunity to work with Gene Prince, a truly lovely, warm man, and a fine and scholarly lawyer. The problem in which Gene enlisted the services of myself and Byron Kabot, then a fellow associate in the office and now General Counsel of International Paper - and a cherished client first of Bill Mussman and now of Jack Bates - was a unilateral attempt by the Navy to expand the boundaries of the Elk Hills Reserve, which would bring into the Reserve, and cloud the title to, numerous Standard lands lying just outside the then existing Reserve. The matter required several trips to Washington, and appearances by both Floyd Bryant and me before the House Armed Services Committee and its legendary Chairman Rep. Carl Vinson of Georgia, and a then little-known member, Lyndon B. Johnson. With the help of the Armed Services Committee, we repulsed the Navy's effort to expand the Elk Hills Reserve at that time.

As you may imagine, I found all of this stimulating and exciting. Several times Gene Prince said to me, however, "I'm tired of trips. I don't really think it's necessary for me to go to Washington. You go." - an attitude I never really understood until quite a number of years later.

Other early battles spring to my mind. One of the most interesting, to me, was the Chinese National Airlines case in, I think, 1950. It was sent to me by the Washington firm of "Tommy-the-Cork" Corcoran, of early New Deal fame, whom I had known in Washington during the war. CNAC, as it was known, was owned by the Chinese Nationalist Government. As it was being driven from the mainland of China by the Communists, that government sold all of the

assets of CNAC to Civil Air Transport, a Delaware corporation controlled by General Chennault, of Flying Tiger fame.

Among other assets, CNAC had almost 6 million dollars on deposit in San Francisco banks. Civil Air Transport, or CAT, made a demand on the banks for the money, but the Chinese Communist government made a similar demand, through an attorney-in-fact in this country, and of course the banks happily impounded the funds, saying "We can't pay either of you until we get a court order to do so."

It was after this that I was retained to sue the banks for CAT. Sam Wright and I took on the job. For those of you who didn't know him, Sam Wright was a fine lawyer, and a most entertaining and stimulating companion. Our problem was to prove that the sale on the mainland had actually taken place, and that it was valid and effective under governing law, so that CAT had good title to the assets. Our documents were fragmentary, however, and in any event, how did we prove their authenticity and effectiveness, and how did we prove what the governing law was?

While we were wrestling with these questions, the "act-of-state" and separation of powers doctrines solved our problems, and enabled us neatly to side-step all these legal technicalities.

It worked this way: The United States continued to recognize the Chinese Nationalist as the legitimate government of China. Accordingly, I got the Chinese Nationalist Government in Taiwan to instruct the Chinese Ambassador in Washington to write to the Secretary of State of the United State and say: "Dear Sir: I have the honor of informing you that CNAC was wholly owned by my government, and that on such-and-such a date my government sold all of the assets of CNAC to CAT. I understand litigation involving this sale is pending in the Federal District Court in San Francisco. I would appreciate it if you would call to the attention of that court the facts set forth in this letter." Meanwhile I had made arrangements with my friend and Oxford classmate, Dean Rusk, then an Assistant Secretary of State in Washington, for the Secretary of State to write to the Attorney General, on the receipt of the Ambassador's letter, saying: "Dear Sir: I enclose a letter to me from _____ the duly accredited Ambassador to the U.S. of the Nationalist Government of China, which we recognize. I accept the Ambassador's statements as true. I would appreciate it if you would call this letter, and the enclosed letter from the Ambassador, to the attention of the court in San Francisco."

The Attorney General then sent the Secretary's letter, with the Ambassador's letter, to the U.S. Attorney in San Francisco. A few days later the U.S. Attorney got up, read the two letters to the court, and presto! - the court entered judgment for CAT, without requiring further proof of the sale to CAT or its validity or effectiveness.

The letters from the Ambassador and Secretary of State had turned the matter into one involving the foreign relations of the United States, within the purview of the Executive rather than the Judicial Branch, and the court had simply followed the wishes of the Executive as a matter of comity.

I had the strong impression that the American attorneys for the Chinese Communists - one of whom was just recently a candidate for Director of the San Francisco Bar Association - were as surprised at the conclusion of the case as I was when I first tumbled to the theory and mechanics outlined above when thumbing through the books in the library one day looking for a way to win this case.

Incidentally, this is one of the very few cases I ever took on a contingent fee basis, and since the Washington lawyers who sent it to me hadn't figured out how to win it, it was a highly satisfactory percentage of the money recovered. Fortunately I had developed the strategy outlined above fairly early on in my efforts, so we didn't have too much time in on the case. The result was the greatest spread between time and fee that I've ever seen in the firm, and was highly gratifying.

Other cases and controversies crowd my mind.

I remember when Jim Wanvig and I got injunctions shutting down two producing oil fields in California, Aliso Canyon and Coalinga Nose, the first and only time this has been done in California, so far as I know, until the Navy recently obtained a preliminary injunction shutting down the Tule Elk field on the ground that it was draining Elk Hills.

I remember when Don Peterson and I saved Standard's leases in the Moose Range in Alaska from an early effort by ecologists, and a major oil field in the Gulf of Mexico from the claims of a Louisiana tribe named Buras which dated back to the 1890s and had lain dormant for 40 or 50 years.

Lest you think the Buras claims weren't serious, they were upheld by the District Court, and we won only in the Court of Appeals, with cert. denied.

I remember the formation of the Iranian Consortium in 1954, when I spent more than 9 months of the year abroad representing Socal, and the break-up of Caltex in Europe in 1967, preceding which Otto Miller and I spent 18 months flying back and forth across the continent every few weeks, with one break of several months, to negotiate with Texaco - and, I may say, playing a lot of dominoes on the trips to and fro.

I have written out brief synopses of these and a number of other matters which seemed to me to be of interest and in which I had the good fortune to participate, and will file it with Miss Alexander in the Library. It has been my hope that other Advisory Partners would write out similar recollections, so that some day we might have the material from which someone might prepare an interesting history of the firm.

In closing, I want to suggest that we adjourn tonight in memory of Marshall Madison. Marshall's death somehow seems to me to mark the end of an era. He was, to my mind, the creator of the firm as it stands, more than any other one man. It was his vision and leadership which enabled us to expand to grasp our post-World War II opportunities, and to do so with a harmony and success matched by few, if any, other law firms anywhere in the United States. It was essentially the ground rules laid down by Marshall and Jack Sutro that have carried us to where we are today. Every time I look around the firm, I think of it as a tribute, and now a memorial, to Marshall Madison.

I've recently had the feeling in the last year or so, however, that our ever expanding size has made it more and more difficult to preserve that true spirit of partnership, that professional camaraderie, which has characterized this firm, and made possible our success. I urge you all to think on this, and to do everything possible to nurture and preserve this vital but intangible asset. If we lose it, or even suffer it to decline appreciably, we will lose a lot of the satisfaction we've all had in being members of one of the great law firms in the United States, no matter what our incomes may be.

Thank you and good night.

APPENDIX B

THE IRANIAN OIL AGREEMENT

On October 29th of last year the oil of Iran, virtually shut in for over 3 years in one of the bitterest and most explosive disputes in modern history, began to flow again into the channels of world trade.

Thus one of the allies of the West completed its return from revolution and financial suicide; thus one of the Free World's most ticklish political and economic problems was finally solved.

How this came about is a dramatic story of modern business and diplomacy -- and a striking illustration of the ever-widening role of American enterprise abroad.

The story of oil in Iran, until 1935 known by the legendary name of Persia, begins at least as early as 1901. In that year an Englishman reared in Australia, named William Knox D'Arcy, obtained a concession giving him the exclusive right to explore for and exploit oil throughout all of Persia except the 5 northern provinces.

Under these concessions D'Arcy was to give the Government of Persia, among other things, 16% of the "net profits" of a company to be formed to exploit the concession.

As is usual in such ventures, the discovery of oil was not easy. D'Arcy's First Exploitation Company spent 5 years of hard work and about a quarter of a million pounds sterling before oil burst forth at Masjid-i-Suleiman in 1907.

Meantime D'Arcy had been having difficulty raising capital in England for his "wildcat" venture in remote Iran, and is reputed to have sought to interest Rockefeller and the Dutch in his concession.

Also in the meantime Admiral Fisher, an ardent advocate of the conversion of the British Navy from coal to oil, had become First Lord of the Admiralty, and was pressing plans for securing adequate supplies of naval fuel oil.

The result was that the British Government stepped in to prevent the concession's passing into foreign hands, and the Anglo-Persian (later Anglo-Iranian) Oil Company was formed and took over the Persian concession.

There are a number of stories as to how this came about. Perhaps the most interesting is the so-called "Reilly" story. This story has it that D'Arcy, a deeply religious man interested in the welfare of the Persian people, was enroute from the Middle East to Australia via America. On board the ship taking him from Alexandria to New York he met a young priest, a missionary returning from Africa. As their friendship ripened, D'Arcy told the priest of his Persian concession and of his hopes and frustrations concerning it. At first the priest seemed only mildly interested. But later he was

struck by a brilliant idea: Why not transfer D'Arcy's concession to a British missionary group dedicated to service in Persia? Why didn't D'Arcy thus rid himself of the necessity of wheedling money from speculators, and at the same time perform a pious and patriotic act? The result was that just before the ship docked in New York D'Arcy handed over all the rights to his concession to the priest -- and thus the British Intelligence Service, for the so-called missionary was in fact Sidney Reilly, one of the cleverest agents of that undercover organization which worked in devious ways for the protection and development of the British Empire.

Whether there is anything to this story I cannot say, but you will find it set forth in detail in "The Secret War" by Frank C. Henighen.

In any case the known historical facts are that in 1909 the Anglo-Persian Oil Company took over D'Arcy's concession, and that in 1914 Winston Churchill, then First Lord of the Admiralty, announced that the British Government had acquired a 53% interest in Anglo-Persian. At the same time, the British Admiralty obtained a long-term contract to purchase fuel oil from the company at a preferred price.

On this basis the British Government took the momentous decision to convert the British Navy from coal -- with which the British Isles were plentifully supplied -- to oil -- of which the United Kingdom had none -- and, according to some historians, the first World War was won.

But the new arrangement was subject to criticism from the Persians. They claimed that the price in the long-term contract with Anglo-Persian was too low, and that as a result the British Government was benefited unfairly, at the expense of Persia. In support of this argument, they cited Churchill himself as saying, in his book "World Crisis, 1911-1914," that the contract saved the British Government 40,000,000 pounds between 1914 and 1923.

Be that as it may, the work in Persia went forward. New fields were discovered, making Persia one of the major oil-producing countries in the world. At Abadan, an island separated from the southern shore of Persia by a canal only a few feet wide, a refinery was built which eventually became the world's largest.

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From time to time, differences of opinion arose between the Persian Government and the Company, principally as to the meaning of the phrase "net profits" in the concession agreement.

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Iranian discontent with their share of the proceeds from the Anglo-Iranian enterprise was intensified when, as a result of the depression of 1929 and following, the "net profits" of Anglo-Iranian, and therefore the sums payable to Iran, dropped precipitately.

In 1932 the Government of Iran cancelled the Anglo-Iranian concession, and the parties went through a dress rehearsal, so to speak, for the events of 1951.

Eventually a new or revised concession dated April 29, 1933 was negotiated.

Under the 1933 agreement relations between the company and the Iranian Government improved, and there was a steady growth in production from Iranian fields and the Abadan refinery.

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Following World War II, however, inflation revived and intensified Iranian dissatisfaction with their share of the proceeds from Iranian oil.

Late in 1947, Iran asked Anglo-Iranian to discuss revision of the 1933 concession.

The Iranians pointed out that in round figures Venezuela produced about double the amount of oil produced from Iran and received over $200,000,000 a year in royalties and taxes, while Iran received only $32,000,000. They asked that Iran be given a 50-50 arrangement similar to that in effect in Venezuela. They also asked that Iranians be given a voice in the affairs of the producing company.

Now a 50-50 arrangement works roughly this way: The producing company supplies the capital and technical skill required to search for, find and produce oil. It sells the oil and pays income taxes to the host country on its profits, the host company agreeing to limit its taxes to 50%. The producing company receives a foreign tax credit in its own country, thus enabling it to retain its share of the profits -- if any.

Anglo-Iranian refused the Iranians' demand for a 50-50 arrangement and for a voice in producing company affairs. They agreed to increase the royalties payable under the 1933 concession, and in 1949 an agreement to this effect was signed with the Iranian Government. The agreement was not popular in Iran, however, and the Government hesitated to submit it to the Iranian Parliament, or Majlis.

Dr. Mohamed Mussadeq, a politician who had long advocated nationalization of Iranian oil, led the opposition to the agreement.

The announcement in January, 1951, that the Arabian American Oil Company -- owned, as you know, by Standard of California, The Texas Company, Standard of New Jersey, and Socony-Vacuum -- had entered into a 50-50 arrangement with Saudi Arabia added fuel to the fire.

Anglo-Iranian offered to reopen negotiations looking toward a 50-50 arrangement with Iran, but by this time it was too late -- Mussadeq was in the saddle.

That wily and weeping politician introduced in the Majlis a resolution calling for nationalization of Iranian oil. The then Prime Minister, General Razmara, referred it to a special committee. The committee reported that nationalization was not practicable, and of doubtful legality as proposed. When Razmara presented this report to the Majlis, he was assassinated by a

According to the Iranian author of a recent book called "Oil Diplomacy," a copy of Anglo-Iranian's consent to a 50-50 arrangement with Iran was found in Razmara's pockets after his death.

With Mussadeq triumphant, the Iranian oil industry was nationalized, and the National Iranian Oil Company was created to take over the properties and functions of what was thereafter invariably referred to in Iran as the "ex Anglo-Iranian Oil Company" or the "former Anglo-Iranian Oil Company."

The claims of Anglo-Iranian against the Government were to be examined, along with the claims of the Government against Anglo-Iranian, and 25% of the current revenue from Iranian oil set aside to meet any payments which might be due the company.

Of course the company did not willingly accept nationalization of its properties on this basis, and Mussadeq set out to evict Anglo-Iranian from Iran.

As a result, Anglo-Iranian eventually stopped shipping oil, the production from Iranian fields dwindled to a trickle, and the Abadan refinery was finally shut down.

Now this was a serious matter, for oil was essential to the success of the Marshall Plan for the recovery of Western Europe, and Iranian oil had played a big part in that plan.

To meet the problem posed by the Iranian shut-down, a Foreign Petroleum Supply Committee was set up in the United States, with Government approval and Department of Justice clearance, and an Oil Supply Advisory Commission organized in England.

Through these committees the international oil companies co-ordinated their programs and facilities, including shipping, and successfully closed the gap caused by the removal of Iranian oil from world trade.

Meanwhile, in July, 1951, President Truman had offered to send Mr. Averell Harriman to Iran to discuss the situation. Dr. Mussadeq accepted the offer. Mr. Harriman's arrival in Teheran was the occasion for Communist-led anti-American riots in which 20 persons were killed and 300 injured. Martial law was declared.

The Harriman mission came to nothing, and a British mission headed by the Lord Privy Seal Richard Stokes went out to Teheran.

The Stokes mission also failed, and Harriman and Stokes both left Iran.

On September 27, Iranian troops seized the Abadan refinery, and shortly thereafter all Anglo-Iranian personnel left Iran.

On September 28, Great Britain requested the Security Council of the United Nations to intervene in the matter as a threat to world peace, and Mussadeq announced that he would fly to New York and appear before the Security Council to contest its jurisdiction, which he subsequently did.

In December 1951 Mussadeq sent an ultimatum to former Anglo-Iranian customers to make arrangements within 10 days to buy oil from Iran or lose that privilege. The ultimatum expired without any acceptances. Plenty of oil was available elsewhere at prices as low as those Iran offered.

During 1952 an International Bank mission went out to Iran and made several efforts to find a solution to the problem, all to no avail.

Later in 1952 the International Court gave judgment affirming its lack of jurisdiction over the dispute; Mussadeq was given power to rule by decree for a period of one year; and diplomatic relations between Iran and Great Britain were broken off.

The impasse was complete.

There are 2 points that I should like to make here:

First, while all generalizations over-simplify, I should say that the basic mistakes which led to this impasse were that

(a) Iran assumed that the world had to have its oil; and

(b) the British assumed that Iran had to sell it oil.

Both were wrong, as events proved.

Second, I never met a single Iranian during the course of my stay in Iran last year who did not consider Dr. Mussadeq to be a great patriot, not a villain. Even those who disapproved of him the most considered only that he did not know when to stop, deplored only that he had not made a deal after he had evicted Anglo-Iranian from Iran.

But he did not know when to stop, and continued to insist that Iran would operate its own oil industry, though it had neither the capital nor the technical know-how to do so, and though his proposals completely ignored the basic economic facts of life.

As Mussadeq's policies plunged Iran deeper and deeper into difficulties, his oratory and dramatics whipped the crowds into greater and greater frenzy. Eventually he clashed with the Shah, a patriotic monarch dedicated to the preservation of constitutional government, and the Shah felt it necessary to leave Iran.

But Mussadeq was soon overthrown, as you know, and the Shah made a dramatic return to Teheran.

A measure of sanity returned to Iranian affairs.

The Government of the United States then determined to make another effort to find a solution to the Iranian problem. In the fall of 1953, Mr. Herbert Hoover, Jr., a California geologist and petroleum engineer known to many of you, was appointed Special Assistant to the Secretary of State to investigate the matter.

Mr. Hoover went to Iran, and after assessing the situation there concluded that it was unrealistic to think of Anglo-Iranian returning to Iran alone, under any terms.

The only possible solution, he felt, was the formation of a group or Consortium of international oil companies to operate the Iranian oil industry in a manner consistent with other similar operations, and at the same time meeting Iranian needs and aspirations.

The British agreed, and in December, 1953, Sir William Fraser, the Chairman of Anglo-Iranian, invited 7 major international oil companies to come to London to discuss the possibility of forming such a Consortium.

These companies were the Royal Dutch-Shell group, the Compagnie Francaise des Petroles, and 5 American oil companies: Standard of California, The Texas Company, Standard of New Jersey, Socony-Vacuum, and the Gulf Oil Corporation.

Sir William took the position, which was not disputed, that he had the right "to choose his partners," so to speak.

Before going to London, the U. S. companies felt it necessary to assure themselves that nothing that was contemplated in the formation of the Iranian Consortium would bring them into violation of the antitrust laws of the United States.

Accordingly, the National Security Council laid the basic outline of the Consortium before the Attorney General of the United States, and requested his opinion as to its legality under our laws.

The Attorney General replied that in his opinion the proposed Consortium was not in violation of any of the laws of the United States, stressing that each Consortium member was to be free to market separately, at its own prices, its individual share of Iranian oil and products.

With this assurance, the 5 U. S. companies joined the talks which opened in London in January, 1954.

Perhaps you will be interested in an editorial which appeared in the Beaverbrook press a few days after our arrival in England. The editorial concluded:

> "Reports persist that an international oil marketing company may be set up to sell Persian oil. All agree that the American companies are pressing for a major holding and that as a part of the deal they want to supply the technicians for the Abadan refinery.
>
> * * * The Americans are moving in on Persian oil.
>
> Another shameful stage in the liquidation of British power and prestige in the Middle East is in progress."

I should add that this was the only public comment of this kind that we heard during our stay in England, and I mention it so that you will perhaps

better understand me when I say that I, for one, was keenly conscious of the forces of history swirling about us as we sat down to our London work.

Four major questions confronted the London group:

1. How big a share in the Consortium should each participant have?

2. How much should each new participant pay Anglo-Iranian?

3. What kind of an arrangement could the Consortium make with Iran?

4. What kind of arrangements should the Consortium members make between themselves?

Discussing these in turn:

The question of how big a share each company should have involved not only economics, but politics and prestige, both internal and international.

It was eventually decided that Anglo-Iranian should retain a 40% interest, Royal-Dutch Shell have 14%, the French 6%, and each of the 5 American companies 8%.

It was also decided that the 5 American companies would be free to offer a 5% interest to any other established American oil companies who might want to join the Consortium if negotiations with Iran for a new agreement were successful. It was decided that if the Consortium reached a satisfactory agreement with Iran, the new participants would pay Anglo-Iranian as if the latter had a going concession -- in effect compensating Anglo-Iranian in place of Iran, except for loss of profits during the shutdown period.

Even so, the amount of compensation remained to be determined. The only comparable transaction known was the purchase of a 40% interest in Aramco by Standard of New Jersey and Socony-Vacuum in 1947.

Obviously the amounts the new participants would be willing to pay Anglo-Iranian would also depend on the kind of an arrangement the Consortium could make with Iran. The advice of Mr. Hoover and of the U. S. and British Ambassadors to Iran was sought on this point, and certain minimum requirements were laid down. Also obviously any arrangement which the Consortium would be willing to make with Iran had to be a realistic one, and not such as to lead to disruption and chaos in the world oil industry.

Lastly, it was necessary to decide what kind of arrangements the Consortium members should make among themselves -- to set up machinery for determining production and the operation of the Abadan refinery, at the same time leaving each member free to market its own oil and products at its own individually determined prices.

Now all these things had to be done so as to satisfy, among other things, the tax and other laws of four countries: the United States, England, Holland and France.

After more than 2 months of discussions and work in London, a group of negotiators went out to Teheran in early April, 1954.

Between April 14th and May 18th there were 16 meetings with the Iranian negotiators, many of them lasting many hours.

Both the Iranians and the British determined to let bygones be bygones, and the negotiations were characterized from the beginning by good will on both sides.

Nevertheless, and despite the best efforts of the negotiators, it proved impossible to reach agreement, and negotiations were broken off during the latter part of May.

The Consortium negotiators returned to London where they met with representatives of all the Consortium members to see what could be done to come close to the Iranian desires.

After discussions in London between the Consortium members lasting a month, the Consortium negotiators returned to Teheran late in June.

The chief negotiator, Mr. Orville Harden, whose doctor forbade him to return to the Middle East, was replaced by Mr. Howard Page, a Stanford graduate from Berkeley and a Vice President of the Standard Oil Company of New Jersey.

There were 29 more meetings between the negotiators, and more between various committees and experts, as point by point was hammered out by give and take.

Over-all agreement was finally reached, and on August 4th an Aide Memoire embodying the points agreed to was signed.

A final agreement was then drafted in Teheran, and the Consortium party returned to London, where agreements regulating the relationships between the Consortium members and providing for compensation to Anglo-Iranian were put into final form.

All of the agreements were then submitted to the Attorney General of the United States, who concluded that they were in conformity with his previous opinion and therefore approved them.

After the so-called Government Agreement was signed by the Iranians in Teheran, it was flown from Iran by special airplane and signed by the Dutch and French in Europe, by the English in London, and by the Americans in New York, and it was ratified by the Iranian Majlis and approved by His Majesty, the Shah, becoming effective on October 29, 1954.

Thus ended one chapter, and another began, in the stormy history of Iranian oil.

I feel it only right to pay tribute, at this point, to the vital and important roles played in both the discussions in London and in the negotia-

tions in Teheran by Mr. Hoover and by Mr. Loy Henderson, the American Ambassador to Iran.

Mr. Hoover was as indefatigable as he was patient. Shuttling between Washington, London and Teheran, he crossed the Atlantic 14 times during the approximate 12 months that he devoted to this job. An experienced businessman, he refused to attend any of the discussions between the Consortium members or the negotiations with the Iranians, but stood ready at all times to give advice and assistance to the companies, or a shove where needed. An inexperienced diplomat, he nevertheless was able to bring about the meeting of minds of the Governments of Iran, Great Britain and the United States which made the consummation of the Consortium possible. How well he succeeded in both aspects of his task is attested by the fact that he concluded his labors with the good will and admiration of all concerned with the Iranian Consortium -- and was promptly made Undersecretary of State of the United States, a post he now holds.

Now the Iranian Agreement is, in essence, a 50-50 arrangement which recognized Iran's ownership of its oil and related facilities, and assures Iran of a voice in the operation of its properties.

The agreement grants to two Operating Companies formed by the Consortium -- one for exploration and producing and one for refining -- the right to produce that oil and to use those facilities for a term of 25 years, subject to 3 five-year extensions.

The Operating Companies are Dutch. The Iranians wanted Iranian companies; the British wanted British companies. The Dutch companies were a compromise solution.

There are 2 Iranian directors on the board of each operating company, plus a third Iranian national appointed by the Consortium members.

The operating companies are owned by the Consortium members not directly, but through an English holding company with headquarters in London.

Parliament as well as the Majlis had to be considered in working out an acceptable solution to this problem.

The oil, when produced, is purchased from the National Iranian Oil Company, or N.I.O.C., by the Consortium members individually, or by Trading Companies established by them, and in turn sold in Iran by those companies at posted prices available to all buyers generally.

The Consortium members guarantee that by the end of the third year they will bring Iranian production and exports back to the pre-shutdown level. To Iran this is somewhat disappointing, but it is 600,000 barrels of oil a day -- which is a lot of oil to find room for in the world today. It is hoped, of course, to increase Iranian production above this figure and in time this undoubtedly will be done.

The Trading Companies, which follow the nationalities of their affiliated Consortium members, are registered in Iran, and each Trading Company pays Iranian income taxes on its profits at the rate of 50%.

In addition, each Trading Company makes a stated payment to N.I.O.C. equal to 12-1/2% of that Trading Company's posted price for its oil, this payment being a credit against that company's Iranian tax.

N.I.O.C. has the right to take oil in kind, at posted prices, equal to this stated payment, and to use or export this oil as it sees fit.

It also has the right to obtain, at cost, all products required for internal consumption in Iran.

One of the unusual features of the Government Agreement is that it contemplates and encourages N.I.O.C.'s taking over so-called "non-basic" functions from the Operating Companies, including

Housing Estates

Medical and health services

Operating of food supply systems, canteens, restaurants and clothing stores.

The last act in the formation of the Iranian Consortium has just recently been completed. On April 28th, in New York and Toronto, papers were completed assigning to 9 additional American oil companies a 5% interest in the Consortium.

These companies are:

American Independent Oil Company
Atlantic Refining Company
Hancock Oil Company
Pacific Western Oil Corporation
Richfield Oil Corporation
San Jacinto Petroleum Corporation
Signal Oil and Gas Company
Standard Oil Company (Ohio)
Tide Water Associated Oil Company.

Together these companies constitute a ninth member of the Consortium.

I think you will agree, from the outline I have given you, that the so-called Government Agreement gives due recognition to the legitimate aspirations and interests of the Iranian people.

On the other hand, it affords to the Consortium companies the degree of security and the prospect of reasonable reward necessary to justify the commitment of their resources and facilities to the reactivation of the Iranian oil industry.

During the recent visit of the Shah of Iran and his Queen to San Francisco, I was gratified to hear His Majesty express his satisfaction with the agreement, and his confidence in its future.

If the present atmosphere of good will and co-operation continues, the Iranian Oil Agreement should benefit Iran and the Consortium members alike for many years to come.

Thank you.

Turner H. McBaine
May 3, 1955

FINANCIAL ASPECTS OF IRANIAN CONSORTIUM

The transactions which set the stage for the introduction of the Consortium into Iran in 1954 were briefly as follows:

(1) Anglo-Iranian Oil Company, technically at the request of the original Members, surrendered to Iran all its rights, titles and interests in Iran (including rights, titles, and interests to fixed assets used in its oil operations);

(2) As consideration for such surrender, Members agreed to pay Anglo-Iranian $1.5 million down payment for each one percent share interest acquired plus payments at the rate of 10¢/bbl. totaling $8.5 million for each one percent share interest acquired. The total obligation to Anglo-Iranian owed by the other 60% shareholders was thus $600 million (grossing up to $1000 million on a 100% consortium basis);

(3) In addition to consideration received from other Consortium Members, Anglo-Iranian received from Iran $70 million in ten annual installments. This was a net figure negotiated after taking into account Anglo-Iranian's relinquishment of claims in respect of assets in Iran -- including various assets (such as internal distribution facilities) not included in the Consortium Agreement, and also after taking account of various claims and counter-claims by Iran and NIOC and by Anglo-Iranian.

Our payments and commitments to Anglo-Iranian (BP) for a 7% share thus break down as follows:

$10.5 million down payment;
$59.5 million at the rate of 10¢/bbl.

As of the beginning of 1969, the unpaid balance of our 10¢/bbl. obligation amounted to $19.3 million. With normal growth in Irancal offtake, it should be fully paid off in late 1971.

The $10.5 million down payment was capitalized in Socal's books and is now fully amortized. The 10¢/bbl. obligation matures only on actual lifting of oil. Payments are made from profits after Iranian tax, and are expensed currently on our books.

We advance to the Operating Companies our share of funds required for working capital and for the financing of new facilities. These new facilities become the property of NIOC upon completion, and NIOC then owes the full amount of the cost to the Operating Companies. This debt is repayable over 10 years for fixed assets (20 years for land assets), but is offset by exactly equal "assets charges" credited to NIOC by the Operating Companies. The unextinguished (i.e., unamortized) portions of these NIOC debts are included as assets on the Operating Companies' balance sheet and also on Socal's balance sheet.

The Operating Companies own movable assets and certain current assets directly. However, of the total unamortized asset balance of approximately $360 million carried on the Operating Companies' books (Socal's share $25 million) as of the end of 1968, only some $6 million (Socal's share $.42 million) represents movable assets.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1562

LEON BURAS, JR., et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA, CHEVRON OIL COMPANY, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief in Opposition for Respondents Chevron Oil Company, et al.

QUESTIONS PRESENTED

The questions presented are:

1. Whether under Louisiana law the perfect record title of the United States to the lands in dispute can be defeated by purported "patents" from the State of Louisiana of which there is no record in the State Land Office and for which no money was ever paid into the State Treasury.

2. Whether under Louisiana law an after-acquired title could pass to the predecessors of Petitioners under a printed form of deed providing for conveyance "with full and general warranty," changed by the parties to read "without warranty of title."

3. Whether the Fifth Circuit erred in refusing *en banc* to abstain and certify questions of state law to the Louisiana Supreme Court.

STATEMENT OF THE CASE

Petitioners' Statement of the Case omits significant facts and is devoted in large part to allegations of wrongdoing on the part of the United States and Chevron. These allegations were made by Petitioners below, and are wholly refuted by the record. In any event, insofar as they are relevant at all, they relate solely to the issue of adverse possession by the United States and its predecessors, an issue the Fifth Circuit did not reach.

The significant facts relevant to the issues decided by the Fifth Circuit are:

In the 1880's two friends and brothers-in-law, Octave Barrois and Pierre Leon Buras, commenced hunting and trapping on marsh lands near the mouth of the Mississippi River which then belonged to the United States. In 1894 Barrois gave to the Register of the Land Office of the State of Louisiana a sum of money, a part of which had been contributed by Buras, for the future purchase of a portion of these lands in the event they were later conveyed to the State, which they were. The Register, who had no authority to receive such payments, stole the money instead of depositing it with the State Treasurer, who was the designated receiver for payments for State lands (Pet.App. p. 8a). In 1898 the crooked Register, to satisfy Barrois' repeated

demands, apparently gave to Barrois some fictitious patents for the lands, of which there is no record in the State Land Office. In 1899 Barrois had these "patents" copied into the conveyance records of Plaquemines Parish, the county in which the lands are located. Also in 1899, Barrois conveyed to Pierre Leon Buras a part of these lands, retaining the remainder for himself. The deed from Barrois to Buras referred to the spurious "patents" as the sole source of Barrois' title, was changed by the parties expressly to exclude warranty of title, and recited as consideration a sum equal to the same amount, per acre, as that paid by Barrois to the crooked Register.

In 1900 the crooked Register (Lanier) committed suicide, and it was revealed that he had stolen the money of numerous applicants for State lands. A new Register (Smith) was appointed. In 1903 Barrois again paid for the lands covered by the 1898 instruments, the money this time reaching the Treasurer, and the new Register issued to Barrois genuine patents duly entered in the State Land Office records.[1]

In the meantime, Pierre Leon Buras had quit his occupancy of that part of these lands purportedly conveyed to him by Barrois in 1899, and ceased paying taxes thereon (although he continued to pay taxes on other property he owned). In 1903, after obtaining the genuine patents, Barrois again conveyed most of the lands he had previously conveyed to Pierre Leon, but this time to Augustin Buras, a professional hunter who had married Pierre Leon's daughter Angeline[2] in 1902 or 1903, this time by a deed re-

1. The fact that they are dated one day earlier than the Treasurer's receipts showing payment for the lands they cover does not affect their validity.

2. Pierre Leon donated to Angeline land on which Augustin and Angeline built their house, near that of Pierre Leon, in Venice, La.

ferring to the 1903 patents as the source of his (Barrois') title, and this time warranting title. It is the lands conveyed by this deed which are in controversy here.[3]

In 1903, Augustin Buras had the 1903 deed from Barrois recorded in Plaquemines Parish, and began paying taxes on the lands covered by the deed. In the years immediately following 1903, Barrois, Pierre Leon Buras and Augustin Buras continued to maintain friendly relations: Barrois visited Pierre Leon and his family regularly; Augustin visited his father-in-law, Pierre Leon, about once a week, and Pierre Leon traded regularly at a grocery store Augustin had; and Pierre Leon's son Theodore Buras lived part of the time with his father and part of the time with Augustin sometime prior to his (Theodore's) marriage in 1914. However, after he quit his occupancy of the lands in controversy and ceased paying taxes thereon, Pierre Leon Buras never made any known claim of title thereto; and after Pierre Leon died in 1908, in his succession proceedings none of his children or other heirs made any claim to the subject lands, although they were represented by counsel, and other lands belonging to Pierre Leon in Venice, Boothville and Buras, La. were auctioned off in the succession proceedings.

In 1911, Augustin Buras sold the lands conveyed to him by Barrois, and they were eventually purchased by the United States from Thomas Leiter[4] for inclusion in the Delta Migratory Waterfowl Refuge. The United States and its predecessors in interest have paid taxes on the lands

3. During his lifetime, Pierre Leon also donated unstated but equal amounts of land to each of his sons.

4. The title questions presented in this case are *not* the same as the title questions presented in *Leiter Minerals, Inc. v. United States* (1957) 352 U.S. 220; (5th Cir. 1964) 329 F.2d 85.

(except the United States) and have exercised acts of ownership with respect to the lands continuously since 1903.[5]

In 1949 the United States granted oil and gas leases on the lands to Frank J. Lobrano and Allen L. Lobrano. Chevron Oil Company acquired the operating rights under these leases. In 1950 and 1951, Chevron drilled eight productive oil wells on the lands, and there has been continuous production since.

In 1954, more than 50 years after Pierre Leon Buras quit his occupancy of the lands and Augustin Buras took title to them, more than 45 years after Pierre Leon's succession proceedings, and shortly after the discovery of oil on the lands, Petitioners herein brought suit in a Louisiana state court asserting title to the lands in controversy as the heirs of Pierre Leon Buras, and seeking the eviction of the mineral lessees. The United States was not named as a defendant. In 1955 the United States instituted this action in the United States District Court for the Eastern District of Louisiana to quiet its title to the lands in question, joining Chevron and the Lobranos as nominal defendants.

At the trial, Petitioners sought to resurrect a title to the lands in Pierre Leon Buras, and to oust the title of Augustin Buras.[6] They based their claim on (a) the counterfeit "patents" given to Barrois in 1898 and Barrois' 1899 deed to Pierre Leon Buras, and (b) the contention that because of the valid 1903 patents to Barrois, an after-acquired title passed to Pierre Leon Buras under the 1899 no-warranty deed.[7]

The originals of the 1898 documents having been lost, Petitioners sought to prove these "patents" by offering

5. Both Petitioners and the United States claim under members of the Buras family, Petitioners under Pierre Leon Buras, and the United States under his son-in-law, Augustin Buras.

6. Three of the Petitioners are also heirs of Augustin Buras.

7. Insofar as they base their claim on after-acquired title, Petitioners recognize the validity of the 1903 patents.

certified copies of the 1899 Plaquemines Parish records, into which the spurious "patents" had been copied by the Parish Clerk. These certified copies of the parish records were admitted into evidence over the objection of the Respondents. If admissible, under a Louisiana statute (La. R.S. 13:3726 (1950)) these certified copies were "entitled to the same credit as the original[s]."

Petitioners requested and received a jury trial. In response to an interrogatory, the jury found that it could not not say whether the Governor had in fact signed the 1898 originals.

After a District Court decision in favor of Petitioners, a three-judge panel of the Fifth Circuit unanimously reversed, holding that the United States has perfect record title, and that the Buras heirs (a) had failed to meet their burden of proving their title, and (b) did not obtain an after-acquired title under the deed expressly excluding warranty.[8]

Petitioners then sought a rehearing *en banc*, asking that the judgment of the panel be reversed, or in the alternative —and for the first time—that the questions of state law involved be certified to the Louisiana Supreme Court. The Attorney General of Louisiana, in an *amicus curiae* brief,

8. The Court did not reach other arguments presented by Respondents, namely:

1. It would have been error for the District Court to admit into evidence the original 1898 "patents," since the State has no record of them, and was therefore error for the District Court to admit into evidence, over objection by the Respondents, the parish copies of these documents;

2. The public records doctrine precludes the application of the doctrine of after-acquired title in this case;

3. On the facts of this case there is a presumption of a lost grant from Pierre Leon Buras to the predecessors of the United States which eliminates the claim of Petitioners; or alternatively, this question should have been submitted to the jury; and

4. Both the United States and its predecessors in title acquired good title to the lands in question by adverse possession.

supported Petitioners' request for reversal, but not their request for certification. The petition was denied 14 to 1, with Chief Judge Brown voting to grant a rehearing to enable the court to order certification.[9]

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