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Pillsbury, Madison & Sutro Oral History Series

James E. O'Brien

ODYSSEY OF A JOURNEYMAN LAWYER

With Introductions by
William E. Mussman, Sr.
and
Francis R. Kirkham

An Interview Conducted By
Carole Hicke
1987-1989

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JAMES E. O'BRIEN
1966

Photograph by Hartsook

Cataloging Information

O'BRIEN, James E. (b. 1912)

Attorney

Odyssey of a Journeyman Lawyer, 1991, xii, 229

Childhood in the Philippines, Shanghai, and Oakland, California; Pillsbury, Madison & Sutro in the late 1920s and 1930s, founders and early partners; service in U.S. Army Air Force intelligence in World War II; antitrust cases, including the oil cartel case in 1950s; Chevron Corporation (formerly Standard Oil of California) international operations; formation of the Iranian Consortium for oil production in 1954; oil production in Saudi Arabia and Indonesia; the Aramco arbitration award, the Libyan arbitration, and problems of international law.

Introductions by William E. Mussman, Sr., Esq., of Carr & Mussman, and Francis R. Kirkham, Esq., of Pillsbury, Madison & Sutro.

Interviewed in 1987-1989 by Carole Hicke for the Pillsbury, Madison & Sutro Oral History Series. The Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

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PREFACE

The history of Pillsbury, Madison & Sutro extends more than one hundred 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 four hundred 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,
1984-1989

May 1986

INTRODUCTION by William E. Mussman, Sr.

The fascinating story which this introduces is essentially an autobiography of one of the truly great American lawyers of this twentieth century. While I have not read the transcript, I know from my forty years of association with James O'Brien that his modesty and humble spirit will have resulted in the narrative passing ever so lightly over the parts where his wisdom, foresight, planning and advocacy were single to the successes related. How benefited we all would be if the whole James O'Brien story were set out in footnotes to the text!

The oral history which follows is essentially a road map through the legal life of Jim O'Brien. The readers will know that Jim has been in the middle of some of the most complex, critically important lawsuits of our day. The face-off with Kaddafi in the World Court and the ultimate victory is but one of many such cases. And the readers will see Jim as a participant in matters having critical international political significance. For example, his role in holding for his company (and his country) the oil concession in Indonesia at the time of Sukarno's overthrow was an accomplishment of enormous historical consequence. These triumphs pile one on another to create a magnificent memorial to the professional accomplishments of this great man.

There is another side to Jim O'Brien which even surpasses the superlatives of his professional self. Many--probably most--of those we meet along our way are forgotten in the ebb and flow of life. Like sand castles, they disappear in the flood tide of time. But always there are a few who attach themselves to our hearts and memories and forever become part of our very being. Jim O'Brien is one of these few. He is a warm, compassionate human being with a heart as big as the whole outdoors and a charismatic personality highlighted by his quick Irish wit and smiling blue eyes.

One can quickly identify Jim O'Brien with Ben Adhem in the famous poem by James Hunt. There Ben Adhem awakens from a dream to find an Angel writing, in the Book of Gold, the names of those who loved the Lord. On being told that his name was not on the list, Ben Adhem asked that he be put down as "one who loveth his fellow man." The next night the Angel came again with her Book of Gold to reveal that "Ben Adhem's name led all the rest." James O'Brien is one who loves his fellow man. And he expresses that love in every way--serving, giving, helping, supporting, forgiving, sympathizing, counseling, et cetera, et cetera. Perhaps most endearing is his fierce loyalty and dedication to both friends and causes.

All of this is not to say that Jim O'Brien is an easy mark or is in any way "wishy washy." He has a passion for truth, for justice, and for right, and he will not be beguiled from these goals by threat, entreaty, or personal reward. In this respect, too, his Irish heritage shines through.

On a personal note, I was assigned to work with Jim O'Brien and Francis Kirkham when I joined Pillsbury, Madison & Sutro in September of 1949. Jim was the newest partner in the firm -- I believe they totaled fourteen at the time -- and he at once became my mentor and my friend. In the years that followed, I was continually and intimately exposed to James O'Brien, the prominent lawyer, and to James O'Brien, the extraordinary man. I learned from him in both roles, the most important lesson being this: strive always for perfection in the practice of the law but never at the expense of being the very best husband, father, son, and friend. Jim's life reflects this perspective in action. While the fates deprived Jim and Mary Louise of the joy of children, they served eagerly and effectively as godparents to the offspring of hosts of friends. My son is a grateful recipient of their devotion to this very special calling.

In 1966, Jim O'Brien left his partnership in Pillsbury, Madison & Sutro to become the legal vice president and director of Standard Oil Company of California. He quickly organized the legal talent within the company into an effective, cohesive unit, and then went on to also become a confidant in all matters to Otto Miller, the chief executive officer of Standard. But this is not the time or place to chronicle Jim's successes as an officer and director of the company. Suffice it to say that he retired with full honors in 1977 in accordance with Standard's mandatory retirement policy. Once more I was the beneficiary of his friendship; he nominated me as his successor and thus opened for me a whole new world of fascinating, delightful professional experiences.

In retirement, Jim was made counsel to Pillsbury, Madison & Sutro. His service continues -- active and productive. Jim's avocation has always been books. He is both a prodigious reader and an accomplished collector. How fortunate The Bancroft Library at the University of California, Berkeley, has been to have Jim serving as the chairman of its Council of The Friends of The Bancroft Library. The challenge is fulfilling for him and rewarding to all who use the library. Again, this is not the place to recount all of the pro bono projects that Jim O'Brien is undertaking in retirement, but be assured that they are many, varied, and publicly beneficial.

I am richly blessed to have had during most of my adult life the caring concern and invaluable counsel of James O'Brien. And I appreciate this opportunity to express publicly my deep affection for him and my gratitude to him for being such a positive force in my life.

William E. Mussman, Esq.
Carr & Mussman

December 1990
San Francisco, California

INTRODUCTION by Francis R. Kirkham

Bill Mussman's words so aptly capture Jim O'Brien's achievements, character, and inner spirit that I hesitate to attempt an added word. But Jim has been so much a part of my life for more than 50 years that I cannot let his story be told without at least an attempt briefly to express my affection and esteem.

Perhaps the best start is to borrow the words of his colleagues when the time came for Jim to retire from the Board of Directors of Standard Oil Company of California and from the post of chief legal officer of that vast and complex international organization. In its farewell Resolution the Board described him not only as "a sage, pragmatic, and resourceful lawyer," but also as a "contemporary 'Renaissance Man'--possessing that rare combination of intellectual brilliance and compassion for others and having an abiding interest in literature, art, culture, and the humanities."

Jim's accomplishments as a lawyer are extensive and brilliant indeed; they are reflected in the records of his law firm and those of numerous courts and international tribunals, enriched by his own recollections chronicled in the pages that follow. The other facets of Jim's character and career that round out the true Renaissance Man are so diverse and extensive that it is difficult to encapsulate or define them. I tried, at Jim's 70th birthday party where hundreds came to pay him tribute, by calling them, collectively: that indefinable something in Jim's heart, mind, and spirit that reaches out and touches with warmth and goodness all who pass his way, that brings him joy in love, friendship, laughter, and song; pleasure in rich scholarship; satisfaction in quiet generosity; and, perhaps above all, that whimsical yet absolutely certain knowledge he has that there are fairies at the bottom of the garden. His Irish ancestors would not have it otherwise.

Jim's war record in a way reflects the pattern of his career--beginning, as he would put it, as a one-feather Indian, and ending with a stream of remarkable accomplishments stretching from Eisenhower's headquarters through Berchtesgaden to our own top air command. One episode which he does not disclose in the pages that follow is, characteristically, an illustration of the accomplishment of the impossible. An injury during his college years left Jim with limited motion in one shoulder. If discovered it undoubtedly would have barred him from active service. With carefully prepracticed moves, quick diverting conversation at the right moments, and more than a bit of Irish luck, he got by his physical and was commissioned a Second Lieutenant in the Air Corps. He was mustered out a Lieutenant Colonel with the French Croix de Guerre with Silver Star, awarded by General de Gaulle for exceptional services rendered in the liberation of France, and with the

Legion of Merit awarded by his own country for "exceptionally meritorious" conduct in the performance of "outstanding service" in the Strategic Air Forces in Europe:

Lieutenant Colonel O'Brien constructed a program without precedent, representing a notable contribution to the success achieved in obtaining from Germany documents and air technical intelligence of great value to the United States Army Air Forces, thereby reflecting the highest credit upon him and armed forces of the United States.

Included in the background of these citations is an almost unbelievable chapter of army intelligence. As the war ended Jim, with one German speaking aide, dashed in a jeep through Germany and into Austria to the little town of Zell am Zee where he located the entire Headquarters Staff of the German Air Force--60 to 70 general officers, including General Von Koller who had succeeded Goering as Chief of the German Air Force.

What follows is from the Arabian Nights. Realizing that this group must be kept together for intelligence purposes, Jim flew immediately to Eisenhower's headquarters at SHAEF and obtained an order from General Beedle Smith that the entire group be kept intact. He then returned to Austria with an American major general and escorted the entire German Staff to Berchtesgaden. The debriefing that followed, by both American army and civilian experts, became an important part of the war's intelligence and also of the curriculums of the United States war colleges.

Before Jim left the service, he was sent by General Spaatz, Commanding General of the Air Force in Europe, on special duty to Washington to coordinate through General Arnold and various divisions of the Air Force, a paper he had prepared on the future mission of the intelligence arm of the Air Force. General Spaatz also directed that regular Air Force officers being returned home should not leave without interviewing Jim about the Air Force of the future--in the new world of technological and scientific developments, where, as Jim puts it, "optical capabilities [exist] that would give you, from a satellite, the number [of a car] on the parking lot."

Between those dramatic years and today, Jim's career has continued to be one of exceptional achievement. As the years went by his practice with the firm trended more and more toward international law, antitrust law, and other problems of large international business enterprises. When the position of Director and Vice President in Charge of Legal Affairs became vacant at Standard Oil Company of California, Jim was immediately recognized as the one best qualified for that important office. Many years after his appointment, Gwin Follis, Chairman of the Board and Chief Executive Officer of Standard, told me that he considered his selection of James O'Brien as the best step he had ever taken for the company in his many years of service.

Through the succeeding busy years and into his retirement, Jim found time to carry on with distinction his important work for the company and at the same time devote his rich scholarship to improvements in the administration of justice and to community activities. In 1973, the Asia Foundation and the Southwestern Legal Foundation, of which Jim is a Founding Trustee, jointly sponsored a legal and economic conference in Singapore for lawyers, judges, ministers of economics, commerce, finance and development from all the countries on the Pacific Rim. Jim ended the meeting with a call for a world of law:

We are all men of the law, the law that is society's discipline, whether we make the law, administer it or, like most of us, try to understand it and breathe life into it. We truly know that only through law can we hope to live as a peaceful and thriving compact of nations. If we fail we shall fall into chaos and darkness and witness the failure of our human edifice--so painfully built, stone on stone.

Commitment to the law is not easy . . .

We have much to do and much to gain.

Let us hope to meet again in the service of the law.

Just last year Jim, a beloved trustee of Mills College, spoke at the dedication of the rare book room of its new library to his old and dear friend, Ellie Raas Heller, who had contributed so many of its treasures. His words reflect his scholarship and sensitivity:

I mentioned the chain of human beings stretching back in time. Indeed, through all recorded history, monasteries, ancient libraries, book collectors, librarians, printers, have (over the centuries) protected fine books. . . . Think of the monks buffeted and harried by bloodthirsty marauders who secretly carried the Book of Kells from Iona to Ireland where it may be seen today in all its glory in the library of Trinity College, Dublin, where a page is turned each day.

Such loyalty to books is a recognition that a book, and particularly a rare and beautiful book, has a life of its own--a life which endures far beyond the life of any man or any woman. No one, faithful to the ideals of beauty, can ever be more than a temporary custodian, nurturing, preserving, and loving precious books; and finally surrendering the treasured books to the next generation--and they to the next votaries, who in the procession and chain of human life, assume the same role and mission. When each of us in turn faces death's

dateless night, the choice and selection of a caretaker must be made. . . .

In the pages of the books on the shelves here are recorded man's inspiration, his soaring spirit, his horrifying crimes, his vaulting imagination, his unimaginable cruelties, his baseness, and his exaltation. . . .

As the poet said, "Beauty endures though towering empires die." Now Ellie's books have found safe harbor. They shall endure beyond the lives of all those within the sound of my voice.

Jim is approaching his 80th year--a milestone I passed some years ago. For more than half a century we have stood shoulder to shoulder in the practice of law and in a friendship which has been, to me, rewarding beyond words. I join Bill Mussman in expressing my affection and gratitude.

Francis R. Kirkham
Pillsbury, Madison & Sutro

May 1991
San Francisco, California

INTERVIEW HISTORY

James E. O'Brien was interviewed as part of the series of oral histories being done with twelve advisory partners at Pillsbury, Madison & Sutro. Starting with the firm as office boy in 1928, Mr. O'Brien joined the firm as an associate after graduating from Boalt Hall Law School in 1935 when he was twenty-three years old.

He participated in a wide variety of matters during his early years with the firm, eventually handling major national and international affairs for Chevron Corporation (then Standard Oil of California) before leaving PM&S in 1966 to become Chevron's legal vice president and director. After retiring from Chevron in 1974, he became counsel to PM&S, where he was interviewed for this oral history.

Mr. O'Brien relates stories of the early founders and senior partners of the firm, including Evans S. and Horace D. Pillsbury, Frank Madison, Alfred and Oscar Sutro, Felix Smith, and others. For example, he recalls of senior partner Felix Smith that "he was an extraordinary man in every way--beautifully educated, with extraordinary intellectual attainments, a writer of pure Anglo-Saxon prose; a lion in his den and a pussycat outside." As an illustration of the lion side, O'Brien explains that Smith's method of training young associates "was to make you walk the plank and watch to see whether you sank or swam." O'Brien's engaging manner of telling an anecdote, plus his own warmth and good humor, are clear in the transcript but especially vibrant on the actual tape-recording.

In discussing some of the early cases he tried, Mr. O'Brien describes with satisfaction some that he won, but he also adds a word of caution regarding the necessity of careful preparation: "Such cases were great seasoning, and you learned very quickly that what you thought was a perfect case when you finished preparing it in the library at the Standard Oil Building proved to be full of holes when some seasoned lawyer began to take you over the jumps in the courtroom."

He also documents the type of law practiced at Pillsbury, Madison & Sutro, discussing different kinds of cases and matters and then proceeding with information about work done for Chevron Corporation. Antitrust law became a special area of expertise for James O'Brien, and his skill and finesse in fending off government onslaughts on the oil industry are much admired by his colleagues. He discusses the principal aspects of the oil cartel case that began during the Harry S. Truman administration and lasted for years.

He participated in significant international agreements, such as the formation of the Iranian consortium, and arbitration, such as the Aramco arbitration award. Becoming well versed in international law, Mr. O'Brien has made a strong effort to educate American thinking about the rights and duties of nations. He has taken on innumerable speaking engagements on this and other law and business topics. As a trustee of the Southwestern Legal Foundation, he helped establish its International Comparative Law Center.

This oral history, as part of the Pillsbury, Madison & Sutro Series, does not attempt to document the years 1966-1974 when O'Brien was vice president for legal affairs and director of Chevron, although he carried on Chevron's strong relationship with the firm as Chevron principal counsel.

In addition to his law firm practice and his term as Chevron vice president, Mr. O'Brien has given generously of his time and talents to various groups that serve the community and society--the Asian Art Museum of San Francisco, for example, and the Friends of The Bancroft Library. He served on the boards of the Youth Council, the San Francisco Chamber of Commerce, Stanford Hospital, and the Academy for Educational Development in Washington, D.C.

Twelve interview sessions took place in Mr. O'Brien's ninth floor office where he is surrounded by books, pictures, and travel mementos. The office is in the Adam Grant Building, located in San Francisco's financial district. The interviews took place on January 13, 20, 26, February 2, March 17, 24, April 7, June 7, September 22, 1987; March 28, November 30, 1988; June 19, 1989.

The tapes were transcribed at Pillsbury, Madison & Sutro and were carefully edited by the interviewer and Mr. O'Brien. He collected photographs and clippings to be included in the transcript.

The Regional Oral History Office was established to record autobiographical interviews with persons who have contributed significantly to recent California history. The office is headed by Willa K. Baum and is under the administration of The Bancroft Library.

Carole Hicke, Project Director

January 1991
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

BIOGRAPHICAL INFORMATION

Your full name James E O'Brien

Date of birth March 22, 1912 Birthplace Trinidad, Colorado

Father's full name George Augustus O'Brien Birthplace Bay City, Michigan
Occupation Transportation executive

Mother's full name Rhce Albendire O'Brien Birthplace Lansville, Indiana
Occupation Wife and mother

Family

Spouse Mary Louise O'Brien (married 1976, she died 1978)

Children Jeane Gulmore O'Brien (married 1971)

Jeane has 3 children; Linda, John & Mary

Where did you grow up? Mexico City, Mex; Manila P.I, Shanghai, China
Oakland CA

Education Technical High School Oakland, BA UC Berkeley 1932
JD, Berkeley UC 1935

Areas of expertise Hard work. Journeyman lawyer
in field of anti-trust, international law &
business transactions

Special interests or activities Books; fine printing;
Aqua Art; photography; The use of the English
language.

O'Brien, James Edward

OCCUPATION(S): lawyer

BORN:

March 22, 1912 Trinidad, CO US

PARENTS: George A O'Brien and Alice A Lapsley O'Brien

SEX: Male

FAMILY:

married Mary Louise James, January 2, 1936 (dec 1978);

married Jeanne Gilmore LaClair, 1979

EDUCATION:

AB, U Calif at Berkeley, 1932;

JD, U Calif at Berkeley, 1935

CERTIFICATION: Calif bar, 1935

CAREER:

practice in, San Francisco, CA, US, 1935-1966;

assoc, partner Pillsbury, Madison & Sutro, 1935-1966;

vp, dir Standard Oil Co Calif, San Francisco, CA, US, 1966-1977;

of counsel firm Pillsbury, Madison & Sutro, 1977-present;

dir WP Fuller & Co;

dir El Portal Mining Co;

dir Abercrombie & Fitch Co;

pres bd dirs Stanford Hosp;

bd dirs Acad for Ednl Devel NY;

bd dirs Nat Fund for Med Edn;

bd dirs Am Enterprise Inst;

trustee Internat and Comparative Law Center, Dallas, TX, US;

trustee Southwestern Legal Found;

trustee Mills Coll;

trustee San Francisco Asian Art Commn

MILITARY:

Served as lt col USAAF, 1942-1948

AWARDS:

Decorated Legion of Merit;

Decorated Bronze Star;

Croix de Guerre with Silver Star

MEMBERSHIPS:

Mem San Francisco C of C (past vp, dir);

Mem Internat C of C;

Mem Am Bar Assn;

Mem Am Soc Internat Law;

Mem Internat Law Assn;

Mem Am Law Inst

CLUBS AND LODGES: Pacific-Union (San Francisco); Bohemian (San Francisco); Stock Exchange

HOME: Palo Alto, CA US

OFFICE: San Francisco, CA US

I BACKGROUND

[Interview 1: January 13, 1987]##¹

Grandparents and Parents

Hicke: I wonder if we could just start this morning by your telling me a little bit about your family background -- something about your grandparents and your parents.

O'Brien: I know very little about my grandparents. I grew up as a youngster outside the United States. As a consequence I had very limited exposure to my grandparents. Once, for a month or two, when my older brother John was in Children's Hospital in New York, I was sent off to spend some time with my paternal grandfather and his wife. They lived in Ashland, Wisconsin. It was wintertime; bitterly cold. I had just come from the Philippines, and the shock of that climate and those surroundings are indelibly printed on my mind.

My father had two sisters who lived with their parents, and they pampered me and spoiled me, but I spent a winter with a runny nose and severely chapped hands; a little lonesome boy playing in the snow on a tiny sled. And that was the only time I ever saw my grandfather or my grandmother -- I don't think she was my father's mother; I think she was the second wife of my grandfather.

Hicke: This was your paternal grandfather?

1. This symbol, ##, marks the beginning or end of a tape or a tape segment. A guide to the tapes is provided at the end of this volume.

O'Brien: Paternal grandfather.

My mother's father I saw, to the best of my recollection, only once in my life. He had been seriously wounded in the Civil War. He lived very modestly as an old soldier in West Los Angeles, near my mother's sister. I do have some pictures of him, taken with the whole O'Brien tribe, when he visited us in Ocean Park, California. He was a tall, handsome, erect, old gentleman, with a most impressive, white, handlebar mustache, a great shock of white hair -- beautiful to behold. My mother, when we lived in China and earlier in the Philippines, I know wrote him with considerable frequency and, I think, probably helped support him.

I never met my grandmother on my maternal side. She died before my mother and father were married. My mother was born in Evansville, Indiana. How she came there, how her family came there, I haven't the slightest idea, or why they moved to Colorado -- all lost in the mist of time. She lived there with her father and mother as a young girl --

Hicke: In Evansville?

O'Brien: No. In Colorado.

Hicke: Where in Colorado?

O'Brien: In Trinidad, Colorado, which is a small railroad and mining town on the southern border of Colorado -- a railroad town because the principal activity, as I look back on it, seemed to be the fact that the Santa Fe Railroad roared through there.

How my mother got there with her family, I don't know. But she was married at an early age, probably eighteen, to a prominent citizen of this small town -- a man much older than she -- who was a railroad construction engineer or had a construction company. In any event, he was the leading citizen or one of the leading citizens of this small town. It is a rather picturesque little place. Behind the small group of streets in those days there was a tall bluff called Fisher's Peak, which was easily climbed. That part of Colorado lies in the Sangre de Cristo range of mountains that run generally north and south through Colorado.

In any event, she was married to this gentleman whose name was McKeough, James McKeough. He had a son who was, I believe, older than my mother. He was, in those days, a young lawyer in Trinidad, Colorado -- representing the railroad, I guess, in all of their personal injury cases and whatever other sort of business they had.

That was a coal-mining area of Colorado. Nearby was Walsenburg, a coal-mining town. I recall my mother telling me

about the terrible, bloody massacres and strikes that had taken place in the coal mines in those very early days. When Mr. McKeough died, his son assigned all of his interest in his father's estate to my mother. She thus inherited, I don't know, three or four little houses and perhaps some other small inheritance.

She lived on there with her mother as a young widow. Her mother died there. I believe her father had already moved away to Southern California, but I may be mistaken about that. At least I have no consciousness of her ever having talked about him in connection with Trinidad, Colorado. I think she was a widow for perhaps five or six years, maybe longer, when my father appeared on the scene as an energetic, promising, young employee of the old Wells Fargo Express Company. In those days the Wells Fargo Express had an express car on every train in the country, and the express messengers rode those trains and handled the express packages, insured packages; they handled money, gold and silver, and safes, and all that kind of business.

Hicke: Were they guarded?

O'Brien: They were the guards -- there were sometimes extra guards. They were usually armed. I don't think he was an express messenger, although I might be mistaken; I think he was sort of a divisional superintendent, superintending the running of the express service in some part of Arizona and Colorado.

Hicke: And your father's name?

O'Brien: Was George Augustus O'Brien. He was born in Bay City, Michigan. He was of Irish and, I believe, German descent; I'm not terribly sure. There are other Irish names in the tribe -- there are Fitzgerald O'Briens, and so on -- but I really don't know anything whatever about the family.

He had a brother by the name of Harry O'Brien. And my father had been married some few years, perhaps five or six years, before he met my mother. His first wife had had two children, Harry Birge O'Brien and George Fitzgerald O'Brien. When his wife died, he was left with two tiny boys. How they were taken care of, I haven't any idea. Anyway, he was younger than my mother by maybe five or six years.

They made common cause, and shortly after they were married, he was sent to Mexico City to take charge of the Wells Fargo business there. On second thought, I think they lived in Nogales, Arizona first, and then he was sent to Mexico City. My father had these two children. My parent's first child was my older brother, John, who was eighteen months older than I. They lived in Mexico

City. When I arrived, my mother had four small children. There were some fairly hectic experiences with tremendous earthquakes and the turmoil of the Mexican revolutions.

I was born in 1912. My mother, I guess, decided that I was going to be president -- at least she came back to Trinidad, Colorado, and I was born there in her old home.

Hicke: She came back specifically to --

O'Brien: For that purpose, yes, to be delivered of me. And shortly thereafter we went back to Mexico City. That was in 1912. In 1914 the civil wars in Mexico City drove us out of Mexico. There were soldiers stationed on the roof of the house, and we were right in the thick of all the shot and shell and fire. My mother and the four children left Mexico by way of Vera Cruz.

My father stayed in Mexico and had a few hair-raising experiences of his own. Pancho Villa, for example, commandeered all of the equipment of the Wells Fargo Express Company there -- their carts, their horses, and so on -- and when my father went out to meet the general, Pancho Villa, he was promptly clapped in jail in one of these railroad cars and held there. He was ultimately marched through the streets of Mexico City on the way to be executed when the [U.S.] State Department, in the person of William Jennings Bryan, intervened with the Mexican government. Somehow his release was secured and he left Mexico.

Hicke: That's an amazing story.

O'Brien: Yes.

Hicke: William Jennings Bryan was down there on a visit, or something?

O'Brien: He was Secretary of State.

Hicke: But he wasn't in Mexico City himself?

O'Brien: No, no. Some State Department messages were sent back and forth presumably.

Hicke: And your father was representing Wells Fargo there?

O'Brien: Yes. He wanted Villa to sign some sort of receipt for all this stuff that he had confiscated. The revolutions that swept Mexico were really bloody revolutions. Somewhere in my papers I have some letters that my father wrote from Mexico at the time, with his accounts of all the contending forces.

He was not a formally educated man--he had, I assume, a high school education--but he was what I would call a well-educated man. He had read widely, he wrote excellent prose. Maybe because he had been a railroad messenger, he wrote a beautiful hand, very legible hand. So his accounts of those episodes in Mexico's history were very interesting.

Hicke: That would be fascinating.

O'Brien: Yes. So then, after that, he was transferred to the Philippines.

Hicke: This is 1914, or so?

O'Brien: Yes. Right. And the four of us, four boys, and our parents lived in Manila--at first in the Manila Hotel. My two older brothers--his sons, Harry and George--were sent off to Baguio, which is in the mountains in the Philippines, to a famous boys' school. I think it's an Episcopal school; it may still be there. And occasionally we'd take a train that went to Baguio and visit them up in the mountains. But my brother and I lived very happily as two lively, small boys in Manila.

Childhood in China

O'Brien: My family moved out of the hotel eventually. My earliest recollections are of this lovely house in which we lived on the Avenue Mabini. And I played in the Luneta, which was the big, main park. And life was very pleasant and agreeable until--I can't remember, the dates have completely escaped me--my older brother, John, fell off a pony. He was a little boy and tumbled from the pony and hurt his hip, and it did not heal. The upshot was that my family just packed up and left the Philippines, and--he was their first born--took him to New York, put him in Children's Hospital, and my father and mother did nothing but tend to him for perhaps a year or more.

We lived in East Orange, New Jersey, and they took the ferry and train and went to the hospital every day. But none of those things succeeded. John ultimately died in the hospital there and is buried in East Orange, New Jersey. Maybe twenty years ago I went to the cemetery (my mother was a Catholic; he is buried in the Catholic cemetery) and arranged for so-called perpetual care. In the cemetery I found his headstone, and so on. His name was John Lapsley O'Brien, which was my mother's maiden name--her name was Alice Lapsley; Alice Alberdine Lapsley.

Hicke: Is that Scottish?

O'Brien: Sounds to me like a manufactured name.

Hicke: Maybe. I was thinking of Aberdeen, Scotland.

O'Brien: Yes. So after his death, my father was asked by the Wells Fargo Express to become their representative in the Far East. My two older brothers were put in school at the Mt. Tamalpais Military Academy in Marin County, and my father, mother, and I moved to Shanghai.

Hicke: You had seen a lot of the world already.

O'Brien: Yes. And we lived there until about 1921, or maybe 1922, or '23, I've forgotten precisely. That was a happy time in my life. We lived in a fashionable hotel in Shanghai in those days called the Astor House, which was in the British zone. It was right on the river. It's still there; I looked it up when Mrs. [Jeanne] O'Brien and I were in China several years ago. And I was sent to a famous missionary school called the Shanghai American School. It had been established by missionaries. It was primarily a boarding school for missionary children. Many of their parents were in the interior of China, up the Yangtze, out of sight, and their children were left in Shanghai at this boarding school, but they took day pupils as well.

When I look back on it, I think my mother was very brave, because I had started school in the Philippines in a private school run by two very nice spinster ladies, school teachers, and run in their private home. As I recall, there were maybe fifteen children altogether--all little monsters, six or seven or eight something like that--kind of kindergarten age. But we did pursue the alphabet and phonics--vowel sounds and so on. I can remember the banners that they used to display with all of the "oos" and "ahs."

Hicke: Well, speaking of languages, can I just interrupt? Where you lived, did you learn the languages? Like in Mexico, did you learn Spanish?

O'Brien: I spoke Spanish before I did English, because I had a Spanish nursemaid. And when I was in Shanghai, I learned, I'm sure, a very vulgar brand of rickshaw-boy Chinese. I also took Chinese in school, however. We had a Chinese teacher, and we did calligraphy.

I never advanced very far in that, but I could make myself understood.

But to go back to my mother: she would walk to the corner with me when I was on my way to school, put me on a British tram car, and I would ride halfway across Shanghai, changing trams, and then walk maybe a quarter of a mile on what was called Bubbling Well Road to the site of the school. And then I would repeat that process in the afternoon when I came home. And I never had, you know, the slightest anxiety, except fear that I might lose my way, until I learned it well. I guess perhaps she rode with me a couple of times to make sure that I had it in mind, but if so, I don't recall that.

As I became more accustomed to the routine, we used to play games with the Chinese conductors, because it was sort of like the cable cars except there were two of them hooked together. And when the conductor would come to collect your fare, you would hop off the thing and get on the back car, and then you'd get off the back car and hop on the front. Not that that really, I think, fooled a Chinese conductor -- to see a little foreign devil running back and forth between one car and another. Anyway, I went to school.

Hicke: Was the expression "foreign devil" used by them?

O'Brien: No. I had a Chinese amah -- nursemaid -- and we had a couple of house boys that waited on us in the hotel, took care of the apartment and so on, and I felt great affection for them, and they for me. I was sorely troubled when we finally parted, because they had been wonderful, affectionate friends. I had a favorite rickshaw boy. When I wanted to go anywhere, I would hop into his rickshaw and be carted around the town. And I used to play on the banks of the river. You could take a small, four-wheeled cart, which was common sort of toy for a little boy [gestures] --

Hicke: Looks like about two feet long?

O'Brien: Yes, and walk along the river and catch, maybe, fifty turtles in the course of afternoon -- of all sizes, little tiny ones and big ones -- and then I'd bring them back to the hotel --

Hicke: For dinner?

O'Brien: And put'em in the -- no -- in the bath tub. They were pets.

Hicke: Pets? Oh, okay.

O'Brien: And then I'd have to turn them loose. But I always kept one or two around.

Well, my favorite rickshaw boy -- I remember only one episode about him. The British zone of Shanghai was policed by these tremendous, ferocious, Indian Sikhs in police uniforms, and they treated the coolies, Chinese coolies, with the greatest cruelty. For example, the big Sikh who stood in front of the Astor House Hotel keeping order among the rickshaw coolies, carried a whip like a riding crop, only longer, and he didn't ever hesitate to flay those poor coolies over the back. I created quite a fuss one day, because he slashed my rickshaw boy. I was sitting in the rickshaw, and as he struck this poor fellow, I wrapped my umbrella around his head. I came down on the Sikh's head.

Hicke: You whacked the Sikh?

O'Brien: Yes.

Hicke: Well, good for you.

O'Brien: Well, that was strictly verboten. I created quite a fuss, but I was loudly applauded on all sides by the Americans who felt the same horror at the way these poor people lived.

In those days -- if you go to Shanghai now it's all cleaned up -- in those days the sampans were --

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Hicke: You were just saying the sampans were tied up on shore.

O'Brien: On the shore, and then tied up to each other, and they came practically out to the center of the channel of the huge river there.

Hicke: One tied to the other in a string?

O'Brien: Yes. Not in strings -- side-by-side. The poor Chinese that lived on those sampans, many of them had never been on dry land. They scurried around on those little sampans, which were about as big as the top of this desk. They cooked and ate and slept and lived and died on those little potato chips in the utmost degradation and filth; barely keeping body and soul together. I used to look out the window and watch the scene every day from the windows of our apartment. The Astor House is right at one of the main bridges that goes across the river, and on the other side of the river was the infamous park, reserved for English people -- the Americans were permitted to use it as well --

Hicke: Condescendingly?

O'Brien: Yes, which had the sign on it, "No Dogs or Chinese Allowed." My father, at some stage, bought me what I guess was the first pair of roller skates ever seen in Shanghai. I learned to skate, skating up the rather precipitous slope of this bridge and then coasting down the other. But the bridge was lined with beggars with every ugly, horrible sore, with every deformity -- many of them self-inflicted for the purpose of attracting sympathy, and so on -- and I knew them all by name, because I fell so often into their arms. They would set me up on my feet again, and I would struggle to scramble up one side and down the other.

I was ill once or twice, rather seriously. I not surprisingly got some sort of a paratyphoid, or something of the sort, some very debilitating sort of disease. My parents, naturally, having lost one child, were quite anxious about that. My mother brought me home once or twice in the summertime to be in Southern California. I can't help but be amused now when I see the pictures of Venice, California, with all the skaters and hot-rodders and hot dogs and grotesque people. In those days Ocean Park and Venice, which was next to it, were sleepy little Southern California communities of little, old-fashioned summer cottages. My mother and my father would rent one of these, and my mother would bring me over to spend the summer playing on the sand in the wonderful Southern California sunshine. I learned to swim and to play on the beach and in the breakers. That was great.

That was a great adventure, because it took perhaps thirty days from Shanghai on a coal-burning ship to come to the West Coast. You went to Japan and Hong Kong, and then set out on the long voyage across to Hawaii. In Japan, you would stay for a few days while they made provision for the next stage of the voyage. And they loaded coal on these ships from huge barges full of coal. The coal was lifted into the hold of the ship by women, many of them with babies on their backs, handing these baskets along up into the bowels of the ship. And then we would go to Hong Kong.

So I saw a lot of Japan. When there'd be time enough, you could go to Tokyo and have some pictures taken in front of the great hotel in Tokyo built by Frank Lloyd Wright -- the Imperial, whatever you call it. Can't think of the name of it now.

Hicke: The Imperial Palace or something?

O'Brien: It came down in the great earthquake in Tokyo. And, of course, has been replaced.

Hicke: I've read about it.

O'Brien: Yes. The Imperial, that's the name of it.

So that was a very pleasant and happy existence. My parents were much interested in me and devoted to me, so I had lots of love and affection.

Hicke: You started to tell me about school too.

O'Brien: Yes. Well, we had American teachers -- missionaries, no doubt. There was a very strenuous curriculum. I had a better education in that missionary school, I guess, than any other school I ever attended, although I went to an excellent high school when I came back. But there was no kidding, you were there to learn things, and it was run very cordially but very firmly, and you were expected to achieve something. You were not putting any beads on a string, and you were not fooling around when you were in class. So without really being conscious of any effort, I fell into the habit of learning things.

Hicke: Was it enjoyable?

O'Brien: Yes. I enjoyed school. I liked it.

Hicke: They didn't make it very difficult?

O'Brien: No, there wasn't any great austerity or discipline or anything of the sort. I didn't go home for lunch; I was fed in the school, and then we had periods of play and recess, and then regular periods of exercise and games. I learned to love to play soccer. So it was really an excellent school. The amazing thing is that there are, in this area, a tremendous number of people, the descendants of all those missionaries, who attended that school at one time or another. As a matter of fact, they have an association. I didn't graduate from the school. I wasn't there long enough to graduate from the school.

Hicke: You mean in San Francisco there are a number of --

O'Brien: Oh, around the western United States, and in the East. There's a marvelous book, an enchanting book, written by a fellow named Espey, who attended that school. I can't think of the name of it, but it's full of the most entertaining, delightful stories. His father and mother were missionaries, and they lived on the other side of the river, the other side of the tracks, if you like. He grew up learning to speak, as his young sister did, Chinese of an absolutely astonishing profanity. Listening to all of the Chinese people around him, he came to have a superb repertoire of profane Shanghaiese -- the Chinese have a gift for colorful profanity. And this book has really delightful stories about his life and his little sister's life in what was pretty largely a Chinese community. They lived in a missionary compound, but their whole life was spent among the Chinese, because their parents, bless

their hearts, were trying to convert the heathen, which at this distance seems like a ludicrous and perhaps even a melancholy way to have to waste your life.

But it was a great school. I can think of a number of people -- one of them comes to mind who's a good friend of mine: Davy Napier, who graduated from that school. He became an ordained minister himself -- a somewhat controversial chaplain at Stanford. He was a Yale Fellow and the Master of Calhoun College at Yale; I had a card from him just a few days ago. But the world is sprinkled with graduates of that missionary school, which had a marvelous, well-deserved reputation.

Hicke: That's one thing they did right.

O'Brien: Yes, right.

Move to Oakland

O'Brien: Then I don't know what happened. Something happened in my father's company. Whether there was a change of signals, whether he fell out of favor, whether they began to suffer losses, or what, I don't know, but we packed up and came back to California.

Then I don't really know, but it was the beginning of very considerable tensions between my mother and my father. My father seemed to be out of work and looking for things to do, and gradually the situation got more and more acute, and finally there was a total rupture, and he left and went off to Cuba. My mother and I were left in a flat, in a very wretched, poor part of Oakland -- below San Pablo Avenue -- which in those days was full of impoverished blacks, Italians, Irish, Spanish people.

I went to school at the Durant School, which was on about 30th and West Street, just above San Pablo Avenue, and I walked back and forth to the school from where we lived. But my father took a position with the Wells Fargo again in Cuba, and became, I guess, the manager of their operations in Cuba. He was headquartered in Camaguey, which is in central Cuba, and he and my mother corresponded. But their relationships, at least on his side, were rapidly changing, and he finally asked her for a divorce, which she resisted with all her might. In the end, she and I went to Cuba; we got on a train in Oakland, California, and went to New Orleans by train, and caught a boat to Havana, and from Havana we got on a train and went to Camaguey. We spent a month there while they tried to solve their problems, unsuccessfully. Eventually they were divorced. And so my mother and I were kind of high and dry in a tough part of Oakland, and so life took another turn. I climbed

out of my Little Lord Fauntleroy clothes and turned into a street kid that had to fend for himself.

Hicke: What a complete turnabout.

O'Brien: Yes, it was quite a turnabout. But my mother was in terrible shape emotionally, psychologically, and I was about her last resource. We were living on a shoestring, so as soon as I was able, I had to do some things to help.

Hicke: You were still only about ten or eleven.

O'Brien: Ten, or eleven, yes, twelve. I graduated from Durant School when I was twelve. Yes, that's right. I graduated from high school when I was sixteen. So she and I lived there in that place. My older brother, Harry, lived with us part of the time. My older brother, George, who was my father's older son, went to Cuba and joined him and worked for the Wells Fargo Express Company there.

Hicke: You started to tell me that you were going to help your mother out. Did you get a job?

O'Brien: Oh, I did everything that a little boy could do. I mean, I sold newspapers, and I can remember marching through the streets -- in those days even the first crystal sets had not yet arrived -- walking through the streets at night with extras, shouting to sell extras, and distributing programs for the local movie house, which was on San Pablo Avenue at about 27th or 28th Street, and washing windows, and doing, you know, all sorts of little chores that people could afford to have done -- not much -- but I don't recall being the least bit discouraged about life.

My mother was really in terrible shape. For a while we used to go to the movies every night of our lives. It was before sound, so there was this little movie house with a piano player there, and I'm not sure she ever saw much of what was flashing on the screen, but it kind of helped her over a tough time. I'd wake up in the middle of the night and she'd be wandering around the house, looking out the window, and all that business. So it was a very hard time.

But I reveled in school, although I had to learn to take care of myself and, as usual, there were a couple of guys that were bigger than I was who were kind of the school bullies, who naturally had to take me on. And I had my share of the fights. Fortunately I was befriended by a good-sized kid.

Hicke: Oh, that's good.

O'Brien: But there is a certain ritual about all this. I had to stand up to them or I would have never made it, you know. So finally we had a regular fight. We went off the school yard to the basement of some abandoned house and fought with gloves. And my second was my larger friend; he made sure I didn't get clobbered with some dirty trick. I guess, you'd call it a draw, but at least I established my willingness to fight, so I never was bothered after that. Oh, once I wanted to play the violin, and we somehow managed to put together enough money to buy a three-quarter size violin, which was my size. Naturally carrying a violin around that part of town was not the form. So I finally busted that violin over somebody's head, you know, in one of those kind of brawls.

Hicke: They were teasing you about the violin.

O'Brien: Yes, sure, and pushing me around. But I got into the swing of things. I could take care of myself, and there were kind of street gangs in that part of town -- little kid gangs, you know. They'd go to a vacant lot and dig a big tunnel, and that would be kind of like a fort. And you'd take some potatoes from home, go down there, and build a fire, and bake potatoes. There'd be another gang two blocks away, and each had its turf. It was kind of an innocent thing. The worst thing that ever happened was they threw a few rocks at each other or something like that, but none of the sort of big, serious, knife fights that you read about in the papers nowadays.

Hicke: What happened to these kids as they grew up? Did they form more serious gangs?

O'Brien: No, I don't have any consciousness of that, because when I got to be just high school age, I decided that I wanted to go to Oakland Technical High School. That was at about 41st and Broadway, and it looked like the capital of the world as far as I was concerned. It's a lovely old building with columns; it's quite a handsome facade.

So by golly, we up and moved to a little flat right across the street from the school, and in many ways that was the happiest time of my life, because I lived right next to school. I was still small, I was twelve years old, and I hadn't begun really to grow up, and yet I played in the school yard. The industrial leagues used to play basketball in the evenings. I got good enough to be invited to play for one of the industrial teams, and I played with their shirt on, you know, some plumbing company or whatever it was in the industrial league.

School was wonderful. I had a straight one average for four years of school, and I enjoyed it all. It wasn't very hard work,

except for Latin -- I got a poor start in Latin with a very nice woman who didn't know much Latin herself.

Hicke: Oh dear.

O'Brien: But I was rescued in the second year of Latin by a very tough woman who knew Greek and Latin, and who taught in a very old-fashioned way. You were severely examined every day on the lessons, and your seat in the room was switched each week. She made some sort of a cryptic notation every time you answered a question or something, and at the end of the week, you shifted. If you were a dunce, you sat in the back of the room, and if you knew your stuff, you sat in the front row.

Hicke: Oh, that's where that expression comes from, "You go to the head of the class." Literally.

O'Brien: Right. Literally. Right. I was not about to sit in the back row, so I began to learn some Latin.

Anyway I enjoyed that school very much, and there were some exceptional teachers. I had at least one very exceptional teacher when I was in this Durant School. She was a tall, gaunt, pioneer-looking woman, with her hair done in an old-fashioned knot on the top of her head named Henrietta M. Jones. Among most school kids she was a terrifying sight; she was severe and blunt and so on, but she really was a marvelous teacher.

Hicke: And what did she teach?

O'Brien: The fifth grade or the sixth grade or the seventh grade or something like that. She told me then that I should try to be a Rhodes scholar.

Hicke: Is that right?

O'Brien: Yes. And that school was a pretty tough school. I didn't realize it, but the language that was being used was usually quite profane. It didn't mean anything to me; I adopted all the words without the slightest idea of what they meant. Apparently it was finally reported to her that I was swearing like a Prussian trooper, and she asked me about it. I think she was quite persuaded of my innocence, that I really didn't know what these words meant. But anyway, I do remember her, and I do remember being sent to the principal once with my good friend for being sassy or something of this sort, and he said, "I want you to be back here tomorrow morning with this scene from Shakespeare memorized. You be Brutus and you be Cassius, but be here at nine o'clock and recite the whole thing." Which we did.

Hicke: Now that makes a lot of sense to me.

O'Brien: Does to me, too.

Hicke: I mean, it taught you something in more ways than one.

O'Brien: Yes, right. As a matter of fact, for years after that, I carried a little, tiny edition of Julius Caesar in my pocket, and at one time, I thought I knew the whole thing.

Hicke: Just in case?

O'Brien: Yes. But I was interested. I can still say some of the lines from that scene. You know, that sticks in your mind like lots of tags of memory.

Hicke: Well, that was a very good way for him to discipline, I think.

O'Brien: Right. So I graduated from high school in 1928, and I was tied with a young girl by the name of Clarissa Young. I think she had a perfect score, too.

Hicke: Oh, tied for the school graduating class?

O'Brien: Yes. But I was chosen as the valedictorian. We had a combined graduation ceremony with the other Oakland high schools at the Oakland Auditorium. I spoke -- gave the speech -- and I could just barely be seen over the top of the lectern.

Office Boy at PM&S; E. S. Pillsbury and Alfred Sutro

O'Brien: And so that summer I worked at PM&S.

Hicke: Well, how did that come about?

O'Brien: That came about because one of the principal clients of Alfred Sutro -- one of his favorite clients, I should say -- was the Railway Express Agency, which was the successor of the Wells Fargo Express. The vice president in charge of the affairs of the Railway Express Agency in the West was the senior officer in contact with Alfred Sutro.

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Hicke: The vice president was the contact?

O'Brien: He was the contact for legal matters affecting the Railway Express Agency with Alfred Sutro, who represented them.

Hicke: And what was your contact with him?

O'Brien: Well, he had been a contemporary of my father's. And Mr. Graham -- his name was Clarence Graham -- and his wife were friends of my mother. They knew we were having a tough time. So Mr. Graham undertook to speak to Alfred Sutro, and asked him whether he needed an office boy for the summer -- an office boy who claimed he was going to be a lawyer, someday.

Hicke: Now have we finished that part?

O'Brien: Yes.

Hicke: Okay. Well, maybe we should get back and find out how, when, and where you decided to become a lawyer.

O'Brien: All right. I had said that from the time I was a child, I don't know quite why, whether I read some story, but I can remember even in China when I used to vow I was going to be a lawyer. My father and mother were always great when they entertained people. I was always invited to join the festivities, at least briefly. If they had a cocktail party, the servants always gave me a drink that looked exactly like those that were being served to the guests.

Hicke: What fun.

O'Brien: Yes. So I somehow fastened on the idea when I was a very small boy that I was going to be a lawyer. And I never really departed from that notion. I thought at the beginning that that was what I wanted to do. By age twelve I had been a caddy and a lot of other things to earn money, so when the opportunity came to work as an office boy in a law office -- "to polish up the handle on the big front door" -- I --

Hicke: "Never go to sea."

O'Brien: Yes. I accepted with alacrity.

Hicke: Did Mr. Sutro interview you?

O'Brien: No. No, I don't recall that.

Hicke: Tell me about your first day.

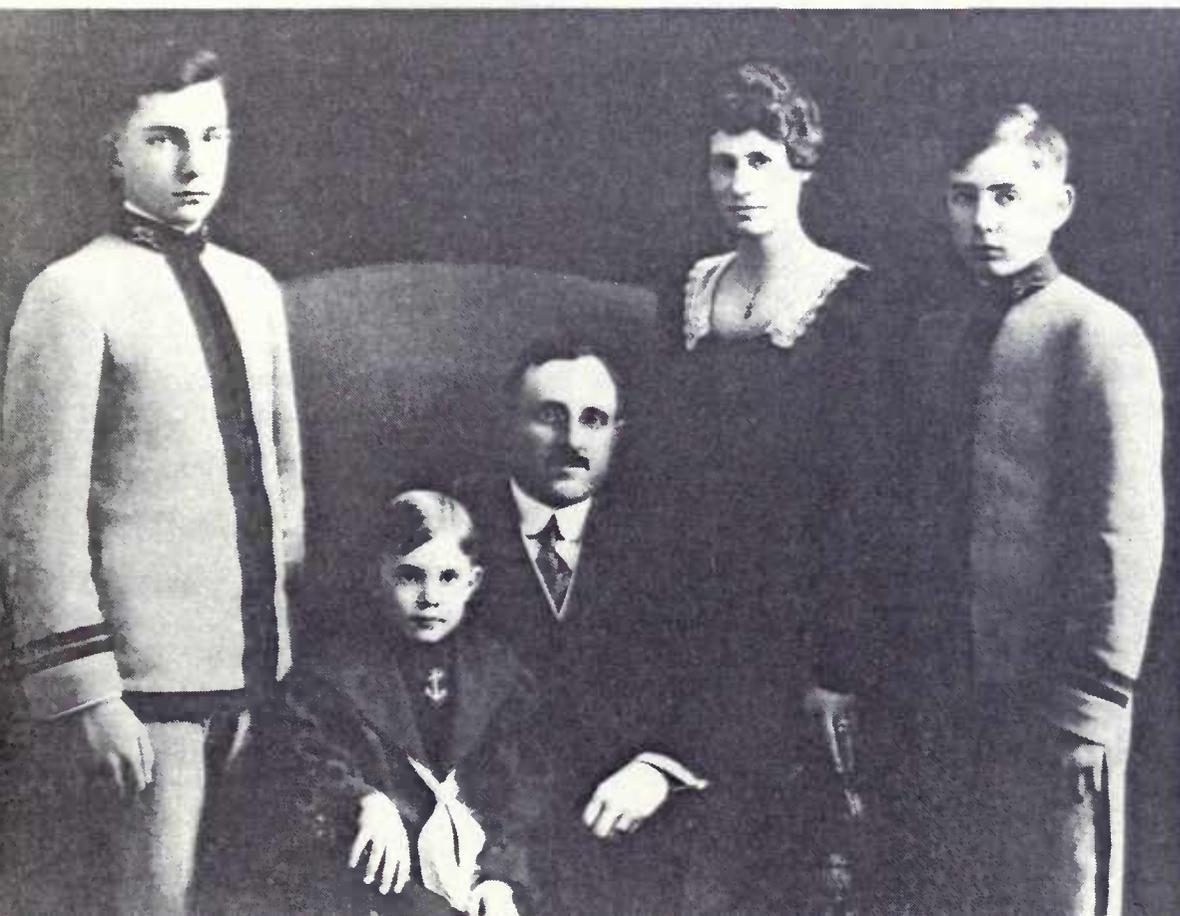
O'Brien: Well, I don't really remember. I can tell you a lot about the office. There was an office manager by the name of Bill Draycott, who was a garrulous, ineffective, good-hearted guy. The whole office occupied just part of the nineteenth floor of 225 Bush. The whole thing has been turned around so much it's hard to quite



Above: View from O' Brien's house in Shanghai with bridge, park on left.

Left: Jim O'Brien (age 8 or 9). In front of the old Imperial Hotel, Tokyo.

Below: The O'Brien family. Left to right: George Fitzgerald, James E., George Augustus, Alice, Harry B. Ca. 1918.



understand, but if you get off of the elevator now at the nineteenth floor, the entrance into the office is now right directly in front of you. In the early days, the entrance was where the receptionist sits now, and you walked in that door.

Hicke: This was in 1928?

O'Brien: Yes. There was a counter there, and the office, including the bookkeeper, the telephone operator, the vault, the office boys, and so on, was behind that counter. The telephone switchboard consisted of a unit about this big. [gestures with hands]

Hicke: Three feet, maybe two feet?

O'Brien: Yes, two or three feet. And there was a telephone operator by the name of Billie, who was practically a lieutenant general. She knew everything, she knew everybody, she knew everybody's business, she knew where everybody was, she ran a magnificent intelligence system -- no doubt from listening in on the phone calls.

Hicke: Well, being a telephone operator was the right spot for that, I guess.

O'Brien: Right, right. She sat over in one corner of the office. There was a lineup of offices down the hall. If you begin at 1906 -- I don't really know who's there now -- that was the beginning of the Gold Coast, if you will, and Felix Smith sat in that office. Next to him was Vincent Butler. Next to him was H. D. Pillsbury, then E. S. Pillsbury. I haven't fitted Oscar Sutro in there, but it's my recollection that he had an office on the nineteenth floor, although he had just recently joined the Standard Oil Company as vice president in charge of their legal affairs. Down at the very end of the hall was Mr. Alfred Sutro. It's my recollection that John A. Sutro had an office next to him. And Marshall Madison. And then in the very corner was Frank D. Madison. And all of them were in the office, busy lawyers all the time.

Mr. H. D. Pillsbury was also president of the telephone company [Pacific Telephone & Telegraph Company] at the same, but he was also a partner in PM&S, and he kept an office there. And Mr. E. S. Pillsbury came to the office only rarely.

Hicke: He was already retired. I think he retired in 1923.

O'Brien: Yes. Right. But in 1928 he was still around, and when he arrived, it was usually with an entourage of people carrying lap robes and so on. I occasionally witnessed this arrival in those days. A big car would pull up in front of the Standard Oil Building, and a big, beefy, flat-footed guard, a ruddy Irishman, would run out, fling open the door, and help Mr. Pillsbury, who would do his best to

evade this guy, all the time swearing at him to take his hands off him. He didn't want to be helped. Then he would be escorted up to the office.

I think that the old gentleman by then was getting close to being blind. I say that because of one personal experience I had with him. I went in his office -- I was naturally anxious to be a good office boy and meet all the requirements of good Horatio Algier hero -- with a sharp pencil and a clean shirt and shoes polished.

Hicke: And a smile?

O'Brien: And a smile. And so I went into his office one day to look around for some reason, or to deliver something there, and I thought his desk was a mess. So I put a new blotter on it, arranged it all in a perfectly handsome way. Apparently the next day he came into the office, led in and followed by the usual train bearers. He plunked down in his chair. I gather he knew precisely where everything was, because the first thing he did was to reach out and plunge his hand in the inkwell where I had put it.

That almost was the end of my legal career.

Hicke: Oh, that's a great story.

O'Brien: I was taken to a quiet room and told not only to never change .. his blotter again, but never to go in that room again.

I had a somewhat similar experience with Alfred Sutro. Naturally I wanted to say to him that I was grateful to him for having given me the job for the summer. I was very timid about all that, and he obviously didn't know me from Adam, and he was a very busy man.

One of the first times I went into his office, he was working away on a draft of a brief. He had a whole handful of pencils there, and without looking up -- so I really didn't have an opportunity to say, "I'm James O'Brien," et cetera -- he said, "Please sharpen these," without turning away from his work. So I took them, and I went down the hall to the outside office. I sharpened them and took them back, put them down where he had had them, and marched back down the long hall.

As I marched down, I could hear -- they had a buzzer system for the office boys, you know, every office had a number -- and as I walked back toward the office, I could hear one buzzer that was just going, going, and not stopping. When I got into the outside office, they were all running around like somebody had kicked their

anthill, because it was Mr. Alfred Sutro's buzzer, and he obviously was in a state. They were all kind of terrified of him anyway.

So under the classification of "last man out, the first man in," I was wheeled around and sent down the hall to see what was going on. I walked in, and Alfred was sitting there with his thumb in his mouth. Obviously he had stuck himself with one of these pencils. He said to me, gravely, "Young man, did you think these were surgical instruments?"

Hicke: That's a wonderful anecdote!

O'Brien: Oh, dear. So anyway, I had a very happy summer.

As for the office and the library, if you now go in the main entrance on the nineteenth floor, turn left, and walk down about three or four offices, the library occupied the rest of what was then the south side of the whole nineteenth floor before they built the new wing. The library occupied that south side of the nineteenth floor. On the other side, there were no offices at all. There was a big bay, and the office boys used to repair to that big open room to play catch. There were two or three characters among those office boys.

Hicke: Do you recall any of their names, or any stories about them?

O'Brien: There was a fellow named Jerry, who was a big, round fellow with kind of a butch haircut, pear-shaped, heavy, horn-rimmed glasses--really kind of an entertaining fellow. There was another one, whose name I can't remember, who really had a checkered career in the office. He was given the job of taking care of some of Mr. Smith's private affairs, and I think he made off with a lot of loot.

Hicke: Oh, dear.

O'Brien: In addition, Mr. Pillsbury had a tall, slender fellow, who was kind of his personal assistant; I've forgotten his name now. And then there was a whole string of lawyers: Mr. Smith was in 1906, and then there was a string of lawyers down the hall. Woodson Spurlock--

Hicke: He was an associate then?

O'Brien: He was an associate. He was a Rhodes scholar from Iowa. A very deliberate speaker, a very low-key fellow, worked principally on Standard of California affairs. There was Henry Hayes, who was a brilliant lawyer; a little man, perhaps five feet two or three. I came to know him well as a lawyer, and we worked together a good deal; I was very fond of him. He did not have a successful career in the firm, although he was very gifted. Next to him was a man

named Renato Capocelli, who spoke with such a marked Italian accent that it was very difficult to understand him, until you really got clued in. He was an absolutely eighteenth century gentleman. He did primarily land work on Standard's oil and gas leases. There was a fellow named Dave Mannoccir, a big, tall, handsome guy. He didn't stay around very long. And a fellow named Garry Owen. That was about it, as I remember.

Summer Work in PM&S Library; Gerry Levin, Vincent Butler

O'Brien: Twice after that summer -- I can't remember whether it was during law school or whether it was during college -- but I worked in the library. Gerry Levin was the librarian. He went on to have a very fine career as a lawyer and federal judge. It was quite out of bounds, I think, before then for anybody that had ever worked as part of the help, if you like, to be hired as a lawyer. I think that Gerry Levin was probably the first exception to that, and I was perhaps the second. I don't know that there was any rule about that, but it normally just didn't happen.

Gerry Levin was a great favorite of mine, and he became president of the San Francisco Bar Association. He was a man of great good instincts who did a tremendous amount of good in various civic organizations in San Francisco. I was just enormously pleased and did whatever I could to help in his appointment as a federal district judge in San Francisco, where again he made a fine reputation, fine career.

Anyhow, I worked as an office boy in '28. Then I worked in the library at least one summer. I can't remember whether I did anything else.

Hicke: Do you happen to recall how much you were paid?

O'Brien: It would be about \$60 a month, I guess, because I made \$100 a month when I began to practice as a lawyer in 1935.

In 1930, Vincent Butler, also a Rhodes scholar, was then the youngest partner. The partners were all family members except Felix Smith, Gene Prince, and Vincent Butler. I think he had gone to Galileo High School, University of San Francisco, and was a Rhodes scholar.

Hicke: I'm just going to flip through here and see when he became a partner.

O'Brien: I'd be interested if you have your list there.

Hicke: Yes, I do. Let me just put this on hold.¹

##

O'Brien: It must have been during law school when I met him, the summer that I was here. And I showed you that book I had, written shortly after his death.

Hicke: Right.

O'Brien: And a letter written to Eddie O'Day by Alfred Sutro shortly after Vincent's death. Let me just take a look--I can see that book from here, I think. [goes to bookcase]

##

Hicke: You have the letter there that was written about Vincent Butler in 1935.

O'Brien: Well, Alfred says, "This is a letter which Mr. Butler dictated and intended to sign on his return, but he was killed." He dictated it on the fifth, and Alfred sent it to Eddie O'Day on the seventh. So that must have been about the time that Vincent was killed.²

When they built the new building, the new wing, I was given the job of redesigning the entire firm's space. We moved the library down to the fourth floor, and I created typing pools, which were highly unpopular, and which after ten years or so were finally abandoned--I think some time after I had left the firm.

Hicke: Okay. Well, maybe we can get to that next time.

* * *

O'Brien: Yes. I had a wonderful secretary in mind, who had been on the night force, Jean Lejeal--she was kind of a famous character in her own right. Her father came out of the coal mines in Montana. She had a very tough time.

¹ Butler joined the firm in 1930, probably as a partner, since he had been practicing law since 1914.

² Butler was killed on October 7, 1935.

Education at University of California and Part-Time Work

[Interview 2: January 20, 1987]##

Hicke: I wonder if we could just start this morning with something about the life and times of 1928, when you entered the University of California.

O'Brien: Well, I've explained something about my personal background, the struggle my mother and I had to keep upright, and when I entered the University of California in 1928 I was sixteen years old; already I had had a lot of miscellaneous, part-time jobs, and it was evident that I was going to have to work to stay in the university. I'd had a pretty fair high school record, but I felt some anxiety about the prospect of college. First, I was a little young, and the difference of two or three years at that age was considerable. I decided to become an economics major and enrolled in the beginning courses in economics.

Berkeley had a famous professor of economics who taught the beginning courses. His name was Ira B. Cross.

Hicke: He wrote at least one famous book that I know of.

O'Brien: Banking in California. And he was an extremely entertaining and gifted lecturer. Several years later, I felt that perhaps I had selected the wrong major, because as I grew two or three years older, my interests were more seriously engaged by English courses, poetry, and the like. I enrolled in naval R.O.T.C. [Reserve Officers Training Corps] but quickly discovered that the classes would be held at a time of day which would interfere with my working in the afternoons and evenings. So I had to go to the head of naval R.O.T.C. and plead to have my "enlistment" torn up.

Hicke: Oh, dear.

O'Brien: That gentleman was Chester Nimitz. I often have thought of that episode, because you wouldn't think it possible that the leading admiral of World War II, responsible for the conduct of naval operations throughout the world, could have been washed up on the beach as the head of naval R.O.T.C. at Berkeley in 1928. I guess it says something about his naval discipline; despite that assignment, he continued to study and read and take courses and hang in there until the day that events brought him to the pinnacle of naval operations.

Anyhow, at or about that time I succeeded in getting a job working at the 16th Street Depot in Oakland as a freight handler. So I had to leave the campus around three o'clock every day to get to my job at the 16th Street Depot.

Hicke: That was a fair distance.

O'Brien: Yes. The job went on at least four hours every day, and I earned 50 cents an hour, so I made about \$50 or \$60 a month, which was quite a lot; it managed to pay my way. I started out as what they call a sticker boy. In those days, on the big, long, drafty platform, covered with boxes, two teams of billers, callers, and stickers billed all the freight on the platform. It was thereafter segregated and put on carts and sent off on the right trains.

My particular pals there were Buck Sawyer and Art Hanson. Art Hanson ultimately became a policeman in Oakland, and Buck Sawyer was a college student with me and became president of a San Francisco insurance company. As I grew more experienced, we took turns in writing up waybills, calling the freight, and sticking the waybills on the packages and moving them across the platform scales. And, over time, we became the fastest guns in the West. We would clean the whole warehouse of all of the outgoing freight in two hours instead of four hours. And, with the indulgence of our Irish foreman, a ruddy-faced mick with the broadest Irish accent imaginable, we were permitted to tiptoe out of the warehouse and go our ways, and he would punch out our time cards.

Hicke: Oh, well, good for him.

O'Brien: I tried, as an undergraduate, to keep an A average in my major, which I pretty largely did. At the end of the first semester, I won a so-called Kraft prize, which I think was related to getting one of the highest set of grades as a freshman. I don't think it was a single prize; I think there were a number of such prizes. That honorarium amounted to \$50.

Hicke: Oh, that was nice.

O'Brien: Yes. Anyway, I was not able to keep the job, which was a perfect one for a schoolboy, although it involved a lot of hard work and cut into my study and social life. Because the Depression got worse and worse, finally expressmen with years of seniority were compelled to bump me off my job to keep working at all. I was bounced off that job and in pretty desperate shape, doing odd jobs at the university, hazing the books around in the library, working in the registrar's office, washing windows, and a whole variety of such chores. A classmate of mine, with whom I had gone to grammar school and high school, by the name of Kerwin Rooney, found us a

job selling newspapers at the auto ferry in Oakland. We wore an S. P. butcher boys cap, and we had the --

Hicke: "S. P." for Southern Pacific?

O'Brien: -- yes -- sole concession for selling newspapers to people in automobiles who were waiting to get on the auto ferry.

Hicke: You went up and down the line?

O'Brien: So we walked up and down the line. I made more money at that than I did as a freight handler.

I had a lot of other jobs of no great importance. I have no great pride in my undergraduate record. I should've been Phi Beta Kappa, but as a sixteen-year-old, a seventeen-year-old, and eighteen-year-old, I suddenly began to grow up to be six feet, one inch tall and became preoccupied with other interests in life. So I graduated with no great distinction and immediately went on to law school.

Law School

O'Brien: I had been saying that I'd be a lawyer since I was seven, eight, or nine, and it never occurred to me to reexamine that decision. Obviously, given the times, it was evident even to a youngster that unless I succeeded in getting an education, being qualified in a profession, I might be stuck as a freight handler for life. And so it was apparent that the only way to fame and fortune was to get to law school, get a degree, get admitted, and hopefully get out of that economic rut. I knew I wasn't going to be satisfied with that lot in life, and law school was the answer. It was inexpensive in those days, and there were no particular qualifications except a college degree. And so in the fall of 1932 I began the great adventure.

Hicke: There were no grade qualifications?

O'Brien: I don't recall that there were any.

Hicke: No tests to take?

O'Brien: I think we submitted our college transcripts, but I'm not even sure of that. We may have only submitted our college diplomas. There were about -- it's a guess now -- approximately a hundred in my class when we started. Most of the people in the class were in the same predicament that I was; we were all pretty impoverished and

penniless, and by then -- of course, we had had the crash in 1929, and the Depression got worse and worse and deeper and deeper, and we hadn't really begun to emerge in 1932.

Hicke: Did most of those hundred make it all the way through?

O'Brien: Most of them did. You know the classic story: "Look at the fellow on your left, look at the fellow on your right, one of you is going to be gone." And there was certainly some attrition. The attrition, I think, was in part a problem of grades, but it was probably at least equally the result of an inability to put together enough money to stay in school, to support yourself. So a lot of people dropped out, I think, because life was just too strenuous, and they couldn't make it.

Hicke: Sure.

O'Brien: I remember a dear friend of mine who arrived at law school; he had hitchhiked all the way from Southern California. He had just the clothes that he had on his back, a big hole in the elbow of his sweater, and he had the \$25 that it took to register. Then he walked down Telegraph Avenue and got a job, as he described it, as a pearl diver, i.e., washing dishes in a restaurant.

Oh, people had every kind of job. There was one fellow who was a conductor on the streetcar. He used to arrive in class with his conductor's hat on. It had very little resemblance to the school now, or to what you might call the Ivy League schools.

The leading scholar in the class, Richard Barrett, became a very dear friend of mine. He was number one in our class in law school. He was a minister's son, and he and I became very close friends. After I was married and working at PM&S, he became the law clerk to Judge Denman in the Ninth Circuit Court of Appeal. He fell in love with a Mills girl, who was a friend of my wife, Mary Louise.

Hicke: From Mills College?

O'Brien: Yes. We put on the wedding reception for Richard Barrett and his wife.

The faculty at the University of California Law School was quite extraordinary in 1932. There were a number of nationally recognized scholars on the faculty. Orrin Kip McMurray was the Dean, George Costigan, Dudley McGovney, Max Radin, who was aced out of being appointed to the Supreme Court of California, Charles Ferrier, who taught Property, "Pat" McBaine -- Turner McBaine's father -- who taught Procedure, Evidence, and Common-Law Pleading, a course which I assume has vanished from the present curriculum.

The extraordinary thing to me was that having said for all those years that I was going to be a lawyer, I was very disenchanted with the whole exercise.

Hicke: Oh, really?

O'Brien: I don't know what I expected, or should have expected, but it seemed like a highly confused operation. The Socratic Method, while it might have stretched your mind, led to no particular conclusions, which I found unpleasant.

Hicke: They just questioned you, and you sort of discussed things and --

O'Brien: It was sort of a give and take, and so on. You never really came to a conclusion where you recognized the one and single principle or rule which was to govern; it was kind of left in the middle of the air. Maybe it was my need to have something that you could really take a grip on, rather than just the process of looking at some proposition from forty different sides and then going on to the next case.

In any event, I was a little scared at first. I worked pretty hard. Then, as I say, I got a little disaffected with the whole thing, but at the end of the first year, I wound up as number five in the class, so I thought to myself I must be doing something right.

Hicke: Right.

O'Brien: So I thought, well now if I really begin to work at it and study instead of complaining about it, I ought to be able to really ring the gong. So I worked like a galley slave the second year, and fell to about number twelve.

Hicke: Oh, no.

O'Brien: I knew too much. I'd read all of the law review articles that were cited in the footnotes, et cetera, et cetera. I was overloaded like a computer. So the third year I got a little better balance into it, and I think wound up about ten or eleven, somewhere along in there.

But it was a remarkable faculty, and I got a fine legal education. I, again, did various chores. I prepared the syllabi for Professor [Barbara] Armstrong's undergraduate courses. She taught a number of courses, undergraduate courses in family law, and I collected the cases in each state in the western states that illustrated the points that she was trying to teach. I did a little legal research to put those together. And then I acted as

the reader in the courses and corrected some of the papers and did things of that sort. I was very fond of her. I admired her and she was a bright, able, intelligent, dynamic woman, with strong convictions on most subjects, and snapping brown eyes, stood erect, and was quite a figure.

But I also had great affection for George Costigan and "Captain" [Alexander M.] Kidd and others. It was interesting to me, because I don't really think Kidd was much of a teacher, but he was a character, and a beloved character. He was a man with an explosive temper and sort of frightened his classes because he was so explosive. He would ask a question, and then put his hand out, look around the room and fasten on some unfortunate student, propound his question, and if he didn't like the answer -- if he thought it was stupid or irrelevant -- he sometimes would take his green eyeshade, which he wore, and pull it right down over his face, around his neck, bundle up all his papers, and stamp out of the room. These fireworks were always a great time.

It's an interesting thing: a year ago I arranged for the fiftieth reunion of my law school class. We held it at Yosemite [National Park] for two days, and we had a considerable turnout. People came from as far away as Washington and Tennessee, with wives and companions, and in many cases with children and grandchildren. The university got us a block of rooms at the Ahwanee [Hotel]. We didn't have any pomp and circumstance. We had one big reunion dinner, and we had lunches. In the daytime people could go their own way.

I asked everybody in the class to send me a biographical statement of the sort that I had them produce ten years before at the fortieth reunion of my class, and to supply pictures. One of the questions I asked them was, "What professors did you like the best?" And almost everyone listed Kidd, despite his fierce aspect, along with others.

Hicke: That is interesting.

O'Brien: But he showed up on nearly everyone's list. I don't know the present faculty. No doubt they have very great distinction. I'm certain that that's true of the dean and many others. But the faculty was much smaller; the courses were more traditional. This was not the day of environmental law or securities law and so on; it was kind of novel that they gave a course in taxation, taught by Roger Traynor, who became chief justice of the State Supreme Court of California and led a very distinguished court in his time.

Hicke: Yes, that is unusual. I don't think there was too much specialization in those days.

O'Brien: No. There was a brilliant professor, whom I vastly enjoyed, who taught part-time. He also practiced in San Francisco with some firm, and I can't think of his full name--his last name was Haynes. He taught Equity, which was a course that particularly fascinated me. I thought he taught it brilliantly; that was a course I just relished.

One summer in there, and maybe even two summers, I can't really remember, I also worked in the PM&S library. I was the summer librarian, I guess, and I hazed books around there, put them back, found things for people. And I was doing some sort of a job in the law school for the professor who taught legal bibliography. I fancied that I knew a lot about how to look up legal problems and how to use all the tools of the trade, and particularly after a couple of summers and using all the indices and working with all this material, I thought I was pretty hot-shot at looking up the law and getting into the cases from various directions in which it could be done. This was long, of course, before computers or anything of that sort.

I had some very dear and exceptional friends in that class. I can't mention them all. I've mentioned Dick Barrett. I'll mention just one other: Lawrence Parma, who came from Santa Barbara. He was a very good student in law school--must have been number three or four in our class. He had very poor eyesight, wore--

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O'Brien: --heavy glasses, and he used to hold his book right up to his nose to see. He ate up the law; he was good. We had lots of entertaining experiences in law school, because he and I and a couple of other people would take turns briefing the cases that we were supposed to be reading and reporting on, so that if we were suddenly braced in class we would have a brief of the case, whether we'd read it or not. Most people took that responsibility seriously, because in turn you would be reading somebody else's brief, and you didn't want a bum piece of paper and one that hadn't been the result of thought and care.

We would type these briefs, and then each fellow got his copies, so he'd have it in his notebook if he was suddenly attacked. Parma had a puckish sense of humor, and he would write the brief and the holding of the court, reciting the facts in a perfectly lucid style. But then gradually it would begin to lead you into some cul-de-sac. Before you knew it you were well launched into this recitation, with a horrifying conclusion. Oh, we had lots of fun.

There is a famous lawyer in Los Angeles named Raoul Magana. Magana I met sometime between high school and college. I met him

at a party in Berkeley, and he had just won the California Shakespearean contest for high school students. He is dark, big, lovely features, and full of mischief. He was a real character in law school.

Hicke: Was he Othello in Shakespeare?

O'Brien: Yes. When he was supposed to be in class, he would be down wrestling in the gym or something. But he was so gifted that he got through law school and went on to become an enormously successful personal injury lawyer. In Southern California, he has taken a terrible toll on the railroads and everybody else in sight. And he and I've remained good friends over all those years. But we had great fun in law school. He and two or three other fellows, Parma, and Everett Matthews, who also worked with PM&S, and a friend of mine who was a great success as a personal injury lawyer in Oakland, whom I've known from high school days, Charlie McLeod, used to bum around a lot together in law school.

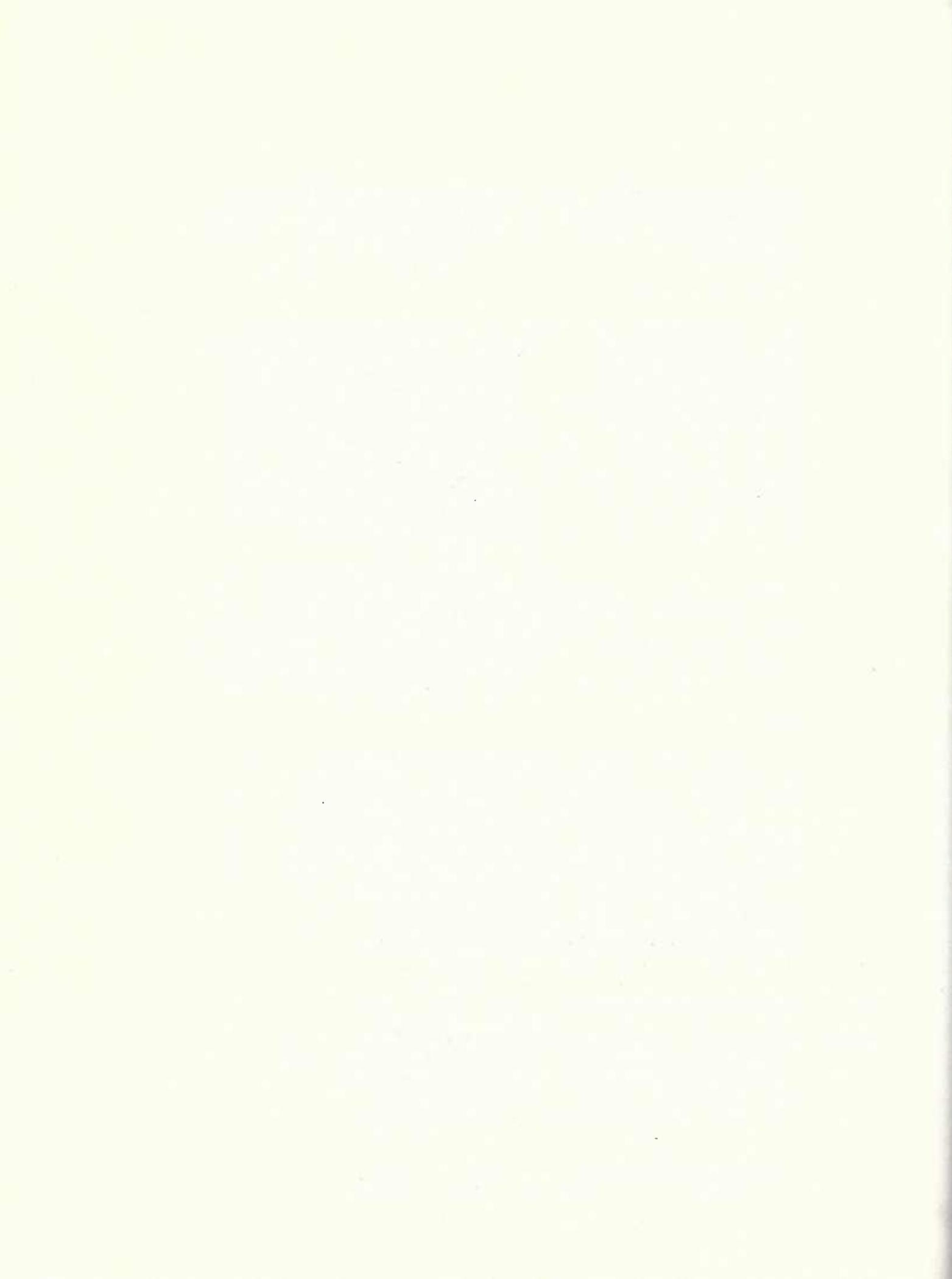
I'll give you a typical example of Magana. The first course we had was legal bibliography, which was given by the librarian in the school whose name was Rose Parma. She was a distant relative of my friend Lawrence Parma. So the M's -- McLeod, Matthews, Parma, and O'Brien -- all sat pretty close together, with Magana well sandwiched in. And I knew that Raoul had one of those acts where he'd play the poor Chicano, you know, speaking broken English.

Miss Parma decided that the best way to come to know each student in the class was to have each to stand up in turn -- and we were seated alphabetically -- and read a paragraph or two out of this book on legal bibliography. That would help fix in her mind the face and the name. As the days wore on in this class, two or three of us kept working on Raoul that when his turn came, he should read his paragraph in Chicano. He was the guy who had won the Shakespeare contest in the state of California. Sure enough, when his turn came, he stood up and read in a broken Mexican-English dialect. Everybody in class absolutely roared, you know. He was the most articulate man around town.

Hicke: Oh, that's wonderful.

O'Brien: She thought that we were laughing at this poor Mexican. She was horrified and indignant. You could imagine how she felt when she discovered this charade. She nearly went into orbit.

Well, enough of that.



II PM&S: THE EARLY YEARS--1930s

Joining the Firm

O'Brien: So I was reading these courses at the time I graduated, and in the meantime I had applied for a job at PM&S. I was interviewed by Jack Sutro, who had just become a partner that year.

Hicke: This was 1935?

O'Brien: Yes, 1935. And also by Felix Smith. Felix Smith was -- I'll come to him in due course, but he had an office in the northwest corner of the 19th floor, 1906. You go in the entrance and turn right and go to the door at the end of the hall; that is 1906. Those offices came to be known in my days as the "Gold Coast." He interviewed me briefly.

As I've mentioned, it was something of rule, I'm sure, that people who had worked in the firm as hired hands would not be employed as lawyers. There was kind of a sense of that, at least. Anyway, Mr. Smith said to me -- a very brief interview -- "I hear you've graduated." He knew me, because I'd worked here in the summer, both as an office boy and later in the library. He said, "How are your grades?" And I said, "Well, I think I was number twelve," or something like that. And he said, "That sounds fine. Why don't you come to work?" So I started the next day.

I was still reading courses. Had to do all the blue books, you know, had mounds of blue books to read, but I managed to do those at night. Jobs were few and far between. I think in my class -- it may not be exactly right, but this is near the fact -- of approximately seventy graduating from Boalt Hall in 1935, only ten or eleven of us found paying jobs.

Hicke: Oh, wait a minute. Ten or eleven found jobs?

O'Brien: That paid any money. Most people had to take desk space in some older lawyer's office, and depend on working for him, and accept such small cases as he might give them to handle, and do various chores of that sort to get established. PM&S, on the other hand, paid me the princely wage of \$100 a month, which was the starting salary for everyone, I assume.

A few days before I was hired, Fred Hawkins had been hired, and at or about the same time I was hired, Stanley Madden came to work, and Marcus Stanton. Hawkins had graduated a year earlier from Stanford Law School and had been teaching night law school somewhere -- I guess Golden Gate [University]. Madden had graduated from Stanford, and Marc Stanton had graduated from Harvard [Law School] and come to California, and married that summer.

Hicke: Was there some reason why four people were taken on? That seems like quite a few, or was that normal?

O'Brien: That was a vast expansion; for the firm suddenly to hire four people was quite extraordinary. I guess that there must have been a growth in their business. In any event, we all worked like beavers that summer. I found it a little hard to get my footing. I worked for Jack Sutro briefly, but then I began to work for Felix Smith principally.

Hicke: You were a roadman first, is that right?

O'Brien: No. Not immediately.

Learning the Ropes: Methods of Felix Smith

O'Brien: I remember having considerable difficulty with Felix Smith, because his idea of teaching the practice of law was to make you walk the plank. He normally neglected to tell you much about the background of the problem or the people, and sometimes I would walk out of his room shell-shocked, not really knowing even what file to call for. But there were a number of his associates down the hall who were extremely helpful to a young, unpracticed associate.

Hicke: Did he do this purposefully, or was he just too busy to explain?

O'Brien: He was too busy. But he did expect you to handle the whole thing, to go ahead and do it. He didn't expect you to do little memoranda and shove them through a wicket; he wanted you to take charge and

do whatever was necessary and get it done, which was kind of terrifying.

That summer was a very strenuous time, because everybody in my class was studying like mad for the bar examination. And I, instead, was working like a beaver to get a foothold at PM&S. Occasionally at night I would go out to the library at Boalt Hall and see all my friends, who were in studying all day and all night, and taking the Witkin course -- doing a systematic job of preparing themselves for the bar examination.

As the summer wore on, I finally got my wind up, got really frightened about what would happen, because in those days there was no thought that you could continue to be employed by PM&S if you didn't pass the bar. So one day about two weeks before the bar examination, I went to see Mr. Smith and said that I'd like to take ten days off. He looked at me in astonishment.

Hicke: Raised his eyebrows?

O'Brien: Yes, and said, "Why?" since I had only recently gone to work. I said, "Well, I think I need the time to study for the bar." He looked at me with the greatest scorn, and said, "Well, if you'd asked for the time to go fishing, that I could've let you have." Well, he was kidding, I hoped.

In any event, I got the time off, and I read my notes morning, noon, and night, and I went through the harrowing experience of the bar examination. And at the end of the day, I left it sort of benumbed, without any idea whether I had really done well or poorly.

We all walked over together -- Hawkins, Madden, O'Brien and Stanton -- the day it was announced that the bar examination results were available at the state bar office. We all marched over there in a body.

Three of us had passed, but Marc Stanton had not, which was a great sadness. He was a brilliant fellow, unusual man, very gifted with his hands -- he was a cabinet maker, and so on, and I think he was pretty well fixed financially. Failing the examination was the not unusual consequence of a Harvard Law School background, without sufficient preparation for questions on the bar examination dealing with California procedure, evidence, community property, and subjects like that. Marc had recently married, was looking for a place to live, or to buy, and so on -- lots of preoccupations. He passed it readily enough the next time, but he decided not to stay with the firm, perhaps in part because of that unfortunate experience, and I guess it just turned out that it really was not his dish of tea to practice in a big law firm like this. He went to Napa County and practiced happily and successfully there.

Hicke: As an individual practitioner?

O'Brien: Yes. So that was the beginning of the exercise. I should add one thing: the firm was much smaller in those days. When I went there as a lawyer, there were maybe twenty lawyers. I'd like to see the roster someday, just as a matter of interest.

Hicke: Yes. I would, too.

O'Brien: It wasn't, therefore, nearly as structured as it is today. We were not divided into "litigation" groups, or "securities," or so on. There were people who specialized in things of that sort -- the trial lawyers -- but they were a corporal's guard compared to the total number of partners and associates now devoted to the firm's enormous litigating practice. And there were two or three people who did a lot of securities work. There was a marvelous lawyer who never became a partner in the firm, who was probably the most learned securities lawyer in town, Charles Ruggles, who was very good to me. He and I became dear friends. He was old enough to be my father, and we worked happily together on all kinds of securities problems.

And so, I think, instead of selecting an area of the law in which one chose to become a specialist, certainly my ambition and I think the ambition of most of us was to be a general practitioner. You hoped to become a sufficiently well-rounded lawyer to be a general counsel to a large corporate client, and to handle trial work and to be able to handle estate work and know something about tax, and so on. So I consciously made an effort to work for everybody and ricocheted around the office, taking on jobs from one person or another. Sometimes that was a little disastrous, because two or three people might suddenly be on your back for the answer or a memorandum or whatever.

Hicke: Nobody kept track of what you did except you?

O'Brien: Well, you had a primary assignment to a partner. We were made up of informal teams. But people borrowed each other's associates, and things would come along that were of a particular interest, or some minor crisis, and you would take off your coat and work on that along with other things. So for the first seven years of my practice, until I got to be a fairly senior associate and the war intervened, I had a practice that kind of covered the waterfront.

Hicke: About that time there were a lot of new regulations coming out of the New Deal.

O'Brien: Right.

Hicke: How did that affect the firm?

O'Brien: Well, one of the first things that happened to me was that with the Depression, Mr. Frank Madison -- very senior, very dignified, very nice, very grave -- said to me that he anticipated that we would have some clients who would find themselves in financial difficulty, and that I should make it my business to become the firm's expert in corporate reorganization. The bankruptcy law had just been amended, as you say, in those days to provide for corporate reorganizations. It was called -- I don't know what it's called now, but in those days it was called a Section 77(b) reorganization. So you didn't go bankrupt; you went into reorganization.

So one of the things I did was to read every case in the Bankruptcy Commerce Clearing House service, and brief it, and try to keep myself abreast of every development in the field of corporate reorganization. I recall once that Felix Smith was sent a rocket by the Chase Bank, which was the trustee under a major bond issue, seeking to intervene in the corporate reorganization of the Western Pacific [Railroad], which was in bankruptcy proceedings under Section 77(b). The Chase Bank wished to intervene to participate in the negotiations of the reorganization.

Felix Smith called me in one afternoon about three o'clock and said, "Here, I have this letter from the Chase" -- about that thick [gestures with hands] --

Hicke: About two inches?

O'Brien: "And here is this petition for intervention in the bankruptcy proceeding." [gestures with hands]

Hicke: About eight inches high?

O'Brien: Yes, with a lot of exhibits and bond indentures and all of the rest of it, and there were about seven or eight parties to this proceeding already. And he said, "Chase wants to have this heard by next Monday." It was some critical date. So he said, "Take care of it."

I looked at that stuff, and it became evident to me that I had to get an order shortening time, because normally a motion in federal court took five days' notice, and we didn't have five days left. The only person who could give me that order shortening time was the senior federal district judge. So I got in a taxicab and roared out with all these papers.

He was in the middle of a jury trial, but fortunately I had made a good friend of his courtroom clerk. Given my knowing him, I

whispered to him about the urgency of this whole thing. He whispered to the judge, and the judge looked very -- he was kind of an irascible old guy anyhow -- he looked a little upset, but he finally interrupted the proceedings long enough for me to make my very short presentation to ask him for this order shortening in time, and asked that the petition be heard on the following Monday, et cetera.

He said, "I'll do that, providing that you serve copies of all this material on all the other parties in interest today."

Hicke: It must have been already five p.m.

O'Brien: Yes. I sped around town in a taxicab, and got everybody served and their acknowledgment of service. When the whole thing was done, I brought it back to Felix, and he said, "Thank you."

And then there was this long letter from the Chase Bank saying that "we'd like to have your opinion on this and that," -- all sorts of the most esoteric and obscure questions of bankruptcy law. Felix said, "I'll answer that." So he buzzed on his buzzer, and in came Aggie Steel, his long-time secretary, and he said, "Miss Steel, take this letter." And he said, "Dear Sir, I received your letter" -- he could write the shortest, most lucid, Anglo-Saxon prose I've ever read -- "We received your letter. The petition for intervention of bankruptcy has been filed and will be heard on Monday. Paragraph. You ask my opinion on a variety of questions. In my view, this is the time for masterly inactivity. Yours truly, Felix Smith."

Hicke: Oh, that's incredible.

O'Brien: I should tell you another thing about him, and then we'll stop. He was the general counsel of the Standard Oil Company, and he ran that job on the old army system. When Standard Oil Company wanted an answer to a question, they would send him a memorandum in two copies. No matter how complicated, he would go through it and put an asterisk where there were questions in the course of a long memorandum. And then he would answer the memorandum at the end of the page: "Yes," "No," "Maybe," "I doubt it," "Felix Smith." And we all dealt with the Standard Oil problems that way.

Or if you had to write a longer memorandum, you sent it in to Felix --

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O'Brien: --in two copies -- his copy, and the one that was going forward, written on the original memorandum that had been sent up to him, with such additional pages as you might have to add to that if you

had a longer answer than there was space available at the foot of the page. At the end of the day, he had a stack of correspondence that high [gestures with his hands], because he signed every letter that went to the company.

Hicke: And did he read everything?

O'Brien: Yes. His stack would maybe be two feet tall, and he'd sit there and read the answers and sign it, and if he didn't like it, he'd throw it on the side and call you in to discuss the thing. Otherwise, he signed out his mail at the end of the day, and that was the way the business was conducted.

Now, nobody could do that nowadays. Nobody could handle the volume of it. But quite apart from that, nobody would quite tolerate his "yes" "no" answers.

Hicke: Yes. Who was the president -- he was dealing with the president of Social at that time?

O'Brien: Everybody else of the company, too, but mostly with the top level people. I guess in the early part of his regime, there would have been a brief period after Oscar Sutro's death when Mr. [Kenneth] Kingsbury was probably still president; after that it would have been Harry [H. D.] Collier.

Well, Felix did things like that. I got to know him very well indeed, because of these cases, the briefs of which are there: the glass cases, so-called.

Once in the middle of those glass cases, when I was preparing them for trial, he dropped into my office one afternoon, which was then down the hall on the nineteenth floor. He sat down at my desk with his hat cocked on the back of his head, and he said, "You know what tomorrow is?" I said, "No, sir." He said, "Tomorrow is the day I leave for a month's vacation."

He owned a beautiful lake back of Truckee, about thirty miles over a corduroy road, called Frog Lake. His children still own it -- his sons Felix and Nathan and Lawrence. I visited there once or twice. He said, "I've just heard this afternoon from my good client, Standard Oil Company of California, that there's a deputation from Dillon, Reed arriving in the morning. The company is going to put out a \$50 million debenture issue." He said, "Al Tanner," a young partner in the firm who specialized in securities work, "Al's out of town. So you take care of that, will you?"

Hicke: There wasn't going to be any way to contact him to ask him questions at Frog Lake, was there?

O'Brien: No. Once in the middle of the thing though -- which is a great horror story, although I finally got it done, with a lot of heavy lifting -- some emergency in the glass case came up, and I needed to go talk to him. He said, "Okay, come on up," so I took the train to Truckee. He met me. We drove over this corduroy road, I stayed overnight, we went trout fishing off a boat, and he absolutely refused to talk about anything to do with the glass case. He took me back to the train, and I came home no wiser than when I'd left.

Other Partners: H. D. Pillsbury, Frank Madison, Alfred Sutro, Oscar Sutro, Vincent Butler, More About Felix Smith

[Interview 3: January 26, 1987]##

Hicke: We have just finished talking about Felix Smith, and I wonder if this morning you could tell me a little bit more about some of the other early partners?

O'Brien: Well, as you know, the firm was started by E. S. Pillsbury. Frank Madison, Alfred Sutro, and Oscar Sutro became associates of his, and by the time I arrived on the scene in 1928 as an office boy, Mr. Pillsbury had almost ceased to come to the office, although, as I told you in an earlier session, he did appear occasionally, usually followed by a number of train-bearers. He never stayed very long.

His son, H. D. Pillsbury, I believe at that time was not only a senior partner in Pillsbury, Madison & Sutro, but president of the telephone company. And so a fair share of his time was spent out of the office.

Mr. Frank Madison was a distinguished gentleman, quiet, dignified. I saw him that early summer, and he continued to be in the firm when I first became an associate, because I recall his asking me to become the firm's expert on corporate reorganizations -- having in mind that we were still in or perhaps just beginning to emerge from the Depression of the early '30s.

Alfred Sutro was an eighteenth century gentleman. He wore a rather tall collar, he was the soul of courtesy, he conducted a personal correspondence with other gentlemen in a way that you might have expected to see among the Edwardians. He was an extraordinarily gifted lawyer. By the time I came to know him, he was getting on in years, somewhat nervous and preoccupied. He was an eminent book collector. He had a marvelous library of fine

books and fine letter press printing. He had been the guiding star of The Book Club of California for a very long time.

Hicke: Do you happen to know what became of his book collection?

O'Brien: No, I don't.

Hicke: I think he donated it to someplace.

O'Brien: Well, I know that John Sutro, his son, very generously gave a considerable number of books to The Bancroft Library and some to Stanford University, but I don't know whether that constituted the bulk of his library.

Oscar Sutro was a tall, dignified, impressive gentleman, with a delightful smile and a wonderful way of dealing with his subordinates -- both the attorneys that worked around him and the hired hands. He had a very considerable reputation as a trial lawyer, and while I've forgotten the details now, there were in those days tales about some of his great courtroom clashes with Garret McEnerney and other eminent trial lawyers in San Francisco. It was said that whenever he and some of these others were in a heavy trial, it was standing room only in federal and state courts. And there are records of some of the famous cases which he tried and won -- jury cases -- and many apocryphal stories about his courtroom presence and some of the great cross-examinations he conducted.

When I first became acquainted with the firm in 1928, I believe the partnership consisted of E. S. Pillsbury, Frank Madison, Alfred Sutro, H. D. Pillsbury, Oscar Sutro, Felix Smith, Marshall Madison, Eugene Prince, and that was it. John Sutro did not join the firm until 1929, Vincent Butler until 1930, and Gene Bennett, and others, at a later time.

Del Fuller was undoubtedly an associate, but I do not now remember the other associates in the office. But my memory could easily be refreshed if I saw some personnel records.

Hicke: I'll see if I can get some of those.

O'Brien: I'd like to see who the associates were, because I would have probably more recollections of some of them than I would of some of the partners.

Hicke: Okay. In 1928, and also then in the '30s.

O'Brien: Yes, and from '35 forward.

I joined the firm as an associate in 1935. That was the year that both Oscar Sutro and Vincent Butler died. I had a few occasions to see Vincent Butler before he embarked on that fatal airplane trip. He was a lively, intelligent, articulate gentleman, whose Rhodes scholarship showed in his manner of speech and certain habits. After his death, I came to know his widow well, and his sons, Vincent and Lewis. Mrs. Butler, Lucy Butler, was a dear friend of Mrs. William Parmer Fuller, and of Mary Tressider (Mary Curry) -- her husband, Dr. Tressider, subsequently became president of Stanford University -- and Lucy Butler, Mary Tressider, and Mrs. Fuller frequently went on high Sierra camping trips together.

Felix Smith, with whom I worked closely from 1935 until I left the firm in 1942 to join the air force [U.S. Army Air Corps], had a tremendous influence on my life as a lawyer. He was an extraordinary man in every way -- beautifully educated, with extraordinary intellectual attainments, a writer of pure Anglo-Saxon prose, a lion in his den in room 1906, and a pussy cat outside.

When I first joined the firm, we were not nearly as structured as the firm is today, and it was possible for an associate to have what was effectively a primary assignment with one partner, and continue to work up and down other sides of the street for other partners and associates. There was less specialization, and certainly as an apprentice, it was my hope and ambition to school myself in as many sides of the law as possible. I think young lawyers then felt that their ambition should be a well-rounded career of the law with the capacity to advise people as, let us say, a general counsel. So I tried to make it my business to do every kind of work.

Hicke: That brings up a question I had wanted to ask. Did you ever think of going into solo practice yourself?

O'Brien: No. Times were so hard that I felt fortunate to have a job, particularly at such a distinguished firm. The prospects for solo practice in 1935 were not good.

As a consequence, I came to know a good many of the partners, and did odd jobs for most of them, but gradually I came to work primarily for Mr. Smith. It wasn't always easy. He had a tremendous capacity for work. He worked rapidly, dictated short memoranda and letters, saw a great many clients and particularly people from Standard Oil, because of the proximity of our offices to those of the executives of the company, and other people with whom he conferred. He read Latin and Greek, spoke French, Spanish, and Italian, and had the equivalent of an advanced degree in geology. So he was a formidable man to work for.

Hicke: Do you have any sense of how he was able to accomplish all of these things? Did he have a photographic memory?

O'Brien: Well, he had a brilliant mind, and he had very few preoccupations outside of his career as a lawyer and his achievements in the fields of literature and science. His wife, Martha, was equally gifted intellectually. They lived a very quiet life and raised three children. Felix left the office usually rather promptly after five o'clock; he arrived promptly in the mornings -- he was a man of regular habits.

He, so far as I know, did not belong to the usual clubs or societies or professional organizations, or participate in things of that sort. He was a highly reserved man outside of his office -- that's what I meant by pussycat, because while he could be frightening and formidable in his office, outside of his office he was a very shy man.

Hicke: You did tell one story where you went all the way up to Frog Lake to talk over a problem, and he never would let you talk about it.

O'Brien: Right. Well, that was because, I think, he consciously had a theory about the way to bring along young lawyers. I think he thought the only way to do that was to make you grab the hot rivets, to walk the plank, and he would give you some horrifying problem and watch to see whether you sank or swam. And frequently, given the tremendous burden and workload that he carried himself, he really didn't supervise you a great deal. He expected you to turn in the job. I think I explained in an earlier interview how he conducted business with the Standard Oil Company.

Hicke: Yes. The asterisks and "yes" and "no."

O'Brien: Yes. It would be impossible to do it that way now, but it enabled him to keep track of the myriad problems of a major corporation, signing all the correspondence, and having all of the questions and answers flow through him. He was totally in command and totally in tune, totally briefed on all of the affairs of his clients.

W. P. Fuller & Co. and Cobbledick-Kibbe v. United States

O'Brien: I remember a lot of episodes in working with him, because he was so remarkably gifted. I won't pause to rehearse a lot of yarns of that sort, but I should say that we came to know each other much better in the late '30s when I was asked to represent, but really, rather to introduce an important client to the firm -- a major company in San Francisco, W. P. Fuller & Company. The president of

that company, W. Parmer Fuller, Jr., was as brilliant a man in his way as Felix was.

I should add by way of background that in 1938 or '39 after the NRA [National Recovery Act] -- the Blue Eagle -- had been declared unconstitutional, the Roosevelt administration reversed course and in the person of Thurman Arnold began a national crusade to enforce the antitrust laws. That crusade began in San Francisco with the impaneling of federal grand juries to conduct investigations for alleged antitrust violations. You could pick up the afternoon Call any day and see that another major company had been indicted for alleged violation of the antitrust law.

That was what was about to happen to W. P. Fuller & Co. when Mr. Parmer Fuller became so concerned about the way his lawyers were acting on his behalf in relation to such an investigation that he decided he needed the support of a major firm like Pillsbury, Madison & Sutro. As a consequence, he asked me to represent his company and arrange for him to call on Felix Smith. The investigation was boiling over with subpoenas and grand jury appearances and so forth.

Hicke: Did you know Mr. Fuller before he met Mr. Smith?

O'Brien: Yes. I can explain that in greater detail. Felix promptly got Gene Bennett into this, and Mr. Smith, Mr. Bennett, Henry Hayes, and O'Brien constituted themselves a team to represent Fuller & Company and subsequently almost everybody else in the glass business in San Francisco in relation to this investigation.

The company had previously been represented by Chalmers Graham, and he remained as one of the counsel of record in the course of this investigation. In those days, there was no code of criminal procedure in federal courts, and in effect we were practicing criminal law based on the English common law of grand juries, of grand jury oaths, of subpoenas, et cetera. And we promptly began to challenge the scope of these subpoenas, the appearance of witnesses before the grand jury, the propriety, the legality, the constitutionality of the oath of secrecy that was given to witnesses before the grand jury, et cetera.

Hicke: I take it this was the first time these challenges had been put before the court?

O'Brien: Challenges had been made, I'm sure, in the past to the breadth of subpoenas duces tecum on the ground that they violated the Fourth and Fifth Amendments -- and in our case we argued the Sixth Amendment as well -- but nearly every day there was a court appearance by Felix Smith or Gene Bennett, and occasionally by O'Brien, to challenge some aspect of this ongoing investigation.

We challenged the constitutionality of the oath of secrecy, which had been given to the daughter-stenographer of one of the potential defendants in the case. She refused to take an oath of secrecy that would prevent her telling her father or her lawyer about any testimony she gave before the grand jury.

Hicke: That was Doris Goodman?

O'Brien: Yes.

The thrust of the government's investigation was that a gentleman by the name of Sam Goodman, who represented the Employers Association in the flat glass industry in San Francisco, was really the nexus of an illegal conspiracy to fix the price of glass and to fix the price at which contracts to install glass were let in San Francisco. Doris Goodman worked for her father in this small office he had, and Sam Goodman was one of the principal targets of the investigation.

I won't rehearse all of the stories about the case. We did challenge the oath of secrecy. The Ninth Circuit more or less waffled on the issue, but said that the oath had to be interpreted in a way which was consistent with the right to counsel provided in the Constitution. We had refused to allow Doris Goodman to take the oath on the ground that her constitutional rights were being invaded, and the Ninth Circuit Court of Appeals held that she hadn't yet suffered any invasion of her constitutional rights, which in effect meant that the only way to test the legality of the oath was to take it, and then violate it, and then be held in contempt, and be sent to jail, and then test the issue. So I took her out before [Judge Adolphus F.] St. Sure just before Christmas, I think in 1939, proffered her as a witness, and she took the oath of secrecy.

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O'Brien: I moved the court in the person of Judge St. Sure, the chief judge of the federal district court, to relieve her of the thirty-day jail sentence, the sentence that she had received, and he did that. So that aspect of the matter was successfully maneuvered.

Hicke: She was somewhat courageous to do that.

O'Brien: She was courageous. And her father was courageous. And when they passed the Federal Rules of Criminal Procedure later, the first thing that went into the rules was a provision that you could no longer give such an oath to a witness before the grand jury.

I had the extraordinary experience of finding out that despite that new rule, the U.S. attorney in the Northern District continued to give such an oath of secrecy to witnesses before the federal grand jury. I believe it was in '52, or after Eisenhower was elected president, and there was a new United States attorney. In the federal district court I submitted a brief on this subject, which was presented to the senior district judges and all the other judges of the district court. They decided to follow the Criminal Rules of Procedure finally.

Hicke: Good heavens. That took a long time.

O'Brien: Yes, a long time. We took another issue in the glass case to the Supreme Court of the United States in the course of the investigation -- Cobbledick-Kibbe v. United States¹ -- to test the question of the appealability of an order denying a motion to quash a grand jury subpoena duces tecum.

In the middle of the investigation, the special assistant to the attorney general, Morris R. Clark, in charge of this investigation --

Hicke: I've got the brief, so we can fill it in.

O'Brien: -- yes -- was relieved of his job, and in his place there was appointed one Mr. Tom Clark.

Hicke: That's a familiar name.

O'Brien: Tom Clark was as about as far away from the action as you could get. He was still trying cases left over from World War I about so-called service-related total and permanent disability, in which ex-soldiers and veterans were claiming that their disabilities, for which they should be compensated, had been incurred in the course of their service in World War I.

Hicke: World War I?

O'Brien: World War I. But Tom Clark was appointed the head of the San Francisco office of the antitrust division and took over this investigation. Ultimately all of the companies involved in the glass business in San Francisco were indicted, and many of the individuals: Mr. Parmer Fuller, Jr., and Mr. A. H. Brawner in Fuller & Company, and the partners of a number of smaller glass companies.

1. (1939) 60 S.Ct. 299; 107 F2d 975.

The case was ultimately settled after a great many months of slugging it out. I spent a year or so preparing the case for the trial and then moved to set the case for trial, which was an extraordinary thing for a defendant to do in a criminal case. The government, which really never had intention of trying these cases but expected everybody to come in and pay \$5,000 and walk away, was astonished when we moved to set the case for trial. Mr. Clark promptly hired one Mr. Joseph Alioto as an assistant in the Antitrust Division in the San Francisco office to help him prepare the case.

Hicke: Had quite a few famous names in there.

O'Brien: Yes. But in the end, the case was settled by dismissing all the personal defendants, including the members of partnerships, and if you look this case up in the Blue Book, which is the record of the disposition of antitrust cases, you'll see that it says that it was possible to fine the partnerships while dismissing all the partners, on the theory that the partnership was some way an entity apart from the partners who composed it. The Blue Book says that this result was reached because of the peculiarities of the California Law of Partnership. In fact, California had adopted the Uniform Partnership Act as had most states of the union.

Tom Clark was a formidable opponent. He was hard to get a rope on, but I must say, when he finally gave his word he kept it. Once during the course of the case, I went to call on him about some matter in connection with the suit. After some sparring around, he told me that he had that day impaneled a new grand jury in the federal court. I asked him what were they investigating now, and he said they were investigating me for suborning the government's witnesses in the glass case.

Hicke: This was because of Doris Goodman?

O'Brien: Well, it was because the principal complaining witness on behalf of the government appeared in my office one day and asked me to represent him. I discussed that with Felix Smith.

Hicke: Who was this?

O'Brien: He was the owner of a small glass business in San Francisco -- I can't think of his name at the moment -- who had complained originally about the other glass companies, saying that they were conspiring to exclude him from participating in these big glass jobs in the city.

Hicke: I wondered how the case got started, so that explains that.

O'Brien: Yes. After I had moved to set the case for trial and they were beginning to dust off all their old transcripts of the federal grand jury, he appeared and asked me to represent him. And I was simply stunned. So I talked to Mr. Smith and Mr. Bennett about it, and so Felix said, "Well, why not?"

Having in mind this oath of secrecy, I was careful not to ask him any questions about his testimony before the grand jury. But he explained to me that he had come to see me because he now realized he'd been totally off-base and wrong about the accusations that he had made against the other glass companies; that he no longer believed in the charges he had made, and he wanted me to protect him, because he had had a phone call from Joe Alioto, who wanted to come out and see him and get him woodshedded to testify in the forthcoming trial.

So I said to him, "Well, I guess the only thing to do is to wait for Mr. Alioto to call you and then tell him that you are perfectly willing to talk to him, but you'd like to have your lawyer present." That's what happened. Joe called him, and he said, "Why, certainly, I'd be delighted to have your lawyer. What's his name?" I couldn't ask the man what he had said to the grand jury, but he had a right to a lawyer. That really puzzled them.

Hicke: You certainly gave them a few things to think about all the way around.

O'Brien: They thought it over for a week or two, and then they called him again, and he said the same thing to them. So after they had called him the second time, knowing that I represented him, I called Joe and I said, "Joe, how long have you been practicing law?" He said, "What's it to you?" He said, "Oh, I don't know, three years." I said, "Well, you know enough to not to talk to a man's client out of his presence, don't you?"

That was how Mr. Clark came to tell me that they were investigating me for obstructing justice. So I said to him, "I'll tell you what I'll do, Tom: I'll waive my right against self-incrimination if you will swear me as the first witness in your investigation and let me testify about some of the shabby things you people have done." That was the last I heard of that investigation.

Hicke: Oh, very interesting.

O'Brien: Well, anyway, Felix went back to Washington to try to settle the case with Clark, and they got closer and closer, and ultimately we did make a settlement. All the individuals except one were dismissed from the case. W. P. Fuller & Company probably paid a

fine of \$5,000. These little partnerships paid about \$2,000 or \$3,000 and that was it. One gentleman by the name of [Alexander H.] Brawner was the sacrifice. He pleaded nolo contendere and was put on probation for six months with the understanding that at the end of that period the record would be expunged, which it was. That was the end of the lawsuit.

I worked like a galley slave, and I worked very closely with Felix and Gene Bennett, and it was a mighty hassle. It was a really a big deal for the time, and it led me from one grand jury investigation to another. And since by then I'd had my nose bloodied considerably with many things, I began to move into many more grand jury investigations and antitrust cases and so on.

That went on until 1942, when I left the firm. I continued to represent the Fuller, along with other people, and by the time the war came along I'd been practicing law about six or seven years.

The Infested Prunes Case

Hicke: Before we get to the war, you mentioned that you had tried a series of lawsuits with Sam Wright, among others, and Norbert Korte, as well as Gene Bennett and Del Fuller?

O'Brien: Yes. I used to prepare these cases for trial, and I tried a few little cases, and I tried a case over in Oakland in the justice's court. They were always pretty careful about letting you go out on your own and start trying cases. But I put together a lot of cases in the insurance field, total and permanent disability cases. I did try a number of cases with Sam Wright, a couple of important ones.

Norbert Korte and I tried the first criminal case involving the then brand-new provision of the Food and Drug Act, which had criminal sanctions for shipping adulterated food in interstate commerce. It was really a fascinating case, because a cargo of prunes had been shipped from San Francisco through the canal, found their way to New York and into a cold storage warehouse. Six months later, a Federal Food and Drug inspector found this cargo of prunes in the warehouse and discovered that they were infested with some sort of insects. The charge was ultimately made that the prunes had been infested before they left San Francisco.

A criminal suit was filed against Libby, McNeil & Libby. There was no real discovery in a criminal case in those days. The defendant really couldn't do much to get a disclosure of what the government intended to prove, but it was the first criminal case

brought under the Food and Drug Act, and the government was extremely eager to show that the new law had lots of teeth. And they really made a federal case of it.

They had all of their chief scientists and heavy enforcers here working on the case. Norbert and I were defending Libby, McNeil & Libby. The government was represented by a fine young lawyer in the United States Attorney's office by the name of Alfonso Zirpoli, who became a distinguished federal district judge. The case was a scientific case in effect: what were the insects? What was their stage of development? Could they have infested the cargo before the ship left San Francisco, having in mind that in a cold storage warehouse they obviously couldn't develop?

Hicke: Yes. They had to see if they were California bugs or something that had been picked up along the way?

O'Brien: Yes. Right. Whether they could have been infested when they went through the Panama Canal, or what. But bear in mind it was a criminal case, and the government had the burden of proof of showing beyond a reasonable doubt that the prunes were infested when they left San Francisco.

I made a motion to discover, to get my hands on, the samples of the prunes that the government inspectors had taken, and the judge would just barely listen to me. He started up and almost walked off the bench when I stood up to speak. For once in my life in a courtroom I was quite indignant. His name was St. Sure; he was the senior district judge, kind of an irascible old gentleman. I said to him, "I'm entitled to be heard, and this is an important issue, and this is an important case." I said something about the first criminal case in the Food and Drug Administration. So he sat down. So I argued my head off, and about a half an hour later he turned to Zirpoli and said, "Well, why shouldn't they have it?"

So we ultimately got the samples, and that enabled us to hire some very eminent entomologists, who were prepared to testify that they [the samples] didn't indicate in any way that the infestation had occurred before the prunes were shipped. The government had two or three equally distinguished entomologists, one from Stanford University that I remember.

I had moved for a jury trial in this case. And one day when I was in front of St. Sure, he said to me, "Counsel, I notice you've asked for a jury trial in this case. Why did you do that?" He was going to try the case. So I said, "Well, your Honor, this case is really a factual case. The law is perfectly clear. If these prunes were infested when they were shipped, then we're guilty of the crime that we're charged with. But if they weren't, we aren't."

So that's pretty straightforward and it's all a question of fact. And a jury is the traditional trier of the fact."

He said, "I hear you. Let me suggest to you that if you waste the court's time in this case with a jury trial, and you're found guilty, you can count on"--getting more or less the maximum was the idea. "On the other hand, if you are sufficiently considerate of the court to waive a jury in this matter, the court might be more inclined to treat you with some leniency." So I waived a jury.

We tried the case for about three or four days, and about every half hour, the judge would begin to wiggle around up there, after the government had put its case, and we had put on one or two witnesses, "Are you prepared to rest, counsel?" And Norbert and I would go into a deep trance, not knowing whether to call another witness or what to do. So then we'd call one more so if there was a finding against us, at least we'd have a record to go up on appeal.

We finally rested, and he said, "Mr. Clerk, take this," and he dictated an opinion right from the bench. "Not guilty."

Hicke: He had it already in mind?

O'Brien: Yes, but we didn't know that.

Hicke: He probably had it ready when he was asking you to waive the jury.

O'Brien: Well, maybe so. I don't know. But he found that it was an entomological mystery and the government had not carried its burden of proof.

The canning industry and the food industry naturally were watching this case with great interest, because it was the first criminal case brought under these new provisions of the Food and Drug Law. So it was quite a celebrated case at the time. We were vastly pleased that we had a successful result.

Hicke: Indeed.

The Firm Offices

[Interview 4: February 2, 1987]##

O'Brien: I'm moving back to 1928 and the summer when I worked in the office. In those days you got off the elevator on the nineteenth floor, walked toward the present front door, but turned into the office on the right where the receptionist now sits. There was a counter there, and all visitors to the office walked into a small anteroom and stood at the counter. The office manager, Mr. Draycott, sat just behind the counter. In the far corner of the room, near a short hallway that connected with the long corridor on the nineteenth floor, sat the calendar clerk. At first, that corner was devoted to a one-place switchboard, which was the throne of a snappy-eyed, dark-haired woman by the name of Billie, who as I told you ran a magnificent intelligence system. As time wore on, she had a relief, a handsome, young, blonde woman by the name of Leslie.

There was a buzzer system for associates, most of whom did not have telephones in their offices. Since they were all situated on one floor, running down the hall from 1906, when Billie received a telephone call for an associate, she buzzed that attorney's special code signal, and he repaired to the counter in the outside office to answer the telephone.

Hicke: The partners had telephones in their rooms?

O'Brien: Yes.

Hicke: Did the associates have offices to themselves?

O'Brien: Most of the associates had offices. We, at some stage, took over the twentieth floor, or part of the twentieth floor, and a whole series of offices were created there. Most new associates, when they were hired -- certainly in my day in 1935 -- did not have offices, and we all sat in the library and worked there, responding to our buzzers to see partners. We went to the telephone to find out what the message was, whether to go to the phone, or to see a partner, or et cetera. About 1936 or 1937, the firm took over half of the twentieth floor and remodeled it into offices, and those of us who had resided in the library were doubled up in offices on the twentieth floor. And I first shared an office on the twentieth floor with Fred Hawkins.

Hicke: You've indicated that he was employed at about the same time you were, and became partner about the same time.

O'Brien: He was employed a month or two before I was employed. He graduated from Stanford Law School with a fine law school record in 1934. I guess he had trouble finding a job.

In any event, during the intervening year, he had been teaching law at some local law school, and was hired to PM&S just a few months before I in 1935. He was a tall, athletic, blond gentleman, outgoing, vivacious, nervous, a racehorse sort of gentleman -- had been a star basketball player at Stanford during his college days. And we hit it off well.

Eugene Prince

O'Brien: I have not talked about Gene Prince, although I could write volumes about him. I first met him when I was still in law school, and he was president of the Boalt Hall Alumni Association and came to Boalt to give a speech. He was a wonderfully impressive man with a Lincolnesque face, a command of the language, a shining sincerity, and immediately attracted everyone in sight with the warmth of his wonderful smile and his legal accomplishments.

As the years wore on, we became dear friends. In fact, I felt honored that he named me, along with Harry Horrow, to be his executor. As a consequence, before his death, I had many long discussions with him about his personal life, his personal affairs, and after his death was able to resolve in a satisfactory way some of the problems which he had foreseen. He was a greatly beloved man, highly respected and honored at the California Bar, and a superb appellate lawyer. I stop there, because there's so much to say that it's better not to launch into a long, discursive account of his life and career.

Hicke: Does, perhaps, one outstanding illustration come to mind of his activities -- appellate activities -- or his contributions to the firm?

O'Brien: There really are so many. The case that comes to my mind is one that he lost. He was retained by the Regents of the University of California to represent them in the litigation involving the loyalty oath, a case which he ultimately lost.¹ The lawyer on the other side was Stanley Weigel, later a federal district judge in San Francisco. The litigation was conducted, despite the political

1. Tolman v. Underhill (1952) 39 Cal.2d. 708.

atmosphere and the intense feelings on all sides, on a standard of legal excellence which one could not help but admire.

Hicke: Was this in the '60s?

O'Brien: I've forgotten. It's so long ago. I think it must have been in the '50s.

Eugene Bennett, Insurance Cases, and the Davidowitz Trial

O'Brien: I also worked closely with Gene Bennett as a young associate. I helped Gene Bennett in a whole series of lawsuits to prepare for trial. Anyone who has ever seen a photograph of Gene Bennett will understand immediately that he was a man of distinction, and he was a superb trial lawyer -- certainly the most gifted that I came to know personally. He had a style which was unique. He was the soul of courtesy in a courtroom, not only to the witnesses, and of course to the court, but more particularly with respect to opposing counsel. And many of the barroom floor attorneys in San Francisco were totally disarmed by his considerate and courtly style.

One of the earliest cases in which I was involved with Gene Bennett was a lawsuit against Armour & Company in the superior court in Oakland. It was a case we lost under circumstances that I won't relate, but there were several co-defendants who ganged up on us with the plaintiff's lawyers to fasten liability on us in the case, and we could not extricate ourselves from this in the face of some very shady testimony.

I won't mention the lawyer's name on the other side. He was a highly successful personal injury lawyer, and this was a personal injury case involving an accident in a big market in Oakland. But he was absolutely mystified at Gene Bennett's conduct in the courtroom. He puzzled to find an opponent who treated him with respect, and with good manners, and with a civility which were not part of his lexicon. In fact, when the case was over, he promptly offered me a job, and he talked with amazement about the wonderful character and style of Gene Bennett.

I may not have mentioned that I prepared a whole series of cases for him -- for Gene Bennett -- involving claims under life insurance policies with total and permanent disability provisions. The firm represented Equitable, New York Life, and Pacific Mutual. The only cases I recall involving claims for payment under total and permanent disability clauses were those involving The Equitable. During the Depression, many people who had lost their

money and suffered terrible psychiatric trauma concluded that they were indeed totally and permanently disabled.

The insurance companies in the halcyon days of the '20s had written policies with provisions that offered substantial monthly income to insureds who became totally and permanently disabled during the term of the policy. The life insurance companies that had written such policies -- and that meant most of them -- were flooded with claims, many of them without any merit.

Gene Bennett and I tried a number of these cases, both in state and federal courts. It was my job to prepare the cases for trial, interview the witnesses, prepare summaries of their testimony, prepare a legal brief of the issues involved in the case, make and argue the preliminary motions in the lawsuit, and hand the finished product in a pink bow to Mr. Bennett for trial.

With a few rare exceptions, he didn't spend much time on the legal memoranda or the preparatory briefs, and I often felt great anxiety as we repaired to the courtroom to think that he could not be in total command of the issues in the case, although he always turned out to be.

Hicke: Do you attribute his success to his manner in the courtroom, or at least partly?

O'Brien: Oh, I attribute it to his tremendous experience, not only his manner, but his great gift for cross-examination, his intuition, his ability to dismantle an adverse witness through some unparalleled gift of shrewdness and experience of life that enabled him to find a soft spot in the witness's testimony, and his tremendous appeal to juries. One could not watch him in a courtroom without coming to have a confidence and respect for what he said, the way he said it, and he enjoyed a tremendous success.

Hicke: It sounds as if he was a person who could think like lightning on his feet, I mean with an immediate reaction to the testimony that was being given.

O'Brien: That's correct. I'll give you just one example. We defended on behalf of Equitable a large total and permanent disability case brought by a gentleman by the name of [Hyman] Davidowitz. Davidowitz had been a successful operator of a very large restaurant at Coney Island. He claimed to have been wiped out by the crash in 1929. In any event, he moved to San Francisco and brought a lawsuit against The Equitable, claiming that he was totally and permanently disabled from arthritis, unable to raise his arms, et cetera. We suspected that he was a crook, and we hired an investigator -- along with The Equitable's investigators -- to keep him under surveillance.

To make a long story short, we discovered that he was doing business in the commodities market under a fictitious name, and we took films of him carrying great loads of wood up the back stairs with these arthritic arms, tossing his ten-year old daughter up in the air in a swimming pool -- all of these were recorded with perfect film.

When we came to trial, Davidowitz, when asked to raise his arm to take the oath, claimed that he was unable to raise his arm, and we made a considerable fuss about whether he could properly take the oath without raising his arm.

The plaintiffs put on a doctor, a trained professional witness, who testified about Davidowitz's disability, claiming that he was totally disabled as a consequence of hypertrophic arthritis. Gene Bennett cross-examined him for two days without much success. The witness had brought to the courtroom a human vertebra with the pelvic bones, and he rattled this around on the stand like castnets.

Hicke: That's an actual skeleton, not just a picture?

O'Brien: Yes, it was an actual skeleton. And he gave a lecture on the cervical spine and the lumbar spine, and this grisly object was handed to the jury for examination.

After two days, Gene Bennett strode across the courtroom to our counsel table and glanced at me and said in a whisper, "I'm about to give up on this guy." With that he turned around, and asked the witness about this skeleton and said, "Doctor, please tell us whether this is a man's or woman's skeleton that you have there." The doctor looked very puzzled, and then embarrassed, and finally said, "I don't know." And Bennett was all over him like a tiger: "Was it an old person? A young person?" et cetera. He absolutely demolished the witness.

What quirk enabled him to ask that question after breaking his pick on the witness for a day or two, I don't know. Although, years later, I discovered in a book The Art of Cross Examination¹ an episode that dealt with just exactly that question.

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The Davidowitz case is interesting, because in the course of my investigation -- and I learned a great deal in these cases about

1. The Art of Cross Examination by Francis L. Wellman.

investigation, wearing off shoe leather, standing out in the rain waiting for a witness to come home, looking at records, et cetera -- I discovered that Davidowitz, as I said, was doing business in the market under a fictitious name.

I called on the customers' man in the brokerage house where he placed his orders and identified Davidowitz with pictures. I then served a subpoena on this gentleman to appear in the court -- the case was being tried in Judge [Harold] Louderback's court -- but I asked the witness not to come into the courtroom, but to wait outside the courtroom until the given moment.

When the moment arrived, I saw the witness's face in the oval of the courtroom door. I went out, got him in front of me, and marched him up the middle of the courtroom facing Davidowitz, who was on the stand and being cross-examined by Mr. Bennett. Davidowitz got one look at this customers' man from a brokerage house. The judge leaned over and said to Davidowitz, "Are you all right? Would you like to take a recess?" Davidowitz said, "No, I'm fine, Your Honor." And with that, fainted and fell off the chair, sprawled out on his face in the middle of the courtroom. That was the end of that lawsuit, and I never had an opportunity to show my wonderful films of Davidowitz tossing his little daughter in the air.

Hicke: Well, it sounds like you played that for dramatic effect.

O'Brien: For the effect on the witness, yes.

Hicke: Yes. Very successful.

O'Brien: Well, Gene Bennett and I had, as I say, a whole series of such cases. Sometimes he would see the issues of the case far differently from the way I saw them, and then he would write across the face of my brief his point, and say, "Nothing done." Sometimes I would make a point that he didn't appreciate.

We won two cases by raising such a point. There is in the law a privilege between patient and doctor. In two cases the insured was dead, but his heirs or surviving spouse was suing, claiming that the policy was in effect at the time of the insured's death, because in addition to the total and permanent disability clause, there was a clause which provided that if insured was totally and permanently disabled, the premiums were waived. So the claim was made that even though the policy had lapsed for nonpayment of premiums, in fact, it was still in effect at the time of the insured's death, because the insured had been totally and permanently disabled.

I conceived the point that with the death of the insured, since the privilege belonged to the insured, there was no one who could waive the privilege between doctor and patient. As a consequence, I was prepared to argue to the court that the doctor for the insured could not testify, since there was no one alive to waive the privilege. Gene Bennett thought that was a pretty technical exercise, and only by tugging on his coattails very hard did I get him to rise in Judge Teresa Michaels's court to make this objection in a case brought by a widow against The Equitable, claiming that her deceased husband was totally and permanently disabled from syphilis at the time of his death.

This objection took the plaintiff's attorney totally by surprise, as it did the court. I had prepared a brief on the subject --

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-- which was submitted to the judge and to opposing counsel, and the case was adjourned for two or three days to give the other lawyer an opportunity to explore the legal question. Ultimately the judge ruled in our favor and that ended the case, since there was no one else able to testify about his medical condition at the time of his death. We used the same objection in at least one other case that I can remember, once in the federal court, which resulted in a victory for our side.

As you probably know, Gene Bennett was a man of many parts, who had a career on a variety of fronts and who had very wide interests. As you'll see from this clipping from the Chronicle, Tuesday, December 16, 1968, about Bennett, he had a distinguished career on many fronts.¹

He was very active in civilian service to the army. He had been a lieutenant in the First World War in artillery. Toward the latter part of his life, he was quite deaf in at least one ear. He was called to active duty early in World War II, and served in the Pacific as a full colonel. But as the article indicates, he served as a civilian aide to the Secretary of the Army for the Sixth Army Area and was decorated with the army's Distinguished Civilian Service Medal.

But he had many other interests. He was a superb fisherman. My friends, the Fullers, invited the Bennetts to their country place in Lake County one summer, and I recall admiring Gene's skill as a dry fly fisherman along the streams there. In any event, the

1. See next page.

S.F. Lawyer Eugene D. Bennett Dies

Eugene D. Bennett, a prominent local attorney whose long career included honored service with the government and the Army, died yesterday at St. Francis Memorial Hospital. He was 74.

Mr. Bennett, of 3320 Baker street, was predeceased by his wife, Gertrude Douglass Bennett, last week.

A member since 1936 of the San Francisco law firm of Pillsbury, Madison & Sutro, Mr. Bennett was a distinguished trial attorney who argued several cases before the United States Supreme Court.

In 1964, he was honored as outstanding graduate by the Hastings College of Law, from which he was graduated in 1920.

ARMY

A native of Kansas, Mr. Bennett served overseas as a first lieutenant in World War I and as a colonel during World War II. He attended the Army War College in 1927 and the Command and General Staff College in 1942.

Since 1950, he had served as civilian aide to the Secretary of the Army for the Sixth Army Area and earlier this year was awarded the Army's Distinguished Civilian Service Medal.

Within Federal government, he served as chief deputy United States attorney here, chairman of the Inter-American Tropical Tuna Commission and member of a commission dealing with judicial and Congressional salaries and court congestion.

At the State level, he was executive officer and counsel for the California Fish and Game Commission and a member of the Pacific Marine Fisheries Commission.



EUGENE D. BENNETT
Government service

He also served as a trustee of the San Francisco War Memorial Commission, and as a trustee and fellow of the California Academy of Sciences.

He was a director of the American Judicature Society, Regent of the American College of Trial Lawyers, Fellow of the American Bar Foundation and member of the American, California and San Francisco Bar Association.

At the national bar level, he served as chairman of the Committee on International and Comparative Law and was noted for his work on the Standing Committee on Federal Judiciary, which reports on all nominees for Federal judgeships.

An ardent sportsman, he directed the National Rifle Association's Legislative Center and was a national trustee of Ducks Unlimited.

He was a member of the Pacific Union, St. Francis Yacht, Olympic Press, Commonwealth and Stock Exchange Clubs.

Mr. Bennett is survived by a brother, Dr. Dudley W. Bennett of San Francisco. Funeral arrangements are pending.

article will give you some idea of the enormous range in his interests, and activities.

Hicke: Thank you. I'll get that right back to you.

The Webb Motor Company Case

O'Brien: I worked very closely with Del Fuller during my early days with the firm. He was a business lawyer. He represented The Equitable and a great many other clients in relation to their real estate problems. The total and permanent disability cases came to the firm through his work with The Equitable, so that in preparing the cases for trial, I frequently worked very closely with him.

I do recall one case that he and I tried, but for the life of me I can't think what the issues were. But it was tried against Teddy Roche, Theodore "Teddy" Roche, the famous San Francisco lawyer. Between Del and me, poor Teddy Roche, who could talk like a Gatling gun, never got out a complete sentence during the whole trial. I'm sorry I can't recall any of the details, but I do recall with what great glee we succeeded in prevailing.

Del Fuller also gave me a number of little cases to try, and I got my nose bloodied a few times in some of those cases. I do recall a case I tried in Oakland. It involved nearly every issue in the book of attachment/execution agency -- an ostensible agency -- et cetera, involving the repossession of an automobile for a Seattle bank which had been removed, in violation of the conditional sales arrangement, by the buyer from Washington to California, where the car was raced in stock car races and then ultimately sold for a new car to the Webb Motor Company in Oakland.

Webb defended the case with the greatest vigor, and we had a full-fledged trial in the justice's court that lasted at least three days. They claimed, among other things, that their sales manager had no authority to buy the car, and therefore they were not liable to the Seattle bank for its value. I cross-examined the sales manager and persuaded the court that he did have authority.

They refused to pay the judgment, and I could not find any property on which to execute. With Del Fuller's help, I served a writ of execution on every bank in Oakland, executing on all accounts in which they had a beneficial interest, whether held in the name of the Webb Motor Company or otherwise. That routed out all banks, and I finally collected the whole judgment.

Such cases were great seasoning, and you learned very quickly that what you thought was a perfect case in the library at the Standard Oil Building was full of holes when some seasoned lawyer began to take you over the jumps.

Howard Marshall, Del Fuller, Charles Ruggles, Gene Prince

Hicke: I think there are a couple more people I wanted to hear about.

O'Brien: Yes. There was Howard Marshall,¹ but I can't remember quite when he came. I have very little recollection of Howard Marshall. I think he came to the firm as a partner on the strong suggestion of Ralph K. Davies. He was obviously a very bright, aggressive, ambitious man. He was badly crippled. He worked, so far as I know, almost exclusively with Felix Smith.

It should be recalled that Ralph K. Davies was president of the Standard Oil Company before World War II and left the company to become Petroleum Administrator for War. Evidently he thought he was slated to become the chief executive officer [of Standard] when the war ended; certainly Secretary [Harold] Ickes thought so. This resulted in a controversy between Davies on one hand; Harry Collier, chief executive officer at Standard; and Mr. Ickes, who purchased shares of Socal stock and undertook to appear at the annual meeting of the company to excoriate the company for not appointing Mr. Davies as chairman. I may be getting all mixed up here.

Hicke: No, I think that's right. On his return from the service, he expected to take up in his place of seniority.

O'Brien: Yes. In any event, Mr. Davies withdrew his candidacy the day before or on the day of the annual meeting and left Mr. Ickes sort of high and dry. Somewhere prior to that time, I have the impression that Howard Marshall had come to the firm as a partner, and that he did not survive all these events. He left the firm shortly thereafter for greener pastures. He did ultimately become, I believe, the chief executive officer of Ashland Oil Company.

Hicke: Howard Marshall?

1. J. Howard Marshall joined PM&S in 1935, and became a partner in 1938. In 1941 he left to become chief counsel for the Petroleum Administration for War.



James O'Brien and Norbert Korte, 1939.



Francis Kirkham, James O'Brien, and Gerry Levin, 1947.

O'Brien: Howard Marshall did, and was very successful in the oil business. I never had any personal contact with him, and having been away from the firm from 1942 to '46, these events were really beyond my ken.

I want to add something else about Del Fuller. Del had come from very humble circumstances, had fought his way through law school, and come to work for the firm. He always arrived at the office early in the morning, worked like a Trojan, and was part of a sort of informal working group composed of Frank Madison, Marshall Madison, Charles Ruggles, and himself.

I've forgotten exactly what year it was, but perhaps '38, Del became ill, seriously ill, and in many people's view, fatally ill with cancer -- abdominal cancer. He never gave up for an instant. He continued to work, and in the course of a year or so had, as I recall, two major cancer operations. He had a young family -- two boys -- and his wife, Marie, was wonderfully supportive.

He was operated on by a famous surgeon at Stanford Medical School, whose name I will supply when I think of it [Emile Holman], and miraculously, through the intervention of this surgeon and Del's own courage and determination, he survived and went on to resume his practice and to live to a ripe old age. When he had completely recovered his health, he raised a new family, and had two additional children, his daughter, and a younger son by the name of Richard.

My first wife and I were dear friends of the Fullers and often saw them socially, and they frequently came to see us in Palo Alto on weekends. It was a wonderful example of family solidarity and courage. I'm sure many another would have given up the ghost, but Del went on to become very successful in his private financial affairs, particularly in real estate, as he was extremely knowledgeable and experienced in that area. He made a great contribution to the firm and was a hard, successful worker.

Hicke: I just wanted to ask you what this group of the two Madisons, Ruggles, and Fuller did. Was it mostly Social work?

O'Brien: No. They didn't do Social work. They did the Bank of California work, California Packing Corporation work, and other corporate and securities work. I think Frank Madison was a director of the bank. I know Marshall Madison became a director of the bank, but we were general counsel for the bank. That involved a lot of corporate work. Charles Ruggles was a superb corporate lawyer. While he never became a member of the firm, he was an absolute mountain peak so far as his knowledge of corporate finance, et cetera, and the man could literally sit down and dictate a fifty-page trust indenture right off the top of his head.

Hicke: Oh, dear.

O'Brien: He was simply fabulous -- Harvard Law School graduate, older than Marshall Madison, with boundless energy, and wonderful to work with. That group, and it wasn't very structured, also represented the California Packing Corporation and handled a great many business deals. Those were always Frank Madison's and Marshall Madison's fields.

Hicke: Well, maybe the next time we can start with the list of associates?

O'Brien: Sure. Ruggles, Renato Capocelli.

[Interview 5: March 17, 1987]##

Hicke: You mentioned that you could say something about Gene Prince's funeral.

O'Brien: Gene was one of the most popular lawyers in the state of California, had a national reputation as an appellate lawyer and was full of honors. At the time of his death there were proceedings both in the federal and state courts in memory of Gene. I recall that Burnham Enersen, "Ham" Enersen, a senior partner of the McCutchen firm,¹ subsequently to be the president of the State Bar himself, made a short speech about Gene before the presiding judge of the Superior Court, who at that time was Gene's former partner, Judge Gerry Levin, who was also a former president of the San Francisco Bar Association -- and I can't remember whether he was perhaps, or also had been president of the California Bar Association. In any event, Ham Enersen spoke, Sol Silverman spoke, and Gerry Levin, wonderful man that he was, made a lengthy response to the remarks of Ham Enersen and Sol Silverman.

On the following day, there was a memorial service at Grace Cathedral. I attended those services, and the huge cathedral was completely full. People were standing on the steps outside, which perhaps gives some notion of what a tremendously popular figure he was.

Hicke: Well, I think that finishes up some of the early partners that you were talking about. And so maybe we can go back to -- chronologically -- where we left off, which was the late '30s, and start with the early '40s and your war service.

1. McCutchen, Doyle, Brown & Enersen of San Francisco.

III WORLD WAR II

Santa Ana Air Base.

O'Brien: By the late '30s, I was deeply involved in antitrust work, particularly criminal grand jury proceedings and the ensuing indictments. The war in Europe had already begun with the invasion of Poland, and I felt in my bones that the day would arrive when I would join the fight. My wife, Mary Louise, and I were profoundly affected emotionally by the invasion of Poland, the bravery of the Polish people, and treachery of the Nazis and the Communists in their original treaty, and Hitler's subsequent invasion of Russia.

In any event, after Pearl Harbor on December 7, [1941] I immediately applied for a commission in the Army Air Force. My application, along with thousands of others, went through the usual tanglefoot. One day early in May, after all the physical examinations and so on, I got a telegram saying that I had been appointed second lieutenant in the Air Force and ordering me to report to the Santa Ana Army Air Base forthwith. I didn't really have much time to compose myself or bring any order out of my legal affairs. I got myself a couple of uniforms and drove to Santa Ana.

Hicke: What were you doing in the law firm at that time? Do you recall?

O'Brien: Well, I had a lot of clients. I can't remember all of the things I was doing, but I was involved in the grand jury investigations, I'd become the regular attorney of Fuller, I had other personal clients, and did Standard Oil work.

I became an intelligence officer in the Air Force. I tried very hard to get overseas from the day I arrived at Santa Ana. My assignment was in the Western Training Command, which involved the technical training of Air Force cadets, preflight training. The Santa Ana Army Air Base was where they all started in the Western Region. It became, before I left it, a huge base, with perhaps a

complement of 25,000 people. The cadets went through all of their initial drill and all of the preflight training courses before proceeding to flight training.

My efforts to get an overseas assignment weren't very successful, and I stayed there from May '42 to about the middle of '43. I did finally get sent to the Air Force intelligence school at Harrisburg, Pennsylvania. There the students in the course were told that the person graduating number one would be able to select an overseas assignment in any theater he wished. It wasn't a very difficult course. Like a lot of army courses, it seemed to me mostly to require keeping a nice, neat notebook.

Hicke: And appearance, probably.

O'Brien: Yes. In any event, I graduated number one, and was called in one day toward the end of the course. I thought, "Well, now I'm going get my chance." They had noticed on my record that I had lived in China, and asked me how I'd like to go to work for General [Joseph W.] Stilwell. I said I thought that would be delightful. They asked me about my Chinese, and I gave them a highly exaggerated idea of my ability to speak the language.

Instead, after a few days, they called me back and said they'd like to have me stay in Harrisburg and teach. I thought that was a dirty trick, and I was highly indignant, and I said, "No way." And so when the graduation ceremonies were over, I went back to Santa Ana.

Assignment in Europe: Intelligence

O'Brien: I was there only a few weeks, however, when a call came for an overseas assignment for one intelligence officer. As it happened, there was another officer at Santa Ana Army Air Base who also wanted desperately to get overseas. The commanding officer of the base called us in and said that we were both qualified for the assignment and he was puzzled as to how to make a choice between us. He suggested we decide for ourselves -- the military mind at work. So this officer, who was a good friend of mine, and I repaired to the officers club, asked the bartender for a deck of cards, shuffled it, and cut for the assignment.

Hicke: Oh, no.

O'Brien: I cut an ace. And within a very few days, I was on my way to Jefferson Barracks.

Hicke: Where is that?

O'Brien: It's in Missouri, outside of St. Louis. I stayed there for perhaps three weeks, going through what was called the staging process, drilling troops, which I had enjoyed at Santa Ana Army Air Base, and putting together a replacement squadron of various enlisted specialists, for whom there was a special call from the Eighth Air Force. As a consequence, when my squadron got put together, it had eight first sergeants and all sorts of technicians, radar specialists, and so on.

Eventually we went to a base in New Jersey, and from there, we were put aboard a British ship, along with a lot of other troops, to sail for England. On the day of our departure, I got a telegram from the adjutant general that I had been promoted to my captaincy.

We had a rough voyage over. I bunked with the radar officer. We were in a large convoy, and he used to come home at night with all these terrifying stories about the attacks that had been launched on the convoy from various directions. My squadron was down in about the fifth hold of the ship. I thought the British were totally indifferent to the welfare of the enlisted personnel on the ship, so I posted a watch on every companionway for twenty-four hours a day in the hope that if we got hit, some of my men would get out of that deep hold and up those companionways with a little advice and help from officer's watch that I posted. The Brits thought I was nuts. So we had an officer roster, and each of us stood watch trying to make sure if we had any episode or incident of that sort, that we could get our men out of the ship. Fortunately we never got hit.

I want to tell you, I was very glad to see Liverpool when we arrived. We disembarked and marched through the streets of Liverpool and got on a British train, and I delivered my squadron to a brand-new air base way up in the northeast corner of England, somewhere on The Wash. Then I was detached and sent to an officers reassignment center in Newcastle.

Hicke: Your taking a squadron over was a temporary duty?

O'Brien: Yes, just to command a squadron on the ship.

Hicke: To get them over there?

O'Brien: To get them there. And they were not an ordinary squadron, because there were enough first sergeants for a regiment.

Hicke: It must have been an interesting squadron.

O'Brien: I hung around this replacement center for a few days, and ultimately orders came for me to go to Ireland, of all places. I was profoundly disappointed with that, because it seemed to me about as remote from the war as had Santa Ana Army Air Base -- but there was no alternative. So I took a train up to Scotland, and caught a boat across the Irish Sea, got to Belfast, and then drove a jeep to a place called Mullighamore, God forbid -- I can't even spell it.

Hicke: Well, I can find it on a map probably.

O'Brien: Yes. It was in the County of Londonderry, and it was a brand-new base. The only personnel on the base were the surviving members of the 82nd Airborne Division that had just been pulled out of Italy after a big jump, and they were in bad shape. The place was commanded by an absolute wild man, and after I had been there a few days, I was determined I was not going spend any longer there than I could possibly manage. So I asked him for permission to go to the command headquarters of that command -- it was called the Composite Command of the Eighth Air Force.

I drove across Ireland in a absolute pouring, drenching rain, to the headquarters of this command, which was kind of a casualty of the war itself. It had originally been put together for a very dangerous and secret mission and had been manned by some very capable and skillful people: many regular officers and some very high-class, and high-ranking, officers. At the last minute before that mission was to be carried off, as often happens in war, the situation changed, and the whole thing was called off. These people were left high and dry in Ireland. They were mighty unhappy and, to some degree, discouraged, depressed, if not disaffected.

Anyway, I did the biggest sales job I could think of about how much they needed my services in that command headquarters, and after being there for two or three days, they cut an order transferring me to that headquarters. So I went back to Mullighamore and collected my few possessions. My footlocker had been lost coming overseas, and I was living a very hand-to-mouth existence.

Fortunately I was only there for a few months when I was transferred to an air base at Cheddington, near Tring, in England, which became the command headquarters of this same command. It was an operational base for the Eighth Air Force, and we began to regroup. The command began to hand out assignments for a variety of secret missions involving people and special operations on the continent. I got involved in some of those. Sometime in 1944, I was transferred to Headquarters of the Strategic Air Forces.

Hicke: Where was that?

O'Brien: That was outside of London. I moved into the huge house with all of the top generals of the American Air Force -- it was near Wimbledon. Maybe it was at Bushy Park; I've kind of forgotten. Bushy Park was where Eisenhower's SHAEF headquarters was located. SHAEF was Supreme Headquarters Allied Expeditionary Forces.

My boss was an extraordinary man by the name of Huntington Sheldon. He was American but had been born in Paris and raised in England. Indeed, he had gone to Eton, become the racquets champion of England, belonged to all the best clubs in the West End -- Brooks and Boodles -- and he and I spent many happy hours there.

Hicke: I was just going to ask if you were a tennis player.

O'Brien: No. He also was the Fives champion at Eton. Fives is a game which began, perhaps, in the fifteenth and sixteenth centuries among Eton students. It was a sort of handball, played up by the little boys against the sides of the chapel while they were waiting for chapel. The buttresses of the chapel came out and made sort of a natural court, except in the one corner there was a drain hole, and then there's a step in the middle of the court. Over the centuries, they built courts just like that at Eton, and my friend Huntington Sheldon, who had been the Fives champion at Eton, had several courts named after him.

It's just like handball, except that it's played against the side courts (the walls of the extended buttresses) as well as the front court, but with a step in the middle of the court, and "dead man's corner," which was the drain.

Post-Hostility Section: Rescuing Scientific Technology

O'Brien: In any event, he became the officer in charge of what was called the post-hostility section, which was designed to think about what would happen at the end of the war. I, as an intelligence officer, was assigned the task of drawing a plan -- an intelligence plan.

I began to have the wild surmise that this was an unparalleled opportunity in history to exploit the whole continent of Europe for intelligence, by which I meant first, operational intelligence against the Japanese, since they were part of the German orbit. We knew they had exchanged information about their military capabilities, their productive capabilities for weapons, the locations of their aircraft factories, et cetera, and personnel.

That would be of an immediate operational interest as the European war wound down.

But in perhaps even more important terms, the winding down of the war would give us an opportunity for the exploitation of all of the very high-level scientific and research secrets of the Germans.

We knew a good deal about German research through intelligence channels: locations of research centers, and so on. Over a period of a month or two -- took me a long time to formulate my ideas -- I finally drew a plan, which served as the basis of this operation.

Then we began to try to accumulate the people to man such a scheme. It was obvious that the military would not, by itself, have the technological, the scientific capability of exploiting these research centers by themselves, and so it was necessary from time to time to recruit very high-level scientists from the United States to man some of these somewhat chancy missions.

So we followed right on the heels of the invasion of the continent. As soon as the allied armies had moved across onto the continent after D-Day, we followed with our technical exploitation teams at selected targets, where we knew that high-level research had been done.

Hicke: Was there some kind of provision made to try to spare these -- were they offices or labs or some such thing?

O'Brien: Well, not really. But they were not military targets, so they, for the most part, were not damaged in the war. They were damaged by some of the displaced people who had been forced to work in them: the people who had been hauled around the face of the earth, and were slave labor in some of these places, doing all sorts of menial tasks. Promptly after they were liberated, the first thing they attempted to do was to attack and destroy the scientific machines.

In any event, that was the theory of it. We had some notable successes, fortunately, in the early days after the invasion. As a consequence, Dr. Von Karman, the chief of scientific advisors to General [Henry "Hap"] Arnold, who was the head of the Air Force, visited me in London. I began to get very high priorities for moving my people into targets and developing a much more sophisticated intelligence system as to what were most important targets and what were the highest priorities.

One of the first targets we hit, which resulted in our getting these priorities, was a target in the Low Countries. The captured material I had couriered back to Washington immediately. After being appraised and evaluated in Washington, it was said to have resulted in saving a couple hundred million dollars in research



1943. Cheddington Air Base, England. Office
of Intelligence staff. O'Brien, center, standing.



that we might otherwise have had done in the United States. But the results of that research were there, done by the Germans.

Hicke: Would this have been with rockets and that sort of thing?

O'Brien: All sorts of things, yes. So then, until the end of the war and for many months afterwards, I had the fascination of helping to direct this show under my boss, and under a very understanding, intelligent general, who was the chief intelligence officer of the Strategic Air Forces in Europe, General George McDonald -- someone should write his biography -- under whose auspices we ran a show all the way from Scandanavia to North Africa, playing cops and robbers with all of the secret radar, aerodynamics, optics, rockets, scientific intelligence of the enemies at a later stage, manufacturing --

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-- and technological achievements. We had an eight-story building in London, which became a documents center. We had there twenty librarians from the United States. We got the equipment together, we catalogued this material, duplicated it, gave copies to our British friends, had airplanes flying documents back and forth across the channel to London where they would be fed into this library system, if you like. Much of it highly classified research.

Hicke: Where were you spending most of your time?

O'Brien: Well, I was living outside of Paris, but I had a flat in London. I got very tired of living with the generals in Bushy Park, being -- by then I was a major, I guess, at that time, so I --

Hicke: You would probably have to salute every time you turned around.

O'Brien: Right. I was sitting well below the salt, and I got very tired of standing up and sitting down. It was sort of "Yes sir, no sir, three bags full."

So I got permission to move from the generals. With the help of a delightful British solicitor named Ballentine -- who represented the Standard Oil Company of California in many of its early negotiations in the Middle East in the acquisition of the Bahrain concession -- I was able to find a comfortable room in which to live in a modern hotel in London, which was an absolute miracle. Nobody could believe that I had lucked into this comfortable room in what was then a new hotel called Atheneum Court on Picadilly, right across from Green Park.

Hicke: Obviously there wasn't much in the way of living quarters in London at that time.

O'Brien: No. Things were getting knocked down, and people were being evacuated from London, and so on. After D-Day, when I was on the continent a lot, I continued to keep that flat. I was gone for a couple of years, so London began to seem like home, and I could leave all my stuff there.

But I did live in a beautiful home for a while with a lot of other officers in St. Germain outside of Paris, on the estate of one Mr. Gervais, the cheese manufacturer in France, with lovely formal gardens. And then we established another base in Wiesbaden, and I had a place to live there. So I led kind of a triangular life -- London, Paris, Wiesbaden -- and I was back and forth all the time.

By then I had a card which enabled me to commandeer an airplane whenever I needed one, and I flew a lot with this General McDonald, who had been one of the original Hap Arnold, Billy Mitchell, wild-blue-yonder boys himself.

Hicke: That must have been exciting.

O'Brien: Yes. It was kind of hair-raising.

Hicke: Yes, that's what I meant.

O'Brien: He had an RAF pilot for his own private airplane. But a general officer in the Air Force had the right to check himself out of an airfield no matter what the weather.

Hicke: Oh, he did the actual flying?

O'Brien: Yes, and this RAF pilot, too. But even if the weather report says zero/zero [visibility], he would decide he was going to go anyway, you know.

Hicke: And you went along?

O'Brien: And I was along. So we'd first go down the deck to see whether you could see anything, and if not, then we'd go up as high as his plane would go to see if you couldn't break out of the overcast. I finally got so I could go to sleep. The plane was dolled up with a berth, which was for the general, but I couldn't stand looking out the window wondering whether we were about to hit a mountain or plunge into the sea.

Anyway, I stayed on doing this until December of '45. By then, most of the material had been collected, transportation

arrangements had to be made. I got the British, at one time, to give us a carrier, and we picked some of the most esoteric examples of German technology and put it on the carrier and shipped it back to the United States.

A few very remarkable things were flown from England back to Wright Field. Ultimately, the documents that had been collected in the document center in London found their way into the Technical Intelligence Archives of the American Air Force.

In the end, I represented the Air Force in the negotiations with the British Air Ministry as to the division, if you like, of the loot. We began with a whole bunch of generals on both sides, air chief marshals and ranking generals, and the British absolutely clobbered us, because they were so skillful at negotiations that within a few minutes they'd have the American generals arguing with each other. That seemed a big catastrophe to me, so we kept getting the groups smaller and smaller, and I finally succeeded in being named as the single American negotiator, and I negotiated the final deal with a British counterpart.

The British had a marvelous intelligence service; they taught us a great deal. We had the advantage of them in the sense that, in relative terms, we had unlimited money. While they had to decide on particular equipment to go ahead and build it and use it, we could keep experimenting on the basis of what we learned from their equipment, and continue to improve and refine all sorts of technical advances -- as, for example, airborne radar.

Hicke: Well, I notice that you got the Legion of Merit, the Bronze Star, the Croix de Guerre [with Silver Star], perhaps others I don't know about, but that was all for that work?

O'Brien: Yes. One of the things I monitored when I was in the Composite Command was in relation to the French Resistance. There was a highly sophisticated system that had to do with rescuing our downed fliers in Europe. They were fed into a pipeline, and ultimately out of the nonoccupied countries.

Hicke: Underground?

O'Brien: Yes, an underground. And I had some piece of that for a while. So when it was possible to go into Paris where I spent V-E Day and a few days thereafter, I looked up a lot of those people who had risked their lives for American fliers. I made some life-long friends.

You know, it's kind of par for the course for Americans to be highly critical of the French, and vice versa, particularly now. And yet if you lived through World War II, and saw the tragedy of

the downfall and defeat of France and its occupation, and also saw the absolutely unlimited courage of some Frenchmen to help the Allies and the American fliers, it makes you hesitate to be so critical.

There wasn't any great future in trying to help an American flyer. If you were a French farmer and a fellow came down in a parachute and you hid him in your house and you got caught, they'd just lock you, your wife, and your children inside of it and burn it down. It was not calculated to add to your longevity. So it was a very touchy thing to run such a thing, and I met some of the people who were actively engaged in that.

You may remember, we were reading the German messages -- it was called "Ultra."

Hicke: I was just going to ask you if you were involved in breaking the German codes.

O'Brien: No, I wasn't involved in that at all, but I was on the receiving end of the information. So having sent a lot of other people to a lot of interesting places, we learned that [Hermann] Goering had moved the main body of his general staff to a secret headquarters in Bavaria. I decided I couldn't resist that one.

In the final days of the war, Hitler and Goering had a great falling-out. They had made an arrangement when Hitler was in the bunker, or maybe even a little before, that if he got absolutely surrounded and couldn't escape, he would send a message to Goering, and Goering would then officially succeed Hitler as Die Fuhrer, and lead the troops to a final victory. They still had hundreds of thousands of troops in the Hartz mountains, and Goering was supposed to lead them in one last, great Gotterdammerung.

You remember that General Eisenhower did not go to Berlin for the armistice signing ceremonies. He sent Beedle Smith, and Eisenhower stayed with his troops, because he was fearful of a flank attack from the great number of German troops still up there in the mountains. And, also, he didn't want to have a confrontation with General Zhukof, the commanding general of the Russian force, in Berlin.

In any event, I flew to Salzburg in a plane with a jeep on it. Another fellow -- German-speaking -- and I toiled off across the country looking for this headquarters staff of the German Air Force. We worked our way down through the country. The German soldiers were pouring out of the mountains, and we drove through them. We kept getting pointers: "They're there; they're over that way." We finally got down into Austria to a little place called Zellam See, and lo and behold, that's where they were.

They were just waiting. The war was essentially over. This guy and I drove up to the little inn that they had turned into their headquarters; there was a German sentry there. I said I wanted to see General Von Kohler, who, by then had succeeded Goering as the commanding general of the Air Force -- he had been appointed in the final days of the war by Hitler. There's an intervening story which I'll tell you; that's kind of interesting.

Anyway, Von Kohler came into the dining room that they had turned into a war room with all their maps and the battle lines and the locations of their ground forces and all that stuff, and I asked him to send immediately for the personnel general. I've forgotten his name now but he came in, very high ranking officer. For effect, I had my associate lay down a chart which was the result of the intensive intelligence efforts from day one of the war both by the British and the Americans. I spread out this chart of the structure of their headquarters, with the names of all the people who occupied the positions in their headquarters, and this German general looked at it for a moment, and said, "It's a lot better than mine." Anyway I stayed with them for a few days.

Hicke: Was he just there? He wasn't under arrest?

O'Brien: No. They were waiting for somebody -- some representative of American forces, or some enemy force -- to come and officially take possession of them.

That first day, I walked through the headquarters out onto the lawn in the back, which led down to a lovely little jewel of a lake, and there they were. There were about sixty or seventy German generals there, full uniforms, decorations, and side arms, just waiting -- strolling up and down arm-in-arm, waiting for somebody to come and officially end the war.

Hicke: That's fascinating.

O'Brien: I might have been a major or a lieutenant colonel by then, maybe -- in any event, I was very greatly out-ranked.

So I stayed there for a couple of days with them. I took their personnel charts. I sat down and I said, "I want to know the whereabouts of everybody on this staff." Some had disappeared; some had been sent off on special missions and never returned; some had been killed; some had been taken prisoner, I guess, but most of them were still there. I had had this idea for a long time that I wanted to keep that staff together as a staff, intact, with all of the leading generals there and all of their principal colleagues and associates, and then bring over from the Pentagon their

opposite numbers from the American Air Force so they could refight the war: "When you did this?" "Why did you do that?" et cetera.

Hicke: Fantastic.

O'Brien: And I knew there would be a great effort to grab off these people, to pull everyone in different directions -- the Signals people would want to talk to the Signals man, you know, and all that sort of business. So after I had done my best to locate them -- I still have in my papers their chart of their headquarters staff with my notes on it -- I flew to SHAEF, to Eisenhower's headquarters, and was fortunate enough to get to see Beedle Smith, who was his deputy. He gave an order that the staff should be kept intact and not pulled to pieces.

They then appointed an American general who had just come over from the training command -- a major general -- to be the official representative of the American side. He and I and some other officers -- some of his entourage -- flew back and met these people again at Zellam See. Then we moved them, in their trucks and ours, back to Berchtesgaden, where they had had a secret headquarters dug into the mountains.

Hicke: The Eagle's Nest.

O'Brien: Yes. Well, the Eagle's Nest was nearby, but this was a big compound of buildings disguised as a girls' school. It had a big signals center, and it had gates and walls around it, so it was a good place -- one that they were familiar with, it was their headquarters. And there we disarmed them.

Then as time wore on we were fortunate to find their papers, which they had been ordered to destroy but which they had secretly microfilmed and buried the microfilm in the Hartz mountains. We found those. So then we had the bodies and their papers, and it was time to begin the interrogations, and ultimately we brought over their counterparts from the U.S.

Hicke: They actually did have this dialogue?

O'Brien: Yes. It was used in the war colleges for a long time; I don't know what ultimately happened to it.

So that was essentially the completion of the job, as far as I was concerned. I took possession of the German officer who was the intelligence officer in the German Air Force. An enlisted man and I found him in an upstairs room in a little building. I had a small detachment of soldiers from the 82nd Airborne that went with me when I was trying to find him. He wasn't with the rest of these fellows.

Hicke: Is this at Berchtesgaden now?

O'Brien: Oh, I've forgotten where it was; it must have been in Berchtesgaden. In any event, we got him; he was in an upstairs room. I didn't know what would happen, you know, whether he was going to fire at us or what. So we kicked open the door, and he was in a bedroom with twin beds in it. There was this tough little soldier that was with me from the 82nd Airborne, and this German officer, impeccably dressed -- uniform, decorations, and so on -- kept sort of shuffling around in the room, and kept talking about the Geneva Convention. I don't know whether he was scared of us, but I was plenty scared of him. Finally he reached down in his boots, where he had a long knife. When he did that this youngster from the 82nd Airborne knocked him over both of those beds, and we took possession of the guy.

Hicke: Was he about to attack?

O'Brien: I don't know. I think he must have been. I think he got spooked and frightened. Maybe he thought he was protecting himself, I don't know. But we hadn't laid a glove on him up until then. I took his handgun, and it was a British gun, a Webbley Scott, a beautiful little revolver. I brought it home as a souvenir. Ultimately I gave it, along with some other souvenirs like that, to a friend of mine who is a gun collector, and about month or two later he called me up one day and said, "You know that little Webbley Scott you gave me?" I said, "Yes." I said, "I'm sorry I gave it to you. I loved that little gun. It felt so good in my hand." He said, "Well, it wouldn't ever have done you any good, because somebody had very carefully sawed off the firing pin." So this German officer was carrying around a gun which he probably didn't know wouldn't fire. He must have had some real friend who fixed him up.

Hicke: That is fascinating.

O'Brien: Anyway, as a consequence of all of those experiences, by the time I came home, I had met a great many people, I had had considerable responsibilities. There were no intelligence manuals about how to do such a job, you know, and I worked with a bunch of very bright, able people within the regular Air Force, and surrounded by very bright people who were ready to take a risk and take a chance and try to do something that was really going to be valuable.

Demise of the Red Baron: The Technological Revolution

O'Brien: If you've read any history, we were really a generation behind the Germans in our weapons. They were flying jet aircraft; we were still flying Model T Fords. They had rockets, and we had nothing of that sort. They had very sophisticated radar; their optics were fantastic. In one single research center in Brunswick, they had more experimental research equipment than we had in the United States. So when Hitler said he had secret weapons, he did. And the war was great deal closer than most people in the United States ever realized.

It seemed to me that this was an opportunity really to get the United States up to speed and to understand that what was coming now was a great technological revolution which would change the whole concept of warfare and would change the whole idea of being an Air Force officer.

So I got permission from General Spaatz, who was the commanding general of the Air Force in Europe, to write a paper about my ideas and what I thought should be done: no more of this just flying airplanes and being a group commander, a wing commander, or whatever -- a wild-blue-yonder boy -- that was not going to win any wars for us. We now had to have people who were highly educated, scientifically oriented, engineers and scholars and research people to make sure that we kept up with the scientific and technological developments and to run an intelligence system that was commensurate with that sort of prospective warfare.

So I wrote that paper. I don't have a copy of it, of all things.

Hicke: I was just going to ask if you did.

O'Brien: I was sent on special duty to Washington for two weeks, and I coordinated my paper through all of the great crowned heads of the Air Force and presented my ideas in writing to General Arnold as to the future mission of the intelligence community in the Air Force.

I don't know what ever happened to it, but it at least had some glimmer of understanding that it was a brand-new world. And I did get Spaatz, while I was still there, to issue a directive that regular Air Force officers who had completed their allotted number of missions and were going to be returned home couldn't leave the theater without coming and talking to me. I did that because I wanted to try to explain to them that the old values about the Air Force were going to disappear very quickly, that the way to rise in

the ranks of the Air Force was going to be through education, intelligence, and technical orientation, and so on, that just getting out there and firing your guns and going 500 miles an hour was not going to win any wars.

Hicke: The demise of the Red Baron.

O'Brien: Yes, the day of the Red Baron was over.

Hicke: It sounds like you not only imported the technological revolution, but also the philosophical revolution that changed ways of thinking.

O'Brien: Well, out of all the people I interviewed, I got perhaps ten or fifteen to transfer out of the flying business into technical intelligence and into strategic intelligence. I don't know what happened to all of them. I know that one of that group became a lieutenant general and there were two major generals: one of them became head of the technical intelligence -- what do they call it? -- it's a technological command of the U.S. Air Force's. Anybody could see that the world had gone through a great revolution in a technological sense with the development of rockets and radar and optical capabilities that would give you, from a satellite, the number on the parking lot. So I came back, in many ways, quite a different fellow from the one that had left.

Hicke: You were different, and the Air Force was different.

O'Brien: Yes. Four or five years of that business had changed my own values and my own perceptions.



IV POSTWAR RESPONSIBILITIES AT PM&S

[Interview 6: March 24, 1987]##

Lawyers Who Came and Went

Hicke: Last time, I think, we ended up when you were just getting back to PM&S after your war service, and you told me a little bit about coming back. But before we start that, at one point we were talking about a list of associates, and this is the only list that I could come up with, and I gleaned that from John Sutro.

O'Brien: [looks at list] Gee, that's a pretty scrappy little list.

Hicke: Yes. Those are the ones that John Sutro hired; he kept a record of some of the ones that he hired.

O'Brien: There must be yellow cards somewhere. There used to be a yellow card for each person -- information about each person.¹

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Harlow Rothert is practicing law in San Francisco. He was a great Stanford athlete, and he and a fellow named Duncan Lowe and another named John Hancock formed a firm, and it was quite a successful firm. Lowe is dead; Rothert and Hancock are still alive and thriving. Ralph Kleps left the firm to become the administrative head of the California courts, the job in which he served with

1. Despite numerous inquiries, the interviewer has not been able to locate the yellow cards or any similar file of personnel information dating back to the 1930s.

great distinction until Rose Bird came along. They didn't hit it off at all, and he retired, I guess, or resigned. Tom Caldwell became the secretary of some judge; he left the firm. Scott Lambert had a marvelous career. He started to work as a hall boy for the Standard Oil Company when he was about sixteen or seventeen, I guess.

Hicke: A hall boy?

O'Brien: Yes. In those days, there was on every floor of the Standard Oil Building, a receptionist when you got off the elevator, and messages were delivered by hall boys carrying baskets between the floors, and Scott Lambert was such a messenger. He went on to get his law degree with the encouragement of the company [Standard Oil]. They liked him very much and were very supportive, and he was a fine, able, bright, energetic, attractive-looking guy.

Then they asked the firm to have him serve an apprenticeship at PM&S. He came to the firm and was primarily interested in tax matters. He worked very closely with Sig Nielson; they were the dearest friends, and Scott was a very popular, very successful young lawyer. After he had been in PM&S for a few years the company took him back and he became, ultimately, the chief tax counsel of the Standard Oil Company, and ultimately was made a vice president of the company and general tax counsel, and retired at or about the same time I did, I guess. He's alive and well, and a very peppy, attractive, charming gentleman. So he had quite a career.

Hicke: Yes. He would be interesting to talk to.

O'Brien: I'm not aware of ever having heard of any of the other names.

Hicke: Okay. Well, they probably came and left. Those were the war years.

O'Brien: See, they did. They were wartime -- '43, '44, '45, and they all left before I came back to work.

Hicke: Yes. Including -- there was one woman there, I see.

O'Brien: Yes, Mrs. Dean Lawrence, but she left. She came in '44 and left in '45. But the people in the '30s -- I still want to talk someday about the Capocellis and the Spurlocks and Garry Owen and all the rest of them.

Hicke: Okay. Well, there's that list and one that I compiled from Francis Marshall's memories of people that he remembered.

O'Brien: Yes. Right. Well, I could add something to these stories, because I knew all of these people.

Hicke: Okay. Do you want to do that now?

O'Brien: Well, I don't care, sure. Whatever.

Hicke: All right.

O'Brien: Charles Ruggles. When I came to the firm in 1935, he was probably sixty. A man of boundless energy, and a great corporate lawyer.

Hicke: Had he been with the firm for a long time?

O'Brien: He'd been with the firm, as far as I know, from the beginning. He'd never become a partner, but he was a brilliant corporate/securities lawyer, and he and I worked together. I was eager to find out about corporate work, and I worked with him writing trust indentures and bond indentures, and I worked a lot with him in preparing applications to the State Corporations Commissioner for permits that were required required under California corporation law -- securities law --

Hicke: Permits to issue?

O'Brien: -- for the issue of securities. I learned a great deal from him. He worked principally with F. D. Madison and Marshall Madison, but he was an absolutely delightful man, beautifully educated and highly charged all the time. He used to sprint up and down the halls; he seemed nervous and excitable. He'd sit down and dictate, practically from his head, a bond indenture fifty printed pages long, you know -- absolutely amazing capacity. He retired, I guess, maybe during or shortly after the war. But he was a great favorite of mine, and I admired his capacity.

Renato Capocelli: don't know how he began. He was probably in his middle fifties when I started at the firm. He had an office just down the hall from Mr. Smith, and he worked exclusively, to the best of my knowledge, on the land problems of the Standard Oil Company.

Hicke: That must have been quite a job.

O'Brien: Yes. It can be enormously complicated, with all the layers of agreements that affect property. So he was an expert on oil and gas rights and land law. When you first sat down across from Capocelli, you used to think, "I need simultaneous translation." He had such a pronounced accent that until you got tuned in, he was difficult to understand. He was a superb, nineteenth century, Italian gentleman. I never met a man with more grace of manner and

real consideration for other people -- he was marvelous. He went about his work quietly, and apparently did it with great effectiveness. I didn't have much to do with him, because I didn't really ever get into that work until I was responsible for some of it in the Standard Oil Company.

Hicke: Yes.

O'Brien: Hugh Fullerton was one of a kind. I think his father had been an executive in the telephone company. When I met Hugh Fullerton he was a broad-shouldered, stocky, energetic swinger. He flew his own airplane. He was a very lively customer. I had some wonderful experiences with him and some of his small cases.

Hicke: Does anything special come to mind as an example?

O'Brien: Yes. I remember a case that he had involving a fellow who had leased a storefront, or one-half of a storefront, or something like that. I guess he was a penman, or something of the sort, as I remember. In any event, he attracted a huge crowd sitting in the storefront of this building, so that the rest of the tenants couldn't get in. The landlord, whom Fullerton represented, wanted to get rid of this guy, and he had just a month-to-month tenancy, or something of that sort.

So Hugh Fullerton served a notice on him to quit, gave him a statutory notice, but the fellow didn't leave. And then we filed an unlawful detainer suit against him, and he claimed he'd never received any of these notices.

I was sitting in the library one day, shortly after I had come to the office, and Hugh Fullerton called for me. I went in and he was taking the deposition of this guy and inquiring about this letter. The fellow denied he'd ever received anything of the sort. Fullerton said to me, "Ask this man some questions. I have to go flying." So I sat down, with what little I knew about it, and examined the fellow, and we continued the deposition, then, until another day.

Ultimately Hugh Fullerton hammered away at that guy, at some future date when the deposition was continued, when Hugh again asked about the letter, the fellow made some involuntary gesture toward his inside pocket of his coat, and Hugh reached over and pulled out what the fellow had in it. There was the notice. So he'd had it all the time.

Hicke: And carried it with him, yet.

O'Brien: He even had it with him, but he made some pass like that at it [makes hand gesture], and Hugh just reached over and took it away

from him -- out of his pocket. And he said to this fellow, "Why you S.O.B.!" And the other lawyer said, "Let the record show that Mr. Fullerton has called my client an S.O.B." Mr. Fullerton said, "Let the record show your client is an S.O.B."

Hicke: Oh, wonderful!

O'Brien: End of story!

So Hugh went to Washington and was originally in charge of our Washington office. Washington fit his style perfectly. He was really into everything, you know -- Washington was a huge cafeteria for Hugh. But he fell on bad times: he got into trouble with the government, and resigned from the firm, and that was the end of Hugh Fullerton.

Norbert Korte I've talked about to some degree. Del Fuller I've talked about. Garry Owen was a remarkable young lawyer when I first joined the firm, and he was very kind to me. He worked with Felix Smith, and Felix had such a shorthand style in describing the legal problem of the people involved, and the things he wanted you to do -- I used to hurry down the hall and talk to Garry to see if I could get a rough idea of the dramatis personae.

Hicke: Another "simultaneous translation" needed.

O'Brien: And Garry was very helpful. He would look at the things I had drafted to see whether they made any sense, and so on. Considering I was a one-feather Indian right out of law school who needed some seasoned lawyer to give me a hand, he was always very generous and friendly, and we became warm friends.

When Aramco was formed, he left the firm and went to Saudi Arabia in the early days -- in the '30s. He became, over time, sort of Aramco's ambassador to the court of the king, and had a very successful career. He was very highly regarded everywhere, had the confidence of the people and of the king and his ministers. So it was a fascinating career.

Hicke: Indeed.

O'Brien: I used to see him from time to time when he'd be on home leave or be in New York or San Francisco on something in connection with Aramco affairs, and we remained good friends until his death.

Woodson Spurlock came from Iowa, and I think he'd been educated at the University in Iowa. He was a Rhodes scholar, tall, slender, fair, with cobalt blue eyes, friendly, reserved, quiet, but very bright and very highly thought of by Felix Smith. He obviously was a highly intelligent fellow with a scholarly turn of

mind. He too left the firm and went to work for Aramco in Saudi Arabia, ultimately, where he had a high-level legal job in the hierarchy of Aramco affairs. He became, it is said, something like a Lawrence of Arabia -- that is, he lived from time to time in the desert, traveled with the Arabs, I guess spoke the language by then, and became a considerable scholar of Islamic culture, and continued to work for Aramco until his retirement. Now he's deceased.

Sam Wright I've talked about, a great fellow.

Dudley Miller: I have the impression, I may be wrong, that he left the office and went to work for the Standard Oil Company in some capacity. And then he and Leland Groezinger, whose name is next on your list, and a couple of other fellows formed a firm which was quite a successful operation.

Hicke: A law firm?

O'Brien: A law firm, yes. And Miller and Groezinger, and someone else -- whose name escapes me at the moment -- were the senior members of that firm. Lee Groezinger worked principally for Marshall Madison, and he and I worked on a lot of food and drug problems -- labeling, and misleading advertising and, oh, a thousand and one things.

Hicke: For various clients?

O'Brien: Because Marshall Madison was general counsel of California Packing Corporation, which was Del Monte --

Hicke: Oh, okay. Yes.

O'Brien: -- and it was an important client. They were, of course, very large manufacturers of canned fruits and vegetables. They may well have grown some of their own things, but they had contracts with the farmers for their crops of vegetables and fruits. They harvested them, and then they put them through their canning plants, and they sold these things worldwide. So they were an important client, and Lee Groezinger worked on those, and I worked with him.

As a matter of fact, I had two interesting experiences that arose out of that. Some time before World War II, the Bank of China or its local subsidiary in San Francisco failed. California Packing Corporation had shipped a cargo of some sort of canned goods to China, and before the money got back through the banking channels, or had been paid by the Bank of China, the bank failed and was taken over by the superintendent of banks in California. I was given the chore of seeing what we could collect. So I went over to call on the bank authorities.

Hicke: Was there a bankruptcy law at that time? Did they go into bankruptcy?

O'Brien: Yes. A receivership, I think it was. In any event, the Chinese government was greatly embarrassed about this, and they sent over an important, young, let's say Assistant Minister of Finance or something, to supervise the liquidation of the bank's affairs. So I went to call on him, and they were offering creditors to the bank, let's say, forty cents on the dollar. In our first meeting that is what he offered me.

As I watched the man, even though they're supposed to be so inscrutable, it seemed to me that the poor fellow was just as lonesome and out of sorts as he could be. And I said to him one day, "You know, it must be very hard for you here. You are separated from your wife and your children, and it's not the most hospitable place for you. You must miss China. Where is your home?" He said, "Shanghai." I said, "Well, I grew up in Shanghai."

Well, gee, the whole atmosphere changed. He did an unusual thing for a Chinese gentleman: he pulled out of his wallet a picture of his wife and his tiny son, and I admired them.

So he said, "Well, why don't we settle this matter?" He did a few calculations with his abacus and said, "I'll pay you this." And I said, "Well, that sounds pretty good. I'll take it and discuss it with my client" -- I didn't have the authority to settle the case.

I did a little arithmetic of my own as we were talking about it, and then I walked down the street right then to the Wells Fargo Bank and went to the foreign exchange department and asked them to translate that for me. What he was offering me was about 85 percent of the price.

I thought that over for a minute. I hadn't even come back to the office, and I hadn't conveyed it to my client. So instead of coming home, I walked back to his office, and I said to him, "As you know, I obviously am interested in winning the most favorable settlement I can for my client. But, and I hesitate to mention this to you because your offer is very generous, but before I convey it to my client, I want to make sure that it's right from your point of view."

He looked a little angry and a little upset. He again wrote down some numbers in Chinese, and he pushed a button and in came a couple of people and he handed the paper to them, and they went out. And they came back in and, sure enough, he had offered me 85

percent. And he absolutely refused to change it. I could see some kind of look of dismay go over his face.

Hicke: It was a mistake?

O'Brien: It was a mistake on his part, but was one that he declined to change. First, because he had given me his word, and because there would be some loss of face involved. I'd given him the opportunity to switch the signals and wasn't trying to take advantage of some arithmetic mistake, but he absolutely declined. So I took it back to the client, and we settled for that. That was kind of an unusual experience.

Hicke: Amazing. Maybe you could tell me more, as we go along about the so-called art of negotiation, but one of the things I've read is that it's particularly true of Americans that they don't want to take advantage in negotiations.

O'Brien: I don't think you can generalize about that, Carole.

Hicke: Okay. Well, maybe that isn't the right way to put it. Maybe what I'm saying is apparently you have found that the best way to negotiate is not to take advantage, but to try to arrive at settlement where everybody is happy.

O'Brien: Or not to fool somebody.

Hicke: Yes.

O'Brien: I had another story I was going to tell about. I guess the first case I ever tried was one that I tried for the California Packing Corporation, and I tried it in Fairfield in the justice's court against a very famous lawyer by the name of Lloyd Robbins, who had the world's greatest collection of canon law, which he left to the University of California. One of the great canon lawyers of our times, Mr. Noonan, who was on the law faculty at Berkeley -- special legal advisor to the Pope and served on all sorts of special commissions -- worked with that Lloyd Robbins's canon law collection, which was a fantastic thing. Robbins also left the law school a great deal of money as an endowment for that library.

Hicke: He was a Californian, obviously.

O'Brien: Yes. He had a big spread around Vacaville or Fairfield. And he objected to the charge that the California Packing Corporation made to farmers for the boxes that they put in the fields that belonged to the California Packing Corporation. The charge they made was called box rental. They would put out the boxes in the field, and the crops or fruit would be harvested and then put on trucks. He wouldn't pay it.

Finally the company felt compelled to sue him. So they sued him for about one month's rent -- it was more a matter of principle than anything else -- and I was drafted to try the case before the justice of the peace, some sort of magistrate in Fairfield.

We tried the case for about three or four days. Every day when I would arrive in court, Lloyd Robbins would be closeted with the judge in chambers. That was a little unnerving to start with. And then whenever I would put on a witness, Lloyd Robbins would promptly rise and say, "No, that isn't the way it is." I finally said to the judge one day, "You know, I'd be happy to waive Mr. Robbins's taking the normal oath of the witness, but I do wish that when he was testifying he'd be sitting in the chair and not standing in the well of the court."

Well, he was very indulgent with me. At the end of every day he'd say, "Come on, let's go have a drink," and I'd get in his car, and he'd drive me out to the ranch. And he said to me, "Now young man, the doctors only allow me one drink a day." And then he'd shout at some attendant, and they'd bring him a martini in one of those [demonstrates with hands] --

Hicke: A foot high?

O'Brien: About a foot high, really.

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Hicke: How did the case turn out?

O'Brien: It didn't take that judge very long to decide in Mr. Robbins's favor. He was the squire, he ran the whole county. But he was an agreeable old gentleman, and I learned a lot about --

Hicke: You didn't learn how to get closeted with the judge before --

O'Brien: No. How to get clobbered, I guess.

Hicke: Oh, on one drink.

O'Brien: Let's see. Who else is on here [looks at list]. Al Tanner worked for Felix Smith, and as the years wore on he, as I recall, became primarily interested in corporate securities work. I think a lot of young lawyers in the firm found him hard to work for. He was a man who was frightfully meticulous, meticulous to a fault, shall we say, and I guess that's a good fault if you are a corporate lawyer and you really need to dot every "I" and cross every "T" and so on, but it would be an enterprise that would drive you up the wall. But he had the confidence and respect of Felix Smith, and he

handled a lot of important matters for the Standard Oil Company over the years. He was a partner in the firm, and retired, and lived on after his wife's death for quite a number of years.

Henry Hayes was a particular favorite of mine, and he just died a few months ago.

Hicke: I saw the notice in the paper.

O'Brien: He didn't have what you'd call a happy career exactly, because he was profoundly disenchanted that he hadn't been made a partner. He was about that tall. [gestures with hands]

Hicke: Five feet?

O'Brien: I would guess less than five feet. He was a brilliant fellow with great charm. He had gone to Deep Springs School -- that was a very special school, I think maybe sponsored by Yale University, but it was a very special place. He went from there to Yale and the Yale Law School, I think, and he had a fine academic record when he was in school. He worked very closely for and with Felix Smith.

He and I were the two associates that worked on all those glass cases that I described for you. Henry was very quick and an excellent draftsman and a most agreeable person to work with. But for some reason unknown to me, he didn't become a member of the firm, and during the war he left the firm and went to teach at Deep Springs. Then after the war, he came back. He still didn't become a partner, but he worked on, I think, until his retirement, as I remember.

In any event, I thought he was a very good lawyer indeed, and a most charming, entertaining, and engaging friend. He had a wife named Kit. They had a big, open car, and they had one of those huge, woolly sheep dogs. I have a vision of Henry and Kit and this enormous sheep dog tooling down the road. They lived in Marin County. And we became good friends.

I've lost track of some of these people, because they disappeared during the war. Bud Pringle I knew before the war. He had been the roadman. I don't think I succeeded him as the roadman. I think it was Bud Pringle, and then Bob Bolander, and then O'Brien. And as I've told you, the roadman argued a great many preliminary motions and demurrers and that sort of thing, and Bud Pringle had an unbroken record of having something like forty or fifty or sixty demurrers sustained against other people. A demurrer is a common law legal motion which says in effect that I concede all the facts that you state in the complaint, but they don't state a legal cause of action; there's something faulty about

your pleading. Nobody could plead a cause of action against Pringle.

Hicke: I bet they were sorry to lose him as roadman.

O'Brien: He then went on to handle -- I think after Francis Gill, who was another real character, an associate -- workman's compensation matters and promptly became possessed of every disease of every case. He was not a very prepossessing-looking guy, kind of pale and sallow, but he was a bright man, and we both knew the grip, both having been roadman. But he had a long tenure as roadman or he never would have scored as he did on all these demurrers.

Bob Bolander: I don't know what happened to him. He was a very attractive, good-looking, young man. He was the roadman, I think, before me; I think I took over from him. I was only on the road about, I don't know, three or four months, maybe something like that. I guess I got into some of these cases and had to be pulled off the road. But I think I succeeded Bob Bolander. I never knew him very well, but he was a very pleasant, agreeable person. I've kind of forgotten what happened to him, whether he stayed on until the war started and left in that context, or otherwise.

And I guess that's about it on those people on the list.

Hicke: You mentioned Francis Gill. Do you have a couple more minutes?

O'Brien: Oh, Francis Gill. He was a real character. Where he came from I don't know, but he was a true eccentric -- skinny, intense, brighter than the dickens, and a nonconformist. I remember that he somehow got an important case involving workmen's compensation law into the Supreme Court of the United States before anybody in the firm realized what had happened. And in those days, where everything was, you know, so carefully supervised -- anything that an associate did was carefully reviewed by serried ranks of elder lawyers and partners -- suddenly they found themselves with Francis Gill about to go to Washington to argue a case in the Supreme Court. And how he got it there, I don't know, perhaps on some special writ, because he was a very creative, imaginative, skillful lawyer. But as I say, he really paid very little attention to the form.

Hicke: He was working away and --

O'Brien: Working away and doing his thing. And I haven't any idea of what became of him. I guess he must have left during the war. Of course, a lot of us got into the service, and I don't know the end of that story.

Price-fixing Cases: Paint, Glass, and Wallpaper

[Interview 7: April 7, 1987]##

- Hicke: I am going to just recap a little bit. We got you back from the war the time before, and then last time you talked about the associates. So we really didn't make any forward progress chronologically. So where we stand now, chronologically, is with what you started to do after you got back from the war.
- O'Brien: All right. I came back gradually to resume my role with some of the clients that I had represented before the war--personal clients and corporate clients. My practice changed in the sense that I became more of a business lawyer and antitrust lawyer than an active litigator. I ceased to have anything really to do with frequent courtroom appearances. As it happened, immediately after the war, with the end of price controls, there was again a great flurry of antitrust proceedings. I represented Fuller in three successive national antitrust grand jury proceedings: paint, wallpaper, and glass.
- Hicke: Those are the three different subjects--
- O'Brien: Segments of their business that were involved in national investigations. As I recall, one investigation was in Pittsburgh, one was in Philadelphia, and one in San Francisco.
- Hicke: I'd like to interrupt you just to ask if you could tell me a little bit more about what was involved?
- O'Brien: They all involved federal criminal grand jury proceedings for alleged price fixing--conspiracies--in paint and glass and wallpaper.
- Hicke: Were these in response to a complaint by competitors, as the other one was?
- O'Brien: Not to the best of my knowledge. If so, I don't identify any individual complainant. It really may have been, again, kind of a political exercise. After the war, there was tremendous pent-up demand, and prices tended to rise rather rapidly after World

War II. I think these grand jury investigations, in part, were an effort by the federal government to help keep prices down.

I know that in the case of Fuller & Company, the chief executive officer, Harry Brawner, who had served in the Air Force during the war, as many of the other Fullers did, was very much concerned about prices in the paint industry. He made a trip around the country, in the course of which he managed to see the chief executives of many of the other major paint companies. I am sure that he acted in all innocence and had no intention whatever of entering into any price arrangements or agreements. He was a very well-intentioned gentleman, if a little naive about the legal niceties, and when I learned of this trip, we had a number of heart-to-heart talks.

I then helped him to issue a memorandum to all of the branches of Fuller & Company (and they then had approximately two or three hundred branch stores in the western United States) in which he recited to the local managers that he had made this trip, noting that he had talked to these various competitors, and that as far as he was concerned, Fuller & Company was going to follow Mr. Truman's plea and hold the price line.

Now as it happened, most of the rest of the industry increased the prices of paint, and so we were not what you would call a good-looking conspirator.

Hicke: Right.

O'Brien: In fact, we had gone the other direction. Ultimately the matter came before a grand jury in Pittsburgh, which was the headquarters of the Pittsburgh Plate Glass Company, one of the largest paint manufacturers of the country. All of the major paint companies and most of the executives except Fuller were indicted.

Hicke: It was a good bit of preventive medicine you arranged.

O'Brien: Yes. We had a number of similar cases. I also gradually got into the Aramco problem and those of Caltex. I picked up a number of other clients -- I can't remember them all. I represented TWA for a while on the West Coast. I represented Sylvania when they decided to move west, and we acquired some property in Mountain View. I went through an annexation, a so-called strip annexation, under which we annexed the plant site land which lay outside the city limits into the city. It was a very highly contested proceeding, with public hearings on the zoning, a lot of marching and counter-marching by people who didn't want this Sylvania plant to come to their rustic community.

Hicke: Just because they didn't want any more development?

O'Brien: I guess.

Abercrombie & Fitch Company

Hicke: Had you done any real estate work before?

O'Brien: Yes.

Hicke: I know you said Abercrombie [& Fitch Company], but maybe that was after?

O'Brien: Yes, I also represented Abercrombie. One of their first ventures outside of New York City was in San Francisco, where they built a beautiful store. The store property belonged to the Crocker family trust. The president of Abercrombie first came to see me pretty much after he had agreed with the Crocker trust on a form of lease. When I looked at the lease, I was horrified because it was so one-sided and such a rip-off. After I'd explained all of its ins and outs to him, I said I thought it really had to be renegotiated.

The executive director of the Crocker family trust -- a property-holding company -- was a gentleman named Dante Lembe. I made an appointment to see Lembe to discuss the lease. I took along the president of Abercrombie, who was a gentleman named Otis Guernsey. After a little sparring around, we made a second appointment, and Lembe came to my office, and we began to slug it out. He was furious that I had unraveled his tentative arrangements with Guernsey, and we had a very hard time and a lot of negotiations before we finally got a more balanced and more reasonable lease.

Hicke: How did it happen that they had gone ahead and worked out the lease without legal advice?

O'Brien: Oh, I don't know, they were just businessmen who came out, thought they knew a lot about these things -- this was a percentage lease, where you paid so much of the gross revenue that was developed by this outlet. Anyway, they spent a lot of money remodeling the building, which is now occupied by Eddie Bauer.

Hicke: Oh, yes.

O'Brien: It is just below Gump's on Post Street. We had a great opening, and there were all sorts of window boxes and flowers. The store was a great success for a while. At the end of that negotiation,

Mr. Guernsey asked me if I would go on the Abercrombie board in New York, which I did. That was kind of an interesting experience.

W.P. Fuller & Company had, as I say, two or three hundred retail stores. I handled their legal matters. They owned stores and they leased stores, so I negotiated the leases and property arrangements -- got a liberal education. I once went to Hawaii to negotiate with the Big Six families when we wanted to build a store in Honolulu, and discovered how expert they were in the drafting of leases.

Hicke: You had to deal with all six of them?

O'Brien: No, no. It was one of the Big Six companies.

Hicke: Does anything else come to mind about being on the board of Abercrombie? Did you go back there for meetings?

O'Brien: Well, I went to their meetings. Some were held in New York, others in Florida and elsewhere. Mr. Guernsey retired within a year or two after I went on the board. He was succeeded by a fellow named John Ewing -- a very attractive, nice man, but without much retail merchandising experience. Though he worked like an absolute galley slave, he couldn't seem to get a handle on the marketing side of the business -- he tried very hard indeed. I stayed on that board almost until the time that I went to work for Chevron.

Hicke: So they got some legal advice before they actually entered into some of these things?

O'Brien: Yes. Sure. Although I didn't purport to be their counsel, I was a regular board member, but you know, when these things came before the board, at least I would be aware of them and could look at the papers. They had a very fine board in those days.

Hicke: Who else was on the board?

O'Brien: There were two in particular: one of them had been a former secretary of the navy -- I can't be sure of his name, I think it was [Artemus L.] Gates; one of them was a gentleman named Gilbert Scribner, who was a very successful financier, real estate magnate of Chicago, who was on the General Motors board and other boards, and he and I became very good friends in the course of all of this. Later on I was able to help his children when they moved out to the West Coast. Anyhow, I made some interesting associations.

Abercrombie was a special company because of its unique carriage trade and the extraordinary things that you could acquire and buy at Abercrombie. The company finally went over the waterfall, principally because they expanded and opened stores, not

only in San Francisco, but in Palm Beach and Colorado Springs and so forth, and began to try to follow the fashions and carry all sorts of sporting wear and special things for these resort atmospheres, and I don't think they really knew too much about how to do that. And they had big overhead costs, et cetera, et cetera.

Then a gentleman, whose name I've forgotten at the moment, who was a sort of a collateral branch of the DuPont family, a congressman from Delaware, became gradually -- he was on the board -- the pre-eminent stockholder in Abercrombie. He and some of his investment banker friends in Delaware undertook to manage the company, with little or no success. And about that time, I went on the Standard board and resigned from the Abercrombie board.

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So I came back in 1946, and in addition to these private clients, I spent some time on behalf of a personal client by the name of Mary Eudora Miller Clover, who's worth a book by herself. She was the cousin of John Foster Dulles, the secretary of state.

I spent a considerable amount of time trying to rescue the fortune of Mrs. Forrest Meyers, whose husband was an extremely wealthy man in Manila and who suffered a fatal stroke after he and his wife were released from Santa Tomas. She came to me for help to marshal the family fortune in the Philippines and get it back to the United States. That is another volume of litigation in the Philippines: attempts at blackmail, threats, double-dealing and all sorts of horrendous things. At one point, the poor lady had a judgment against her for a million or two dollars in the Philippine courts, which we ultimately reversed in the Supreme Court of the Philippines. We finally succeeded in getting the bulk of her fortune back to the United States.

Hicke: But it all had to go through the courts?

O'Brien: Well, yes. I was very fortunate in enlisting the help of a famous American, who had been a great hero in the Philippines in World War II, a fellow named Charles Parsons. With his help, we managed to get a handle on most of everything Mr. Meyers owned and not to get too badly ripped off.

Oh, we also got sued in the United States, in a case that Noel Dyer handled here. There was a determination by the Labor Department in the Philippines, upholding a fraudulent claim that Mr. Meyers had promised all of his workers that if they would go to Corregidor with [General Douglas] MacArthur, he would pay their salaries for the duration of the war. A judgment was taken against Mr. Meyers and Mrs. Meyers based on that preposterous promise or alleged promise. There were U.S. income tax problems which Frank

Roberts handled with great skill. So that was an interesting client.

Mary Eudora Miller Clover

Hicke: Indeed. Well, let's go back to Mary Eudora. You said that was worth a book, but you skipped right on by.

O'Brien: Yes. Mary Eudora Clover was the daughter of an American admiral who had been the naval attache in various embassies around the world. He, in turn, was the son of some famous gentleman who first established the family fortune by acquiring the seal concession in the Pribilof Islands.

I think her grandfather was an early senator in California. At least when her father died, she was left with two enormous ranches: one in the Napa Valley, and one near Helm, outside of Bakersfield. This was long before I knew her. She lost the one in the Napa Valley, because it was so immense. She had no money to pay the taxes, and she was being sued right and left by farmers in the valley who wanted to get her water rights away from her. She ultimately lost that property. But she managed to hang onto the one in Helm, which was farmed by a family that had been on the property for a generation or two, and that paid enough to pay the taxes and give her some small income.

She, through all these years, had lived in France, because it was less expensive, and for her, a great deal more interesting. When World War II was about to start, she got permission from the State Department to go back to France -- she happened to be in the United States -- and disappeared behind the German invasion and was not heard of for the duration of the war. She did survive it. In the meantime, her local representatives in the San Francisco bank took a flyer, even though they couldn't reach her (they held some sort of power of attorney). In the wartime search for oil, one of the oil companies took a lease on this farming property in Helm and brought in a huge oil field.

So shortly after I came back in 1946, the phone rang one day, and Eudora Clover was on the phone. She was in a San Francisco hotel. She had just arrived after a triumphal procession across the country in which she acquired a farm or two in Maryland, and an apartment house in Chicago.

Hicke: She had a nice bank account waiting for her.

O'Brien: Yes, right. And various other properties.

Hicke: How did she happen to call you?

O'Brien: I haven't any idea. I don't know how she ever got hold of my name. In the years in which she had lived in France, she had become very closely identified with the the White Russians that lived in Paris, and with the remnants of the Czar's family. So I helped her acquire a house -- I can't think of the name of it, off of Lake Street -- beautiful house out on the bay. It has a special name -- the area.

Hicke: Oh, where Dianne Fienstein lives.

O'Brien: Yes, I guess.

Hicke: Yes, I can't think of the name of it either.

O'Brien: Anyway, we put an elevator in it. She was immense. She had some sort of thyroid trouble, so she was huge. She had brought out with her two body servants, two attractive, nice, black people to take care of her. So we got them all safely ensconced in this house, and then she invited the two remaining heirs [to the Russian throne], two real Romanovs -- two nephews, who had been raised at Hampton Court in England -- to come and live with her. They did, and she once said to me, "The only trouble with the Romanovs was that none of them ever had a decent education." So she was determined to educate these two boys.

Everything was great, except that she was bored and she lacked for interests; she was relatively immobilized, because of her disease and her bulk. But she had a sister who lived in the East, and the sister had a son, Miss Clover's nephew, who was the natural object of her bounty, and he in turn had two children, two little girls. I represented her for quite a number of years, until her death in 1954. In the meantime, she was constantly casting around for something new, just to enliven her personal equation.

For example, she once went down to Shreve's one afternoon and bought three or four hundred thousand dollars worth of jewelry, which she brought home in a brown bag, I guess.

Hicke: Oh, my goodness.

O'Brien: She called me up and said, "I've just acquired this jewelry, and I need to modify my will to decide to whom I intend to give it." I went out, I looked at the jewelry, and then discussed with her which friend or relative she should leave it to. I said to her, "Is it insured?" She said, "Oh, no, no." So while I was there, I called up her broker, and said, "We've got all this jewelry here, and the invoice on it is two-three thousand dollars. Will you put

a binder on it until it can all be scheduled and added to her regular policy?" So that was arranged. About a week later, it was all stolen.

Hicke: Again, some good preventive medicine.

O'Brien: Yes. Well, anyway, we, of course, had all the police in. In those days it was easier; they put some sort of surveillance on her telephone, and sure enough within a few days some fellow called her up and tried to ransom this jewelry back to her -- not only this stuff she'd bought at Shreve's, but some of her own family jewelry, which she really prized. We did our very best, and once or twice we got within an inch of the person. She, in meantime, was having an absolutely uproarious time, enjoying every moment of it, under instructions to try to keep the caller on the phone long enough for us to go back through the telephone exchange to locate the booth he was phoning from. Well, we never quite made it, and she never got the jewelry back, but she got all the money back.

Hicke: From the insurance?

O'Brien: Yes.

Hicke: And she had a good time.

O'Brien: Yes, a good time. Over the years she gradually became quite disenchanted with this nephew, who paid little or no attention to her. She continued to write wills all the time, and in the end, I had maybe seven or eight wills that I had drawn for her -- long, elaborate wills with all sorts of trusts and contingencies -- and you could see this gentleman's stock falling, falling, and falling through these wills. Finally she decided not to leave him anything, and I remonstrated with her. I didn't think that was quite fair. I argued that she certainly didn't want to see him become ill and destitute or anything of that sort. I said, "At least you should have a provision that in the event that he does become ill or disabled or prevented from conducting his career, you would support him in his lifetime." So I wrote a reasonably generous provision, with lots of elbow room in it, with discretion to do the appropriate thing, and she --

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Hicke: She took a blue pencil to that, you were saying.

O'Brien: Yes. The way she wrote it, it sounded like the most beady-eyed insurance policy draft you've ever read: ". . . in the event he became totally and permanently disabled from conducting any useful occupation," or something of the sort. I made arrangements for her too, to be buried in Arlington Cemetery, which soon after that were

needed. Because of the fact that she was a spinster and that her father had been a naval officer, an admiral in the navy, she was entitled to be buried in the National Cemetery, and I made arrangements for that, and promised I'd go with her when the time came. Instead, I was in England working on the Iranian consortium when she died.

That was the end of the story, except for the fact that when the nephew discovered that he was not going to inherit this tremendous fortune, he went to Foster Dulles, who went to Herman Phleger, who was the senior partner of Brobeck¹ and the then legal advisor to the State Department -- very eminent lawyer in San Francisco's history. Mr. Phleger hired the McCutchen firm to see if they could break Eudora Clover's will.

- Hicke: It sounds like you had a formidable array of soldiers drawn around.
- O'Brien: Yes. So they conducted an in-depth study of Miss Clover, her habits, peccadilloes, and considered the prospect of undue influence, or whatever. But she was far too cunning for them, because she had left this vast fortune to this nephew's daughters, in trust until they became thirty or thirty-five. He therefore had the uphill task of proving that his dearly beloved auntie was out of her mind because she'd left her money to his children rather than to him. Besides which, under the California law, if you successfully attack a will, you are then relegated to the next-to-the-last will, and so this whole series of wills in which his stock had been declining made that an absolutely insuperable obstacle.
- Hicke: He wouldn't have been that much better off according to the next will.
- O'Brien: No. So I finally had a climactic conference with all the parties and all the lawyers (including Brent Abel representing the nephew). I produced all these wills, and that was essentially the end of it.
- Hicke: That is an interesting story.
- O'Brien: Yes. She was a remarkable woman. Very bright.
- Hicke: Did the oil continue to come in all this time?
- O'Brien: Yes. The discovery was made by Amerada, which ultimately became Amerada Hess.

1. Brobeck, Phleger & Harrison.

She occasionally used to take a house in Carmel. She had a big, black limosine, and my wife and I would drive to Carmel and be her guests over the weekend. But she just was lonesome and lacked company and interest in her personal equation. That's why if her nephew had been more attentive and had helped fill her life up, and shared his own experiences and career in the State Department, he would have come into a large fortune.

She did have these two young Russians who lived with her. One of them was Nikita Romanov, with whom I stayed in close touch for a number of years; we became good friends. He went to the University of California and became a professor of history, and then married a very wealthy Texas girl. We corresponded -- I've lost track of him now -- we corresponded for years. I would hear from him in Mozambique or Hong Kong or someplace, and they apparently traveled very widely.

The other son, who was Andrew Romanov, married a San Francisco girl, left school. I don't know what became of him. But that was an interesting sort of episode, because I was fond of Miss Clover, and she had an interesting life.

Hicke: Yes.

Tubbs Cordage

O'Brien: Anyway, by '51, I guess it was, the cartel grand jury began.

Hicke: Okay. Before we get onto that, I have the names of some of these other companies. Tubbs Cordage?

O'Brien: Yes. I represented them principally in connection with an industry-wide suit charging price fixing by all of the major rope companies in the United States. It was a complaint by the Federal Trade Commission claiming that the pricing system used by all of the cordage companies, which was a so-called universal delivered price system, was a price-fixing agreement implemented through the cordage association, the National Association of Cordage Manufacturers.

Tubbs Cordage was a simply wonderful old California company. Mr. Tubbs had been a contemporary of Senator [Leland] Stanford, and if my recollection serves me, Mr. Tubbs was one of the original Stanford trustees and had been invited by Mr. Stanford to participate in discussions about his idea of forming a university.

Tubbs Cordage had an old-fashioned ropewalk here in San Francisco where they made rope. In my day, in my earliest association with the company, Henry Nichols was the president, a delightful, eighteenth-century gentleman. His son, Herman Nichols, became president of the company subsequently.

In any event, the Federal Trade Commission began this proceeding, and -- well, to make a long story short, we ultimately won the case. We did an industry price study -- a statistical study -- based on the actual invoices of all of these companies. Their price lists would make it seem as though they were all selling rope at a single price at a given destination.

In fact, after we had done a price study in which we examined a representative sample over, say, a six-months' period, of all of the sales of all of these companies, done with the help of a statistical operating group, their prices were all over the lot. Behind the facade of this universal delivered price, it was a very competitive industry. When you charted the prices of individual companies for a given product over time, and then you plotted -- I think there were twenty-one companies, defendants in this case -- you plotted all twenty-one companies, the chart looked like a bowl of spaghetti.

There was no uniform price at all; the prices were up and down. I was able to demonstrate to Tubbs that their own subsidiary that presumably was following their pricing practices had different price schedules with discounts and rebates with customers. They were all over the lot, sometimes higher and sometimes lower than the parent company.

So, the trial examiner in the case ultimately concluded that there was no substance to this charge of price fixing and that indeed it was a highly competitive business, and that ruling was ultimately sustained by the commission itself.

Hicke: When you come up against a case like that, how do you go about deciding how to defend it?

O'Brien: Well, you just explore the facts, you know. And some exploration of the facts convinced me that this universal price system was being honored in the breach. There wasn't any such system at all. In fact, they quoted price lists, but every company individually told its customer what discount it would give him off that price list, and it was just done to get the business. Behind those price lists, there was an intense struggle going on for business. Rope was beginning to be kind of a dying industry as the plastics came along -- all sorts of plastic materials that began to take away a significant share of the old-fashioned rope.

But it was a fascinating business. In the first place, it was one of the earliest businesses in the country -- it goes back to Plymouth Rope.

Hicke: Oh, it's that old?

O'Brien: Yes. Plymouth Rope Company was the biggest and the oldest, probably. Tubbs Cordage had been started in the 1850s, and it had been a very respectable, profitable business over all those years. It's now gone out of existence. But I did become the general counsel of the company -- rather briefly, because it wasn't long before I left to go to work for Chevron.

El Portal Mining Company

Hicke: I also brought a few files from El Portal [Mining Company]. Do you want to do the oil cartel case first, or this?

O'Brien: I don't care. El Portal was just kind of a personal thing. One of the most famous families around San Francisco for years was the Drum family -- if you just go down the street, there is a Drum Street -- and they were clients of the office. The principal member of the family was a fellow named Frank Drum, who couldn't have been a finer, nicer man. I think he was Marshall Madison's client.

In any event, I had met him at Santa Ana Air Base when we were both assigned there in early 1942. He was another one of the ninety-day wonders who was commissioned and sent to Santa Ana, and we had become good friends, not intimate friends.

Somewhere along in this period, Frank wanted me to help with the El Portal Mining Company. The El Portal Mining Company, I guess, had once been a successful mining company. Its affairs at that time consisted principally of owning the entire town of El Portal outside of Yosemite, and leasing some of its property to major mining companies for prospecting. So he had all the problems of operating a town. He owned all the stores, the residences, the waterworks, had to run this little, miniature city.

Hicke: But there was no mining operation?

O'Brien: No mining operation.

Hicke: Oh, I see.

O'Brien: He just rented the houses, but we had to keep the houses up and all that kind of business. And there was a little hotel there, and a gas station, grocery store, and all the streets had to be paved. It was tough.

Hicke: There was something about a railroad in the files.

O'Brien: I don't remember much about the railroad. There's no doubt that there was a railroad, because that was the way people got to Yosemite.

Hicke: Yes, that was the one and it was sold, I guess, eventually.

O'Brien: Yes. Anyway I went on the El Portal board, and its affairs were pretty largely managed by the American Trust Company in those days. Frank had a cousin, I think his name was Hugh Drum, who was on the board, and this bank officer and probably one other person and I constituted the board. Anyway, it was a small operation.

We ultimately sold the whole town to the National Park Service, because they were very eager to have someplace outside the park where they could house some of the park employees, and they foresaw at that time that some of their major, heavy equipment and things that cluttered up the park could be stored at El Portal. It would logistically fit their pistol.

So ultimately we sold the whole town and all of its works. And I guess we must have sold all of the land, too. I guess that mining leases came to end, and so on. I think we probably sold the whole thing, lock, stock, and barrel, to the federal government.

But anyway, I did it really because Frank was a good friend of mine, and I admired him. He was a very devout Catholic, and very much interested in the Hanna Home for Boys in Marin County, of which he was a major benefactor. So, I had clients of that sort.

Like every other lawyer, I accumulated a number of personal clients that came to me through representing a corporation, you know. Officers and people involved with the company would gradually become your personal clients as well.

Hicke: It sounds like you did a little bit of everything -- wills, and real estate, and corporate law, antitrust.

O'Brien: Right. That's the way I liked it. As I told you in an earlier meeting, that had always been my idea of the way to practice law.

But through this antitrust business, I kept getting more and more involved in some of Standard's foreign affairs, and then in 1951, when the cartel cases started, and eventually when the civil

suit was filed, that became a major preoccupation of mine. For the first year or so, before jets, I often made two round trips a week to New York when various things were happening.

Hicke: Those were the days of real lag, not jet lag.

O'Brien: Yes, right. And we had to organize a team to produce the hundreds of thousands of documents, and we fought and bled over the production of all Caltex's papers around the world. Bill Martin and Jerry Doppelt and others had a major role all through that period in masterminding the development of a structure and orderly procedures for all of the discovery processes in the lawsuit.

V OIL CARTEL CASE: 1952-1968

Inception

Hicke: Maybe we should back up a little bit and start at the beginning.

O'Brien: Yes. Well, the beginning of the case -- if it were told chronologically, I guess -- was that the attorney general of the United States persuaded [Harry] Truman that a big, national, vicious attack on the oil companies was the way to win the presidential election in 1952.

Hicke: The attorney general was?

O'Brien: [J. Howard] McGrath. So he and a fellow -- I think his name was [Stephen] Spingarn, a Federal Trade Commissioner -- had in their files a report prepared by the staff of the Federal Trade Commission, written by a guy whose name escapes me at the moment -- but he's a principal actor in this thing -- the staff report of the Federal Trade Commission, entitled "International Oil Cartel."

Hicke: Let's see. I have Stan Barnes, but he was the head of the Antitrust Division.

O'Brien: No, Barnes was later head of the Antitrust Division in the Eisenhower Administration. Anyway, his name will occur to me. He's the fellow who after the war was the principal author of the antitrust laws that we foisted onto the Japanese as the occupying power in Japan. I can't think of his name at the moment.¹

He had spent many years studying the international oil companies, and had prepared a staff report called the

1. The gentleman was named Corwin Edwards.

"International Oil Cartel." It rehearsed events in the '20s -- notably in 1928 -- '32, and so on, when a number of the international oil companies, the Anglo-Persian Oil Company, Shell, the French, and a couple of American companies -- Exxon, Gulf and for some period of time, I think, Texaco -- had made a series of arrangements about the international oil industry. Chevron was never a part of those arrangements, because it had no interest in the Middle East in any way.

Anyway, the Federal Trade Commission staff report -- never approved by the Federal Trade Commission itself, but gathering dust on the shelves there -- was suddenly resurrected, dusted off, and leaked to the press. And before we knew it, a federal grand jury had been impaneled in Washington, D.C., and all of the so-called "Seven Sisters"¹ and a lot of other companies, had received subpoenas duces tecum to produce their documents from the four corners of the universe before this federal grand jury in Washington. The newspapers absolutely ridiculed Truman, gave him the works. Instead of taking his charges about the wicked and sinister oil companies seriously, they were not only skeptical, but they were downright amused by the whole thing.

Hicke: The newspapers?

O'Brien: Yes. We kept vast files of clippings. It created, though, a tremendous furor around the world, because the integrated, international American oil companies were in many respects the principal emissaries of the United States government and all of its works in many countries of the world -- the same oil companies, who were now being branded as common criminals by the United States government, our own government!

Hicke: That also includes at least one British company, right? And Shell?

O'Brien: Yes. Shell, the Dutch company, which is 60 percent Dutch and 40 percent British, as well as the old Anglo-Persian Oil Company, then British Petroleum Company. They and the five American companies and, I guess -- I can't remember now -- CFP [Compagnie Francaise des Petroles], the French company, maybe?

Hicke: Oh, we can check that.

O'Brien: Yes. We all got these subpoenas to produce our papers.

Hicke: Did they subpoena companies in other countries?

1. The "Seven Sisters" are Standard Oil of New Jersey (Exxon), Gulf, Texaco, Socal (now Chevron), Socony Mobil, British Petroleum, Royal Dutch Shell.

O'Brien: Well, yes. They wanted documents from all the countries of the world -- the Far East, the Middle East, et cetera.

Historical Background

[Interview 8: July 7, 1987]##

Hicke: Well, I think today that we're about to the point where we can start on the early roots of the oil cartel case, which I thought maybe began in World War II antitrust immunities, but I know there were interlocking agreements before before World War II, and you were just now reciting to me a list of files which go back to, I think, 1926 at least, that you have seen.

O'Brien: Yes.

Hicke: So perhaps you can give us some of the background.

O'Brien: As a matter of fact, the story really begins at the end of World War I. The Middle East at that time was a British sphere of influence. The Germans, who had to tried to get a big position there, and their allies, the Turks, had lost their position in the Middle East because they were the defeated enemy. The U.S. Government, commencing with President Woodrow Wilson, tried from the end of World War I for over ten years before the U.S. went through the sound barrier and finally got the grudging consent of the British government to permit any American oil company into their private domain in the Middle East. And the position of the American oil companies in the Middle East was first evidenced by their participation in the Iraq Petroleum Company [IPC].

Hicke: Did the Red Line Agreement come in here?

O'Brien: That came in as part of that arrangement. Exxon and Mobil, Gulf, and I think briefly Texaco, became shareholders in the Iraq Petroleum Company, along with Anglo-Persian, Shell, the French and Mr. [C. S.] Gulbenkian -- Mr. Five Percent.

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There was a lot of pushing and shoving going on in the Iraq Petroleum Company, and as a consequence, they finally agreed that none of the participants in the Iraq Petroleum Company could separately take any concession within the Red Line area, which was

a line drawn on a map and embraced the entire Saudi Arabian peninsula.

Hicke: A circular line?

O'Brien: Well, it went through the Persian Gulf and up the Red Sea, and what it meant was that none of them could individually compete for any concessions in that area. They'd have to take any concession jointly within the arrangements for the operation of IPC.

The Standard Oil Company of California had never been in the Middle East. It had explored in Central and South America -- as I recall, it spent quite a lot of money for a relatively small West Coast company -- in Bolivia and elsewhere, with no great success. But Gulf had taken a concession in Bahrain, and when its IPC partners learned of this, they compelled Gulf to disgorge its Bahrain concession. None of the rest of them wanted any part of Bahrain, so they did not take it into IPC, but they made Gulf, in effect, get rid of it, and Standard Oil Company of California negotiated a transfer of the concession.

I've just recently looked at some of the files that affected all of those negotiations.

Hicke: That was done by PM&S?

O'Brien: It was handled by PM&S, and was handled -- I have the company's files here -- by Mr. [Kenneth] Kingsbury, who was the president of Standard Oil Company, Mr. [Maurice E.] Lombardi, and others. And they were men of great courage and vision, because by the time that concession became available, the world had fallen into deep depression.

Hicke: So they literally purchased this concession?

O'Brien: Yes, they bought the rights, and it took an absolutely heroic effort. The foreign relations of Bahrain were handled by the British government, and it took heroic efforts finally to persuade the British government to let in this intruder, this upstart oil company, not part of IPC or anything, totally a maverick, totally outside whatever arrangements they had.

Hicke: Who handled that for PM&S, do you know? Who represented the company?

O'Brien: Felix Smith.

In the upshot, they got the concession. I subsequently learned when I -- in a later stage of the cartel case -- got access to the papers that had been produced by Standard Oil of New Jersey

and Gulf, that IPC was very much alarmed at this. They -- BP [British Petroleum] -- controlled the oil production in Iran. BP and its partners controlled oil production in Iraq. And that was it.

Hicke: This was Anglo-Persian, before BP.

O'Brien: Yes. Yes, before BP.

Hicke: And so here they had somebody completely from outside getting into this Red Line area.

O'Brien: Yes. Right.

Hicke: But then, they really forced Gulf to do that. What else did they expect?

O'Brien: Well, I don't know what they expected. Maybe they expected Gulf to cancel the concession.

Hicke: Oh, I see.

O'Brien: They didn't expect the competition from the Standard Oil Company of California.

Mootness Study

O'Brien: All of this is briefly described in a chapter of the Mootness Study, in which I wrote the history of our participation in foreign oil production.

Hicke: That's on your shelf, isn't it?

O'Brien: Yes. Let me get it.

Hicke: Okay.

O'Brien: There's a much more detailed and longer history of all this.

Hicke: Oh, yes.

O'Brien: The Jacoby Study.

Hicke: That was done by Neil Jacoby for --

O'Brien: Yes. This is called the Mootness Study, which was titled "Postwar Changes in The Foreign Oil Industry," and it was written in 1963,

ten years after the cartel case began. Let's see, it's Chapter Two of the study, I guess.

Hicke: Is that study available anyplace except here in your office?

O'Brien: Oh, yes. I finally put it into evidence in the Church hearings. When it was prepared in '63, it was submitted to the head of the antitrust division as a confidential document -- we had numbered copies -- because it had chapters describing our relationships with foreign governments and a lot of other sensitive material.

I made a presentation of the findings of the study to the Department of Justice, with all the crowned heads -- the assistant attorney general and the head of the trial staff and the works, along with [Francis] Kirkham and John Sonnett from the Cahill firm. But Jacoby, Jerry Doppelt, and I and a platoon of economists -- some of his choosing and many in the company -- spent nearly two years writing this.

Hicke: That's a gigantic work.

O'Brien: Yes. I'm getting ahead of myself. But it was submitted to the Attorney General, and they then asked for some additional copies to submit to the State Department, the Defense Department, Joint Chiefs of Staff, and so on, which was done. And that's another day.

But Chapter Two of this study describes what I've been saying to you. It discusses the structure of the international oil industry prior to World War I, the consequences of our efforts -- the United States's efforts -- to get foreign oil concessions in the Middle East before World War I, and then after World War I, the efforts by Congress and the president to formulate proposals to encourage foreign exploration by the United States. Because as this study indicates, the U.S. feared our country was running out of oil. It was commonly said that the Allies in World War I had floated to victory on a sea of oil. And we had made a major contribution of our oil supplies to fuel the navies of the world, and there was anxiety that we were running out of oil.

So the United States adopted a policy of encouraging American oil companies to look abroad for oil. But we couldn't get into the Middle East. That's why I say our presidents, starting with President Wilson, spent from about 1918 to '28 before we broke into the Middle East. All of that is discussed, and I don't really need to elaborate on all of it; all you need to do is to read this study.

Here's an example here, "The American government of 1919 had already viewed the situation with sufficient concern to declare

that the British administration in these areas --" this was also true of the Dutch in Indonesia, in the East Indies, so called, for keeping out American oil companies -- anyway, "had created the unfortunate impression in the minds of the American public that Great Britain had been preparing quietly for exclusive control of the oil resources of the region."

Hicke: Although we furnished their navy with oil.

O'Brien: Well, when we fought the war together, sure. But anyway, all of this is elaborated on in the study.

Hicke: Okay.

O'Brien: So then to go back to the beginning of the cartel case, three of the IPC participants, that is to say, Shell, BP, and Jersey [Standard Oil of New Jersey] were said in this staff study of the Federal Trade Commission to have entered into a wicked and sinister worldwide cartel to control production, refining, distribution, and marketing of oil. The first agreement was called the Achnacarry Agreement, and then there was a so-called As Is Agreement, and then there were subsequent agreements.

Take, for example, the fact that our resentment of the Dutch, because of their resistance to any American oil company entering the East Indies, the area of Indonesia and so on, reached the point where we passed a law that said that Shell couldn't take any American concessions; they couldn't bid in competitive lease sales in the United States.

Hicke: This was in the '30s or '40s?

O'Brien: No. It was in 1921. The United States retaliated by refusing to grant Shell a permit to prospect certain U.S. public lands until the Netherlands was declared a reciprocating company under the Mineral Leasing Act. So, you see, all of the people who by 1951 were talking about this evil, wicked international cartel and so on didn't realize that the United States government itself had actively espoused, had urged, had, as an official government policy, done its utmost to break into the British and Dutch spheres of influence in the Middle East and the East Indies, and now that we had been successful, the politicians tried to pull the rug on us.

Hicke: There's something to be said for studying history, right there.

O'Brien: Yes. As Mr. [George] Santayana said, "Those who do not study history will be condemned to relive it," right?

Hicke: Yes.

O'Brien: As I told you, this staff report was released by the chairman of the Federal Trade Commission, although it had never been approved by the commission itself, at the suggestion of Howard McGrath, who was the attorney general.

It didn't work, because the press just ridiculed the whole thing. There are volumes of clippings from the national press saying what a phony baloney deal. But in any event, it was a tremendously serious thing, because they released the staff report, hit the press with this nationwide, accusing the heads of all of the major international oil companies of the United States of being criminals, impanelled a federal grand jury, and appointed a special prosecutor from the Department of Justice, a very brilliant, able guy by the name of Leonard Emmerglick, to conduct the criminal investigation of the crowned heads of the international oil companies.

Socal's Concession in Saudi Arabia

Hicke: Didn't you say that only Exxon in the United States, plus BP and Shell, was involved in the agreements?

O'Brien: Well, yes -- I think. But those agreements, if that's what they were, took place in 1928, presumably, and then in 1932. The depression came first to Europe and then hit us. October 1929 was the great stock market crash, and along came Mr. [Franklin Delano] Roosevelt. We took the concession in Saudi Arabia just about the time that the president of the United States closed the American banks.

Hicke: 1933?

O'Brien: Yes. So it took a lot of moxie, a lot of courage, a lot of vision, to go ahead and take the concession in Saudi Arabia and drill half a dozen dry holes.

Hicke: Yes, indeed. That was --

O'Brien: Half way around the world.

Hicke: Yes. That was Mr. Kingsbury you were talking about?

O'Brien: Yes. Right. And his board of directors, and his officers. Stoner was one of them, Reg Stoner.

I interviewed Mr. Lombardi in the cartel case, who was still alive. I started to say to you that we subsequently learned the reaction of the IPC partners to our taking this concession in Bahrain. They were very much alarmed. They flew airplanes over Bahrain to see what we were doing, they sent all sorts of letters home saying these fools are really making us look bad, they're drilling for oil, you know. They controlled the whole area, you see, and they had all of the major companies that were in the area subject to this Red Line Agreement. So nobody could independently go for a concession in Saudi Arabia or Kuwait. Iran was already locked up by BP.

Hicke: Isn't it in Ted Lenzen's book, this wonderful story of him, or somebody who was sitting in Bahrain gazing across the Gulf of Bahrain to Saudi Arabia?

O'Brien: That was Mr. [Fred] Davies, yes, a marvelous man, who was one of the first geologists, who went to Bahrain. He looked out over across the water -- now we have this beautiful causeway that runs from Bahrain to Saudi Arabia joining the island in to the mainland, but in those days, looking from the Island of Bahrain, he saw these formations that looked promising to him. And that history is described in this study as well.

Hicke: Okay.

O'Brien: And I guess I didn't quite state it right. Gulf had an option to take this concession; they didn't actually take the concession. My study says, "The oil concession in Bahrain, although within IPC's Red Line, was not considered to be very choice property. Gulf had been assigned an option to the concession by a British syndicate, but because of its Red Line commitment, Gulf was prevented from holding the concession, and a transfer of the option to Socal was arranged. The British Colonial Office at first opposed the transfer, insisted on control by British nationals. However, because of the prompt and positive intervention of the United States State Department, Socal obtained the concession in 1930, thereby initiating a successful Middle East entry by a venture controlled by Americans rather than by British interests.

"Once the diplomatic hurdle was cleared, development began promptly. Exploration commenced in 1931. Oil was found in '32 and commercial export was begun in '34. The intrusion of this new American oil company into the IPC sphere of influence was no doubt a rude shock to the established companies, but it was followed by an earthquake. The discovery of oil on Bahrain generated great interest in the oil prospects in Saudi Arabia. Negotiations for a concession were begun in February 1933, a month before the United States closed its banks and revised the gold standard. The Saudi concession was won only after fierce opposition from IPC." At the

last minute they came down and offered the king a barrel of gold, chests of gold. Anyway, the story is here.

Hicke: Okay.

Grand Jury Investigation

O'Brien: The grand jury investigation began, and to carry out the thesis of the Truman administration, it was important that they get the oil companies and their officials indicted before the election. Now that was a very rash and foolish thing to have done from the viewpoint of our national security. If you think of the reaction of Western European nations to the notion that these respected businessmen were really criminals being sued by their own government, if you think of the reaction in the Middle East where we controlled Aramco, in Indonesia, in South America, and the rest of the world, it was catastrophic.

The grand jury investigation went on. I went back at least once a week, sometimes twice a week, and was reporting here at home, and dealing with this end of it, and then going to court with our New York lawyers, the Cahill firm, Mr. John Cahill and John Sonnett, and we were doing our best to think of things -- Kirkham was into it, too -- think of things that would delay the issuing of any indictments.

Hicke: Your strategy was to delay it?

O'Brien: To delay it, yes.

Hicke: And what methods did you use?

O'Brien: Well, there must have been a hundred lawyers in the courtroom the first hearing.

Hicke: All of the oil companies?

O'Brien: Yes. All the oil companies, large and small, who'd been served with these subpoenas -- subpoena duces tecum -- to produce documents from all over the world. Most of the lawyers intended to argue that the subpoenas were too broad, that it was under the Constitution of the United States an unreasonable search and seizure, that they -- the subpoenas -- lacked specificity.

We also argued -- and I think it was Francis Kirkham's idea -- that the grand jury was an illegal grand jury. There were twenty-three members of the grand jury, and it only takes a majority of

twelve to indict. We argued that since a majority of the members of the grand jury were government employees it was an illegal grand jury.

We thought that if we could somehow delay the return of an indictment until after November, people might come to their senses then and realize how prejudicial all this was to the security of the United States, how baseless it was, and do something about it. So we filed every conceivable motion attacking the composition of the grand jury on the ground that a majority of the members of the grand jury were federal employees.

Hicke: Did that work?

O'Brien: Well, we got to the Supreme Court of the United States on that issue -- on very rushed proceedings, to be sure, on typewritten transcripts and all that business -- but it did slow it down. And then every company, I think, filed motions to quash these subpoenas on the ground that they constituted unreasonable searches and seizures, which also raised constitutional points. These were all heard by a federal district judge in Washington.

We argued every point. And we had some very bitter sessions standing in the hall outside the courtroom with the rest of the lawyers who wanted to get busy arguing about the unconstitutional breadth of the subpoenas while we were going ahead with our arguments about the illegal grand jury.

Hicke: How did they proceed with that many people involved?

O'Brien: Well, after all, there were only about -- I've forgotten now -- maybe ten or fifteen companies that had been subpoenaed. BP had been subpoenaed, and they --

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-- argued it was not subject to the jurisdiction of the United States, at least the parent company was not; they had an American subsidiary that did business. But that didn't mean their parent company in England, the old Anglo-Persian Oil Company, was present in the United States.

Then at a later stage of the grand jury proceedings, they appeared with a document under the great seal of England with all the red ribbons on it, and the court didn't address himself to the question whether BP was present in the U.S. He, in effect, said they were an instrument of the British government, because the majority of the stock was owned by the British government, and so he kind of gave them sovereign immunity and dismissed them from the proceeding.

Those were really stirring events. The court finally denied our motion on the illegality of the grand jury, and we took an appeal, and the appeal was heard, I think, the same day. We went from the District court to the Court of Appeals of the District of Columbia Circuit and argued this on a typewritten brief in the afternoon. That was denied with an opinion, I think. Then we petitioned for certiorari in the Supreme Court of the United States, and that took a longer time.

In the meantime, we went back and argued this question about the unreasonable search and seizure, and the breadth of the subpoenas, and the illegality of attempting to produce documents from foreign countries over the objection of the foreign countries, things of that sort -- whether the writ of the United States, like that of the Roman Empire, ran to the known boundaries of the earth, and whether the subpoenas served on Saudi Arabian companies would have to be complied with because they had an American parent. Well, there are a lot of really good questions like that.

Hicke: What legal jurisdiction does the U.S. government have over a foreign company?

O'Brien: Well, they continue to argue for wide extraterritorial jurisdiction. In those days they were even more expansive, I think, in their ideas of the reach of U.S. jurisdiction. The rest of the world bitterly complained about our intrusion into their sovereignty. All of these companies outside the United States were formed under the laws of foreign countries and were considered by those governments to be their companies. And here the United States government was giving them directions to produce documents from their company in the United States.

The consequence of that ultimately was the passage of statutes in various foreign countries making it a crime to comply with a subpoena duces tecum from an American court. Which left the American multinational in a very awkward dilemma, because it was being ordered by a federal district court in this country to produce documents and were being ordered by a foreign court, or a foreign government, not to do so.

So, we had some very ouchy problems, and the efforts to compel the production of these documents from foreign countries created great bitterness and rancor among our friendly allies: the British, the French, the Germans, the Italians. And what was even more of a problem were countries like Saudi Arabia where the king was the law, if you like. What they were attempting to do was to get an indictment against all these people, and shake their gory locks at all the wicked things the international oil companies had done and were doing, going back for generations. The inception of

the case really involved allegations of things that had happened in the late '20s -- 1928 or before.

Hicke: Yes. Well, this is about the time the Korean War was coming on. Did it have any influence on the proceedings?

O'Brien: It had influence on the proceedings. In the meantime, the State Department was privately urging President Truman to drop the federal grand jury, arguing that it was creating serious tensions and really bringing about ruptures in our relationships with our allies. As a matter of fact, the legal advisor to the State Department testified in court about some of this business. His name was Adrian Fisher. He subsequently became an editor on the Washington Post, I believe, and is now deceased.

The National Security Council also went to the president of the United States and said, "You have to withdraw this grand jury proceeding; it's destroying our relationships with friendly foreign powers." And with great reluctance, Truman did that, and instructed the attorney general to withdraw the grand jury proceedings, and Mr. Emmerglick appeared in court and moved to dismiss the grand jury. It was a really big deal, a major collision and a clash between the government and the court and the companies.

Hicke: Did you know that the State Department and National Security Council were going to Truman with this request? Or was this a total surprise?

O'Brien: I've forgotten now. We may have had a signal a day or two before the government actually moved in court.

Hicke: I can imagine it was a very dramatic announcement.

O'Brien: Well, I remember being in the court when the special prosecutor rose and asked the court to withdraw the grand jury proceeding. I often used what the judge said a good many times after that. He said, "Mr. Attorney General, this is a wise and patriotic act." He was glad to be shut of that, and he didn't want to bring on World War III.

Hicke: Do you remember who the judge was?

O'Brien: I've forgotten his name now. He died rather shortly after that. He was a federal district judge in Washington, and he had no experience whatever in international affairs at all, and he was doing his best to do it right. All of this is easily checked. We have the transcripts of all those proceedings.

Hicke: Okay.

O'Brien: So then the grand jury was dismissed, and no indictment was brought before the election.

Hicke: This was still prior to the election? Prior to November?

O'Brien: I think it was in December -- I've forgotten now. I probably have a transcript here.¹

Hicke: Well, that's in the record, too. We can find that.

O'Brien: It's in the records. I'm sure it's on my shelf over there. I have at least one volume of the early transcripts there; the rest of the transcripts I don't have, but I have an early volume with the first proceedings.

The Civil Suit

O'Brien: Anyway, the grand jury was dismissed, but the baby was left on the door of the new Republican administration. And after the new chief of the antitrust division was appointed. He was a gentleman named Stanley Barnes -- a football player from Berkeley and a judge on the Ninth Circuit Court of Appeals at a later time. He stooged around for three or four or five months. Somehow it sticks in my mind he subsequently said, "Nobody came to see me or told me what to do."

The upshot of it was that the Eisenhower administration didn't have the courage just to say, "Well, that grand jury was a big political act. That was a big vaudeville act that Truman put on, and we've put it to bed." They felt that, politically, they couldn't be seen as lending aid and comfort to these big, wicked monsters in the oil companies. So they filed a civil suit instead of a criminal suit. What that distinction made to a foreign power I don't know, except that it didn't have the onus that they were now accusing the CEOs of the major oil companies of being criminals. Instead they were accusing them of having participated in a conspiracy to control and dominate every phase and every aspect of the international oil industry!

Then they changed their theories. Since Standard of California hadn't been in the Middle East at all at the time of the creation of this worldwide conspiracy, the company was a little

1. January 1953.

hard to hook up to this conspiracy. It was hard to find some way of doing that, but they finally --

Hicke: You mean Chevron [formerly Socal] was hard to hook up?

O'Brien: Chevron, yes. So they concluded that they would then attack Caltex, which was the partnership between Socal and Texaco; within the context of the cartel case; that they would attack Caltex as an illegal part of the whole, overall arrangement, a somewhat amorphous kind of thing. And also they leveled an attack on Aramco.

Now arguably Socal owned the whole Aramco concession in Saudi Arabia. It did not become part of IPC or the rest of the group, and I think was totally rebuffed by the IPC partners. So when Socal discovered the huge size of this concession, looking for an outlet for this enormous supply of oil, it made a partnership with Texaco and acquired a half interest in Texaco's marketing assets east of Suez, and took an option to acquire a half interest in Texaco's assets in Western Europe. That was the genesis, the birth, of the arrangements with Texaco, which ultimately resulted in our operating in sixty or seventy foreign countries.

Hicke: Did the Red Line Agreement then kind of fall apart?

O'Brien: Well, no, because Texaco had nothing to do with the Red Line Agreement. It wasn't in the IPC by then.

Hicke: But the others still stuck to their Red Line agreement?

O'Brien: They stuck to their agreement. But I tell that story in here, as well.

Hicke: Okay.

O'Brien: Because as soon as the war was over the whole world had undergone a tremendous change. Western Europe lay prostrate after enormous destruction all over the continent. The Russians had lost twenty million people, the world was just a smoking ruin. But the United States had never had a bomb fall on it.

We had people who had the genius to do something to make the world livable again, i.e., the Marshall Plan, which I think my friend John McCloy had a major role in. He told me once that he was going to announce the Marshall Plan at Amherst, where he was Chairman of the Board, but there was some hitch in the proceedings, and instead Marshall announced it at Harvard the next week. In any event --

Hicke: It would have been the McCloy Plan?

O'Brien: Well, maybe. I don't know. I know he's a very modest man. He never said it was his idea, but it could well have been. And in the meantime, the two partners, Texaco and Socal, had set up a whole apparatus of committees to plan how they were going to invade the world market and compete with these entrenched companies in Western Europe -- with Shell, and Jersey, and BP, and others. And in the cartel case, we made a great many studies -- there was a study, for example, of three or four hundred printed pages -- of our efforts to get into Italy and the resistance we met from the established companies.

But that didn't deter Socal and Texaco. They had in mind -- and the record proved all this, because the minutes of the meeting were extant -- they had in mind seizing 25 percent of the oil business in Western Europe. They had a new, cheap source of supply. The United States government thought it was so important they tried to buy it.

Hicke: Outright?

O'Brien: Outright. They wanted to establish an oil reserve in the Persian Gulf, and they wanted to buy out Socal and Texaco. Mr. Ickes formed a corporation called Petroleum Reserve Incorporated, and negotiated with the companies to acquire their interests in the Aramco concession. At the end of the war there was great alarm in the U.S. government that we'd run out of oil, that we'd pulled our wells too hard to supply the navies of the world and all the aircraft fighting for the survival of the free world. And so the U.S. government wanted us to sell the huge Aramco reserves so it could create something like Elk Hills in the Persian Gulf.

Hicke: Well, we were up to the civil proceedings, and Caltex was under attack.

O'Brien: Yes. Well, we were going after 25 percent of the market. Then Marshall Plan came along. The Europeans had to decide how to use the Marshall Plan money. And then the United States government -- when Icke's plan to acquire Aramco failed -- gave us the priorities to build Tapline, a huge pipeline that would lift oil from Saudi Arabia, run it across to the Mediterranean to Sidon. So then we had this huge oil reserve, we had a way of getting it to the Mediterranean, we had a short haul across the Mediterranean to Western Europe. We gave the economies of Western Europe a transfusion that brought about their resurrection. And that's actually what happened.

That cheap crude oil from Saudi Arabia brought the whole economy of Western Europe to life again, and the shipments of oil from the concession were financed, in effect, through the United

States government and the Marshall Plan. There was an organization called MSA, the Mutual Security Agency, which in effect guaranteed those transactions.

And with the usual ambivalence of the United States, MSA subsequently sued us on the theory that we were overcharging Western Europe for the oil. They brought a horrendous suit against us in New York for overcharging, which went to trial, and we won it. Hillyer Brown was extremely active in that case and spent a great deal of time in New York during his regime working on the MSA case. It was a famous victory.

Hicke: Indeed.

O'Brien: Yes. Again, the company was vindicated.

Anyway, to go back to my story, the United States government -- that's all rehearsed in this study, too -- made this effort to acquire Aramco for itself as a petroleum reserve, just like Elk Hills, for the benefit of the United States and its allies. But that didn't fly in the Senate of the United States. And I stated in this study, on the basis of the evidence that I was able to glean from State Department records (they wouldn't let me see the really critical messages, but I read the diplomatic correspondence to the extent it had been published, and the United States government subsequently said, "We don't disagree with anything you've said") that they secretly encouraged Jersey and Mobil to break the Red Line Agreement and become part owners of Aramco, so that this huge concession, which is beyond the financial capacity of even two big companies like Texaco and Socal, would have the added strength of Jersey and Mobil, and it would be an all-American concession.

And this study says that's what happened, because when Jersey and Mobil broke the Red Line Agreement, Gulbenkian filed a lawsuit against them in London for breaking the agreement. And the French government filed an official protest with the United States government, which meant to me that the French knew that the United States government was secretly encouraging Jersey and Mobil to break the Red Line Agreement and join Aramco, which is what they did.

We sold Mobil a 10 percent interest, and Jersey a 30 percent interest: that made Aramco 30, 30, 30, and 10 deal. I'm sure that's true. I'm dead sure that that's exactly what happened. But now, along comes the cartel case, and they are attacking Aramco as being an instrument of this worldwide conspiracy in the international oil cartel. Which just shows you what a slippery bunch the politicians really are.

Hicke: Did you begin to feel like a baseball being batted around?

O'Brien: No. I began to feel a certain skepticism and cynicism about the way we conduct our domestic politics -- and even our international politics.

Hicke: Yes.

O'Brien: And that was the inception of the civil cartel case. It began about April 1953 and didn't really end until about 1968. I had gone to Standard by the time the case was over, but in the meantime, we had written this Mootness Study.¹ We appeared twice before the crowned heads of the antitrust [division], and we updated the Mootness Study twice to show that there was no conceivable way that the allegations that related to 1928 could have any truth or any bearing on the world international oil scene in the 1950s and '60s.

In the first place, the case charged that we controlled exploration and production and refining and distribution and marketing worldwide. And this study traced the entry of two or three hundred companies in the international exploration and production business in the Middle East and elsewhere.

Hicke: During that period?

O'Brien: Yes. So the notion that we were controlling exploration-production was ridiculous. The Mootness Study discusses every aspect and actually charts the acreage that these other independent companies owned. We did that sort of study with refining capacity, and so on. Now in the antitrust law, there are matters of elementary economics. There are so-called concentration ratios -- the amount of a particular aspect of a business which is controlled by the top three, the top four, the top five, the top six, so on -- and we took those classic measures of concentration, and we developed concentration ratios -- this was Neil Jacoby's genius -- for every aspect of the international oil industry. And we showed that in exploration acreage we were going downhill abruptly in relation to the number of new companies owning acreage around the world. Ditto on production, ditto on refining. So the Mootness Study was really written around this thesis.

1. So-called because I argued that whatever the truth of the complaint's allegations in 1928 and 1932, such profound changes had taken place in the international oil industry post war that the case was moot.

While Social was never part of any agreement like Achnacarry or any of the other so-called "As Is" Agreements, we assumed for the purpose of this study that those allegations were true in 1928, and that even though we weren't even in the international oil business, we assumed we were. Then we said: "Now let's take a look at the postwar changes in the foreign oil industry and see how those allegations measure up against the realities of the world today." And the consequence of the study was that it showed that it was total absurdity to suggest that this huge, dynamic industry could conceivably be controlled by four or five companies. It was ridiculous, but it took sixteen years for the USG to give up.

They took consent decrees against Jersey, Gulf, which had been participants in IPC; Texaco got on a kick of its own and finally took a consent decree, but that did not affect the legality of Caltex or Aramco. We hung tough. We wrote this study. The head of the antitrust division, an eminent federal judge, now retired in San Francisco, was head of the antitrust division when we first presented this study to them.

Hicke: Who was that?

O'Brien: [William H.] Bill Orrick. I said to him at the conclusion of the first session in which this study was tabled with them that it was a perfectly absurd case, that they were fighting the Punic Wars. Their contentions and allegations had about as much relevance as the Punic Wars. When the meeting was over, he got me aside and said, "I guess that's the first time anybody ever accused the antitrust division of fighting the Punic Wars." And I said, "Well, Bill, that's the way it really is." "Well, you'll hear from us." And they got the additional copies. Then a year went by. They called us back again, and this time he said in effect, "Well, we don't disagree with this." Years afterwards, I used to see it on the desk of every head of the antitrust division.

Hicke: Oh, really. Oh, very good.

O'Brien: They said: "We don't disagree with it, but we've got big problems. You know, we don't want to get into some big hassle with Congress and so on. So why don't you take some kind of an innocuous consent decree, so we can get rid of the case?" No way!

Hicke: This must have been about '64?

O'Brien: Meanwhile we had had months and months and months and months of discussions with them about this earlier on. Kirk led those discussions for many, many months, and I was with him, and a fellow from the Cahill office by the name of Bill Sayre, and a couple of Texaco lawyers. We had months of discussion about a consent decree. They had these ridiculous ideas that you should put on the

handcuffs for twenty years when nobody knew what would happen the next time the earth took a turn, and nobody could predict whether a decree like that would come close to fitting. Nobody knew what the Saudi government might do next, in effect, to expropriate the concession in a few years, all that kind of business. There was no way that you could advise your client to accept a pig in a poke like that.

Anyway, in the end they came back at the end of the year and said, "Why don't you take a consent decree?" And we said, "No way." Bill Orrick said to me, "Well, Jim, I guess we'll just have to bite the bullet some day." Well, he went out of office without biting any bullets.

Hicke: This was Mr. Orrick?

O'Brien: Yes. Two succeeding assistant attorney generals made all sorts of threatening noises about it. They were going to set the case for trial, and they were going to do this and that, and so on. Along came a Harvard professor, who was the head of the antitrust division, and he called us up one day and said, "Would you mind if I dismissed the case?"

He's a man I knew well, too -- well, not well. I can't think of his last name; his first name was Don [Turner]. He was a visiting professor at Stanford for a while. He used to teach in the mornings, and I was interested in antitrust stuff and had done a lot of antitrust, and I lived in Palo Alto, and I met him there. So occasionally I'd invite him to lunch. This was in an earlier incarnation, before he ever joined the antitrust division.

But he was the most threatening of all, and he was just going to eat us alive when he became head of the antitrust division, and set the case for trial and take steps that would astonish us and all that. But he was the one that finally had the courage to dismiss the case. And so that's the end of the saga. Fifteen or sixteen years with a lot of heavy lifting.

Hicke: Well, clearly it was the Mootness Study which convinced them.

O'Brien: Well, it was the lapse of time, the lapse of time. Well, Jacoby did a brilliant job. And Jerry Doppelt, who worked with me in PM&S, and whom I persuaded to leave the firm to become my assistant when I took the job as the legal honcho for the company, did a magnificent job, too, working on the Mootness Study. He and I used to fly down to see Jacoby, and Jacoby would fly up here, and we would draft and write and redraft, and we had a team of Standard economists who were very skillful, sophisticated, and so on. But it was a brutal thing. If I'd ever known what a monster it was

going to turn into, I don't think I ever would have had the courage to suggest that we could do it.

Jacoby got so involved, he gave up his whole sabbatical year, really, to help write this, and then it wasn't finished by the time the year was up, so he didn't quit at all on it; we blazed away at it until it was done. It was such a hot paper, it was such a pumpkin paper. It is really the only objective economic study that's ever been done on the international oil industry. And I thought it was so important, and that it was in a way such an important policy paper for the United States government, that without waiting to get it printed up in the usual fashion, we had it bound in these rings. [gestures to book]

Hicke: It's kind of a spiral binding.

O'Brien: Spiral binding. We numbered some copies, and took it back to get it in the hands of the United States government, because they were just looking through the wrong end of the telescope. And to have them subsequently say a year or so later that they didn't disagree with anything that was said was gratifying. It went the rounds, not only of the antitrust division, but of State, Defense, and the White House.

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Some of the subsequent antitrust cases, government cases, probably have been bigger, but none was more important to the position of the United States in the world international scene than the cartel case. None was more important to our national security, in the sense that even now, we have American warships in the Persian Gulf, and we're flagging Kuwaiti tankers to maintain our presence in the Persian Gulf. Seventy to seventy-five percent of the world's oil reserves are in the Persian Gulf, and our national security still depends upon access to that oil, and that of our allies as well. So it was a good thing we won the case.

Hicke: Yes, I should say so. Well, is it your sense that this was really just a political football from beginning to end?

O'Brien: Well, you know, these things get to have a life of their own. It was a political shenanigan to begin with, but once it started, it turned out to be something nobody could stop.

[tape interruption]##

O'Brien: Look at what the government did to the telephone company.

Hicke: Yes.

O'Brien: Look at what we almost did to IBM [International Business Machines Corporation] before somebody finally intervened. Here we are, our great weapon is our capacity for computers and communications, and we wanted to perform major surgery on IBM, cut it in half, and then cut it in quarters -- absolute bunk. And we almost did that with the international oil industry, so far as the American companies were concerned.

Impact of Iranian Crisis on Cartel Case

O'Brien: Well, I'll tell you another thing that happened in this case that broke its back. I should have mentioned this earlier because it was a very important factor. The civil case was commenced in 1953; in 1954 came the Iranian oil crisis. The Shah fled, Mossadegh took power, the Iranian government confiscated the oil concessions of the Anglo-Persian Oil Company, the World Court refused to accept jurisdiction under the arbitration provisions of the Concession Agreement to hear Anglo-Persian's complaint that their concession had been confiscated in violation of international law. The International Court of Justice held that it was not the judicial successor of the World Court.

That concession went back to World War I. Mr. [Winston] Churchill was the one who turned the British navy from a coal-burning into an oil-burning navy on the basis of his access to the Persian Gulf oil.

Iran was very quickly slipping into the hands of the Russians. Most people have forgotten that the first resolution that went to the United Nations Security Council was a resolution by the United States to compel the Russians to get out of Northern Iran, out of Azerbaijan, which they had occupied during World War II.

Now the Tudeh party, the Communist party of Iran, was becoming dominant, and the United States government came to the American oil companies and said, "Look, BP is down the tubes. Iran is rapidly disappearing in a Red revolution, and you must do something to get the economy of Iran going again. We want you to take over the oil concessions in Iran and run them, generate revenue to reestablish the government of the country." And we said, "No way. We've got our hands full of problems in Saudi Arabia, Kuwait, and all the rest of the area." They said, "No way. You get out there and do something about it." So these reluctant dragons did something about it.

Hicke: Well, we want to get into that in more detail.

O'Brien: Yes. But what I'm saying to you is that suddenly they found themselves in the position where they said, "Now you oil companies get together with BP, Shell, and CFP, and everybody else, and you sit down in London and get your heads together and figure out how to rescue Iran." And the attorney general of the United States gave an opinion that what we were doing was okay, that if we were violating the law, what we were doing to rescue Iran didn't make it any worse. That's the kind of an opinion he wrote.

Hicke: Oh, that's amazing.

O'Brien: But you can see that kind of pulled the rug on the antitrust division. Reality overtook the political abstractions of the cartel case. The events were out of their control, the international crisis. The government was restored. We now learn the coup that toppled Mossadegh was engineered by the CIA. The Shah came back, and the agreement that we executed in 1954 with the Iranian government, which became the law of the country, was passed by the Iranian Parliament. Turner McBaine, down the hall here, was a part of the team that went out to negotiate the so-called Government Agreement with the Iranians.¹ I sat in London working on the participants' agreement: what kind of a deal we would make among the many companies to run the thing, if we could make an agreement with the Iranian government.

But you can see what an impact that had on the cartel case. In the Church hearings, Senator [Frank] Church's hearings, years later, I got access to the internal correspondence of the Department of Justice, courtesy of some of Senator Church's staff who didn't like what he was doing. I read what the Department of Justice had to say about the cartel case against the remaining two defendants, Socal and Mobil (Mobil just rode our coattails). The trial staff of the Department of Justice said, in effect, to the chief of the litigation section and the assistant attorney general in charge of the antitrust division that they had a very weak case, that if they brought it to trial, we'd probably beat them, and they'd get all sorts of flak and adverse publicity; that they should select some suitable time to get rid of the case where they wouldn't catch all this adverse publicity. So that's what happened.

Hicke: That's truly an amazing story.

O'Brien: Well, it occupied a lot of my time for a good many years.

Hicke: Well, it was a worthwhile cause.

1. See Turner H. McBaine, "A Career in the Law at Home and Abroad," an oral history, conducted in 1986 as part of this series.

O'Brien: I was pretty dedicated.

Caltex Breakup

Hicke: Did the Caltex breakup have any effect on this particular case?

O'Brien: Well, it was kind of the other way around. Did the case have any effect, and did it bring about the partial break-up of Caltex? I think it did, yes. I was conducting the so-called negotiations with the consent judgment division of the antitrust division. A fellow by the name of Bill Kilgore was the head of the Justice Department. It became evident that Texaco, for commercial reasons, wanted out of Caltex. And they, therefore, discovered a new legal principle which said -- inspired by the pendency of the cartel case -- I may have to seal this.

Hicke: Okay.

O'Brien: They discovered a new legal principle, which was that in order to be safe under the antitrust proceeding and to comply with the antitrust laws as they read them, they had to compete with Caltex! That led to some major ruckusses.

Hicke: What was the year that they actually broke up? Or about when? I can get the actual year. It was after this was settled?

O'Brien: No, no. They took a consent decree in the case.

Hicke: Oh, yes. That's right.

O'Brien: So, let's see, the case was dismissed about 1968. I would think about 1964 or '65 they took a decree. It's in the law books -- their consent decree. But they did that because, in fact, they wanted to compete with Caltex. So they adopted this air of great piety arguing that it was essential to the antitrust position of their company that they compete with the creature that they had created -- Caltex.

Hicke: Okay.

O'Brien: That did not fly in San Francisco. Neither with the chairman of the board, or the board of directors, or their lawyers.

Hicke: You put your foot down?

O'Brien: Yes, we got ready to sue them. Sure. There are, you know, lots of episodes in that war that went on for a number of years. Turner handled some of them, and Kirk handled some of them, and I handled some of them. We had a complaint prepared. Those were stirring days.

Hicke: Yes. Is there anything else about the oil cartel case that we haven't covered?

O'Brien: Oh, you know, there a million things about the cartel case. There were some fascinating international legal problems involved in the case.

For example, we produced experts from the Netherlands to prove that if we complied with the U.S. court's order for the production of documents from the Netherlands, we'd all go to jail; the Dutch had a criminal statute against the production of papers in response to a subpoena from an American court.

I was just reading last week that there are something like twenty nations now that have adopted such laws: Britain, France, a lot of the Western European nations deeply resent the efforts of the United States to apply its antitrust laws on an international basis. They think it's an intrusion into their national sovereignty for the United States courts to be giving directions to British subsidiaries of American companies as to how they should perform.

Hicke: What's the United States's position?

O'Brien: Well, I don't know. I think, if I read the tea leaves right, they're gradually understanding that we no longer are like the Roman Empire; we have neither the power nor the influence to compel people to dance to our tune all the time; that we are a little more willing to listen to some of the concerns that are expressed, notably by our allies. I mean, the Brits have statutes on this subject.

We had a number of lawsuits in this country where we had an absolutely violent collision with the British courts. In the Nylon Spinners case, an American court directed an American parent defendant to order its British subsidiary to reassign British patents which its British subsidiary had already licensed to some British companies. The High Court in England held that those licenses were valid. It issued an injunction against this British subsidiary transferring the patents to its American parent.

So, you'd have courts on both sides of the Atlantic reaching opposite results, with the hapless defendant in the middle of it. That's a ridiculous thing. And it was perceived by many people as

an effort by the United States to give extra-territorial effect to its antitrust laws. Other civilized nations have different ways of doing things.

We've modified our views about some of the antitrust strictures, as witness the mergers that are going on now. So we were not the sole embodiment of wisdom in the field of competition in international trade. I think that the passage of these laws in many, many nations now has kind of sobered us up a little. And also the fact that we no longer have the commanding position in the world. Everybody danced to our tune after World War I. We gave the Germans an antitrust law, we gave the Japanese an antitrust law, even though it was totally foreign to their culture and their heritage and tradition. We fastened one on them like a can on a dog's tail.

Hicke: Do we agree to produce documents and so forth according to other nation's directives?

O'Brien: Well, I don't think the other nations have tried that very much. There are international techniques for the discovery of foreign documents, and ways of taking the depositions of witnesses in foreign countries, but they don't cotton to the way we've tried to force our way into the international arena. And now, on the other hand, we've got to deal with their antitrust provisions in the European Community, you know, the Treaty of Rome, and they have a commission that has rather Draconian views about antitrust.

The funny thing was that when it started, some of the European countries didn't even have antitrust laws. The one which had the model antitrust law was the Germans, which we forced on them at the end of the war. But they had such a swift economic revival that they became great devotees of antitrust law and competition, because they didn't want anybody in the rest of Europe to get in their way while they were making great economic headway. I may sound kind of skeptical.

I'm a great believer in the antitrust laws and competition. I'm a great disbeliever in all of the foolish economic nonsense that passes for economic theory in the enforcement of our antitrust laws. I'm against price-fixing agreements, boycotts, and so on. But a lot of the malarkey about potential competition and a lot of stuff like that is just nonsense. And in the last four or five years, it's been pretty largely discarded. They've repealed most of the stuff I spent so many years trying to learn.

Okay.

Hicke: Well, I want to go on to the history of the Iranian consortium next time.

O'Brien: Yes.



VI FORMATION OF THE IRANIAN CONSORTIUM: 1954

[Interview 9: September 22, 1987]##

Hicke: Maybe we could start this morning on the Iranian consortium, in which I know you had a very instrumental part. It's hard to know where to start with that.

O'Brien: Yes. It all happened in 1954 and I sort of backed into the problem of the Iranian consortium. In one or more of our earlier sessions, I've talked about the cartel case. That case was filed in 1953 -- I think in April or May -- shortly after Eisenhower took office.

Up until that time, I had done very little work for Standard Oil Company after World War II.

I had done quite a lot of things for Standard when Mr. Smith was alive before the war, but in 1952 I was supposed to be an antitrust lawyer. I had my own practice, acting as counsel for various corporations and private clients. When the cartel case grand jury began, I was drafted to work on that. The consequence was that nearly every foreign problem that the company had ultimately passed over my desk after 1952 to make sure the company's actions overseas were consistent with our defense in the cartel case.

Hicke: Because it was all connected with this cartel thing?

O'Brien: Because we were all concerned that what they might do or were doing abroad would have some impact on the cartel case or at least was relevant in respect to one or more of the charges in the case. As a consequence, I was drawn more regularly and more deeply into the company's international problems. When the United States government turned to the American oil companies to rescue Iran from communist clutches, and when the government became insistent that

the American oil companies do something to get Iran's oil industry going again so that revenues would be produced in Iran and the situation would be stabilized and the threat of a communist takeover might be avoided, Mr. [Gwin] Follis and the other chairmen of the American oil companies were absolutely dragooned into taking some major steps to help in the effort to keep Iran from going behind the Iron Curtain.

As I mentioned before, most people don't even remember that the first resolution that came to the Security Council after the United Nations was formed was one by the United States to compel the U.S.S.R. to get out of Northern Iran, which they had occupied during World War II. In any event, the Tudeh Party -- the Communist Party in Iran -- was in its ascendancy and Mossadegh had taken over the government. The Shah had fled, the Anglo-Persian Oil Company -- now British Petroleum [BP] -- had been unsuccessful in its efforts to get the International Court of Justice to take jurisdiction over its dispute with Iran involving the confiscation of their great oil concession, and things were rapidly going downhill.

There were a series of preliminary meetings, with which I had nothing to do, in which Follis participated with the other heads of the American oil companies and BP and Shell. Those meetings took place in London, and Follis was accompanied by Ted Lenzen and Turner McBaine -- Turner can give you that whole story and probably has.

Hicke: Well, he has told me about the negotiations that went on in Iran and meanwhile, you were in London --

O'Brien: Well, my participation came later, after they had sort of agreed in principle on the structure of some new deal under which the American oil companies would acquire a substantial interest in the Iranian concession of BP. They would buy out BP's interests under a so-called compensation agreement. Within that structure, a team was formed of legal representatives headed by an Exxon executive to go to Iran and negotiate with the Iranians, and Turner McBaine was a member of the team of lawyers that went out there.

When the whole process had reached that stage, I was suddenly asked -- I was the antitrust lawyer, but I was suddenly asked to put on my hat and go with Fred Boucke to London to work with the other lawyers and executives in London, who were beginning the process of trying to work out what sort of an internal arrangement they would have among themselves to own and operate these interests in Iran if eventually a deal could be struck with the Iranians.

- Hicke: Could I interrupt a minute? First of all, it's very interesting they chose an antitrust lawyer, because certainly there were a lot of antitrust implications in this.
- O'Brien: Well, there were. After all, the cartel case was pending and now suddenly the United States government came forward and implored and commanded the American oil companies to get their heads together --
- Hicke: To form a trust?
- O'Brien: -- to form some sort of a new apparatus and structure to operate the Iranian oil industry.
- Hicke: So was that important in your being chosen?
- O'Brien: Well, I don't know whether it was or not.
- Hicke: And the other thing was that you were on top of all the Standard affairs.
- O'Brien: I had been involved in their affairs to a considerable degree. But I really had had no experience in the negotiation -- nobody had really had experience in the negotiation of a monster deal like this. So Boucke and I left on very short notice. I had just one conversation with Mr. Follis before I left, for about fifteen minutes.
- Hicke: What kind of preparation did you have to do?
- O'Brien: I didn't really. We had a few papers that had been put out by an informal kind of drafting group that had been formed in the offices of Britannic House -- BP in London -- as this was in its earliest stages and just beginning to emerge.
- Hicke: Did the State Department make available any of its papers?
- O'Brien: Well, there were some conversations with the State Department, but I don't recall that I was involved in those. Herbert Hoover, Jr. of the State Department was the guy who was ramrodding this around and insisting that the American oil companies must come to the aid of the party.
- So Boucke and I rocketed off to London to get into what was a vast unknown. It was the worst carborundum process I've ever gotten into in my life. In the first place, the negotiators on this team in Iran were having tremendous difficulty with the Iranians, who were just as bad then as they are today.
- Hicke: I was going to say, probably a continued tradition.

O'Brien: So it was extremely difficult to formulate principles around which a deal could be made. They of course had expropriated BP's concession and they were not about to give it back. There were national sensibilities of that sort that had to be dealt with. Within the framework of their new ownership of their oil rights in the name of the Iranian nation, some way had to be worked out of giving us -- even if we didn't own the concession in the traditional sense -- the assurances that were needed to assure we would have the exclusive right to explore and produce and manufacture and distribute the oil of Iran and operate the great refinery at Abadan and the pipelines and the distributions system.

And at the same time, we had to do this in such a way that it would be compatible with U.S. antitrust laws. So while we could operate through a jointly owned company the exploration, producing, manufacturing activities, once the crude oil had been produced as crude oil and was to be shipped out of the country, that had to be done by each individual company, and each separate company had to decide the price at which it was going to sell that oil in its own markets to its own customers. Ditto in respect to the products that were produced by the Abadan Refinery.

It was an extraordinarily complex situation. No sooner would they get going in Iran and come up with a tentative draft than it would fall out of bed and we would tear up all the papers that we'd been drafting in London and start over. I think we made something like fifteen separate beginnings to try to shape the internal mechanics of operating this great concession with eight companies. As it turned out, we had the five American companies: Exxon, Texaco, Gulf, Mobil, Socal, and BP and Shell and the French.

So we landed in London -- Boucke and O'Brien. Texaco was of course there, and I met with Texaco's representatives the afternoon that we arrived, a Sunday afternoon, lurching around after flying from San Francisco.

But I could see even before the meeting that there were going to be some tremendously important problems of English corporate law. Already it was being envisaged that there would be maybe French companies or Dutch companies or something else that would operate aspects of this deal, but at the top of the pyramid there would be an English company that would control the whole thing, and the members of this consortium would be shareholders in that organization and in the other corporate organizations. By then the deal was beginning to take shape so that it was understood that BP would have 40 percent of the new company; it would no longer have control.

Hicke: This was before you got there?



STATE OF CALIFORNIA
OFFICE OF THE
Secretary of State

FRANK M. JORDAN
SECRETARY OF STATE

James E. O'Brien
SIGNATURE OF BEARER

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that JAMES E. O'BRIEN is a resident of the City of Palo Alto, in the State of California.

Mr. O'Brien, who is associated with the Law Firm of Pillsbury, Madison, & Sutro, will be visiting in London, England, and traveling in the Countries of the Middle East.

This is to ask that wherever he may be he be extended every courtesy to the end that upon his return to his home he may always remember with pleasure the kind treatment he received while absent therefrom.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Great Seal of the State of California this 4th day of August, A. D. 1954.

James M. Jordan
Secretary of State



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT
5712 S. DICKINSON ST.
CHICAGO, ILL. 60637

Dear Mr. [Name]:
I am writing to you regarding
the [Subject] of your letter.

I am sorry that I cannot
reply to you more quickly.

I am sure that you will
understand my position.

I am very sorry for the
inconvenience.



O'Brien: Yes, as I recall now, that was pretty well understood. Each of the American companies would have 8 percent, that was another 40 percent -- that made 80. Shell would have 14 percent and the French would have 6.

Now you can think of mutations of that structure, and who was going to really control this deal. The only thing that Mr. Follis said to me before I left -- mind you, the Standard Oil Company of California itself had never played ring-around-the-rosy with these people. We were the maverick; we had discovered the huge oil resource in Saudi Arabia which shook the whole oil world. And the British in Persia and Iran and the owners of IPC were horrified --

Hicke: You were outside the Red Line Agreement.

O'Brien: Yes, we were outside the Red Line. We were outside of the whole waltzing party.

Hicke: How was Standard chosen as one of the consortium companies?

O'Brien: We had the Saudi Arabian concession. We had a major interest in the Middle East, ditto, Texaco. So it was inconceivable that they could go forward without us, and it was barely conceivable that we would sit down at a table with them.

Mr. Follis said to me before I departed, and this was the only specific instruction I had, "The British have blown this thing in Iran and we must not let them take it over again." I mean, he conceived of the fact that the cause of all this -- in part at least, and I shouldn't speak for him; he can speak for himself -- was the British intransigence. We had already agreed to a 50/50 tax arrangement in Saudi Arabia, which meant that we were sharing the producing profit of that great concession on a 50/50 basis with the Saudi government. But the British didn't make such a deal in Iran, and resisted such a deal. And that of course fueled a great deal of the difficulty that they had.

Hicke: I read that Sir William Fraser was very conservative. Do you attribute a lot of this to him?

O'Brien: He was, he was, right. I don't think I ever met Sir William; I might have. But I do know that I practically lived with his son.

Hicke: Who was different, I think, from his father.

O'Brien: Billy Fraser, yes -- Lord Strathalmund later -- was a British barrister who had also practiced with one of the big firms in New York. A charming guy and came to be my principal antagonist throughout the whole negotiation in London of the '54 agreement.

He was a very skillful manipulator, playing on his own field, and I was young but energetic.

Hicke: That helped didn't it?

O'Brien: And determined not to let the British take the thing over again.

So we began our meetings with all of these companies. The French company was represented by a very distinguished British solicitor, and all of the British companies had both inside and outside counsel, solicitors and barristers there. I retained an eminent British firm that had already done some work for us -- principally for George Parkhurst, who had originally made the contact with this outfit.

Hicke: You don't happen to recall the name?

O'Brien: Yes, I do, very well -- Coward Chance & Co. Almost at once I called up the firm and asked to speak to one of the senior partners, Tim Tyler was his name. It turned out he was in Rhodesia or some other outpost of the Empire, so I spoke with a young partner by the name of Tom Johnson-Gilbert -- a hyphenated name, Johnson-Gilbert. He showed up at the Savoy [Hotel] one evening very soon after I'd arrived.

Boucke and I had got ourselves a big suite with a big living room and two bedrooms down the hall. We used our hotel suite as our working space. The company didn't have an office in London, we didn't have any of the normal facilities, and with Tom's -- Coward Chance's -- assistance, we hired a secretary who used to come about 5 or 6 o'clock in the evening when we'd take a break from the meetings -- although we often met in the evening as well.¹ Boucke and I would sit there then and dictate cables to San Francisco to try to keep them abreast of what was happening, but it was almost a hopeless task.

Although we were very faithful about it, we had to decide things in the London meetings before they could really react in San Francisco. If they had thought we were way off the track they might have intervened and said something, but otherwise it was pretty much giving them information on what had happened. The British are very skillful at this. Here we were, two green peas from San Francisco a long way from home. There was no way of communicating by telephone in those days. There was a radio-telephone, but whenever I tried to call Mr. Follis -- which

1. Her name was Margaret. She stayed on with Iran California Corporation and retired twenty-five years later.

meant I had to sit up until 3 o'clock in the morning or something -- I'd hear about one word in ten. It was a most frustrating thing to try to give him any coherent report and get any ideas or instructions.

Hicke: You were really on your own.

O'Brien: Oh, yes, we were. I felt very isolated. And more than that, the meetings had hardly begun when it became apparent that just what Mr. Follis had said was very much in BP's mind: they really intended to get a rope on this whole thing all over again and to structure the new deal in such a way that their 40 percent in the new arrangement would really be a controlling interest, because here they would be faced with four or five companies, American companies, each owning only 8 percent and Shell owning 14 percent and the French owning 6 percent. They intended just --

Hicke: Divide and conquer.

O'Brien: -- to strike up the music the way they had before. I was bent on frustrating that. I agonized over this, but I had really to do it for better or for worse. I don't want to make it sound too dramatic.

We met for about four or five days. The first meetings were at Britannic House, which was the headquarters of BP. The American companies quickly decided that we wanted some separate headquarters outside of BP's offices. For the sake of appearances with the Iranians, we didn't want to be seen as doing all these negotiations under the aegis of British Petroleum Company after it had just been expropriated by the Iranians. The Brits and the Iranians were at each others' throats. So we rented a big share of the Grosvenor House in London, in the West End. We had a couple floors of Grosvenor House, as I recall, for offices.

Hicke: This was for the meeting place?

O'Brien: For offices, for the meeting places. We had secretaries and conference rooms, even cots where we could go lie down once and a while.

Hicke: Could I interrupt with one more question? What was Fred Boucke's position with the company?

O'Brien: At that time Lenzen was the vice president in charge of these foreign affairs under Mr. Follis, and Fred Boucke was his assistant.

Hicke: I see.

O'Brien: Fred had been the head of the foreign staff; I believe that was his official job. He then became Lenzen's assistant, and he and Ted kind of ran the foreign business out of their hats. They really roared around the world a lot.

Ted Lenzen was on the road all the time. He was the Caltex director, and he was in charge of Indonesia. He was a very busy man, and he had absolutely enormous capacity to sit down no matter where he was -- I've been in Lagos with him, or Tripoli, or Tehran, or London -- to sit down at the end of the day and write a long, coherent message, which he would dispatch to Mr. Follis regularly after coming out of these meetings. Gee, I've been in I don't know, a hundred meetings with Lenzen when he'd sit down immediately afterwards and send a succinct, coherent message about what had happened that day.

Hicke: If those were collected somewhere, they would make a remarkable story of the foreign operations of the company.

O'Brien: Yes. Because they would provide the details of many of the major negotiations that went on in the company's foreign business.

Anyway, Lenzen appeared from time to time in the course of our deliberations in London. There were supposed to be legal meetings and meetings of principals -- those were the executives that were supposed to be meeting at the same time that the lawyers were meeting trying to put together an agreement covering the arrangements. The principals were supposed to be negotiating the substantive aspects of what the deal would be among themselves.

Hicke: Was Fred Boucke then representing the principals?

O'Brien: Yes, he was representing the principals but Lenzen showed up with considerable frequency.

The Issues: British Control

O'Brien: Almost at once the issue of who was going to run this thing came up. It could have come up in any one of a number of ways, but almost the first thing we attacked was drafting the articles of incorporation. That's not what you call them in English law, but that's what they are -- the basic document for this top British company that would be the controlling mechanism for the whole arrangement.

Hicke: Would it be similar to a holding company?

O'Brien: Well, kind of a holding company. It would have a whole series of subsidiaries that managed exploration, production, and so forth and so on. Obviously, there had to be a huge supply company to buy and ship to Iran the materials needed -- so-called country goods and all the apparatus and tools and so on to run one of the largest refineries in the world, pipelines and all that. So there would be a huge company to operate that concession.

Almost at once, the issue of how to do all this arose. By then I had invited Johnson-Gilbert to come sit with me at the meetings, and every time he would interject any remark, he would get absolutely spanked by all of these great mandarins of the British bar -- he being only a young partner in a solicitor's firm. But he is a very bright, able fellow. He doesn't look as though he could punch his way out of a paper bag, but it turned out he was a mountain climber, a direct descendant of Dr. Samuel Johnson. And he really hung in there. He's a marvelous draftsman, an Oxford graduate who is now the senior partner of this firm, which has recently merged to become one of the very largest, if not the largest firm of solicitors in London, and therefore in England.

We became great friends through all sorts of other negotiations that followed the Iranian Consortium.

##

O'Brien: The issue arose over British control almost at once in the drafting of these articles of incorporation. The British wrote a set of articles of incorporation that empowered this new British corporation that was to be created with every power known to the world. It could operate in all countries, it could do everything. I said, "No way. We couldn't conceivably agree to that. In the first place," I reminded them, "this agreement would have to be cleared with the attorney general of the United States." I argued, "He is not going to approve of some formulation that would give this new English corporation the power to hold properties or explore, produce, refine or sell oil in all the countries of the world." I said, "We're not going to create some superpower in the oil business. What we want is a company that is strictly limited to rescuing the Iranian properties and operating them, and we must draw the articles of incorporation as narrowly as possible."

Hicke: That wasn't what they had in mind?

O'Brien: No. They accused me of waving the "bloody shirt of the American antitrust laws."

Hicke: Did they have antitrust laws?

O'Brien: No, not really. They subsequently had some that have become more rigorous as the years have worn on. They don't have anything that compares with criminal investigations or criminal indictments nor do they have treble damage suits or anything like that. They have a Restrictive Practices Commission to which agreements which conceivably are in restraint of trade must be reported. And they can make you dissolve those agreements if they violate the Restrictive Practices Act.

Anyway, this started out in kind of a gentlemanly way. We sat around the lawyers' meeting, and I kept making my point, and they kept drafting something that was just as bad, from my point of view.

Finally, the Brits put up to challenge me a British solicitor, a very fine man, who ostensibly was representing the French, the CFP [Compagnie Francaise des Petroles]. One day when I walked in there -- I was already tired -- he said that I was so obstreperous and so obstructive that there was no point in continuing the lawyers' meetings until the lawyers had received instruction from the principals as to how to do this, that it was outrageous that they couldn't go ahead and create a normal kind of corporation with the powers that were needed. They didn't want to be charged at some subsequent time of doing things that would be beyond the powers granted to the corporation, what the lawyers called ultra vires of the corporation. And it was a folly to try to write some narrow provision restricting the powers of this company in the way that I had proposed. So, geez, I suddenly had against me the whole mighty array of British counsel and all the Brits, and I didn't get one word of encouragement or support from any American company.

Hicke: I was just going to ask what the other American companies were doing.

O'Brien: They all just sat on their hands. And I was particularly offended because our partner, Texaco, didn't move a muscle. So that's what happened.

The legal meetings stopped. An appointment was made for this gentleman -- this English solicitor -- and O'Brien to appear before the crowned heads of the international oil industry and argue our respective positions. So at two o'clock the same afternoon, this guy and I waited in the anteroom until we were called in, and there all these fellows sat at a huge table that extended down this great room with the chandeliers and so on. We each got up in turn and argued our position.

Hicke: Was that a little overwhelming?

O'Brien: Well, I was a little spooked, because in the first place, Standard Oil Company of California was not their favorite company. It wasn't one of the -- let's say, in that sense, one of the old boy network. I was a young partner in PM&S, and I was a long way from home, and I didn't have any chief executive right at my hand here to tell me what was right and what was wrong. That was a problem that came up several times when I was challenged subsequently. Anyway, we went in there and we argued our position.

Hicke: Most of what you did was on the strength of what Mr. Follis had told you when you left?

O'Brien: Yes, "Don't let them get it back after they have blown it." When we had finished arguing there were some questions, and each of us answered the questions from his point of view. Then they said, "Thank you," and we were excused.

We waited outside in the hall for what seemed like an hour to me. Finally we were called in and the chairman said, "We want to do it the way Mr. O'Brien is suggesting."

Hicke: Hooray!

O'Brien: Oh, man, that lifted me up.

Hicke: That indeed was a major victory.

O'Brien: So we marched out of the room. The lawyers had assembled in their meeting room in another part of the building and were waiting for me to come back on a stretcher. And I walked in the room -- I'll never forget -- and the Texaco lawyer, who was a terribly nice fellow but not given to sticking his neck out, said to me, "Well, Jim, do you come home on your shield or with it?" I was followed into the room by this British lawyer representing the French, and I said, "Well, I'll let Mr. So-and-so explain." So he did, fairly, so that we started up this thing again.

Hicke: Who all was in the room with the crowned heads? All the principals of the American companies and all the companies who were involved?

O'Brien: Yes, or their principal representatives; all of the companies that were involved.

Hicke: Why do you think that they decided your way?

O'Brien: I made a number of arguments. I can't remember them all, but I remember two. I made the antitrust argument, certainly, that here we were in the midst of a lawsuit brought by the United States government charging that we were party to a worldwide conspiracy involving just these same companies and now they wanted to write a

set of articles -- it's called a memorandum of association -- that would confirm the Department of Justice's allegation that here we were united in a worldwide company that could go anywhere, do anything. In fact, everybody knew that we were there to try to get the Iranian concession going again and to work out an agreement to compensate British Petroleum and to get Iran going.

Then I said, "Suppose that we draft the articles the way they suggest that they be done, and British Petroleum has 40 percent of the piece. Any Iranian can go down to the government office and buy a copy of this piece of paper for a shilling and see that BP now has got a corporation with worldwide powers. What do you think that means in terms of Iranian sensibilities? We're having a very hard time finding any way to shape this transaction that's consistent with their sensibilities, their ambitions, their great sense of sovereignty and all that. Here we are saying we're going to create a corporation that's worldwide and vast and powerful."

Now I think the latter argument persuaded the Shell people; I don't know. I came to be friends with a lot of these people, of course, as the negotiations wore on -- this was fairly early in the game. Well, that identified me as a radical and a --

Hicke: -- a power to be reckoned with.

O'Brien: No. Anyway, the fallout of all that was that I then began to explore options with British lawyers -- with Coward Chance, with Johnson-Gilbert and a number of their experts, and with a retained barrister. I always thought a barrister did nothing but try cases. But in England, you can hire a corporate barrister who advises; he tries cases involving corporate matters, but he is a specialist in corporate affairs.

Hicke: Acts as counselor also?

O'Brien: Yes. So you can brief a British barrister and ask him a specific question on some aspect of corporate law and he'll give you an opinion. And we did that, because I was aware that under British law, the managing director of a British corporation has very wide powers -- not like a board of directors in California or in the United States generally. Under the corporation law, the chairman of the board operates under the authority given him by the board of directors, but traditionally in British law, the managing director does pretty much as he pleases and only reports to the board once a year. So it was quite a different stroke.

I wanted to make sure that the managing director of this company was not going to be given all of those powers; that he was going to be restricted in the things he could do, and that the board of directors on which all the companies would now all sit in

this new organization would be the controlling, operating force of the consortium. If we could accomplish that, then we would have to figure out what kind of voting requirements there should be on every kind of an issue to make sure that we couldn't get clobbered by a combination of, let us say, BP and Shell, or BP, Shell, and the French against the American companies, or let us say, BP and Exxon and Mobil.

Hicke: You had your work cut out for you.

O'Brien: Yes, and we were plowing absolutely new ground in British corporate law. Well, there's no use going into all that, but essentially we did it my way in the end. There was no managing director of this top consortium. There was a new animal called "managing agent"; he was given just the limited powers delegated to him by the board of directors, and there was no managing director who had ill-defined but very broad grants of power under the British law.

Hicke: How in the world did you persuade them to accept it?

O'Brien: Well, it came down to the very last session of the whole consortium practically. It was, of course, a very hotly debated point with the British, and there was a final climactic meeting about this issue -- this was weeks later -- which took place about twelve or one o'clock in the morning. This time, Lenzen was there, and Boucke was there, and all the other CEOs -- the senior executives. Mr. Follis wasn't there but most of the other major international companies' executives were sitting in the room when this provision about the managing agent was put forward. Of course the British -- BP -- just despised that idea. The first managing director they wanted was going to be a senior executive from their company, a very distinguished guy by the name of [William] Snow.

So, again, I made a presentation on the subject.

Hicke: Had the lawyers agreed?

O'Brien: The lawyers had at least agreed it was to put forward as a proposition to the principals. But certainly BP's lawyers hadn't agreed to it. They had both their house lawyer and they had a very distinguished lawyer from a big firm of solicitors representing them. That was kind of interesting, because after these arguments and discussion and so on had gone around the table on this whole thing, the principals felt a little embarrassed and awkward about it, and they didn't want to grasp the nettle. So they said, "Mr. O'Brien, we want you to go out with" -- his name was John Gauntlet, who was the solicitor from this firm representing BP -- "and see if you can't draft something that you both can agree on and bring it back to us in a few minutes."

Hicke: Just step outside in the hall?

O'Brien: Just step outside and draft it. I remember he and I went out and sat on a wicker bench and I quickly drafted something that was really quite outrageous. It was all my way, let's say 100 percent my way, and I made him fight to change every word of it. I kept hanging in there and arguing and so on. Billy Fraser had come out of the meeting room and he was leaning over our shoulders trying to see what I had written and what Gauntlet was saying in trying to change it.

Finally, I kind of wore Gauntlet down, I think, I said, "Does that suit you now, John? Can we go in there and say this is it?" And he said, "Oh, yes, okay." So we went back in and presented this piece of paper which now had the approval of their lawyer, and I sat down next to the No. 2 man in international Shell -- I can't think of his name but he was a very bright, shrewd fellow. I had this provision only in my handwriting, and he said, "Let me see it." So I passed it along the table. He looked at it, and he turned to me and he said, "It's shocking. You've given them a comma."

Hicke: Well, you have to give something, don't you?

O'Brien: Anyway, BP was highly dissatisfied with it. But the rest of the group now, since it in effect had been agreed on by BP's counsel, were prepared to go along with it. BP called a recess. This was a huge room. All of the BP executives went down to a corner of this room where we were meeting and they must have talked for forty minutes. The rest of us sat there, and it got to be 2:30-3 o'clock. Finally, they stood up and said, "Okay, we'll buy it." That ended the whole affair.

I got up and rushed over to see Mr. Snow, who was going to be the managing agent, and said, "I want you to understand that the Standard Oil Company has nothing but the highest regard for you and that the issue involved here had nothing to do with you. On the contrary, we endorse your appointment as the chief executive of this operation with great enthusiasm."

Hicke: That was a good idea.

O'Brien: In the meantime, I got absolutely played out. As we went down the home stretch, I sent a message to Hillyer Brown and Marshall Madison asking that Al Brown be sent over to help me on the corporate aspects of all this. See, the British were, among other things, very skillful, because in a deal like this they would immediately form five committees -- a committee on this subject and a committee on that subject, a committee on whether we should have

an arbitration clause, a committee on something else, a committee on the fiscal regime.

In the meantime, I should say that Scott Lambert was there almost from the beginning, and that was an entirely kind of separate working party to work out how this thing could be structured in a way to insure that we would get a foreign tax credit in the United States for the taxes that we paid Iran in a way that was also consistent with the British Inland Revenue -- all of the national tax laws of all of the participating companies. You can imagine what a wrangle that was.

Hicke: Scott Lambert was with Aramco?

O'Brien: Scott Lambert was with Standard of California. He was their first tax counsel.

Hicke: Oh, okay, I was thinking he went to Aramco, but that's right.

O'Brien: No, he had started out in -- a marvelous man -- he started out as a hall boy at Standard, went to night law school somewhere. The company thought extremely well of him, as they should have, and they sort of farmed him out to PM&S and he worked in PM&S for a few years with Sigvald Nielson, who was our chief tax lawyer in those days. Then they put Scott back into the company again, and eventually he emerged as general tax counsel, and ultimately he was made a vice president. But he was there in '54, and that's another big story, because the tax regime which he and a Texaco lawyer -- Will something or other [Will Young], who ultimately became vice chairman of Texaco -- worked out was promptly attacked by the British as being impossible if not illegal. So we had another great brannigan over that.

Just a footnote to all that story. It was ultimately signed, sealed, delivered. Al Brown came over. He's a fabulous corporate lawyer, probably the best securities and corporate lawyer in the country. Of course, he has had a great career in the firm. So he and I managed to live through it. Toward the end, we actually did stay up all night for nights trying to get these papers put together.

In the end, there's a fascinating story about how the agreement was signed, the so-called Government Agreement, which was the agreement between the companies and the Iranian government. It was insisted that that agreement be enacted into the law of Iran.

Hicke: By the Majlis?

O'Brien: Yes, by the Majlis. And it was essential that these agreements all be signed in a single day.¹ This was before the day of jets. So the agreement was signed by representatives in Tehran, and it was enacted into law by the Majlis. The document, with all the ribbons and seals and whistles on it, was put on a chartered airplane and flown to London, where we rented a big pub outside Heathrow Airport -- the whole affair with residential rooms and all that, a small hotel, in effect -- where representatives of all the companies were sitting.

They then signed all of these documents that we had prepared -- the compensation agreement, the creation of all these corporations, and all of the participants' agreements (the main agreement regulating the legal relationship among all of the companies that were part of the consortium). Representatives of all the companies initialed those documents. Then the fellow got on the plane and flew from there to New York, where the chiefs of all the corporations were sitting in the Exxon boardroom about midnight, and the documents were signed, sealed, and delivered. A cable was then sent to Iran.

In the meantime, mind you, the final documents also had been cleared with the attorney general of the United States. He wrote an opinion. I guess it went through the National Security Council to the White House and everything else. The State Department had insisted that there be a provision in these agreements under which each of the American corporations would sell to independent American oil companies X percent of the interest it had acquired. Let's see, we had 8 percent originally and I guess we each agreed to sell 1 percent to "other financially responsible American corporations."

Now State did that to indicate that they were not going to sprinkle any holy water on the five monster American oil companies by allowing them to be the sole participants in this vast new international oil consortium. We must each sell 1 percent of what we had acquired. So that made a kitty of a 5 percent interest. We said, "We will have nothing whatever to do with selecting the companies that can become eligible or actually buy any or all of that 5 percent interest. That's your provision, Mr. State Department; you run that." So they hired Price, Waterhouse, and maybe twenty or more American corporations -- smaller ones -- produced their financial reports and the rest of it to Price, Waterhouse, which ultimately -- with the seal of approval from the State Department -- declared X number of companies as eligible to bid on the interest.

1. The Consortium Agreement was signed on October 29, 1954.

That was an interesting affair, because as soon as they were declared to be eligible, they had a seat at the poker table, which each conceived might be worth a lot of money. Each now had a right to participate, and so to give up that right he figured he deserved to get a lot of money from somebody else that was interested in acquiring that right. In the end, I think there were some nine companies that were selected to acquire participating interest in the 5 percent.¹

Then we had to prepare the sale documents -- this was months later, maybe six months after the first deal was all over -- we had to prepare the documents for the five companies to sell to the nine companies -- if that's the right number. We insisted that they act through a single entity that they had to create so we wouldn't be orchestrating the whole deal twice, with all the companies sitting on one board.

I spent months working with the rest of the lawyers on this deal in New York in the Exxon offices with my great friend, Tom Monahan -- he was general counsel of Exxon, a superb lawyer and a marvelous human being -- writing up all this stuff to sell this 5 percent interest, all the papers that the transferers had to sign. The transferees had to take over their shares of the obligations under all the previous agreements that had been executed with the government of Iran and among the rest of the participants. It was a hair-raising exercise. When we came to sign the documents, two officers from every one of these corporations -- buyers and sellers -- appeared in the cafeteria of Texaco in the Chrysler Building in New York.

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O'Brien: We had an all-day session to sign these papers in the cafeteria. We had nine buyers and five sellers, and every document -- and there were many of them -- had to have about twenty copies. So each document had to be signed twenty times to make sure that everybody had an executed copy -- and copies for the government of Iran and governments of other participating companies. The lawyers had to keep the copies straight to make sure the people signed their names in the right place and put the corporate seal on each copy. I once calculated that there were 5,000 signatures to get all those copies of all those documents in twenty executed copies.

1. American Independent Oil Co., Atlantic Refining Co., Hancock Oil Co., Pacific Western Oil Corp., Richfield Oil Corp., San Jacinto Petroleum Corp., Signal Oil and Gas Co., Standard Oil Co. (Ohio), Tide Water Associated Oil Co.

Hicke: How long did it take?

O'Brien: It took from about 9 o'clock in the morning until about 5:30 p.m. At the end of the day we lined up the five sellers with their documents and the nine buyers with their documents. We'd call out the name, and one would step forward and hand his documents to the other fellow and receive a check at the same time for the 1 percent interest we were selling. We managed to keep the whole thing straight.

Hicke: I hope you all went out for champagne.

O'Brien: We did. That was quite a day. One amusing thing that happened that I recall. Harold Severance was the assistant secretary of the Standard Oil Company of California. By mistake he signed one of the copies of one of the documents on the line meant for the secretary of Mobil. He got up and walked around the room -- and I went with him -- to where the secretary of Mobil Corporation was sitting. He was a fine, distinguished, eighteenth century-looking gentleman. We explained that through inadvertence Harold had signed the wrong line. He looked up with a big twinkle in his eye and said he didn't mind a young man trying to improve himself.

Hicke: That's great. Apparently people still kept a sense of humor through all of that.

O'Brien: Yes. So after that, I went back to peddling my papers. I pretty much dropped out of the whole Iranian thing. By then Johnson-Gilbert in London, who had gone through this whole exercise and kept careful records and so on, was the world's greatest expert on the Iranian consortium. He had worked on all the drafts and the compromises and had been at the meetings and the rest of it.

The legal advice in respect to the consortium from then on forward was handled by Tom Haven in San Francisco in PM&S. He became the world's greatest expert on the Iranian consortium and eventually the most senior man in the industry on the legal aspects because he had greater continuity, as it turned out, in this legal advice. Tom, from about 1954 forward, became a great expert on every aspect of Iranian operations. The agreement went through all sorts of changes over the years; the Shah insisted that it be modified in later years. Tom handled all of that tremendously complex, tremendously important work.

Hicke: Why was it that you dropped out of that?

O'Brien: I had gotten into this thing only because I was involved in the cartel case. When I came back, the cartel case was still going strong. We had produced documents from forty or fifty countries of

the world. We had court appearances in New York; you know, it was a tremendous case in its day.

Distribution and Marketing

Hicke: I have another question about the Consortium Agreement. What about the take, or the distribution? Did you have to negotiate that -- who gets how much oil at what price?

O'Brien: Well, it was really divided up. All of that was negotiated, but the price was not set. Each company posted its own price. To meet antitrust requirements, we each created a so-called trading company which bought the oil from the government of Iran and then turned around and sold it for whatever it could get in international markets, in competition with every other participant in the Iranian consortium and in competition with every other producing concession in the world, whether it was Saudi Arabia or Kuwait or Oman or the Trucial States or Nigeria. But the oil was lifted by the individual trading company of each participant and sold for what it was worth, and we individually paid Iranian and U.S. taxes.

Naturally, on a competitive basis like that, nobody could sell it for much more or was willing to settle for much less than anybody else. The abstractions of the cartel case, the theories of the antitrust lawyers in the cartel case in the Department of Justice about all the wicked and sinister things that they contended we had been doing, ultimately yielded to a great international convulsion and crisis. The United States, as it does today, understood how essential the oil of the Middle East was to the free world. They could not let the Russians take over Iran any more than we can today. As a consequence, I said once that the Iran consortium agreement went through the Department of Justice and to the Attorney General like a Baldwin locomotive. They had to yield up these theories that really had no basis in fact about this great international cartel.

Now maybe the companies that were in the Red Line Agreement in 1928 had had some sort of a deal in the '20s. But by 1954 the world had gone through World War II, Western Europe was beginning to make a great recovery after being laid waste, and we had made the huge discoveries in Saudi Arabia which changed all of the pieces on the board. It was and is by far the greatest deposit of oil in the world. The United States, as I've told you before, wanted to turn Arabia into a petroleum reserve just like Elk Hills and to own it themselves. Mr. Ickes created a corporation to take over the concession. So there was an appreciation, an understanding as I tried to say in that Mootness Study, that in the

classic eighteenth century phrase, which we still use with the same meaning, that area was an area of strategic importance to us and affects our vital interest as a country.

Hicke: Again, what about the Korean War which was going on? Did that have any effect on all this?

O'Brien: Yes it did, in this sense. All the time that these things were going on, the U.S.S.R. was continuing to beam into the Middle East all of its propaganda about "you should confiscate all these concessions." From the minute the cartel case started, when the U.S. government itself was accusing the American companies of conspiring to monopolize the whole of the international oil business and to fix prices worldwide, it was a propaganda opportunity for the Russians which they did their best to exploit. And then they kept urging confiscation, as they had in Iran -- you know, they got the Iranians to take over the oil concession there -- and they were telling every other Arab country that they should do the same. So there were some mighty forces working on the earth.

Those were pretty stirring times, including the Korean War, where we had the Chinese just barely over the horizon and the United States and China came within an inch of having a major confrontation of their own. When [Douglas] MacArthur went across the thirty-eighth parallel into North Korea and the Chinese attacked on the other side of the border, we were within an ace of a major conflagration. The oil in the Middle East would have been the resource to fuel the war.

The U.S. government already felt that the U.S. had run out of oil, because we had pumped our domestic wells through World War II so that the Allies had floated to victory on a sea of oil. We had been encouraged to look for oil abroad to replace the reserves of the United States which had been depleted in World War II. So if a major war with the Chinese had commenced, the oil in the Middle East would have been absolutely strategic, important, as it is today.

We're working ourselves into exactly the same position we were in 1971 now: our imports are increasing, our domestic production is falling, and it's going to be as alarming as it ever was in 1971. We're doing nothing about it; we're going down the same old street whistling Dixie.

International Law and Antitrust Law

- Hicke: Well, I know that you got very interested in international law. Was this really where you developed your interest, or had you been doing something in that area before?
- O'Brien: Well, I had been interested in it. When I went to law school it was in the middle of the Depression. The only thing that was of interest to anybody going to law school in my day was how to graduate, how to hang in and finish school, graduate and pass the bar. While there was a very distinguished international law professor at Berkeley, Edwin Dickinson (who was retained as an expert, incidently, in the Onassis arbitration -- the Aramco arbitration), I didn't take international law.
- Hicke: But I think you've given speeches on it and so forth.
- O'Brien: Oh yes, yes, I have given speeches on it. I used to give a seminar at Berkeley for a few years at the law school in the summertime. They had a course or courses for young law professors in smaller universities where they didn't have a full-fledged international law program. They used to invite me to come over and give a seminar, which I did for a number of years. I think that they did that not because of my prowess as a teacher but because they wanted to demonstrate that there were live bodies to whom these issues made some real difference. But it wasn't some abstraction, it wasn't some theory, some arcane or esoteric idea that had no practical application. We won the Aramco arbitration on principles of international law.
- Hicke: I guess that's really where we should talk more about international law. Were there antitrust regulations in Holland and France?
- O'Brien: There were some very ancient laws, but they had nothing like our laws, and the French for centuries had not really enforced what few they had. Before the days of the Common Market, which has a very rigorous antitrust law as it turns out, most of the antitrust laws in Western Europe were so-called abuse laws. They didn't mind cartels so long as they didn't abuse people. They really thought that the organization of business in large, cooperative ventures was not wrong so long as they didn't abuse their position. Then we came along at the end of World War II and did a transplant of the Germans' model antitrust law. It was written by Corwin Edwards of the Federal Trade Commission.

We did the same thing with our defeated enemy in the Pacific. We gave the Japanese a very refined and complicated antitrust law, and we imposed it on them. It was totally foreign to their

tradition, their heritage. The great companies, the great daibutsu, had operated in the country, and lo! and behold, within a few years they rose again from the waves and took exactly the same position in the Japanese society that they had had before. While the Japanese still have the antitrust laws, they only dust them off when they want to keep, let's say, American companies from selling into Japan's markets. Then they suddenly discover there might be something in our activities that would raise an antitrust question.

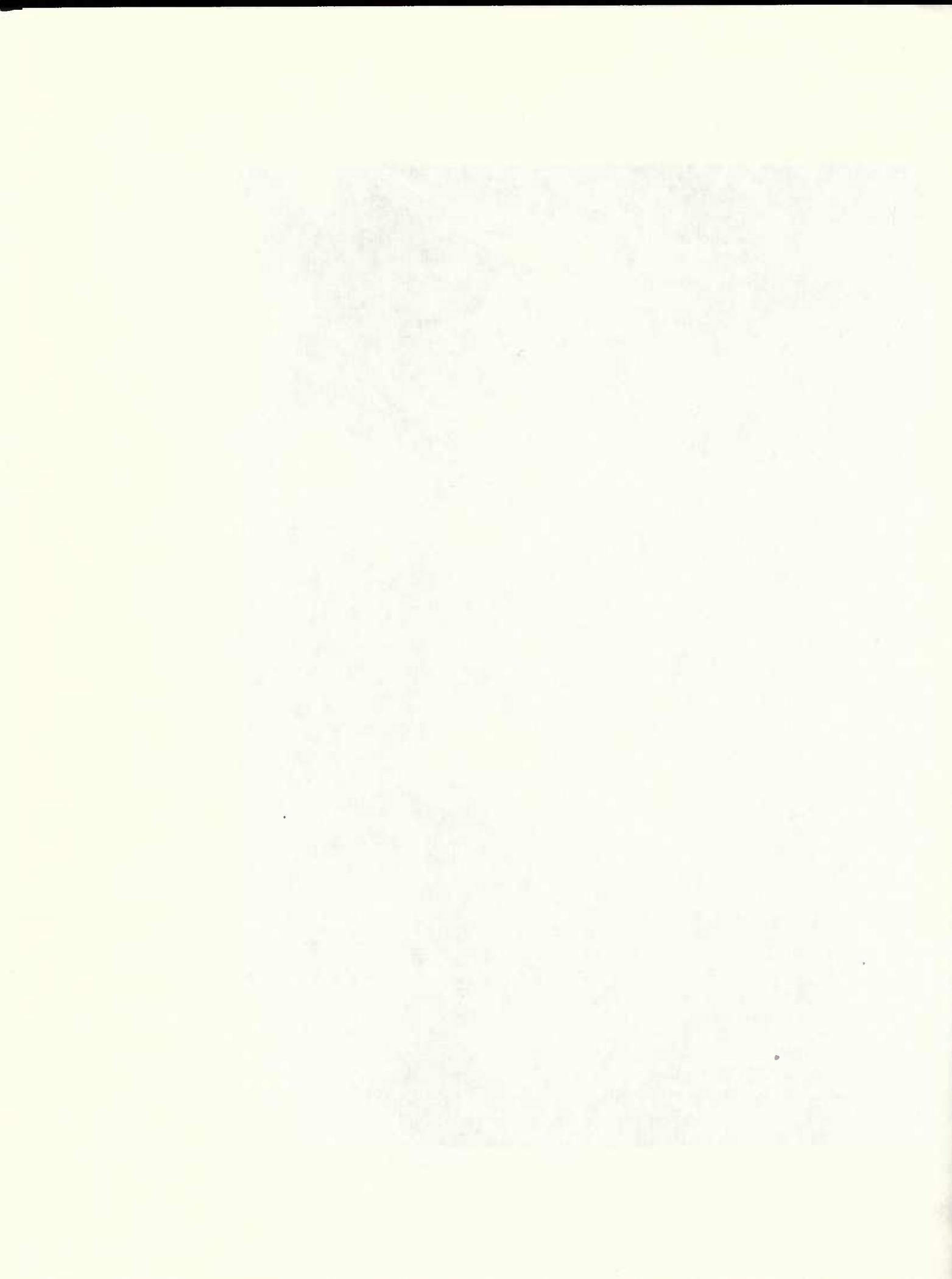
But the Germans, on the other hand, embraced their antitrust law. There was a remarkable resurrection of the German economy, and because of the Cold War, we threw billions of dollars into Germany. Through the Marshall Plan, we gave transfusions to all the Western European countries. And the Germans leaped out ahead with their marvelous capacity for organization and their mechanical genius. Their new industries with new equipment began to enjoy a great economic revival, and they got ahead of the rest of the countries.

They therefore thought that the antitrust laws were great, because they didn't want any combination of other countries to interfere with the tremendous progress that they were making in their development of export markets. So they espoused these antitrust laws. I used to talk to the head of the German cartel office, who had been a prisoner of war in World War II in the United States, and he was more doctrinaire than a lot of people in the Department of Justice.

- Hicke: Well, how do you account for the fact that this seems to be a uniquely American phenomenon up until World War II, and even then we exported it rather than other countries arriving at it on their own?
- O'Brien: That's right. See, we did a lot of missionary work too. That's how some of these antitrust concepts got into the Common Market -- the Rome Treaty.
- Hicke: I guess what I was saying is, why do you think it developed in the United States?
- O'Brien: Well, it really developed in the English common law. We inherited the tradition of the illegality, if you like -- yes, the illegality of combinations in restraint of trade. When the Sherman Act was passed in 1890, it reflected -- often ignored, but reflected a tradition of the English common law against price fixing agreements and so on.
- Hicke: Which the English themselves, though, did not have.



James O'Brien and Hillyer Brown at right. Simultaneous translation during international conference in Bonn, Germany. Ca. 1960.



O'Brien: The English never carried it out in the bloodthirsty way that we have. Now an extraordinary thing has happened, though, because much of the law that I spent forty years trying to master has been largely moderated by court decisions and by some amendments in the law. Some of the extreme positions, which led to things like the cartel case, some of the total hot air that worked its way into the economic theories applied in antitrust laws with great solemnity as though it were their important concepts of thought -- some of these notions have been abandoned.

Like the whole subject of potential competition. It's almost impossible to judge the effects of actual competition in the marketplace as a matter of economics. To judge the supposed effects of potential competition -- the hypothetical consequences of something that hadn't happened -- was such rubbish. I gave a speech on the subject of potential competition and the Sherman Act years ago before the antitrust section of the American Bar in the hope of heading off this nonsense.

That didn't restrain anybody. All these governments went for all these stupid concepts. Now a little light and air have been let into some of these notions, and we're a good deal more pragmatic. There is a growing sense that we were carrying some of these ideas to such extremes that we were handicapping American corporations in international commerce. When we began to have these great trade deficits and so on, people began to say, well gee, we are trying to tie their hands behind their back in international competition by concepts about potential competition, a lot of hot air like that. So the pendulum swung back again.

We went through the same thing in the United States when we had the great Depression. We had Mr. Roosevelt and the National Recovery Administration, we had the Blue Eagle, and you could go to jail if you didn't follow the prices set in the marketing orders. The government was fixing the price in consultation with the industries involved. When those were all declared unconstitutional by the Supreme Court of the United States, they suddenly reversed their course and did a 180-degree turn. That was how I started in the antitrust business in 1937 and '38, when they began criminal indictments of everybody in sight, starting in San Francisco. So we go from one extreme to the other.

Now I think we've probably a little more balance, but we had made some profound mistakes, like breaking up the telephone company [American Telephone and Telegraph Company], technologically a country mile ahead of anybody else's telephone company. We were provided superb service at fair prices by a monopoly regulated by the federal government and the public utility commissions of the several states. Now it is chaos.

We almost did it to IBM. Somebody finally had the sense to dismiss the case, and yet our computer capabilities -- our capacity to combine computers with communications -- has put us at least a generation ahead of our adversaries in the U.S.S.R. and the satellite countries. They're falling further behind except when they can steal something.

The consequence is that now they are driven -- this is maybe a little oversimplification -- by the problems of their domestic economy and their failure to keep pace with the free societies and their free market systems. Now if we had broken up IBM into little satisfying pieces, we would not have that sort of a lead. The U.S.S.R. wouldn't be worried about our capacity to stay ahead of them and to get into a new generation of communication. In the end it's about as simple as that.

So the antitrust laws have to be administered with some horse sense. They can't just be an arena to espouse every crackpot idea. The stakes are too high for that. And I used to say that to the people in the Department of Justice in the oil cartel case: "Suppose you did succeed in breaking up one of these major companies that are integrated all the way from the wellhead to a service station in Dubuque, would you in any way be increasing the efficiency or lowering the price of a system which has been able to survive world wars and every other kind of emergency and assure a steady supply of oil from every corner of the earth into the domestic market of the United States?"

Hicke: Did that have any effect on them?

O'Brien: Oh, I think it must have in the end, because they ultimately dismissed the case. But an experience like that broadens and changes your own horizons, your own perceptions. I think my first experience in the criminal investigations in the late '30s probably did more, had a larger effect on my own thinking about the way the great republic works than many other episodes.

VII ARAMCO RESTRUCTURING

Background

[Interview 10: March 28, 1988]##

Hicke: Today I'd like to ask you about Aramco restructuring. There were actually several different types and occasions for restructuring.

O'Brien: Yes. You'll remember that originally the Standard Oil Company of California successfully negotiated a concession which involved substantially the whole country of Saudi Arabia -- the Arabian Peninsula. That contract was made before World War II with King Ibn Saud.

After a lot of dry holes, the company eventually struck oil. But the great fields of Saudi Arabia could not be developed because of the intervention of World War II. By 1939 Europe was at war and it was impossible to develop the fields. Nobody really understood the enormous extent of the oil reserves in Saudi Arabia in those days. There was a small teapot refinery built in Saudi Arabia during the war, I guess with U.S. government help, which was in support of the war effort.

Before World War II, Standard of California had negotiated a contract to sell half interest in the concession to Texaco for a half interest in Texaco's refining -- all of its downstream assets, refineries, distribution, stations, and interests east of Suez -- with an option to acquire a half interest in all of Texaco's properties west of Suez. It's my recollection that they exercised only the option in respect of Texaco's properties east of Suez before World War II.

I think in an earlier session I mentioned the fact that at the end of the war, the United States government felt considerable anxiety about the oil reserves of the United States. They thought that the American companies -- certainly with the encouragement of the government -- had perhaps overproduced American reserves in support of the Allied war effort, and they encouraged American companies to go abroad, hopefully to discover new oil reserves. It was recognized, particularly by Secretary Ickes, the Secretary of the Interior, that the reserves which Standard of California had discovered in Saudi Arabia were tremendously important to the future of national security of the United States. He did his best to negotiate the acquisition of those reserves by the United States government.

He created a corporation called Petroleum Reserves Inc., and negotiated with the companies to acquire their rights, in the hope that we would establish for our national security a oil reserve like Elk Hills or any of the great national reserves that we have in our own territory. That's a very long story, and it's recounted in part in the Mootness Study. You can get the details of that episode there.

When the war was over and Europe was devastated and prostrated from the war, the genius of the American government and of the people who led it at that time resulted in the creation of the Marshall Plan. One important aspect of that was to revive the economies of Western Europe by supplying all of the devastated countries -- Italy, France, Germany, England, et cetera -- with cheap oil, and the United States government provided the priorities to build Tapline -- TransArabian Pipeline Company -- which crossed from Saudi Arabia to the Mediterranean Sea at Sidon and enabled oil to be picked up by ships on a short haul to Western Europe.

That, in effect, was a massive transfusion that did in fact help in a very significant way to put all of the European countries back on their feet and to provide the cheap energy that resulted in their industrial revival. At the same time, the United States government -- after Ickes's plan of the acquisition of Aramco had failed -- the United States government, I firmly believe, secretly encouraged Mobil and Standard of New Jersey to seek to acquire an interest in Aramco. They were both members of IPC, the Iraq Petroleum Company, bound by the provisions of the so-called Red Line Agreement, which prohibited its members from independently exploring any area within the boundaries of the Red Line Agreement, which included Saudi Arabia. Accordingly, the agreement effectively prevented Mobil and Jersey from becoming part owners of Aramco without somehow extricating themselves from the provisions of the Red Line Agreement.

- Hicke: You said that involved exploring. Would there be any question of --
- O'Brien: Well, yes, of taking any separate concession, inside the Red Line, without turning it over to IPC.
- Hicke: I see.
- O'Brien: So eventually they did break the Red Line Agreement and they were sued in England by their partners in the IPC concession -- Gulbenkian and Shell and others -- and they made some settlement of that arrangement and became partners in Aramco. Jersey took a 30 percent interest and Mobil took a 10 percent interest.
- Hicke: That was the first restructuring?
- O'Brien: Yes, right.
- Hicke: Felix Smith was involved in it.
- O'Brien: Felix Smith was involved in that. And the acquisition by Jersey and Socal was reported to the Department of Justice, and they did not object and took no action.
- Hicke: Interesting. Was it reported before or after the fact?
- O'Brien: No, simultaneous, contemporaneously with the execution of the agreement.
- Hicke: Were you involved with any of this?
- O'Brien: Only as a trainbearer. Meantime, Texaco and Socal, after the formation of Caltex, had long since begun an all-out program to take away a substantial part of the international market from the IPC partners -- Jersey, Mobil, Shell, BP, and Gulf -- the international majors which held the predominant market positions in all of the countries of Western Europe, Scandinavia, and the Far East.
- At one stage of my life, I reviewed all of the multitudinous meetings that were held by the committees of Socal and Texaco planning how they would wrest from their competitors at least a 25 percent interest in all of the markets of the world -- now that they were armed with these huge reserves in Saudi Arabia of cheap oil with a pipeline that enabled them to deliver oil into the major markets at a highly competitive prices.
- Hicke: How did they plan to do this?

- O'Brien: Well, to establish their own marketing companies and to invade these markets --
- Hicke: Lower the price a little bit?
- O'Brien: Lower the price and fight their way into the business and stake out a big market position. And as their business grew, to build distribution points and refineries and pipelines and marketing service, station outlets, et cetera.
- Hicke: That was an enormous plan.
- O'Brien: It was an enormous plan, and it worked. The rest of majors, which traditionally had enjoyed the majority of market positions in all of these countries, fought Caltex tooth and nail. But Caltex made substantial progress.

Tapline

- Hicke: Before we get too much farther, have we passed the building of Tapline? Because I think you were involved in preparing contracts.
- O'Brien: Well, yes, when the Tapline came along, a company was formed -- the TransArabian Pipeline Company -- and I guess, I can't remember what year that was -- I guess that by that time, Mobil and Jersey were part owners of Aramco.¹ In any event, the headquarters of Aramco was still in San Francisco at that stage, along with Tapline. Tapline had its first headquarters here in San Francisco and the company was headed by a fellow named Bert Hull, who was an old Texaco pipeline hand.

I recall that Felix Smith delegated me to keep track of what was happening within the Tapline and to represent our interests in relation to the negotiations and the legal aspects of Tapline's problems while they were here. This involved drawing the major contracts with the pipeline construction companies -- Williams Brothers in Texas, I guess -- for the construction of the pipeline itself and to some degree in the negotiations and review of the transit concessions that had to be made with the countries through which the pipeline passed. It had to be, of course, all ratified by their parliaments and with such provisions as could be

1. The TransArabian Pipeline Company was formed in 1945. Construction of the pipeline began in 1947, and the company began operations in 1950.

negotiated against expropriation and to secure the rights to maintain the pipeline to the countries.

[telephone interruption]##

Hicke: But you weren't involved in the actual negotiations of these contracts?

O'Brien: No, no, I was reviewing and making suggestions about their provisions and so on. Those went back out to Saudi Arabia. But I remember working at that time with Herb Navis, who later became a vice president of Standard Oil Company. In those days, he was a young, energetic, bright fellow, and he and I worked out some of these contracts. But that was sort of short lived, because the headquarters of Tapline along with Aramco moved away from here to New York, and so my role in that ceased to be of any significance.

Hicke: What was PM&S's involvement then? Did somebody have to go back there?

O'Brien: Aramco got its own lawyers in New York, which turned out to be White & Case. But we were responsible for watching over the interests of the Standard Oil Company as a participant in Aramco.

Hicke: Why did they move their headquarters?

O'Brien: Well, we had two new owners -- Jersey and Mobil -- and Texaco, and all three of them were in New York.

Hicke: Oh, I see.

O'Brien: They were within a few blocks of each other, so it was hard for us to resist the gravitational force of having three out of the four owners in New York City. To make a very long story short, this will be the subject of three or four volumes of Standard Oil Company history some day I hope --

Hicke: I hope so too, but we can just maybe get your part of it here --

O'Brien: Yes, just a touch.

Hicke: -- and part of the background.

The Follis Plan

O'Brien: The fellow who would have the most accurate recollection of what I'm about to say would be Hugh Taylor, who became in effect the steady guiding advisor on all Aramco affairs for the duration of his career. He became the senior statesman of all of the lawyers who through the years counseled their clients in respect of Aramco. He has the greatest background and continuity and so on.

Hicke: Somebody should certainly get that story.

O'Brien: Yes, we must get the story from Hugh Taylor of his participation in Aramco affairs, because it's a brilliant story and a very involved one.

But I got into the act again when Bev Letcher was the operating vice president -- he'd been treasurer of the company and then became the operating vice president who represented Socal's interests in Aramco. He was an Aramco director. Over time there developed a very bitter internal hassle between Socal and Texaco on one side and the other two shareholders. When the Aramco agreement had been made among the four shareholders, there was a provision in it that said that Aramco would be operated in its own best interests.

Hicke: Is that a standard part of an agreement itself? It sounds like common sense to me.

O'Brien: What Jersey and Mobil began to say that the provision meant -- and it had been stuck in there by a very bright and subtle Jersey executive -- that Aramco must sell its oil to its shareholders (who took all of the oil that Aramco produced) at the full market price.

Hicke: No discounts or special favors?

O'Brien: And not at a discount. That would have effectively put Caltex out of business, because it would be buying at the market price and trying to resell it at the market price in competition with Jersey and Mobil. We took the position that the way to operate Aramco in its best interests, among other things, was to sell it at a discount so that it could produce infinitely more oil that could be moved in the market. That led to increasingly antagonistic, hostile, and bitter divisions among the shareholders.

It reached the stage when Jersey had privately consulted counsel of all sorts and prepared a complaint and was about to sue Socal and Texaco. We together controlled 60 percent of the shares -- 60 percent of the vote. The other two shareholders

together had only 40 percent; so we were the majority shareholders, and that promised to be a very serious hassle. About that time I started going to New York with Mr. Letcher and sitting in the anteroom while all these brannigans were going on in the board room and advising with him.

Hicke: They'd come out and consult with you?

O'Brien: Yes, right. A culmination of all that was that they finally -- I'm leaving out huge chapters of this -- but the culmination of all that was that they ultimately adopted what was called the Follis Plan. The Follis Plan was a plan by which you could buy your equity share of the oil produced by Aramco at 18.3 percent below the market price -- that much of a discount. That enabled Caltex effectively to compete with the other two owners.

I can recall that I flew back to meet Mr. Letcher. Mr. Letcher sometimes took the train and his trunks and spent the entire summer in New York with these Aramco discussions and negotiations and in Caltex affairs. I flew back to meet him.

I met him in the hotel early in the evening. He explained this problem to me and asked me to draft a short piece of paper which embodied this so-called Follis Plan. I sat up nearly most of the night drafting such a short document, and the next morning attended a meeting of the lawyers' committee for the Aramco shareholders. I sold that document to all the lawyers. One of them said, "Well, we'll have to check it out with our executives." In the afternoon reservations began to appear about the document. In the end Hugh Taylor and Scott Lambert and a dozen other people, I guess, spent nine months drafting a Follis Plan, which turned out to be about forty pages long in its printed form.

Hicke: How did you sell Jersey and Mobil on this first plan?

O'Brien: I don't know. It was a perfectly shorthand way of saying what they ultimately developed, but by the time everybody found problems under every rock and so on, every word of it had to be elaborated into pages of explanation and protections and procedures. It got to be an enormously elaborate thing. It was a document that required all sorts of help from tax lawyers. That's why I mentioned Scott Lambert, because such a plan had to protect the tax position of all of the participants as well. So it was a great problem.

Hicke: It's interesting that the lawyers were the first group to accept this very short and concise plan, and when it got back to the executives, it started to be elaborated on.

O'Brien: Yes. Well, they may have had other fish to fry.

Hicke: Well, I understand it was an advantage to Caltex, but what was in it for Mobil and Jersey? Why did they agree to this?

O'Brien: Well, I guess they must have thought we were at least half right and they didn't want to spend ten years litigating the question with us. It was a period of great stress and strain and lots of travel. But I kind of got out of it, then, because in 1952 the cartel case started and Hugh Taylor took over.

First, Mr. Letcher retired and his place was taken by George Parkhurst, and I went with George Parkhurst a few times to these meetings. I was so preoccupied with the absolute hassle that was going on in the grand jury proceedings and in the federal district court in Washington, I made frequent trips. It just happened that my wife had hurt her back very badly, and I made two round trips a week to New York, eight-hour trips, before the day of jets. I flew the Redeye Special regularly while we were burning up the track before the election. And so I kind of got out of Aramco affairs until '51, until the arbitration proceeding came along.

Hicke: Do you remember any of the people that were involved particularly in Aramco?

O'Brien: Do you mean in our company?

Hicke: Well, any of the people that were involved in the negotiations other than the ones you've told me about.

O'Brien: Hillyer Brown and Mr. Follis, Letcher, Parkhurst, Lenzen --

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O'Brien: Then there were a whole bunch of Aramco study groups that were formed and there were a lot of people who were in the foreign staff -- Standard's foreign staff -- who would have been members of those study groups, like George Keller and Jones McQuinn and Perrin Fay and others; all of them ultimately became vice presidents and some of them directors, and Keller the CEO.

Hicke: Sounds like a good proving ground.

O'Brien: Yes, right. So I really kind of got out of that business. I was talking to Kirkham -- I guess Marshall Madison was general counsel then, yes he was, and he was much involved -- and I talked to Francis Kirkham, who was also involved, and that was a lot of heavy lifting.

I remember once or twice I had to fly home from New York, when I was involved in something to do with the cartel case, to come

back out here to consult with Hugh Taylor and satisfy myself that we were going to be capable of giving a legal opinion on some important Aramco issue at the moment.

Hicke: So you still carried it around in your head.

O'Brien: Yes, I still had some kind of a hand in it but not in the daily negotiations. I guess my next real contact with Aramco was in connection with the famous arbitration, the Aramco arbitration with the Saudi government.

Ibn Saud's oldest son became briefly the king but turned out to be wholly incompetent and was in effect booted out by King Faisal. The new king was in there long enough, among other things, to adopt as his first royal decree a decree which effectively said that thereafter all of the oil from Saudi Arabia would be transported on Saudi ships. These would be Aristotle Socrates Onassis's ships put under the Saudi flag, so that we would be moving our oil on Greek ships supplied by Mr. Onassis.

He created for King Saud these exciting and cloudy visions of Saudi Arabia becoming a great maritime nation. We contended that the requirement was a violation of our concession rights under the original concession agreement, which provided explicitly that we would be free to move the oil on ships of our own choosing. And most of the oil, as you know, was sold as crude oil to purchasers who picked it up in their own ships at the docks in Saudi Arabia. We didn't transport it all on our own ships by any means. The fleets of the world came in there and loaded up oil -- customers of all four of the owners.

That undoubtedly was the most important international arbitration of the last fifty years.¹

1. See Chapter IX below for more information on the Aramco arbitration.



VIII INDONESIA: 1964-1966

Background: Oil and Resolution

Hicke: Did the Indonesian problem come along before you became Socal's vice president for legal affairs?

O'Brien: It came on just before and just after.

Hicke: Well, maybe you could talk about that.

O'Brien: Now that's '64, '65, '66.

Hicke: You became vice president in '66?

O'Brien: Yes, '66. Things had been going from bad to worse in Indonesia for quite a long time. In the first place, [President] Sukarno's relationships with the United States had deteriorated very badly and he seemed to be moving into a Communist orbit. The Communist party in Indonesia was becoming stronger and stronger -- the so-called PKI, which was the name of the Communist party. In consequence, he was gradually taking over all of the foreign oil companies in his country.

Hicke: One after the other, or how was this being done?

O'Brien: Well, they were being either bought out or forced out in some way, and the international situation was deteriorating. He adopted all sorts of tactics. He was very shrewd. He didn't want to adopt a decree of expropriation in so many words, but he was making life so miserable and so difficult and so unprofitable that most people were ready to throw in the towel. Shell, Jersey, Mobil and the rest of them all got out of the country.

Among other things, he had a special oil rate and exchange rate, which was a way of milking the oil companies. Finally, the thing came to a head for Caltex Indonesia when he manufactured a lot of riots, and we had people banging on the doors and shouting and yelling -- what we see too typically in protests around the world now. These were all phoney-baloney riots, as a consequence of which he adopted a decree putting our operations, in effect, under protective custody allegedly in order to keep us out of the hands of these rioters. And "to protect" our interests, he put in a supervisory team to run our business.

The chief executive in Indonesia at that time was one of the greatest guys I ever met. His name was Art Brown. Art Brown was a tall, spare, graying man with enormous energy and absolutely imperturbable style, endless patience, and very smart. He had served in Venezuela and had had other overseas assignments. We were fortunate as well that the president of the company was a famous Indonesian by the name of Julius Tahiya. Tahiya had been a war hero in Indonesia in the wars of revolution to throw the Dutch out of Indonesia, and I believe that he was an officer himself in the Indonesian army. But he was a fellow of infinite skill, highly respected, with great courage, because now things were really getting pretty dangerous.

Hicke: Was he seen to be a traitor to the enemy?

O'Brien: Oh, I don't know that he was -- it's very hard for me to say. We talk about the Chinese being inscrutable, but I often think that the Javanese are far more subtle than the Chinese and the Orientals.

In any event, a decree was adopted, as I say, that put teams in to run our business for us. And these were largely made up of peoples' committees, and those committees were in turn made up of some of the labor leaders, things of that sort. So they came and sat down in the manager's chair and took his automobile over and all that and started to run our business.

I got called in then -- I was a partner in PM&S -- to advise with the company as to how we should respond. Mr. Follis felt great concern and anxiety over these developments, particularly since the United States government despised Sukarno. Howard Jones, who was our ambassador and was the senior member of the diplomatic corps in Indonesia, was constantly being humiliated by Sukarno. As the senior diplomat in the corps he usually, at receptions and public affairs, sat very close to Sukarno, who just practically spit in his face. And the United States government had just about had it with Mr. Sukarno.

But Howard Jones, bless his soul, insisted that we ought to hang in there, that we ought to stay. Meanwhile, here was Caltex gradually and effectively being driven down to the shore and poked with a sharp stick and no longer able to control its affairs and with government intervention and so on. I think Mr. Follis was very much concerned about the security of our people. We had an expatriate corps and we had a lot of Indonesian employees who might suddenly go through some blood bath. We were aware of the internal rumblings that were going on in the country.

Hicke: Were you the only oil company left? You said that the others had gone.

O'Brien: I think we were. We were the largest; we always have been and still are the largest producers in Indonesia, and at that time we were probably generating at least 50 percent of the country's revenues.

There had been an earlier revolution, or attempted revolt, in Sumatra against Sukarno, which the United States government was suspected of having possibly engineered but certainly supported, by a fellow named Nasation. I think the CIA might have been involved in that, at least that's what the press reported. In addition, Indonesia was at war with Malaysia, and President Johnson had announced that he was sending foreign aid and military equipment to Malaysia.

So here we had the situation of our affiliate controlling the major oil production that fueled Indonesia's military, its ships, its airplanes, its tanks, its military armada, if you like, all in the hands of foreigners who were openly supporting a country with which Indonesia was at war.

Hicke: A very odd situation, certainly.

O'Brien: Yes, an odd situation. Anyway, I was in very close contact with the State Department and with some of the other agencies of the U.S. government. Once or twice I went to Hawaii or Hong Kong -- I've forgotten which -- and Art Brown and Julius Tahiya flew there from Indonesia because I couldn't get into Indonesia. I guess there must have been a Texaco representative there, but I can't remember -- I'm not sure there was.

In any event, we would figure out, plot and plan as to how we ought to handle ourselves. Mr. Follis was toying with the idea of shutting down completely, because obviously this was a very dangerous and explosive situation. Moreover, it was not a very good example for other places in which we held important concessions. If Indonesia could effectively get away with this rinky-dink of running your business and protecting you against the

angry populace that was being exploited by the wicked oil company and all that kind of jazz -- feeling these great nationalistic surges -- it would be an unfortunate example of our weakness and passivity if we couldn't counter in some way.

Legal Principles of the Concession

O'Brien: I got into this because Mr. Follis asked me to give the company an opinion on the question of whether we were legally entitled to shut down. I wrote an opinion saying we were not.

Hicke: What was that based on?

O'Brien: Well, a study of the concession agreement and the legal principles. It was based on a construction of provisions of the concession. I remember remarking that there were some very broad provisions in the concession agreement that said that we had to act in the interests of the great nation of Indonesia, and that we could be challenged for failure to perform our part of the contract if we shut down through a failure to recognize the spirit of that provision which in some vague ways obligated us to support Indonesia in its independence. I suppose that opinion could be resurrected. I wrote such an opinion.

In any event, we played along, and as I say, I went to the Pacific a couple of times and met Art Brown and Julius Tahiya, and then they flew back to Indonesia and I flew to Washington to talk to the State Department and to others to keep them apprised as to what was really happening and not let them get so outraged and indignant that the U.S. would break off relationships with Indonesia. Then the fat would really be in the fire; we'd be done.

Hicke: You'd really be stranded then.

What would be the legal consequences, had you shut down in violation of the concession?

O'Brien: Well, we'd forfeit the concession, perhaps. We would have provided the government of Indonesia an excuse to rescind the contract, to cancel it, and given them the excuse of saying, "Well, that's that, it's over."

Anyway, fate intervened. That was the time when the palace guard murdered all the generals, threw their bodies down the well, and destroyed everybody except Suharto, who rallied his troops and overcame the rebels who were inspired, I guess, by Sukarno. Meanwhile, we were privately negotiating all the time with the

foreign minister and other people. I can't remember all their names, but I'll tell you an interesting story.

I saw last week an article that said that the foreign minister -- Sukarno's foreign minister -- has been in jail ever since that thing happened. His name was [Dr.] Subandrio, a really wicked man. Subandrio, the New York Times reported a week or two ago, offered to tell the Indonesian government finally where some billions of dollars in gold had been secreted by Sukarno if they'd let him out of jail finally. He's been in jail since 1966, '67.

Hicke: You'd think he would have thought of this before.

O'Brien: Yes.

Hicke: Did it say they actually came up with the money and freed him?

O'Brien: No, they haven't done that and a lot of people -- the Swiss and others -- say it would be impossible for anybody to have hidden away that much gold in Switzerland or other places. So I don't know whether there's anything to the story or whether he's just trying to get out.

Some of the other people in Sukarno's inner group were left out in the wet to die after this takeover attempt which failed. And the Communist party, the PKI, was effectively destroyed in Indonesia. Nobody knows how many people died in that great revolution. There were reports coming out, but very meager reports, that all of the great rivers in Indonesia were just full of bodies that clogged the harbors. They probably destroyed three or four or five hundred thousand people.

What started out as a revolution to rid themselves of Communist influence in their country, I guess turned into a few other sorts of bloodbaths that involved paying off old scores. The Chinese suffered a great deal because they were the merchant class and the Indonesians felt no affection for them. Anyway, it went on for months and the country was essentially sealed off, and nobody knew the extent of the deaths or how the whole thing would turn out. But ultimately, Suharto emerged in control of the country.

One of the first official acts that happened to me after I became a vice president of Standard Oil Company was this: I was about to leave with Bud Lund, who wanted to take me and Mary Louise O'Brien and an entourage of explorationists on a trip all through South America to visit all of the places where we were producing oil -- Columbia, Venezuela, and elsewhere -- and introduce me around and show me a little bit about the foreign exploration and production business.

Almost the day before we were to leave Otto Miller called me. He was now president, and he was keenly interested in everything that was happening in Indonesia and watching it very closely along with Mr. Follis. He called me in and said that Ibnu Sotowo, the general who was a confidant of General Suharto and who was now the minister of petroleum after months of silence and no really detailed communications between us and our people who were keeping their heads down, was going to the Netherlands and he would like very much to see representatives of Socal and Texaco in Amsterdam.

Hicke: That was the wrong direction for you.

O'Brien: Yes. A gentleman named Harvey Cash from Texaco, who was a very senior director and officer of the company, and I met in Amsterdam and spent a day talking to Ibnu. Julius Tahiya was there. I can't remember whether Art Brown was there or not. Anyway, we said, "We're practically flat on our back. You've manipulated the exchange rights and taken over our business. But if it's your intention really to honor your contractual arrangements with us, if you'll correct some of these basic things that are fundamental to our being able to continue to operate, we're prepared to continue to make the investment to get the country going again, to start producing oil in substantial quantities that will provide the revenue for this new government to make its way."

Ibnu Sotowo is blacker than the ace of spades, shiny, speaks pretty good English, was smart as the dickens, very bright, very cunning, very Javanese. And within a few weeks, he fixed most of those things; they fixed the currency rates and so on. We began again, and we've enjoyed a wonderful relationship with the Indonesians. They keep trying to get more money out of us all the time, but it's one of the biggest moneymakers on the Standard Oil balance sheet.

Hicke: That was a nice bit of advice you gave on not giving up on the concession -- it saved Socal's operations there.

O'Brien: Well, there wasn't any other advice to give. But now we couldn't go on the way we were, and they had gone through a bloody revolution, and they needed support and encouragement. If you look at the thing from a geopolitical point of view, it was probably the most important event after World War II, and I'll explain why.

##

Geopolitical Implications

O'Brien: In the '60s, China -- huge, mysterious, menacing with a billion people -- was our mortal enemy. Around the perimeter of China, you have Korea, Japan, Taiwan, Philippines, Indonesia, Australia, New Zealand, and on through the Straits of Malacca into the Indian Ocean and the Middle East. Those countries on the perimeter of China are all part of the free world except for North Korea. The great sea routes from the Middle East into the Far East run through Indonesia and the Straits of Malacca. If the Chinese, in effect through the PKI, had prevailed and Indonesia had ceased to be part of the free world, that would have blocked the most important strategic gateway into the Far East from the Middle East.

Here are nations that became a showcase of industrial development in the Far Pacific -- the South Koreans, the Japanese, the Taiwanese -- all had this incredible industrial growth. The Philippines lagged only because of their inability to get their act together -- their political problems and so on. But because the Communists lost in Indonesia, all of those nations continued to be part of the free world and part of an open Pacific basin, if you like, and we are still moving.

Look at Japan today: it has no indigenous oil production today, one of the greatest -- the greatest -- industrial nations in the world in terms of their financial condition today, relying totally on supplies of oil produced in the Middle East. They had modified their refineries, at our urging and salesmanship and marketing, to use Indonesian crude. Caltex was partners in Japan with the biggest company, the Nippon Oil Company, in the construction of some of the largest refineries to use Indonesian crude, because it was practically free of any sort of pollution. It was a very heavy, waxy crude that had almost no sulphur in it. So it made a profound contribution to the situation in a country that's consumed by air pollution.

All of those things were important, and the United States, after General Suharto emerged victorious from this struggle, took tremendous interest in Indonesia and its survival. I'll tell you another little story just before we quit. They became the darling of the World Bank in the days when Mr. [Robert] McNamara was running the World Bank, and it made substantial loans to Indonesia. And Indonesia gradually came to be "run" in an economic sense by a bunch of Ph.Ds from Berkeley, a bunch of Indonesians who taken their doctorates at Berkeley and were called the Berkeley Mafia in Jakarta.

I'll give you an example. At that time in the United States we had oil import restrictions, and only so much foreign oil could be brought into the United States. It was controlled by a system of granting so-called tickets, import tickets, given to those traditional importers who had received supplies in the United States from foreign countries. It occurred to Tom Powell and me that maybe we could greatly increase the market for Indonesian oil if we could get the import control program modified in a way to permit the shipment of Indonesian oil to the United States and particularly into the Los Angeles area where it would have a tremendous effect on the pollution problem there. I thought it would require new legislation, and Mr. Powell and I drafted such legislation.

Hicke: Federal?

O'Brien: Federal legislation. We went to Washington and we presented it to the Interior Department and then we went over and presented it to the State Department. We saw a gentleman, an assistant secretary of state in the State Department who was in charge of monitoring all of Indonesia's foreign debt -- the debt it owed to all foreign countries -- and working out patterns of rescheduling their debt so that they could balance their payments of their debt with the revenues that they were generating in their own economy, all that.

When we explained this program of ours, he practically jumped out of his chair, he thought it was so great. He was so eager to do it, and I said, "Well, wait until we talk to the Interior Department, at least. They're the ones that have control of this." Anyway, to make a long story short, that eventually happened, and Indonesian oil was given a place, over the resistance of most of the other domestic oil companies who opposed this. After hearings, the regulations on oil imports were modified to permit the importation of Indonesian oil, which added to Indonesian revenues. Eventually, they actually shipped Indonesian oil to New York.

Hicke: They need it also [to diminish pollution].

O'Brien: Indonesian oil occupied a very important strategic role in the mind of the United States.

Hicke: I'm thinking back to that moment when you told Mr. Follis that he shouldn't close the concession. That was pretty crucial.

O'Brien: I wasn't aware of all the strategic considerations.

Hicke: Well, obviously you couldn't see what was going to happen, but looking back on it, that was certainly a crucial point.



Visit to an important discovery well in Central Sumatra, March 1970. James E. O'Brien and Douglas Magee.

O'Brien: Well, another thing that worried me at the time was that we had undertaken an obligation to Indonesianize our operation. That meant that maybe 90 percent of everybody connected with the operations in Indonesia had to be Indonesian. I wanted to make sure that we couldn't be caught out of school on how that provision was interpreted and whether we had met, in every category of our operations, that 90 percent requirement.

And there are other things like that that would be a concern to any lawyer reading the agreement, about whether we were absolutely on solid ground in shutting down our operations. Maybe we could have done it by suspending them, or something of that sort, but Sukarno had us right down onto the shore, and almost any step we took might have provided him with an excuse. My role was really trying to preserve our legal position, so that if the ax finally fell, we would have an international arbitration against Indonesia, because we had a very airtight contract which provided for international arbitration. But more importantly, once you're out of business, you're out of business. You couldn't have made water run uphill, I'm afraid.

In any event, for whatever reason, we managed to worry our way through the thing. I wound up with a profound affection for the country, for the people, and I've enjoyed going back there from time to time. Still have friends there.

Hicke: During this blackout period, did you maintain telephone contact with Julius Tahiya, or cable?

O'Brien: Well, the company did, yes.

Hicke: They were able to get --

O'Brien: Well, they would fly to Singapore and telephone.

Hicke: Oh, I see.

O'Brien: I think that was the way it was probably done. You had to get out of the country a little bit.

Hicke: Can you tell me a little bit more about General Suharto?

O'Brien: Well, no, I can't tell you very much.

Hicke: Did you know him personally?

O'Brien: No. He was just reelected for another term, another eight years. Someday they're going to have to turn the country over to the civilian operation again. It's still effectively a military dictatorship, although they have this huge parliament. It has not

been what you'd call a functioning democracy. There have been tremendous accusations over all the years of corruption among the generals. I don't know what truth there is in it. Even the newspapers in Indonesia have been bold enough to accuse Mrs. Suharto of lining her pockets.

Hicke: Building up the shoes in her closet and so on?

O'Brien: Well, I don't think she's Mrs. [Imelda] Marcos. If any of that's true, she's probably just a good businesswoman.

Hicke: And did you ever get your tour through the oil-producing countries of South America and the Pacific?

O'Brien: Yes, after I saw Ibnu Sotowo, I flew to New York and from there to Caracas and picked up this company plane that was flying Bud Lund and Mrs. Lund and a dozen other people, including Mrs. [Mary Louise] O'Brien; she went with them. I joined them in Caracas and we did some of the rest of the trip.

Edward H. Hills and the Gambling Casino: An Aside

[Interview 11: November 30, 1988]##

Hicke: You indicated that you remembered a story about the Edward H. Hills estate up at Nevada.

O'Brien: Yes. This is just sort of an asterisk. Edward Hills who was the senior member of this Hills tribe--Hills [Bros.] Coffee Company--had a lovely summer home at Lake Tahoe. The only problem was that next door was a big gambling casino. One day he called Marshall Madison to say that he had heard from his caretaker that the gamblers--let's say the place was Stateline; I don't remember whether it was Stateline or CalNeva--the gamblers had bulldozed down all the man-proof fences between Hills' property and the gambling casino and started building a string of bungalows to house their guests. Naturally, Mr. Hills was much alarmed and in considerable uproar.

Marshall handed over the problem to me and I--after some lengthy conversations with Mr. Hills--engaged an attorney in Reno to represent him. We promptly filed a suit against the gambling

casino and sought a temporary restraining order and permanent injunction against their trespass on Mr. Hills's property.

We got the temporary restraining order and construction of the bungalows was suspended, but it seemed to be impossible to get the case to trial. I hired some private detectives to check out the gamblers who were listed on the casino's license. I did that because I had the impression that perhaps the true owners were some Chicago hoods for whom the recorded licensees were just fronting. Those investigations took several months and in the end it appeared that all the licensees really had Ph.D degrees in gambling, since all of them had long arrest records in other states for gambling violations.

Hicke: You said that these were the famous Pinkerton detectives that you called in.

O'Brien: Well, I called them Pinkertons. They were a number of investigating agencies, because these gamblers were fairly mobile and had operated in various states of the United States.

In any event, I finally noticed the depositions of these gentlemen and they promptly took off for vacations in Hawaii and Tahiti and various parts of the Pacific. After a lot of milling around, they were finally ordered by the court to come back to be deposed, and I went to Reno and participated in these depositions. We asked them a lot of questions about their prior arrest records and convictions, et cetera, which they found quite annoying. But still it seemed hard to get a final disposition of the lawsuit.

Hicke: Did they answer these questions, or did they take the Fifth Amendment?

O'Brien: No, the arrest records and the convictions were all on the record; there was no use denying them. What I was trying to demonstrate was that they were just acting on behalf of the true owners, who were more menacing and sinister people in the underworld. I must say that during the course of those investigations, I turned up all sorts of remarkable information about San Francisco lawyers who were bagmen for these gamblers, and foolish cafe society people who thought that it was entertaining to consort with these hoods.

Hicke: Did you feel at risk yourself?

O'Brien: No, not particularly. Once in a while I felt a little uneasy.

I should say that the casino and the individual gamblers were represented by one of the best firms in Reno. In fact, they were the firm that normally represented the Standard Oil Company of California, so that --

Hicke: Which firm was that?

O'Brien: I can't remember their names right now, it could easily be checked. But they were putting every obstacle, every conceivable obstacle in the way of a final resolution of the matter. One day Eddie Hills came to see me and said that his wife was very agitated about our seeming inability to get the case decided and--

Hicke: They were still building and going ahead with their--?

O'Brien: No, the building had been suspended, because we had a temporary restraining order. He handed me a shiny dime and said that he was willing to bet me the dime that I'd never get a rope on these gamblers.

Inspired by that challenge, I made an appointment to see the governor of Nevada.

Hicke: Was it difficult to get in to see him?

O'Brien: No. As a matter of fact, I didn't really have any trouble making the appointment nor were there a great many inquiries as to why I wanted to see him.

Hicke: Interesting.

O'Brien: But in any event, I went to Carson City on the appointed day and had my meeting with him. I explained what had happened to Mr. Hills, the pendency of the lawsuit, and concluded by saying in effect that while it was inappropriate for me to comment about the policy of the State of Nevada in raising its revenues through the activities of gamblers, I thought he should be aware of the fact that these hoods were a bunch of musclemen who were pushing around innocent, decent people who didn't deserve that sort of treatment and which brought the State of Nevada into bad repute.

When I had finished my peroration he said to me, "Well, this is all very interesting, because I just happen to have on my desk the application of the casino for a renewal of its gambling license, and in view of what you say to me, I will hold it up and start an investigation of my own." Well, that investigation did not last very long because by the next morning, I had received word from the lawyers for the casino that they were prepared to submit to any injunction that I could think of.

Hicke: His investigation consisted of thinking it over or something?

O'Brien: Yes. Well, just the notion that their license might not be renewed and could be suspended, which would put them out of business and cut off their oxygen right now, was enough to bring the case to an end. And so we got a very sweeping injunction to restore Hills's property to its previous condition, pay damages, turn off the casino loudspeakers, and act with a good deal more civility. That ended the whole lawsuit. Kind of a back-door method of winning such a suit.

The interesting thing was that the gamblers thought I had some special clout with the governor and had been given access to the confidential files of the Nevada Gambling Commission, which in its efforts to keep out the really dangerous hoods from Chicago and elsewhere, had a staff principally of ex-FBI agents that conducted rigorous examinations of all of the applicants for gambling licenses. But since I had spent a certain amount of money investigating the background of these gentlemen, they were alarmed to think that I had access to the gambling commission files. That may also have persuaded them that it would be wise to settle. In any event, just another lawsuit but a rather curious and unusual one.

Hicke: Your information must have been excellent to give them that impression.

O'Brien: Well, yes, we checked all of the available sources, public records and things of that sort in compiling the dossiers on these particular people.

Hicke: Whatever happened to that information?

O'Brien: Well, it's all in the file. I didn't do anything with it.

Hicke: But it didn't go anywhere else, like to the gambling commission.

O'Brien: No, it didn't go anywhere else, no. I was just trying to get rid of the lawsuit, not chase anybody around.

IX ARAMCO ARBITRATION AWARD: 1955

Background

Hicke: Okay, well then, maybe we can switch to the Aramco arbitration award. This was -- I think the award was in 1955, is that correct?

O'Brien: I have the award here in front of me. The award was made on February 23, 1955.

Hicke: I guess we should start with the background of the problem.

O'Brien: Let me say to begin with that this arbitral award was undoubtedly the most important international arbitration affecting the rights of foreign investors in host countries that had been decided in the last fifty years. It is still the most important precedent in international arbitration matters of this sort.

The original concession had been given to Standard of California. It was an agreement made in May of 1933, and was subsequently ratified by a Royal Decree in July of 1933.

Hicke: That is by the Saudi --

O'Brien: -- by the Saudi government. The original Aramco agreement, which was years later supplemented by additional agreements granting more territory, in effect granted to Standard of California most of the onshore territory oil rights of the huge kingdom of Saudi Arabia. At a later time, an agreement was negotiated for all of the offshore rights of Saudi Arabia in the Persian Gulf.

After the concession was granted, the company created, as they were required to under the agreement, a company called California Arabian Oil Company (Casoc) exclusively for the purposes of enterprise, and assigned to that company the rights and obligations

under the concession agreement. As I said, at a later time, indeed it was in October of 1948, the concession agreement was modified to cover offshore rights.

By 1948, Standard of California had taken three partners in the venture -- Texaco, Standard Oil Company of New Jersey, and Mobil. In 1947, Aramco entered into an agreement with Standard of New Jersey, Caltex Oceanic -- which was jointly owned by Texaco and Socal -- and Socony under which, to make a long story short, Aramco sold its crude oil to the shareholders more or less in proportion with their shareholding rights in Aramco, both crude oil and refined products. That was the general shape and structure of the venture until 1954, when the new king -- after Ibn Saud's death -- in his first royal decree made an agreement with Aristotle Socrates Onassis (described in the arbitration agreement as of Greek birth and Argentine nationality, resident in Montevideo and domiciled in Paris).¹

Hicke: Can I stop you just for a minute? Do you happen to know how he got interested in this venture?

O'Brien: Oh, he was a real beady-eyed Greek tanker owner who had acquired a lot of tankers after World War II when they were a dime a dozen. Just as a footnote, he was subsequently indicted by the United States government for his activities in the way in which he acquired these V-2 tankers and was represented by an English solicitor friend of mine, in responding to the criminal indictments in the Southern District of New York. Onassis paid a million-dollar fine. I remember my friend describing how he took the million dollars in cash and slapped it down on the clerk's desk in the United States District Court.

Hicke: Good heavens. So now he needed someplace for his tankers to go, is that what that was about?

O'Brien: Right. So he persuaded the new king that he would make Saudi Arabia a great maritime nation. He would establish a maritime academy. He would transfer a large number of ships to the Saudi flag and turn the Saudis into a seafaring race.

It seemed like a promising thing, and the only way he could do that was to take away the rights of Aramco given under the concession agreement to transport the crude oil and products which they produced in Saudi Arabia on ships of their own choosing -- either their own ships or their customers' ships.

Hicke: They were going to make sailors out of desert nomads.

1. The new king was Saud ibn Abd Abdul-Azia, or Saud IV.

O'Brien: Yes, right. So that agreement was ratified by a royal decree in April '54 and Aramco was officially notified for the first time that it was going to be required to comply with this provision. That was the heart of the dispute: whether the company and its shareholders were compelled to recognize this new regulation of its activities governing the transport of oil from Saudi Arabia.

As I say, the agreement with the new company that Onassis created, called Saudi Arabian Maritime Tankers Company (Satco), was to maintain a minimum of 500,000 tons of tankers under the Saudi flag. The tankers were to bear Saudi Arabian names, and Satco was to establish a maritime school at Jeddah and employ the graduates of that school on the Satco tankers. Preference was to be given to Saudis as employees and workmen on the tankers, and also Satco was going to carry free of charge X thousands of tons of oil for the Saudi government to ports in Saudi Arabia.

Aramco protested that new decree and claimed that it was contrary both to the letter and spirit of existing agreements between the Saudi government and Aramco; would be contrary to long-established business arrangements and procedures that had been developed in reliance on the agreement; would violate international worldwide custom and practice in the oil business, et cetera. Ultimately, when it was impossible to reconcile the views of the company and the Saudi government, the matter went to arbitration.

Hicke: Was this a problem? Was everybody agreeable to submitting it?

O'Brien: Yes, they were.

Drafting the Arbitration Agreement

O'Brien: The parties then met in Jeddah in January and February of 1955 to draft the text of an arbitration agreement. They were unable to agree on the text of the joint questions that they wanted to ask the tribunal; so they therefore agreed that each party would submit its own question or questions to the arbitration tribunal, and these separate questions were formulated by the government and by the company for submission to the tribunal.

Hicke: Was Mr. Onassis involved in this at all?

O'Brien: No, Onassis was not involved in this in any way, so far as I know.

The general counsel of Aramco was George Ray. George was selected as the agent of the company for the purposes of the

arbitration. Lowell Wadmond of White & Case was the chief trial counsel. On the government side there was first a professor, Hamad Sultan. Each of those agents and counsels had a very imposing team of assistants. In the case of the Saudi government, Professor Roberto Ago, a famous international lawyer --

Hicke: Where was he from?

O'Brien: He was from Italy, I believe.

Also the Right Honorable Sir Lionel Heald, who had been attorney general in England, and Professor Myers McDougal, one of the great mountain peaks of international law in the United States -- Yale professor -- but very widely known around the world.

On our side, we had Lord McNair, who had been the president of the International Court of Justice, Professor Maurice Bourquin, Arthur Boal, a Dutchman by the name of [K.] Jansma, and behind the scenes were the counsel for all of the companies. I was one of those representing Standard of California from this distance.

Hicke: You were here?

O'Brien: Yes. From my point of view the case was really won in the drafting of the arbitration agreement, because the Saudi government in that arbitration agreement implicitly acknowledged that they were bound to perform the agreement, and that was the major issue really. They claimed that if the agreement was properly interpreted, we did not have the exclusive right to select the means under which the crude oil and products would be shipped from Saudi Arabia. But at the outset, they didn't undertake to question the binding force of the agreement. Later on in the arbitration, their memorials argued that because they are a sovereign state they had special rights to regulate us, which was the equivalent of saying that the agreement had less than binding effect.

Hicke: This came about because they could see that --

O'Brien: They had a lot of new lawyers who were attempting to --

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-- nullify that original provision of the arbitration agreement.

Hicke: What was your part? Somebody told me that you studied the Koran --

O'Brien: Well, we agreed in the arbitration agreement that the agreement would be interpreted in accordance with the law of Saudi Arabia, which of course was the Islamic law based on the Koran, and upon the sacred Shar'iah. The Wahabi tribes of central Saudi Arabia,

from which the House of Saud came, followed the Hanbali Code, which was one of the three or four schools of Islamic law, and it was the most -- how shall I say it -- the most fundamentalist, the most rigorous, the most absolute in its terms. I did make an effort to read and understand the provisions of the Koran and, so far as could be known, of the Hanbali school of Islamic law to try and understand how they would affect the issues of the case.

I went to New York with considerable frequency to participate in the discussions that took place there about the tactics and strategy of the arbitration. It was agreed that the arbitration would take place in Geneva, that it would be conducted in Arabic and English with one exception, that at least one oral argument could be made in French. We had practically simultaneous translation, and the lead counsel in these arguments -- I think the French was selected for him -- the lead counsel on our side was Maurice Bourquin. While Wadman is listed in the book as the chief trial counsel, Bourquin carried the bulk of the arguments before the tribunal.

Members of the Tribunal

O'Brien: After the arbitration agreement was signed, each of the parties was required to select an arbitrator, and those two arbitrators were in turn to select a referee. The Saudis selected a gentleman named [Helmi Bahgat] Badawi; Aramco selected Saba Habachy. Both of these gentlemen were Egyptians. Saba Habachy became a very dear, intimate, personal friend of mine, which also stimulated my interest in Islamic law, because he was a great scholar of Islamic law and one of the most remarkable men I ever encountered in my whole life.

I have to take a moment to say a word about him. By the time I met him, he had been functioning as a consultant to Aramco on Islamic law matters for some considerable period of time, probably for seven or eight years and perhaps longer. He had been a minister, I believe the minister of trade and commerce in Egypt, under the regime of King Farouk. He was a nobleman in the Egyptian society, a man of great distinction, slated to become the prime minister; magnificently educated. Fell out with Farouk in the later days of Farouk's regime, had his estates confiscated, and left Egypt and became in effect a refugee.

He went first in Geneva. He then came to the United States and taught Islamic law and international law at Columbia University, which promptly granted him an honorary degree. A man of great distinction and attainments, and I would counsel anybody

interested in Islamic law to read the series of articles that he wrote in the Columbia Law Review about the sacred Shar'iah. It will do more, I think, to illuminate for a Western mind the concepts of Islamic law than anything else I've ever encountered.

Anyway we became fast friends. He is a small, plump gentleman with exquisite manners, modest, a Christian -- in fact, the lay head of the Coptic church, the man who ultimately was able from time to time to resolve the differences -- the factional differences -- within the Coptic church between the the Ethiopian Copts and the Egyptian Copts.

Well, rarely have I met any man that I thought was his equal and certainly in his standards of excellence and his standards of ethics, his compassionate view of people, an extraordinary and wonderful guy.

Another footnote: when it was decided that we needed a new forum to express some of the traditional view of international law in the United States, a forum was created in Dallas under the aegis of the Southwestern Legal Foundation -- a new International and Comparative Law Center. I was involved with that, with many others, and it was decided that the first thing we ought to do in advance of holding the first symposium under the aegis of this new center on international and comparative law was to publish a book of readings about international law. So we got some of the most distinguished and able and prestigious people in this country and others to submit articles, including Lord McNair and Saba Habachy. I believe Arthur Dean of Sullivan & Cromwell prepared an article, and others.

Hicke: When was that published?

O'Brien: It was in the '60s I think. As a consequence of the Aramco arbitration, I got deeply interested in the question of the rights of foreign investors in host states, the international law, the rights and obligations of sovereign states toward investors in their country.

Hicke: You must have been on the cutting edge of that.

O'Brien: I followed the problems in the United Nations, where all sorts of efforts were being made by the U.S.S.R. and its satellites and some other countries to break down all the international concepts. Aided and abetted, I should say, by the Arabs and others who began to feel restive under the concepts of traditional international law and who felt that since they had gained their independence after World War II and were now new and sovereign nations, none of the traditional principles of international law or of acquired rights



James E. O'Brien, as a member of Advisory Board and the Southwestern Legal Foundation, introduces His Excellency Nobuhiko Ushiba at the June 1971 Symposium on Private Investments Abroad.

should be applied to them. According to them, a new age was dawning and we should tear up all of the traditional principles.

On the other side were companies like the Standard Oil Company of California, which had invested hundreds of millions of dollars in oil exploration and production in various foreign countries on the faith of the binding force of contracts negotiated in good faith and performed in good faith. So it was a period in which there was a great convulsion taking place on all of these questions.

Hicke: It must have somehow been resolved or there wouldn't be this enormous increase in overseas investments that all the Western countries --

O'Brien: I wouldn't say it was resolved, because the effort has gone on ever since the '50s by the underdeveloped countries, so-called -- the less developed countries, what is now called the Group of Seventy-Seven in the U.N. -- to modify, if not repeal, the traditional concepts of international law including respect for binding force of contractual obligations by sovereign states.

About the same time, Aramco had on its payroll a young man who was quite an expert on the U.N. He was located in New York, and he attended the sessions of the U.N. and kept track of all of the resolutions and initiatives that were being made by these underdeveloped countries, aided and abetted by the U.S.S.R., which was constantly propagandizing the Middle East that they should tear up all of their concession arrangements. I got very much interested and very much involved with that.

This is a long aside, if you like. At a subsequent time I persuaded the company officials that they were not taking enough of a lively interest in all of these affairs; that it was important for us to try to influence the position of the United States delegation to the General Assembly and to the Economic and Social Council in Geneva (and to some of the specialized agencies) when we felt that our vital interests were engaged by initiatives that were being put forward by other countries. That's another story. It's a story that's kind of relevant to this, because somewhere along in this period, and we'll have to talk about it another day, the U.N. decided to adopt some resolutions on permanent sovereignty over natural resources. I got deeply involved in that in Geneva, and that's another long story.

Hicke: I would like to get that; that sounds absolutely fascinating.

O'Brien: Anyway, to go back to this arbitration. After Badawi and Habachy had been appointed, and you can understand Habachy's position with the greatest oil concession in the history of the world on the

table, that these four enormous, international, integrated oil companies thought he was the man to carry their case. The question then arose about the referee, and we spent months preparing dossiers on the candidates that might be selected or considered for selection as the referee. I was involved in that to some degree.

Cahill, Gordon in the person of John Sonnett in New York was also involved, and we and the lawyers for the other shareholders canvassed all of the conceivable people we could think of in the United States, in France, in Sweden, in England, Australia, former members of the international court of justice, and so on. We tried to do a fairly comprehensive job reviewing the opinions they had written in arbitral proceedings, talking to other lawyers, talking to banks and to commercial entities about the reputation and balance and stability and integrity of all of these possible arbitrators or referee in this case.

I was in New York in the final stages of this process when we sat down and established our priorities: who was our number one pick and who was number two and who was number three and number four. I had been designated as the man to go along with Saba Habachy and talk out this question with the Saudis. Saba was in Geneva, and I was to fly the next morning to Geneva to meet him with my dossiers and my list of priorities and so on.

We called Saba to make sure everything was in order and he called us back and said that he had gotten a peek at the Saudi list of referees, and number one on their list was number one on our list.

Hicke: Oh, no.

O'Brien: So I didn't have to go. He was a most distinguished professor, member of the permanent court of international arbitration, a Swiss gentleman by the name of Georges Sauser-Hall. So Saba Habachy, Badawi, and Georges Sauser-Hall started out as the arbitration tribunal.

Hicke: Would that be fairly unusual, that both sides would pick the same?

O'Brien: I would think so. What it proved to me was the quality of the people who were representing the Saudi government and the integrity of the Saudi government itself in not trying to slicker us into some trained seal that they might select. They were prepared to put their case to a most distinguished, able man.

In the meantime, our side had retained as consultants to write opinions -- which is the way it's done in these international arbitrations -- we had retained most of the Islamic law experts in the Western world -- and some of them not in the Western world --

distinguished professors of law in the faculties of universities in England and Holland, Belgium, and the United States.

Mr. Dickinson, who was at the University of California on the Berkeley faculty at Boalt Hall, was one of those. When we talk about this again, I'll give you a more complete list, because you never saw such a dazzling array of talent in your life.¹

Then the memorials were put together, and these opinions were attached to the memorials. Each side also had the right to call witnesses, but in the end, neither side availed themselves of that opportunity. So the case ultimately went to hearing in Geneva. The secretary of the tribunal was Professor Pierre Lalive. He was very close to the International Court of Justice, distinguished academician and international law scholar whose brother, Jean Lalive, is also a famous and distinguished lawyer who assisted us in the Aramco arbitration and was very active in the arbitration we had some years later with the Libyan government. He has been involved in many other cases of the same sort. He represented American Independent Oil Company in a recent arbitration with the government of Kuwait, and was involved in many other cases. He too became a good friend of mine over the years, because he also participated in the activities of this International Comparative Law Center in Dallas.

So the memorials were filed. You see the government's memorials; ours were about another foot or two thick [indicating pile of books].

Hicke: You've got a stack of books there about a foot and a half wide that you're talking about.

O'Brien: Yes. The government memorials. Ours were bigger and fatter than these.

Hicke: And the government memorials are three volumes and yours must have been --

O'Brien: Well, they were three volumes too.

1. Opinions were written by Professor Abou Zahra, Professor J. N. D. Anderson, Justice Algot Bagge, Professor Maurice Gourquin, Professor Henry P. deVries, Professor Edwin D. Dickinson, Lord McNair, Professor Tomaso Perassi, Professor Georges Ripert, Professor Henri Rolin, Judge Ahmed Faraj El Sanhoury, Professor J. Schacht, Sir Hartley Shawcross and John Megaw, Professor Max Sorensen, Professor Alfred von Verdross, Professor C. H. M. Waldock, Professor Hans Wehberg, Professor J. Yanguas Messia.

Hicke: Oh, but considerably fatter.

O'Brien: Yes. In the middle of the proceeding, the Saudi government arbitrator died -- Badawi. By then, it must have been apparent to the Saudi government and certainly to its lawyers that we had a very powerful case. I always have given the Saudi government the highest marks because that would have given them a great opportunity to slide out of the whole affair. At least begin to say, "Well, we'll have to start all over," et cetera, and in the end probably let the whole thing die or become moribund. Instead, they promptly appointed a second arbitrator to represent them, I think his name was [Mahmoud] Hassan.

Hicke: Do you attribute this extremely honorable behavior to their culture or to some specific people in the government?

O'Brien: I attribute it to Ibn Saud, and I guess to the counsel who represented them in the case. But I tell you, it would never happen in this day and age. But in those days it seemed to me the highest level of honorable conduct --

Hicke: On all sides it sounds like.

O'Brien: Yes. In any event, they appointed this substitute arbitrator. He listened to the tapes and read the stenographic transcripts of the arguments, and they went right ahead. Ultimately, the tribunal rendered a decision in favor of Aramco, with a dissenting opinion -- a very short and more of a pro forma dissent. The dissent was one page long. The opinion is 128 printed pages long.

Hicke: Who wrote it, the Saudi arbitrator?

O'Brien: Yes, the arbitrator. The referee and the Secretary General Lalive, the other two arbitrators, signed the award. Then Mr. Hassan, the Saudi arbitrator, signed a dissenting opinion, which was not very weighty. Again to the profound honor of the Saudi government, they immediately cancelled their arrangements with Onassis, and that was the last we heard of it.

Hicke: What did the Saudis have at stake here?

O'Brien: Oh, the formation of a huge tanker fleet.

Hicke: Which would be financially beneficial and also prestigious for them, a nationalistic feeling?

O'Brien: Yes. Now that king did not survive very long. He was defrocked and his role taken over by Faisal, a much stronger and more effective ruler of Saudi Arabia.

- Hicke: I just read The Kingdom last summer, which is a history of the Saudis.¹ I don't know if you've seen it.
- O'Brien: Sometime you should get from the company a copy of Floyd Ohliger's oral history.
- Hicke: I've seen that too.
- O'Brien: It's an absolutely charming, a fascinating story of the earliest days in Saudi Arabia and the relationship that grew up between him, a young petroleum engineer, and King Ibn Saud. The story of these early days, as always, had a great fascination for me, because three of PM&S's lawyers with whom I worked when I was a young fledgling lawyer left the firm to work for Aramco and became part of that whole thing. One of them, named Woodson Spurlock, appears in the list of lawyers representing Aramco in the arbitration. Another, Garry Owen, was essentially Aramco's ambassador at the court of the king. Both of them were dear friends of mine who used to keep me pointed in the right direction in my earliest days at PM&S. Finally, there was Douglas Erskine, who wound up as Aramco's chief tax lawyer.
- Hicke: You've had a long association with them.
- O'Brien: Yes, two of them now gone. I'm not sure about Doug Erskine, who moved to Portola Valley after his retirement.

International Law: Relationships Between Sovereign Governments and Private Investors

- O'Brien: Well, that is essentially the story of the arbitration, but it led me to have this abiding interest in trying to protect the rights under international law of some of our clients. When, for example, the American Law Institute began a draft of the Foreign Relations Law of the United States, they established some formulations about whether contracts between sovereign governments and private investors were binding, and about the standards of prompt, adequate, and effective compensation in the event of expropriation, and things of that sort. I happened to be a member of the American Law Institute, and I attended some of their sessions and banged away at these drafts and tried to get them changed and fought and bled over some of the language they had written.

1. Robert Lacey, The Kingdom (New York: Harcourt, Brace, Jovanovich, 1982).

[Interruption]##

Hicke: You were just starting to talk about the American Law Institute.

O'Brien: There was a famous professor at Harvard by the name of Baxter who consulted with the Libyans years later in the Libyan arbitration and who became briefly, before his death, a member of the International Court of Justice. He used to defend the positions taken by the drafters of this Foreign Relations Law of the United States with great vigor. He and I tangled a few times on the floor of the meetings of the American Law Institute. I remember his rising, after I had made some violent protest about the language that was being adopted by the Institute in one of its black-letter paragraphs, and saying that he thought the American Law Institute was being overcome by fumes of petrol.

I remember writing a letter to the director of the American Law Institute telling him that if they adopted that draft some Saturday afternoon when the rest of us had left the proceedings, it would be an act of faith and not an act of scholarship.

I do remember that we raised so much hell about the drafts that the powers in the American Law Institute decided that they would retain a special group of international lawyers to advise them on the propriety of the language that the American Law Institute drafters had put forward. They did retain three very eminent international lawyers who wrote an opinion, finally, saying that the formulation was a violation of international law. Did I ever rejoice over that!

Hicke: What was the problem?

O'Brien: This has to do with the extraterritorial application of U.S. laws. In those days we had this very expansive philosophy about the enforcement of our laws in the foreign countries, another great subject that I spent years working on in connection with antitrust. The American government took the position that an act could violate the American antitrust laws even if it took place in Mozambique, and you could be held accountable for it in U.S. courts. That's a vast controversy that has subsided slightly, because the United States government is now taking a somewhat less aggressive stance. Particularly after a good many foreign nations made it a crime to comply with these U.S. subpoenas directing the production of documents from foreign countries. Anyhow, these were related subjects in my mind.

So along came, at some stage, a whole series of resolutions that were put forward by the U.S.S.R. and its satellites, some of these satellite countries, at the Economic and Social Council in

Geneva on the subject of permanent sovereignty over natural resources. This was a fancy way of saying that no matter what agreements a sovereign made, it never surrendered its sovereignty over its natural resources, and it could always change the signals and abrogate your rights and subject you to a new set of rules.

I talked to George Parkhurst about these and said I thought that they were very dangerous and that we ought to sort of make an effort to see if we could get them changed. We could also use it as an experiment to see whether it was possible for some guy without any special talents or special association or influence could go to Geneva and do something about it.

So I went off to Geneva with a great lawyer named George Winthrop Haight, who was representing Shell, and a guy named Ed Burke, who was a Texaco lawyer. When it appeared that these resolutions on permanent sovereignty were coming up for decision, the name of the game from my point of view was to get an audience with the chief of the U.S. delegation to the Economic and Social Council and try to persuade him that it was essential to confront those resolutions head on, to fight it out and go to the General Assembly and fight it out there and not lay back and vote for this kind of stuff with a little explanatory slap on the wrist and so on, but to really go to the mat on these things.

Now the fellow's name escapes me at the moment, but the head of the U.S. delegation for the time being was a very brilliant, prestigious, Jewish gentleman from Chicago, very bright, able man, very civilized guy, very considerable breadth. But how to reach him, you know. You're can't just walk in and say, now hear me! He was just surrounded, as usual, with a great apparatus of economists and others that are part of the American delegation, all of the people from Commerce and State, Treasury, and all that kind of business, each of whom has his own set of assistants. So you get a very considerable bureaucracy, and how to try to go through the sound barrier was the hard to thing to figure out.

Mr. Burke was on a short time fuse. He had been told by the general counsel of Texaco to be back in New York in ten days, and as the two main contestants, the U.S. and the U.S.S.R., circled around each other, not quite wanting to take hold of this problem, they kept postponing it on the agenda. Finally, Burke thought he would breast the waves, and he put on his hat one day and roared over to the U.S. delegation, and they just said, "forget it."

Hicke: They didn't even let him in the door?

O'Brien: No, they didn't. So I bethought myself of that a little bit and decided I wouldn't try that. Mr. Haight, although he was an American, was representing Shell. Shell, of course, was British

and Dutch, so it didn't seem to me that he would have much clout with the American delegation. In casting around for something to do, I recalled that a friend of mine in New York was a very close friend of a gentleman by the name of Dave Morse.

Dave Morse had been acting Secretary of Labor in Truman's administration. He was an all-American football player at Rutgers [University], a professional football player, an enormously successful private lawyer, who had been persuaded by Mr. Truman to become head of the International Labor Organization [ILO]. ILO is older than the United Nations. It had its international headquarters in Geneva, and Mr. Morse, as the head of ILO, was the senior diplomat in Geneva. It was a tremendous listening post, because the ILO, which went back to the '20s and '30s, had a members from the U.S.S.R. and China and other places where we didn't have any access at all, so that Mr. Morse in his position of heading the International Labor Organization and looking out for the rights of working people in all the countries of the world and all that business, could go to and knew people and places to which the typical American had no access.

Well, anyway I called him up on the phone and said I was a friend of Phil Allen's in New York, and he promptly invited me to dinner. We got to be good friends. I went out on his huge motorboat, which is his only indulgence. He had a big, powerful motorboat on Lake Geneva, and we went out and picnicked on that. I explained my problem, and he said, "Well, give me a few days. I'll think about it." Didn't promise to do anything, but lo and behold! -- at the appropriate juncture I was introduced to the head of the U.S. delegation.

I had an opportunity to tell him what I thought was the great gravity of this thing and the tremendous concern of the United States. He asked me to draft some amendments to these Russian resolutions. In the end, they turned out to be the U.S. position when those amendments were introduced. In the meantime, it gave me an opportunity to get to know his staff a little bit. I entertained a few of them at some restaurants in Geneva and discovered that once you got through the sound barrier, and if you had the credentials of having now spoken to the head man, that they were a good deal more civilized.

So anyway, in the end the Economic and Social Council did not decide the issue but bundled up all of these resolutions, amendments and so on, and sent them to the General Assembly. Then I came back to the United States. By the time I got back to San Francisco, it was evident to me that the people in the State Department in Washington who gave instructions to the delegation at the Economic and Social Council were less enthusiastic than the

U.S. representative had been in Geneva to have a knock-down-drag-out fight over this thing.

So I then wrote a letter -- I wish I could find it because I remain satisfied with it -- to a fellow named Harlan Cleveland and his deputy, a guy named Gardener, who is a professor of law somewhere now, telling them what a tremendous mistake it would be for the United States not to pull up its socks and fight this thing out. That if they voted for the U.S.S.R. resolution with an explanatory statement, that statement would always lag about ten paces behind the fact that they had voted for it.

So in the end, they put in the first team and they slugged it out all one hot summer. Ultimately a solemn declaration -- which took a two-thirds vote and was not an ordinary resolution of the General Assembly -- a solemn declaration was adopted on the subject of permanent sovereignty over natural resources, which said that contracts of the sort we've been talking about all morning were binding on government and that in the event that they didn't keep their word or abrogated rights under those contracts, they had to pay adequate compensation. I thought that was a great victory for the United States -- a great victory.

Hicke: Indeed, you must have celebrated that one.

O'Brien: Yes. In another session, we can talk about some of the fallout of that in subsequent arbitrations.

Hicke: Ok, I'd really like to hear more about that. That was a worthwhile fight.

O'Brien: It's interesting. It proved to me that Geneva was no different from Sacramento. That if you walked up and down the halls long enough you'd run into somebody that would open the door for you.

Hicke: Well, you persisted and I think there's really something to that.

O'Brien: I just lucked in. I happened to run into the man who could push all the right buttons.

Hicke: That was extremely interesting. Thank you.

X SOME OTHER SOCIAL MATTERS

[Interview 12: June 19, 1989]##

Permanent Sovereignty Over Natural Resources: The Libyan
Arbitration, 1974

Hicke: The last time --

O'Brien: We talked about the United Nations.

Hicke: Yes. And you said that there was some fallout from that in the declaration of permanent sovereignty over natural resources. Maybe we could take that up now.

O'Brien: The declaration of the General Assembly on permanent sovereignty over natural resources was to play an important role in the decision of the arbitrator in the Libyan arbitration years later. The declaration of the General Assembly expressly relied upon the final decision of Rene-Jean-Dupuy.

The Libyans first expropriated 51 percent of Chevron-Texaco's concessions in Libya, and subsequently, as we proved to be somewhat intractable, confiscated the entire concession. We immediately filed a request for arbitration, as we had the right to do under our concession agreement, and named an arbitrator. But the Libyans declined to appoint an arbitrator and ignored the whole affair.

As a result, in 1974, after considerable agonizing, we filed a petition with the President of the International Court of Justice, as we had a right to do under the concession agreement, asking him to name a sole arbitrator because of the refusal of the Libyan government to appoint an arbitrator in response to our request. The reason for the agony was that the president of the

International Court of Justice was a Polish gentleman and we were fearful that we might get somebody either from Eastern Europe or the Third World appointed as the sole arbitrator.

As it turned out, unbeknownst to us the Libyan government, perhaps with the help of a Harvard law professor, secretly filed a memorandum with the President of the International Court arguing that there was nothing to arbitrate, that in addition to expropriating our properties and assets and oil fields and pipelines, et cetera, Libya had expropriated the entire concession contract, including our contractual rights to ask for arbitration, the neatest trick of the week!

We didn't learn of that secret memorandum until after a long delay; we sweated it out. The president of the International Court finally appointed a distinguished French lawyer by the name of Rene-Jean-Dupuy as the sole arbitrator.

Hicke: What was happening to the oil production? Had it been taken over physically by the Libyans?

O'Brien: It was taken over by the Libyans. It was first taken over 51 percent, then they gave permission for the oil companies to lift their remaining 49 percent. But for a long time, unlike the other oil companies, we did not lift oil, primarily because I urged the company not to do so for fear that if we started lifting oil, we would be deemed to have acquiesced in the confiscation of our 51 percent.

In the meantime, our "partner" in our joint refinery in the Bahamas, Ed Carey, made a deal with the Libyan government and began to lift "our oil" from the concession and sell it to Italian refineries and ship it to the Bahamas refinery to run through our jointly owned refinery! And we filed, oh, perhaps fifteen or twenty lawsuits against him in Italy and elsewhere to interdict his movement of our oil, and every buyer of our oil got a lawsuit along with a cargo of crude oil.

Hicke: In order to do this, how did you go about filing these suits in other countries?

O'Brien: Well, we traced the oil. Oil can be fingerprinted, in effect so that you can trace the cargos of oil. We got writs issued by Italian courts, for example, and went aboard the ships and tested the oil and then slapped all sorts of plasters on the cargoes so that it really effectively slowed down the sale, movement, and use of our oil. That was a technique which BP had used many years before when their concession in Iran had been confiscated by the Iranian government in the time of Mossedeq. That's another story.

After the whole affair was over, we were sued right and left by Mr. Carey and others in New York: they claimed we were going to put out the lights in the topless towers of New York, et cetera.

O'Brien: Governor Rockefeller sent me word that we were going to bring down the whole economy of the State of New York if we prevented the products manufactured from our oil from coming into New York, through Mr. Carey's company. The head of the Public Utilities Commission in New York, and others were roaring around. Ultimately, we defended a whole series of cases in which the claims ran into billions of dollars based upon our efforts to prevent others from stealing our oil, of attempting to interdict the use of our confiscated oil.

In the meantime, to go back to the Libyan arbitration, the Libyans ignored the official proceedings. They stayed out of them. But the court, the brilliant academician and jurist, insisted that the whole matter be briefed in the most careful way. And one of the key issues had to do with the argument that Libya enjoyed permanent sovereignty over its natural resources and accordingly was at liberty to do pretty much what it wished. Mr. Dupuy, maybe fifteen or twenty years after I had been in Geneva working on Permanent Sovereignty Resolutions and afterwords on the General Assembly, relied on the Declaration of the General Assembly in holding that Libya, despite permanent sovereignty over its natural resources, was bound by its contract with us, which had been enacted into Libyan law. And, he concluded, if Libya did not restore us to our concession -- we had not yet asked for damages -- he would then hold them liable for not only the value of the property that had been expropriated, but for the loss of all future profits for the remaining years of the concession, which was an absolutely astronomical sum of money.

Hicke: That was a joyous day when that came down.

O'Brien: Yes. Well, Libya kept saying, "Well, forget it. What can you do?" Nonetheless, the Libyans ultimately offered us a settlement of some \$150,000,000 (a nominal sum considering the real value of its concession) which we accepted. But as a legal proposition, the fact that we had hung in there years before on these permanent sovereignty Resolutions, before we were even in Libya, I guess, made some difference in the upshot years later when the matter was actually litigated with the Libyan government. So that was that.

Hicke: So actually the fact that you followed through on that, although it didn't have any immediacy --

O'Brien: Didn't have any relevance to any existing lawsuit, it was just the general principle of law that we would continue to espouse and maintain, as we did through all the years that I had anything to do

with the international work; that sovereign governments, like private individuals, were bound by their contracts. That's a principle of law that applies between nations: pacta sunt servanda. And by the same token we took the position that governments that made contracts with private investors were equally obligated to fulfill their obligations. That had been implicit in the holdings of the court in the famous Saudi Arabian arbitration over the Onassis contracts, and it was upheld again in the Libyan arbitration.

So we have succeeded in maintaining the principle that a sovereign nation cannot violate the rights of a private investor with impunity and just kick him out and say forget it. This is a position that we struggled and fought and bled for over all the years, as many people had before and after me.

Hicke: Do you know if it was ever used on another occasion?

O'Brien: Oh yes, it's been used and cited. In the Saudi Arabia case we agreed with the government that the award could be published but that we would keep confidential all of the memorials -- the briefs -- that were filed in the proceedings. I don't think any such restriction was put on us in the case of the Libyan award, and I'm sure that we did our best to publicize the record in that case.

There have been other arbitrations since that one, involving Kuwait and Iran and elsewhere, in which the Libyan award has been cited as a precedent and, of course, among all the academics and among those involved in international litigation, it was an important case.

Hicke: Do you have a sense of what finally forced the Libyan government to settle?

O'Brien: First the size of the possible judgment; if they had not come in and settled, they would have been exposed to a judgment that would have run into the zillions. Now, how we might have collected that is problematical. I think we could have attached their bank accounts, if we could have found them, in any country in the world, armed with that judgment. And to be sure, they would have offered many obstacles and it would have been a thicket of problems. We could have made them sufficiently uncomfortable, and they might have had to bury all their gold somewhere in the desert.

Hicke: Instead of in Zurich.

O'Brien: Yes. As a legal precedent it was of worldwide importance, even though, despite the large amount paid in settlement, it was still a financial loss for the company, in the sense that we lost a very valuable concession and never got anything that could be considered

prompt, adequate, or effective compensation for its loss. On the other hand, Mr. [Muammar al-]Kaddafi did not get away with it.

Hicke: Well, that's really a watershed.

O'Brien: That was important as a legal principle and one that gave everybody a lot of public and private satisfaction, having in mind Mr. Kaddafi and his eccentricities.

Hicke: Speaking of these concessions, could you just update the record a little bit on the Iranian consortium? I mean, after all these years, whatever happened to it?

O'Brien: Well, really, the expert on all that is Tom Haven, because that all came after my retirement. But it was the result of the last Iranian revolution and the hostage situation and all the rest of it. The United States had billions of dollars, presumably in the United States, that belonged to the Iranians and that money was all sequestered; those accounts were sequestered. So, ultimately the Iranian government agreed to a mixed commission of international arbitrators to settle claims against Iran.

Our claim against the Iranian government for our loss of our interest in the Iranian concession was presented to that mixed commission. Tom Haven did a brilliant job in effecting a settlement of our claim.¹ I know very little about it except that I do understand that in the case of the other oil companies who did not get in promptly and make a settlement of their claims, the Iranians turned around and made huge claims against them for alleged breaches of the concession and tax payments and everything else they could think of to forstall having to pay the sort of money required by the settlement that Haven effected for our company.

Now again, it didn't really compensate the company in any effective way; but it again maintained the principle that you just can't play ducks and drakes with these great international contractual obligations. that they are meant to be and must be observed. Haven can fill you in on all that, because he practically commuted for the next few years to -- I've forgotten whether it was Paris or London -- and marshalled all of our claims against Iran, made the presentations, argued, and all that kind of business, and ultimately effected a settlement with Iranian representatives.

1. \$115 million was awarded to Chevron at the Iran-U.S. Claims Tribunal.

That tribunal was -- I'm not even sure of the composition anymore of that tribunal, but I know it had a couple of famous Swedish arbitrators. The Iranians conducted themselves in those proceedings like a bunch of wild Indians, and they didn't gain a whole lot of favor I think with the tribunal. But I imagine that there are a great many of those claims still pending and until they are settled, the United States is not going to release their hold on the funds of Iran -- the government of Iran. That may contribute to the fact that they are -- really through their surrogates -- holding our hostages. The Great Satan.

Hicke: Yes. Well, that's another aspect of --

O'Brien: That's another story. I was in London in 1954 with Al Brown when the original Iranian consortium agreements were written. After 1954 they got modified and modified, and all through that period from '54 on, Tom Haven handled the legal advice to the company in respect of the Iranian concession and the participants agreements.

It was always a very lively affair because there were internal problems of trying to operate in harness with all the major and minor companies in the world that were members of the Iranian consortium; and the Shah was always seeking some modification or trying to chisel on the agreement; so it was a running fight, and Haven became the world's greatest expert on the Iranian consortium and all of its ins and outs. He became over time the most senior and experienced lawyer with the greatest background on the whole arcane, esoteric subject of the interpretation of the concession agreements with Iran and among the participants.

Why the Saudi Concession Went to Socal

Hicke: This is skipping about a bit here, but I have a note to ask you about Follis's story of why Ibn Saud gave the concession to Socal and not to the British.

O'Brien: Well, Gwin Follis could tell this story much better than I, but he was in Saudi Arabia paying a visit to the king in his court. After a more general audience, he had a private audience with the King. They were discussing the great company of Aramco and discussing how it had come to be that Ibn Saud had bestowed this vast concession, which covered practically all of Saudi Arabia, upon this vast remote American company on the West Coast of the United States. The king said to Mr. Follis, "Do you know why I selected an American company?" (having in mind that at the last moment before the award, the British in the Iraq Petroleum Company, and the British in Iran, Persia, got very alarmed at the thought of this

intruder, i.e., the Standard Oil Company of California, owning this major concession in their sphere of influence. They arrived in Saudi Arabia to enter the final bidding with great chests of gold.)

Hicke: Incense and myrrh.

O'Brien: Incense and myrrh. In the end, however, Ibn Saud gave the concession to Standard Oil. So he said to Mr. Follis, "Do you know why I gave it to an American company?" Mr. Follis said, "No, Your Highness, why was that?" He said, "I knew that if I gave it to the British or the French and we had a falling out, I'd have a gunboat here." "But," he said, "in your case I knew that the American government would never support you."

Hicke: Oh, excellent, that's a good one to have on the record.

The KySo Merger

Hicke: Okay, again switching gears here, I'd like to go to the KySo merger. Mr. Kirkham told me something about that, but I know that you were in on that and along on most of the proceedings, and I would like to get something of your view of it, your participation, perhaps your thoughts on Mr. Kirkham's work there and the impact of it.

O'Brien: I recall writing the first opinion on the question of whether there was any conceivable possibility that the government could be persuaded to let Standard of California merge with Standard of Kentucky. I wrote a preliminary opinion about that, and then it was sufficiently tantalizing, and Kirkham was asked to get into the problem. Then he and Bill Mussman began actively to explore it at the company's request.

The government had filed a suit against Standard of New Jersey and Standard of Kentucky, a civil antitrust case, claiming that Standard of New Jersey, which was effectively the sole supplier of Standard of Kentucky, the largest marketer in the world, had agreed with Kentucky to stay out of Kentucky's territory -- the southeastern United States -- so long as Kentucky bought its supplies from Jersey; that was the main thrust of the charge. So Kirkham began active discussions at Social's request with the Antitrust Division.

The government case was being handled at that stage by a brilliant young lawyer by the name of Gordon Spivak, who subsequently left the government and became an important partner in Lord, Day & Lord in New York, I think that he subsequently left

that firm with some of his chief partners and chief clients when he had some falling out with Lord, Day & Lord over some partnership matters.

In any event, Kirkham said to the government and to Mr. Spivak that if we were permitted -- Standard of California -- to merge with Standard of Kentucky, it would introduce a great deal of new competition into the southeastern United States. Socal had a huge crude supply in the Gulf and we had lost our market for it. I've forgotten who was buying it, but their contracts had come to an end or were terminated by the buyer. Kirk explained to the government that we would build a huge modern refinery in Mississippi -- the Pascagoula Refinery -- and we would then be able to supply Standard of Kentucky. And as soon as we were allowed to merge with Kentucky, Jersey would promptly start up in the southeastern United States, and then you would have the clash of two great companies in the most intensive kind of competition.

Well, only Kirkham would have had the temerity to suggest to the government that competition would be greatly enhanced by putting back together two of the original Standard Oil companies that had been part of --

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Hicke: -- part of the great Standard Oil trust.

O'Brien: -- a trust which had been chopped up so many years before. But the logic of that position ultimately prevailed. There was another master stroke by Kirkham, which was that we were to be named a defendant in the case pending against Jersey and Kentucky; then a consent decree was going to be entered by Standard of Kentucky in which they would be ordered by the court to merge with the Standard Oil Company of California.

Hicke: That's really doing it right.

O'Brien: All of this happened without the knowledge of the Standard Oil Company of New Jersey. That came about in a curious way. I had really no part in the actual negotiations of this deal with the Department of Justice, but I did have one small part that was useful. In the cartel case, the Standard Oil Company of New Jersey made a consent settlement with the government. They sent out a letter to the rest of the defendants -- including Socal -- saying, "You have no standing in this matter at all; we're going to have to go ahead and make our settlement, and the authorities all make it perfectly clear that another defendant or any party to the litigation isn't even entitled to know of the existence of the settlement, and therefore forget it."

All of this had been done by Arthur Dean, senior partner of Sullivan and Cromwell, who was representing Standard of New Jersey in the cartel case. Well, that was a useful precedent coming from Standard of New Jersey, when we were in the process of making a consent settlement with the Standard Oil Company of Kentucky. So I hastened to give those papers to Mr. Kirkham. Then when the case was ready to be settled, he made a date with Spivak to see him in the federal court in Louisville, Kentucky on the afternoon of a certain day when we would present this whole program to the court.

Kirk and I went down there. We didn't go to Louisville because we were afraid somebody would see us. Somebody had suggested to Standard of New Jersey that something, some rumble was going on, and even that maybe we were fussing around with trying to get into the act, but they didn't give that any credit at all. They thought that it was so absurd to suggest that two of the major Standard Oil companies could get back together again, that they sort of dismissed that prospect or possibility.

So Kirk and I went to Lexington and spent a beautiful Sunday driving through the countryside -- out of sight. I remember having a Chinese dinner with Kirkham, in Lexington of all places, the night before all this took place.

The next day we sort of tiptoed around until it was time to go to the federal courthouse in Louisville. Then we went into the court's chambers. My God, lo and behold, there was a newspaper reporter that the judge had invited. So my main contribution, according to Kirkham, was to hang onto this guy who wanted to rush to the telephone and announce the happy tidings to the whole world! After all, Standard Oil Company of Kentucky was the biggest company in Kentucky.

So I held on to his coattails, and the presentation was made in chambers by the government and by Kirkham. The judge said he'd like to study the matter, and so we left his chambers. I was still clutching the hapless reporter. The judge gave the thing considerable thought and read all the briefs and memoranda that had been filed in connection with it. Finally he appeared in the courtroom and entered an order directing the merger, etc. Then there was a great commotion, as you can imagine, for a few days. That was a cannonball that whistled through the antitrust world and the oil industry.

Hicke: You let go of the reporter's coattails first?

O'Brien: Yes, right. Then, of course, it hit the press up and down the country. Well, only Francis Kirkham could have put that scenario together, what he had predicted immediately took place. Standard of New Jersey was fit to be tied, furious and frustrated. The

upshot was they began to build stations right and left throughout the southeastern United States. They came back with a vengeance and a roar and got to be highly competitive.

That in turn led to another famous piece of litigation, because when they came into the traditional Kentucky territory, they put up their traditional signs, "ESSO," which of course means "S.O.," "Standard Oil." They relied on the terms of a contract with Kentucky which they claimed gave them the right to use that name.

Hicke: A contract with who?

O'Brien: With Kentucky.

Hicke: Oh, okay.

O'Brien: Which they said gave them the right to use "ESSO." Then there was another great litigation. Kirk tried that case in Mississippi, I think it was; I've forgotten, maybe Alabama. A fine old Southern judge. We had a platoon of lawyers down there; a lot of young partners in PM&S cut their teeth on that case. There were all kinds of extraordinary episodes in this great trademark case over our right to exclude Standard of New Jersey from using ESSO in Kentucky's territory. We lost the case in the trial court; we could hardly expect to win it there, I guess. But Kirkham argued it in the Circuit Court of Appeals, and the judgment of the District Court was reversed. The Supreme Court denied certiorari, as I recall, and that was the end of it.

I think by that time -- I've forgotten when all this happened; I can't put a date to it -- I had already moved over to Chevron. I'm pretty sure I had, because I know that maybe a year afterwards Standard of New Jersey built a refinery in the Bay Area -- at Benicia -- and they started sending their tankers into San Francisco Bay, now that they had a refinery with crude oil to be refined in their new refinery. The stacks on those ships said "ESSO." So I wrote a letter to the Standard Oil Company of New Jersey telling them to knock it off. I didn't hear from them for months, but then finally they did, which meant they had to change everything on that ship -- not only the stack but the silverware and the life preservers and a hundred other things, the registration and the rest of it. So we finally made peace.

Church Congressional Hearings

Hicke: One thing that took place I think while you were with Chevron -- but Mr. Kirkham was involved and he hasn't talked about it -- is the Church hearings. Do you want to tell me about that or should I --

O'Brien: I was in it --

Hicke: I know you were.

O'Brien: -- until it got down to the end, Kirk got in it then --

Hicke: Oh, okay.

O'Brien: -- at the time they were going to indict me. Senator [Frank] Church was a wicked and sinister man. He had a vicious, unprincipled fellow by the name of Levison, who was his chief honcho. Church was really running for president, and he ran for president against the CIA [Central Intelligence Agency] and the oil companies. He went a very long way toward destroying our intelligence capabilities in the United States with his assault on the CIA; it was unforgivable. He was trying to rewrite history as far as the oil companies were concerned. He used the most shabby, underhanded tactics imaginable.

Anyway, it got to be quite a hassle. There is a shelf full of the transcripts of hearings [gestures].

Hicke: Five feet wide, you're indicating?

O'Brien: Yes, six feet, of the hearings before Senator Church. I was trying to orchestrate it inside the company. My relationships with Levison got more and more acrimonious. We weren't about to roll over and play dead. We received a whole series of subpoenas, and I went to Washington, negotiated with this jerk about the subpoenas, and we produced documents and all that.

The thing came to a great climax when he began to send us subpoenas that were so detailed that you had to wonder. Most of the time you spend with the government is in objecting to the breadth of subpoenas -- dragnet subpoenas -- that are designed to require you to produce a hundred or two hundred thousand documents. In this case the subpoenas were very detailed. Meanwhile, I should say that three of us had testified before the committee: George Parkhurst, Dennis Bonney, and I.

Hicke: All from Chevron.

O'Brien: Yes, officers of Chevron. I tried to carry the fight to Church by telling him that he was in effect rewriting history and that if he really wanted the facts he would put in evidence the Mootness Study that we had done in the cartel case; that I had originally submitted that study to the government as a confidential document, and it had been largely treated that way. Since Church was trying to do what the Chinese are trying to do today -- saying nothing ever happened in Tiananmen Square -- I thought it was time to surface that study.

Now it was in the possession of the committee staff, but obviously they would never have put it in the record, because it absolutely blew all of these phony-baloney contentions of Church right out the window. The man who had worked on it, Neil Jacoby, the head of the business school at UCLA, who had written much of the economic study, wrote to Senator Church and asked to be heard. The committee had all these trained seal economists they were running through the hearings instead of the guy who had really studied the subject.

Anyway, I asked Senator Church to put the study in evidence and offered a copy of it to him. He said, oh, the government didn't have enough money to publish that kind of stuff. He never did put in evidence. I said, "Well, you've got enough money to publish the federal budget, you ought to publish this study." Our relationships were really pretty rancorous, and mine with Levison were very bad.

Then we began to get these subpoenas, and they were so detailed that I finally went back to Washington and saw this guy and said, "Look, I don't know what you're trying to do, set me up some way?" I said, "These subpoenas are so specific that the only conclusion that I can reach is that you have the documents already in your possession -- you describe them as between A and B and so on -- that you have them and you're hoping that I won't be able to produce them or that I won't produce them. Then you can take some steps against the company or against me. Why don't you give me the documents and let me see if I can find them?"

So we went around and around and around. Then the word came back they were about to indict me for obstructing justice. Much against my feelings, they were finally permitted to search for these documents in our files, and there were no such documents. What had happened was that presumably somebody inside the company

had forged these documents and had sent them to [Jack] Anderson.¹ I wanted to sue Anderson, because I thought that we could take his deposition and compel him to produce the documents and maybe we could locate the people who had written them.

I hired some outside investigators to see whether we could identify the person or persons in the company that had forged these documents -- typewritten documents. Anyway, the documents presumably came to Anderson from somebody inside the company, and Anderson slipped them to Levison. So Levison was subpoenaing me to produce forged documents, and he thought all the time that I was withholding the documents and obstructing the work of the committee.

Well, it was a costly exercise in the sense that we opened up our files to them to look through, and they made a lot of hay out of some of the things they found -- our conversations with the King of Saudi Arabia. I didn't appreciate it at all. But they were forced to drop these charges about the documents, and Kirkham went back to the final hearing before the committee.

We were aided in that by one of the staff of the committee, a fellow who thought that we were being badly mistreated. There were several such sympathizers on the staff; I know because Bonney and I once testified -- I think it was both of us -- testified in, what do they call it? some sort of private hearing; they have a word for it. After we had testified, I was walking down the street, and one of the many members of the Church staff came up to me. We were walking back in the direction of his office, and he said something like, "You were involved in the cartel case, weren't you?" I said, "Yes." He said, "Did you ever see the correspondence within the Department of Justice that led to the dismissal of the case?" I said, "No, why?" He said, "Oh, I've got that in my file; I'll show it to you."

So before the end of the day, I walked out with copies of the correspondence from the trial staff in the cartel case written to the head of the antitrust division urging him to dismiss the case. Here was Church trying to prove all this ridiculous nonsense. So I put those in evidence -- material supplied from Church's files by his staff to me -- I put those in evidence at the Church hearing. You'll find those in the record too, in which this guy says, "We've got a bum case against Standard of California, and if we try it

1. Newspaper columnist Jack Anderson had supplied Senator Church with documents he claimed to have received from a secret source inside SoCal.

we'll probably get licked, and now is a good time to dismiss it without too much loss of face," et cetera, et cetera.

Hicke: Marvelous.

O'Brien: A lot of stuff like that. Those are in the record. So not everybody agreed with his tactics and we forced him to write reports that were more balanced, and some of his staff intervened and kept him from making the worst charges. But it was a bloody exercise and I thought he was an absolutely despicable. And I still do. He's gone to his great reward now. But it was a very hectic exercise. Hugh Taylor and I worked night and day on some of those things for months, and we conducted a very long investigation trying to identify the person who had precipitated all this business with his forged documents.

You see, Levison roamed through the CIA files, the State Department files, and so on. What his purpose was, I'll never know. I don't know whether he belonged to the KGB or what. Anyhow, you'll recall that in I guess it was December of 1970 or '71, when OPEC [Organization of Petroleum Exporting Countries] sent us word that they were going to cancel all our concessions and to get the hell out of the Middle East in ten days and give up or else, we got the approval of the State Department and the antitrust division to try to make a single response to all of the concession countries by all of the oil companies. We'd been picked off one by one; we called it leapfrogging. You'd give one country something and the other would want that plus some more and then that would ricochet back to the initial country, and so on.

Such a document was drafted and sent to OPEC with the approval of the United States government in all of its manifestations asking for one single negotiation between the OPEC countries and all the producing companies in all the OPEC countries. It never worked, because State sent a green pea emissary out to Iran and he got talked out of it; a U.S. emissary got talked out of it. So instead of having one single rally, a monster rally involving all of the concession countries and all of the operators, to try and bring some sense out of this whole business of international oil pricing, we wound up having to negotiate with all the Middle East countries without having Libya, Venezuela, Nigeria, et cetera -- the countries outside the Middle East -- involved in those negotiations.

But we also got approval, then, to have a kind of master strategy group, and that was done with the understanding that Mr. McCloy, John J. McCloy, and his firm would monitor these meetings while we were developing the tactics and strategy of dealing with OPEC, first in the Middle East negotiations and then in subsequent negotiations in Libya and elsewhere. It was called

the London Policy Group, and it was all done with the knowledge and consent and with periodic reports to the Department of Justice as it was developing.

Along comes Church, as I say, running for president against the oil companies and dismantling the American intelligence system. Levison got wind of our meetings and he thought, oh God! have I got these people by the throat now! To his profound disgust and dismay, he ultimately learned it was all being done with the knowledge and consent of the Department of Justice. He was very frustrated.

Hicke: One for the oil companies.

O'Brien: Yes. So that's a very incoherent and sketchy account of our great, bloody massacre.

Joining Socal as Director and Vice President: 1966

Hicke: Well, let's end the oil story here with a little bit about after you became vice president for legal affairs and director of Chevron, what your relationship then was with PM&S.

O'Brien: While I felt honored to be asked, I gave a good deal of thought as to whether I ought to take that job. After all, I'd gone to work for the firm right out of law school, and except for the four years I was away during World War II, my whole professional career, such as it was, had been spent in the firm, and I had my roots down pretty deep.

I felt great loyalties to the Standard Oil Company. I had great respect for Gwin Follis, the chairman and the values for which he and the Company shared. I also felt some sense of challenge. After all, it is one of the greatest international corporations. I was interested in international affairs. I had done a lot of work on their international affairs and their antitrust affairs, so the prospect of continuing to work in that field interested me and I felt I had some experience in it. But I was also old enough to realize that whatever my earlier relationships or my position within the firm, I was starting a brand-new career with a whole new dramatis personae, that I would have to learn the ropes in a corporate environment, I'd have to find out how to get things done, and I'd have to start over, in a way, in my middle fifties to earn the confidence and respect of the people with whom I would be dealing in my new role.

I had a number of conversations with Mr. Follis about the job before I accepted. As a matter of fact, it took me quite a long time to make up my mind. Among other things, I said to him, "Has it occurred to you that many of your colleagues within the company may conclude that I can't adopt an objective view about PM&S or its performance or the caliber of legal advice it gives the company, because, after all, he's a bent twig? He's been there all his professional life."

He said, "Sure, of course I've thought of that." He said, "On the other hand, you know the firm better than anyone else that could be selected, and you'll know its great strengths and its weaknesses, if any, and you'll be able to orchestrate the sources of legal advice and watch the caliber of work." I said, "Well, that's great, but the same thing applies to legal fees. People may think that I can't be objective about the firm and what it's charging the company, whether they're getting their money's worth, and so on." Well, he said, "Again, your own experience --

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-- will enable you to guide us and tell us whether the legal advice is good, whether they're wasting our time, or we're wasting their time." That was a fairly wise statement, because obviously there are people within any big company who may think that if they can't sell some proposition to the boss, maybe they can sell lawyers on it. And maybe the lawyers can be manipulated or used in some way to advance a cause that somebody wants to bring about.

So anyway, having satisfied myself that at least he thought that I could function in an atmosphere of using the great skills and talents and experience of the firm in a sophisticated way and view it as kind of a third force and look at it with objectivity, I decided to take the job.

It was like getting on a giant roller coaster, of course. I immediately had a whole legal apparatus, worldwide, to deal with: in-house lawyers and retained counsel throughout the U.S. and in all the countries of Western Europe, Canada, South America, the Near East. And I quickly discovered that in a corporate atmosphere things happen with lightning speed. There may be a great deal of deliberation and staff work and research and so on, but once problems reach the level of the chief lawyer and the chief executive of the company, each problem has achieved a kind of momentum that carries it along like a Baldwin locomotive hurtling down the track.

And if you really expect that you can influence its course or its speed, you already have to be going at top speed yourself. This means that gradually you learn to see the problems emerging --



James E. O'Brien
at Loch Kishorn, Scotland
ca 1970s

you see it on the horizon. It's kind of like watching the waves make toward the pebbled shore. You see it begin to crest and grow, and that's the time you have to start paddling like mad if you want to keep up with it.

I'd never thought of it quite like body surfing, but maybe that's the way it is.

Hicke: Yes. Your description makes that very apt.

O'Brien: By the time it peaks, you'd better be on top of it or it'll wash you right under, and that means you have to keep going. And that meant to me that I had to keep PM&S going; that I wouldn't be giving them a fair opportunity to deal with the huge problems that I could begin to see coming unless I alerted them at the earliest stages that I could, and gave them an opportunity to get up to speed on the problem, so that when they were officially approached for an opinion or for some recommendation or whatever, they didn't have to start with Genesis. They were already swinging with it, see.

Hicke: Yes, I see.

O'Brien: And that was one of my objectives. I also quickly discovered that none of the lawyers inside the company, from one end of the company to the other, even those that were domestic -- that were in Salt Lake, New Jersey and New Orleans -- none of them knew each other, even though it was one company, and even though they might have common problems in the company. There was no mechanism, no apparatus, no method by which they became aware of the fact that other lawyers in other branches of the company might be going through exactly the same kind of a case, whether it was a specialized case involving oil and gas law, or whether somebody had dug up a pipeline, or whatever, that could be happening all around the thing.

So one of the first things I did was to initiate a system by which we had an annual conference of all these lawyers. The first one was devoted to introducing these guys to each other for the first time.

Hicke: Was this about '67, or something like that?

O'Brien: Yes. And then after that it was done on an annual basis, and I devised a very rudimentary and primitive computer reporting system. A printout was sent to every lawyer, which had a synopsis of every case that we had in the company. That was sent each month to each of the operating companies, to their lawyers. They, of course, had to keep that up-to-date in respect to their own cases. But the totality of all the cases was made known to them, so that if they

had a [similar] case, they might be able to use an expert who had considered this problem before. They might be able to find that in-house and retained counsel had written voluminous opinions on this, that, or the other subject, and it had all been researched, and so on; it would ease their task. There might be questions of tactics, and so on, all of which could be shared to everybody's advantage.

And finally there was the problem of gaining the confidence of the presidents of operating companies, because the company was organized with separate boards of directors and operating subsidiaries throughout the country, or their equivalent. There would be an operating president in Louisiana, Texas, New Jersey, Denver, Canada and the rest of it. Administratively, each of these lawyers reported to his boss, and he was responsible to his boss, and his boss was the primary focus of his life and his future in terms of his salary, his benefits, his bonus, and so forth.

Well, I was determined that I would create what you might call an intelligence channel. The lawyers would report to me in respect to legal matters without regard to their bosses. But there might be some boss who would think that if his lawyer was reporting to me, he might be reporting something that'd make that boss look like a big chump, or that he'd stubbed his toe in some way. Now San Francisco knows about it, and San Francisco's lawyers are going to get into the act, and I'll look foolish when San Francisco has to try to bail me out, and all that.

It was perfectly evident to me, though, that we had tremendous legal resources. We had PM&S with all of its great capacity, experience, and talent, and we had retained counsel in every major city in the United States, and usually the best and the biggest and the most capable. So we had tremendous ability to move into a major problem, and the company always had a lot of major problems to handle -- if we knew about them in time. There'd been a few cases while I was in PM&S when cases had gone a long way before they suddenly reared their ugly heads in San Francisco, and it turned out that they were a great disaster and they were almost irretrievable, because a lot had gone on before anybody here truly became aware of what was happening. So this reporting system and this hopefully not only vertical communication but lateral communication between the operating lawyers and the operating companies would help create a rapport and an intelligence system, so we could quickly bring to bear all we could in the way of skill and talent to try and handle some of these tremendous problems.

I think it worked with fair success. I think the lawyers got to know each other, and gradually, maybe grudgingly, the presidents of these operating companies came to realize that I wasn't gunning for them, that as a matter of fact it was an opportunity frequently

to bail them out of something for which they were not personally responsible, but where we needed all of the skill we could muster.

So I traveled to see them; we talked on the phone a lot. I put some things in the policy manual by which they became obliged to report certain transactions to me for approval here -- some of the complicated joint ventures in exploration and production deals, things of that sort where there were a lot of ouchy problems.

I just had a call the other day from some lawyer in PM&S asking me about the genesis of some of those provisions in the policy manual that are still there which require special reporting of particular kinds of transactions to forestall any difficulty with federal and state authorities on antitrust grounds, and so on.

So I started out -- physically I moved just one floor down from where I'd been for thirty years, and I had been, except for the war, with the firm thirty years and was what they would have called a fully vested partner. It had its pace.

I think I told you that within the first week or so I was going off to South America with Bud Lund.

Hicke: Yes, you told me about that.

O'Brien: And I suddenly did a U-turn and found myself in Amsterdam talking to Ibnu Sotowo, who was the Minister of Petroleum in Indonesia -- the first Indonesian back into Western Europe after the great internal convulsion that had taken place in Indonesia.

Another interesting thing about relationships was this: Jim Gosline, who was then then president [of Socal] in 1966, was the head of a committee of directors called the Profit and Growth Committee. They were considering all sorts of ways of saving money and improving efficiency. Some member of that committee proposed to Gosline that they propound to me the question of why didn't we have an internal, in-house legal department of the sort that all the other major international oil companies had?

Well, I studied that question in depth. I talked to the general counsel of some of the other oil companies, I secretly compared costs with them, I looked at the PM&S statements, I bethought myself of the whole thing for several months, and finally delivered myself of a memorandum to Gosline and his committee which put that question to bed for the rest of my tenure.

I concluded on the merits that no internal legal department of any oil company could conceivably match the talents of PM&S. And if anybody objected to the fact that some senior lawyer in PM&S had a very high hourly rate, the company had to remember that they were

not paying him any benefits, and that if an executive called up that lawyer and asked him for his view on a question, he'd probably already considered it for half of the Fortune 500 [companies], and he answered it on the telephone. And even though his meter ran at a fairly high rate, the cost to the company was substantially less than if they'd tried to keep a lawyer on a legal staff who was in any way prepared to answer an obscure question about some corner of corporate securities law or things of that sort.

I supplied as part of this memorandum a list of the major clients of the firm for whom the firm acted as counsel in the western states or where the firm was general counsel for other companies and for banks and railroads and fifty other things. When you racked it up like that, you could see that any firm that was exposed to the variety of problems that PM&S was, that handled such high-level negotiations and drew such contracts of such complexity and handled major litigation for such a wide-ranging, diverse clientele, that it was almost impossible to conceive that an internal legal department could ever equal those skills.

And finally, it occurred to me that this being the international headquarters of the company, I thought to myself I should really explore a little bit some of the extracurricular things that some of the major players at PM&S were doing outside of the law. And of course, it turned out that they were trustees of major colleges and universities, they were involved in the symphony, the museums, the bar associations, all of the professional exercises of the legal profession as well as all of the cultural things around California. That fabric of relationships that emerged from that, where they were associated with people of equal caliber, not only in the profession, but in the major corporations and other walks of professional life in the state and in other states, gave them another intelligence system that in no way could be duplicated by a group of thirty, forty, fifty, or a hundred in-house lawyers. So I marshalled all of these arguments, opinions, and views, and as I say, wrote a memorandum on the subject, which ended the matter.

Several of the directors came along privately afterwards and were very congratulatory about it and apparently agreed with that conclusion. But it was written, not under a PM&S banner, but hopefully in the most objective way, really to look at the costs and benefits and the rest of it.

Now there were some things that I thought the company properly did for itself. We had a patent and trademark group in the company, which was bigger than any private firm of that sort in the West, with forty or fifty lawyers in it. Very sophisticated people dealing with all sorts of chemical patents, refining patents, things of that sort, and operating in eighty/ninety countries then,

with copyright and trademark problems throughout the world. Now, if you like, a fairly narrow corner of the law, but one of tremendous and practical importance to the company, and here they had and had had for many years, a very skillful, great group that handled that.

They had a lot of landmen. Those people all reported to the land vice president. In my day, for most of my time, that turned out to be Larry Funkhouser, who is a superb geologist, a dear friend, and a great oil finder. Those landmen, all of whom were lawyers, came to a very considerable number. Where we were tremendous acreage holders, say in the Gulf of Mexico, in Louisiana and Texas, where we were leasing up thousands upon thousands of city lots to put together a drilling site in the middle of Los Angeles, there weren't enough lawyers, despite their numbers, in all of California to put together a huge operation like that, covering fifty-foot lots throughout a whole downtown section of Los Angeles, and signing up everybody on a lease with the right to cross his property, and drill a well and all that kind of business, and keep all of the administrative things straight, and pay him his royalties, and do all that, except within the company.

Some of these oil and gas problems are infinitely complex, and there were people within the company who, after years of practice before oil and gas commissions and some of the producing states, had become very skilled at obtaining the sort of orders that made for efficient operations of oil fields, production, and so on, and protected the company's interest.

Then the company had its own tax department for which I had no direct responsibility, although I got into their act from time to time. That, for most of my tenure, was run by Scott Lambert, who himself had a PM&S affiliation.

Hicke: Could I just interrupt to ask, was that memo confidential? Because it sounds like it was really descriptive of the firm at that point. I don't know --

O'Brien: I haven't any idea where it would be now, if it's even in existence.

Hicke: Okay.

O'Brien: My files are gone, I guess, and probably those of the Profit and Growth Committee. I don't know.

So those were the things that occurred to me within the first few years that needed to be kind of put in order, some new initiatives, some kind of consolidating, and so on.

Relationships Between Socal and PM&S

Hicke: What kind of oversight did you exercise on the work? For instance, if somebody from Chevron called up a PM&S lawyer, did you know about it, or did they carbon copy you, or did they ask you first?

O'Brien: I got a copy of every memorandum that was written by the company to the lawyers, and a copy of the lawyers' memorandum back. For the first year or two, until I thought I had digested the dimensions of the job, I read every piece of paper. That meant in the normal course of a day I would have a stack a couple of feet high. So I worked pretty hard -- usually seven days a week and most evenings -- to ensure that I understood everything that was happening.

It also gave me an opportunity to watch the caliber of PM&S's work and to watch for -- and I never found very much of it; just occasionally -- busy work, where some lawyer would flog some problem to death and spend more time on it than he should have, answering a question that probably shouldn't have been asked in the first place. I could handle both ends of that. I could say to the lawyer, "Gee, you really flogged that to death." Or I could call the guy up who'd asked the question and say, "Gee, you got a three-hundred-pound answer to that question."

Hicke: Who in PM&S were you dealing with mostly?

O'Brien: Most of the time it was Kirkham. Because he -- I've forgotten what year that he became general counsel -- I put it in my piece I wrote about him. So he was there most of the time.

Hicke: Was that '60 -- just a second I want to get that --

O'Brien: It was '60 to '70. I started in '66. So we really only had four or five years. But he and I were kind of interchangeable in the sense -- well, I didn't have his talents for great advocacy. Because he continued to participate in major litigation, and he was away from San Francisco a great deal. I could play on the mighty Wurlitzer of PM&S, and I sent the questions that I had or that the company had to the PM&S people that I selected that I thought were the best equipped; I did that always, and there wasn't any problem about that.

At first when I was traveling a good deal, I'd sometimes just bundle up my whole stack of mail and send it to Kirk to sort out. Neither of us was bucking for anything, and we were trying, within the limits of this avalanche of paper and problems, to keep abreast

of them, come out with the best answer, and do all these things in a timely way.

Hicke: Would you send it to the head of the practice group first, or would you send it to whoever was working on the problem without going through the --

O'Brien: Well, if I wrote a memorandum, I'd send it to the person that I wanted to handle it, and I'd send a copy to Kirk, so that we both knew that the problem was on the table and who was doing something about it.

Once in a great while, not very often, I did have occasion to spank somebody for stoozing around and not answering a question for a long time. I felt that didn't make the firm look good if somebody was dilatory in answering a problem, where somebody in the Company was pent up waiting for an answer and didn't get one, and so on. I kept track of that to some extent, and could gig some guy if he wasn't really doing his job promptly.

I was as interested in having the firm do well as they were in doing well. It takes a great deal of consideration on all ends of this thing. Kirkham and I were kind of interchangeable. We were so close and had such great affection and confidence in each other that there never was any question of pointing fingers at either the firm or each other or anybody else.

Kirkham is the kind of a lawyer -- and I hope I was -- that was prepared to take off his coat and get down and wrestle on the barroom floor, you know. I'm sure that's one secret of it; you can't sit in PM&S and stick little answers through the wicket. You can't draw yourself up to your full height and just sit there and respond with a memorandum. You've got to participate in the whole thing. The genius of PM&S has always been that from generation to generation they developed people who grew up from their legal beginnings in knowing their counterparts within the company and having as much background in the great problems and events of the company's history.

People in the company came to respect their judgment, their experience, and their sophistication in their view of the overall problem, not only of its legal dimensions.

For a good many years I handled the Caltex problems in the firm. During that period, Hillyer Brown would send me a memorandum saying, "Review these papers," (and there'd be a stack --

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-- about six inches thick, and the deal was pending re Germany or Amsterdam or wherever, and you were supposed to react to them immediately) from both a legal and business point of view. "Let me know what you think of the deal, as well as the way it's being written up, huh?"

You didn't know if this contract was being negotiated in London or New York, whether the bright idea you had about it had already been considered and discarded long ago. So you were on the telephone with people in various parts of the world trying to make sure that you were really dealing with the last piece of paper and not some discarded draft.

- Hicke: Did you try to separate the legal and business advice? Or did you let them sort that out?
- O'Brien: Sure, sure. In fact, you were almost, let's say you were compelled to give business advice, because when I was actually a director --
- Hicke: I was just going to say, as a director you certainly would --
- O'Brien: If we asked PM&S for an opinion on something and received an opinion, I'd probably discussed a dozen different ways with the fellow who was writing the opinion. So when it arrived, then the chairman of the board would look at it, and say, "Okay, I've read it, what we do?" So PM&S would point out, let us say, in the traditional way, the risks involved in this proposed course of action, whatever: should we settle this case, if so, for how much?

After they had functioned on what they considered the appropriate scope of the legal problem, then the chairman would say, "Well, what do I do now?" So then I'd have to function in another capacity, let's say. Sometimes I had to say, "No way are we going to do that, we're not going to do that." Because never once in my tenure that I recall, did the board of directors or the chief executive ever overrule my advice and decide to do something that I'd said was out. If my red light went on and I said so, then that was the end of it. They were trying to live within the law; they weren't trying to skirt the law or to go beyond the safe borders of conduct. The job would have been intolerable if it'd been any other way.

- Hicke: But you took some very strong stances too. For instance, not lifting any oil in Libya -- that was a tough decision.
- O'Brien: Yes, sure. Well, that went with the job, as far as I was concerned.
- Hicke: But it's clear they have the utmost confidence in what you were doing.

O'Brien: Well, I don't know whether they did or not. At least they didn't overrule me.

Every lawyer in PM&S wants to see the company achieve the things it's trying to achieve. It wants to give advice in a way that will facilitate the accomplishment of that objective. On the other hand, if they see what they consider to be very dangerous risks involved, their integrity compels them to state those categorically. They're not going to pull their punches in order to look like they're just going along to get along.

Their own professional integrity means that they will call the shots as they see them and will have absolutely the highest professional standards, and that, of course, is a great, great benefit to any client. It's too easy, given the momentum of these problems, the urgency of these problems, the sort of gravitational force that goes along that tends to pull a professional man in the direction of the answer that his client wants, particularly when his client is sitting on top of a great, corporate enterprise operating around the world, to say, "Yes." But if he feels compelled to say, "No," he has to do that, or he's not worth his salt.

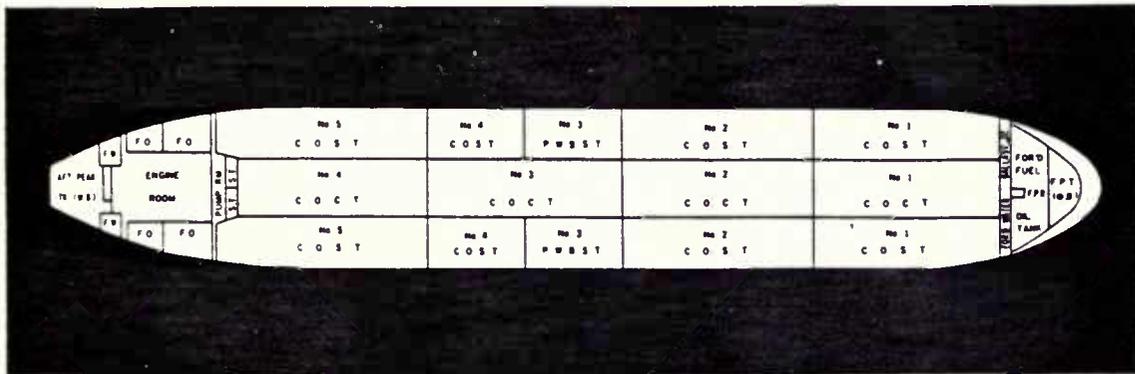
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Announcing the Christening of the
s.s. *JAMES E. O'BRIEN*

March 10, 1970

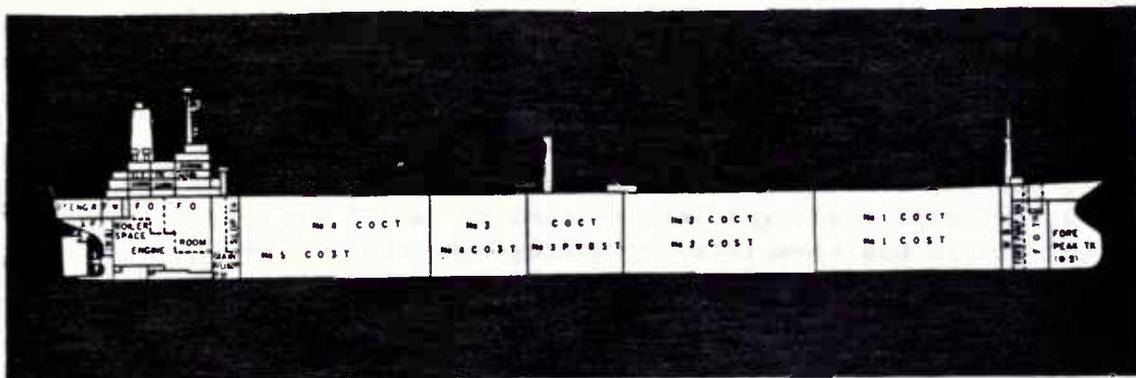
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Principal Particulars

Length Overall.....	1,069 feet, 6 $\frac{1}{2}$ inches	Cargo Capacity.....	1,661,000 Barrels
Length Between Perpendiculars.....	1,017 feet, $\frac{1}{2}$ inches	SHP (Metric).....	30,000
Beam.....	159 feet, 9 $\frac{1}{4}$ inches	Speed, Average.....	16.0 Knots
Depth.....	80 feet, 4 $\frac{1}{2}$ inches	Main Engine.....	MHI-Westinghouse Double- Reduction Geared Cross Compound Steam Turbine
Draft, International Summer.....	62 feet, 1 $\frac{1}{2}$ inches	Boilers.....	Two Mitsubishi-Combustion Engineering Water Tube Boilers
Deadweight.....	214,000 Long Tons	Cargo Pump Capacity.....	75,500 Barrels per hour
Gross Tonnage.....	109,550 Tons		



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Historical Particulars

Contract Signed.....October 20, 1967 Keel Laid.....August 8, 1969 Christened.....March 10, 1970
Class.....American Bureau of Shipping — ✕ A1 (E) Oil Carrier ✕ AMS

XI PRACTICING LAW AT PM&S

Hicke: What you're describing now is a firm of lawyers that have the client's best interest foremost. Do you think that this is changing with the intense competition between law firms for growth?

O'Brien: I don't think so.

Hicke: I don't mean just PM&S.

O'Brien: I don't think PM&S has changed its style or its ideals or anything of the sort. I think, as a matter of fact, given the intensity of the competition, that there's a greater compulsion within that competition to be right and to deal with the problem in the most effective and skillful way, because, perhaps, of the competition. But having now watched PM&S for over fifty years, and having been around when the original partners were there, I don't see any change in their standards of performance, in their aspiration to practice law against the highest standards of the profession, to be the most capable and skillful firm.

When I look at the array of talents that are exhibited in that little binder over there that has the resumes of the 500 lawyers, why it's hard for me to believe that any other firm in the United States has such an aggregation of experience and background and talent. It's absolutely fantastic. Absolutely fantastic academic records, breadth of experience, and so on. So I don't think the firm has changed in that regard.

Practicing law, I think, has changed, and to my way of thinking, not in the happiest ways, because it takes such a tremendous battery of people to handle the enormous problems now that some of the personal aspects of practicing law perhaps suffer a little bit. I can't really judge that. From the outside it gives that appearance.

When I began to practice law, if you went out to try a case with somebody, and you came home at five o'clock, there'd probably be four or five guys waiting at the elevator to find out what had happened, you know.

Hicke: Oh, yes.

O'Brien: Everybody shared each other's problems. When you first came to work in the firm, you were put in a big bullpen, and you overheard the conversations that your colleagues, apprentice lawyers, were having on the telephone. You kind of multiplied your experience, and you talked about your problems to each other in this big bullpen. So you were very much involved in the lives of all of your contemporaries. Maybe that happens today. I think it was easier to happen when it was a smaller firm.

The thing that is astonishing in some ways, but perhaps to be expected in another, is that commencing fifty years ago when I began to practice in the firm, there have been great lawyers, ones for whom I had, profound respect.

Hicke: In the firm?

O'Brien: Yes. Alfred Sutro, Oscar Sutro, the great trial lawyer, Felix Smith, Gene Prince, Gene Bennett -- people of very great stature and talent. And the firm's growth, of course, is in part an expression of the growth of its greatest clients. If you want to represent the telephone company and handle a great rate case, you've got to have a platoon of people. As it grew to be a huge company, the Standard Oil Company emerged from being a West Coast marketing company into one of the great international, integrated companies, and their problems involved questions of all countries of the world -- including Saudi Arabian law. If you wanted to hang onto the coattails of a client like that, you had to develop people, and develop skills, and so on, that went with the chore.

That's the way the firm grew. As it grew, it grew in stature and reputation, and became nationally known. But the same old rudimentary rules of doing it right always has prevailed -- practicing against a standard of excellence.

Even when I came in 1935, they had comparers. You couldn't write a letter acknowledging a letter without having sent it to the comparer and having her put a little rubber stamp on it to make sure that the letter was properly spaced on the page, and the secretary read her notes to the comparer, and so on. You're trained in a firm that has a manual of style and that sort of thing, so the mechanical parts of this thing are done against that background. The professional standards -- I used to laugh at Francis Marshall, because when Alfred Sutro asked him a tough

question, he went roaring down to the library, wrote out the names of the forty-eight states -- there were only forty-eight then -- and he'd look for the latest precedent in every state.

Hicke: Oh, my goodness.

O'Brien: I'm kidding a little bit, but that was the way we all approached the task of legal research and legal writing.

The miraculous thing is that from that time, fifty years ago, the firm has cast up in each generation people who serve with the same style, the same experience, the same kind of legal judgment as the founders of the firm did. It's also been able to handle all of the new fields of law that have emerged.

Beginning in the '30s, the whole corporate securities were changed with all the federal statutes, the SEC [Securities and Exchange Commission], the Trust Indenture Act, and you can test that against the capacity of this firm to handle the legal aspects, for example, of a Gulf merger -- the biggest merger in the history of the United States up until that date, a job of infinite size and complexity. So I don't have any hesitation in saying that the firm is right up to speed.

Hicke: Well, one of the questions I usually ask is for characteristics of the firm. I think you've just covered that very well. Do you have anything more to add on that subject?

O'Brien: No, I think it has a great future. I think all the members of the firm nowadays, if they reflect for a moment, must realize that earlier generations of partners and associates in this firm made quite a record and frequently made very considerable sacrifices for the future of the firm. I'm not speaking about myself at all. But I look back myself on people who went before me with the knowledge that it wasn't always a cornucopia of riches and that people had to tighten their belts and work a little harder and forego some of the pleasures of life to make the firm hum. So long as the firm retains that spirit, no one can ever doubt its abilities to enjoy in this generation and those to come the kind of success it's had in the past.

XII COMMUNITY SERVICE

Hicke: That's a wonderful note to end the discussion of PM&S on, but I want to ask you for a little further information on your community activities which I think cover the wide world and probably we could spend several days on. Maybe you could just do some highlights for me.

O'Brien: When I was younger in the firm, I used to to do some outside things. I used to do a certain amount of speaking; I had done a certain amount of speaking in school. I got very much involved emotionally at the time of the great longshoreman strike in San Francisco --

Hicke: -- in the '30s?

O'Brien: -- in the '30s with the general strike. I had just begun to practice law, but I asked Felix Smith if he had any objection to my roaring around the town making speeches and so on, and they didn't have any objection, so I debated with a lot of Harry Bridges's henchmen in every kind of a forum. Can't remember all the places I went. I got on their short list, I'll tell you. As a matter of fact, one day they showed up with a lot of pickets in front of Standard Oil Company of California raising hell about PM&S.

Hicke: Because of your speaking tours?

O'Brien: I think so, yes, because I debated with a lot of people that I thought were hammering other people in back rooms. I may have told you this story. About that time, Stephen Vincent Benet, the great American poet, had written a long, narrative poem about the fascists called Burning City. When these goon squads were running around San Francisco beating up people, I compared them with some of those people. The communists never like to be called fascists. When I referred to the fact that they were a bunch of boys with rubber fists, they didn't particularly like that.

But I debated with, among others, Mat Tobriner, who ultimately became a Supreme Court justice in California and a very distinguished, likeable, able gentleman. He represented the AFL/CIO [American Federation of Labor/Congress of Industrial Organizations]. That was a pretty rough-and-tumble bunch for him because he was a very sweet and a very courteous and a very gentlemanly fellow. He had more of the smoky lamp about him than he did a bunch of two-fisted longshoremen. I must say I came on pretty strong the night I debated with him. I'm afraid he wasn't ready for such a rambunctious, young firebrand.

Years later I negotiated a labor contract with him, and we sat for weeks. He was representing the glassmakers and I was representing the glass companies. Harry Brawner, who was the CEO then of Fuller and Company, and I used to go out to the glass plant in South San Francisco and negotiate all day long. When the contract was finally agreed upon by Tobriner and O'Brien and Brawner and the committee, it went back to the union, who repudiated Tobriner and committee; so we had to start all over again. I'll never forget how embarrassed he was to call me up and say that they'd thrown him out a window, in effect.

Anyway, so I have done things like that. I served on the board of the Youth Council in San Francisco for youngsters who were kind of handicapped and impoverished. I met some wonderful people on that board, including Dan Koshland who was, along with Walter Haas, the principal stockholder of Levi Strauss. One of the most wonderful men in the history of San Francisco, a man of great wealth, to be sure, but a man of even greater compassion. That was a friendship I cherished all my life and which I had occasions to lean on later in life.

I served on the board of the San Francisco Chamber of Commerce for a couple of years. That was kind of a romp with some friends of mine. The president of the Chamber was a close friend of mine, Parmer Fuller. There were a lot of other Comanches on that board and we had a lot of fun. I made speeches on public occasions and presided at things like the celebration of the great earthquake and fire and dedications when they dug the big hole for the Equitable building.

I had a pretty busy practice. I worked hard, worked a lot. In those days, you were still practicing law in the great tradition. They didn't really think you had your back in it unless you were around here two or three or four nights a week. Besides which, when you started out, you didn't have a secretary of your own and you had to rely on the night staff to get your work out in the morning -- before morning.

Hicke: Oh, dear.

O'Brien: But, I don't know, I turned down various invitations to do things because I felt I was too busy and I was on the road and I never really wanted to serve on a board unless you could do something. You always felt you were filling up a chair that somebody else might have really done something about.

Hicke: Since you've retired, you've done lots of things, I know. You've been on The Bancroft Library board.

O'Brien: Yes. Well, I served for a number of years at the -- while I was still in PM&S and for a year or two after, I went over to Stanford as the chairman of the Stanford Hospital board. For a few years, I was on the National Fund for Medical Education, which was an organization created by statute at the behest of President [Dwight D.] Eisenhower. It raised and disbursed funds in the hope of being on the cutting edge of medical education in the United States. It was kind of interesting because it had a board composed of a lot of crowned heads in the medical profession and you got into the whole area of what were the frontiers of medicine that should be integrated into the curriculum of the major medical schools of the country, and we met around the country.

I served on a couple of corporate boards. I enjoyed serving on Abercrombie & Fitch, because I served on it in the good old days when it was still selling elephant foot umbrella stands, you could buy almost any kind of thing you wanted, including fine guns and the rest of it. They met in New York. I had represented them out here, they opened a store in San Francisco.

Hicke: Yes, I think you told me about that.

O'Brien: Yes. And as a favor to a dear friend of mine, I served on the El Portal Mining Company board.

Hicke: I think we talked about that one, too.

O'Brien: And I still serve on the board of the Academy for Educational Development in Washington, which was created by Alvin C. Eurich, who was, at one time, acting president of Stanford and became the first president of the State University of New York, which has about fifty campuses, and subsequently was the head of the educational division of the Ford Foundation, chairman of the Aspen Institute, and he was a dear friend of my first wife and mine. He wanted to start his own nonprofit consulting firm in the field of higher education. We discussed that for quite a while.

I helped him draw the first articles of incorporation, and it's now one of the most prestigious outfits of its type in the

field of education in the United States. In the intervening years he has been hired as a consultant to reexamine the curriculum of most of the major universities in the country, done financial work, done searches for university presidents, that sort of business.

Then in the last twenty years, the business has become probably the biggest international dispensers of education and health care. In the last few years it's been awarded the major contract for AIDS education in Africa, for all sorts of health programs involving mothers and children; dehydration and diarrhea. It established the King Faisal University in Saudi Arabia and designed the buildings and curriculum and everything else. So that's kind of a fascinating outfit.

I used to be a trustee for the Southwestern Legal Foundation. I guess I'm now kind of an honorary trustee. I got interested in the establishment of their International and Comparative Law Center, which provided us a forum to express our views about some of the traditional principles of international law. Never having studied international law, I guess I had the impression that that tiny coterie of international lawyers really spend their time talking to each other at the American Society of International Law and International Law Association. It was thought to be a great idea --

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-- to have a similar organization in the West, and so it was established under the aegis of the Southwestern Legal Foundation in Dallas originally on the campus of SMU. The four American international oil companies and a few other major companies were really responsible for finding the funding to get it off the ground. We planned it so that it published first a book of selected readings in international law by very distinguished international lawyers and judges.

We established then an Academy in Dallas, which is now probably in its twenty or twenty-fifth year, in which students come from all over the world to attend a six- or eight-week course in Dallas. Most of them are judges and lawyers from Third World countries and South America and Western Europe and Southeast Asia and China: the works. It's taught by a very good faculty, and they have now formed an alumni association that must include five or six hundred or seven hundred graduates. Usually they turn out to be a judge of the Supreme Court or the Attorney General or the Foreign Minister or something in their country.

The result has been that the State Department looks upon this program with great approval and the Foundation receives, I think, more Fulbright grants than all the major universities put together



Southwestern Legal Foundation International and Comparative Law Center.
1978 Dallas, Texas. O'Brien speaking

for travel to the United States for people to attend this course. In addition to that, there is an annual symposium which now has become kind of a command performance. It really does have tremendous support from the profession and from corporations throughout the country. They put on this symposium on current subjects of interest in international law, which attracts lawyers from all over the country and is usually quite a success. The papers that are given are published by Bobbs Merrill each year, and I've got a whole shelf full of those books.

So that turned out to be an interesting exercise. I met a lot of wonderful people there, lawyers from all over the country, all over the world. Some of the companies with which Chevron is affiliated have sent lawyers say from Indonesia, Saudi Arabia, and other countries where we do business to attend that course. I think it gives the participants some glimpse of how we look at legal problems and some of our constitutional standards and beliefs which is useful to them.

My prime example of a success in that respect is the young man who lost his job as dean of a law school in Bandung at the time that Sukarno was trying to restructure his society and tell people what they could teach and what they couldn't teach. This teacher was rescued from Indonesia, where he was at great risk of either being imprisoned or executed by Sukarno, and brought to the United States by Myers McDougal, given some sort of a fellowship at Yale. Since it wasn't safe for him to go back, we put him through this course in Dallas at the Southwestern Legal Foundation. Then he came to San Francisco for a few days as my guest, and he happened to be here on the Fourth of July. We went to some celebrations and were invited to some parties and so on.

Subsequently, I saw him in Indonesia and in Singapore when I attended a conference out there. He became the youngest representative of any nation in the United Nations at the Law of the Sea Conference representing Indonesia, where he proved to be a very skillful and knowledgeable negotiator, became a consultant to their political office, and subsequently Attorney General and then, more recently, Foreign minister of Indonesia.

Hicke: And his name is?

O'Brien: Mochtar.

Hicke: Well, that certainly is an interesting story.

O'Brien: A course like that didn't do him any harm and gave him some perception of the way we think about things, legally.

Hicke: Obviously he took that back to Indonesia, with considerable impact, I'm sure.

O'Brien: Yes, well, he's a very bright, very able gentleman. He's remained a friend.

Well, that's enough.

Hicke: I guess we skipped by your career at Chevron, and your community activities and quite a few things in a big hurry this afternoon, but I think we've hit the highlights of those.

O'Brien: Sure, sure.

Hicke: So I do thank you very much for all time that you've --

O'Brien: Bless your heart. I thank you. I never would have done such a thing without your help and encouragement, and I may say, your persistence.

Transcribing and revisions by:

Georgia K. Stith
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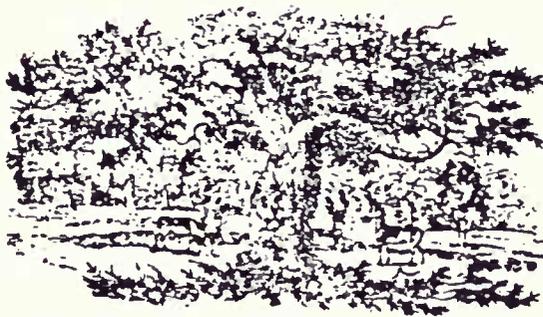
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JAMES E. O'BRIEN



RESOLUTION

ADOPTED BY THE BOARD OF DIRECTORS OF
STANDARD OIL COMPANY OF CALIFORNIA

MARCH 30, 1977

**RESOLVED**

That recognition of the outstanding achievements
of James E. O'Brien be perpetuated
in the minutes of this meeting.

MR. O'BRIEN'S

distinguished career in law, industry, and public service spans more than 40 years.

Jim O'Brien must be considered a contemporary "Renaissance Man" – possessing that rare combination of intellectual brilliance and compassion for others, and having an abiding interest in literature, art, culture and the humanities.

He is a sage, pragmatic, and resourceful lawyer who is described by his friends in admirable terms as "tough and firm, but fair."

A nationally recognized authority on antitrust and international law, Mr. O'Brien was a senior partner in the law firm of Pillsbury, Madison & Sutro until he joined Standard Oil Company of California in 1966 as a Director and Vice-President. He had been a prominent member of the law firm for 30 years.

Born in Trinidad, Colorado, Mr. O'Brien was graduated in 1932 from the University of California

at Berkeley and in 1935 from the University's law school, Boalt Hall, establishing a brilliant academic record at both institutions.

During World War II, Mr. O'Brien was a decorated Lieutenant Colonel who served with the U.S. Strategic Air Forces in Europe.

His unyielding dedication and skill as a lawyer, negotiator and advisor have had a profound and far-reaching influence on the Company that will be evident long after his retirement on April 1.

Beyond his ability, intellect, and scholarship which established him as a prominent attorney, Company executives looked to Mr. O'Brien as more than a legal advisor; over the years they sought his provocative views and advice on a broad range of policy matters.

Mr. O'Brien wielded strong influence on the management of this Company through his service on the Executive Committee of the Board of Directors; the Annuities Committee; the Public Affairs Committee; the Foreign Review Committee and the Insurance Advisory Committee.

As Vice-President for Legal Affairs, one of Mr. O'Brien's principal achievements was establishment of an annual meeting of Company lawyers based throughout the world to review the Company's widespread and varying legal problems and to foster a spirit of unity within the legal staff.

In addition to overseeing legal affairs, Mr. O'Brien frequently played a key role himself representing the Company's interest in Washington, in the United Nations, and with other foreign governments.

The successful conclusion of the International Oil Cartel Case; complex and sensitive negotiations with the Organization of Petroleum Exporting Countries (OPEC), which culminated in the Tehran Agreement of 1971; and his on-going negotiations with Common Market countries on behalf of the Company, signify benchmarks of achievement in Mr. O'Brien's distinguished career.

Jim O'Brien's outstanding abilities and public service have long been recognized not only by his

Company and law firm, but by his colleagues and friends in industry, government and law.

He presently is a Trustee of Mills College and of the International and Comparative Law Center of the Southwestern Legal Foundation and of the Foundation itself; and he served as an advisor on international law programs to several universities.

He has served as a Director of W. P. Fuller & Co., Abercrombie & Fitch, El Portal Mining Company and the San Francisco Chamber of Commerce. He is the past Chairman of the Stanford Hospital Board and a Director of the National Fund for Medical Education, the American Academy for Educational Development and the American Enterprise Institute.

James O'Brien departs from his day-to-day duties with us with the knowledge that he is held in the utmost admiration of his colleagues in the Company. His wise counsel and contributions to the deliberations of the Board of Directors will be sorely missed.

We, the Board of Directors, adopt this resolution with great pride and affection and convey to Jim and Mary Louise our sincere and warmest best wishes for long life, health and happiness.



Bill Noyes
CHAIRMAN OF THE BOARD

George Keller
VICE-CHAIRMAN OF THE BOARD

J. W. Gray
PRESIDENT

ATTEST:

D. W. Mayhew
SECRETARY

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