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Sierra Club Oral History Series
and
University of California, Source of Community Leaders Series

Gary J. Torre

LABOR AND TAX ATTORNEY, 1949-1982;
SIERRA CLUB FOUNDATION TRUSTEE, 1968-1981, 1994-1998

With an Introduction by
Edgar Wayburn

Interviews conducted by
Carl Wilmsen
in 1998

Underwritten by
the Sierra Club Foundation
and
The University of California, Class of 1931 Endowment Fund

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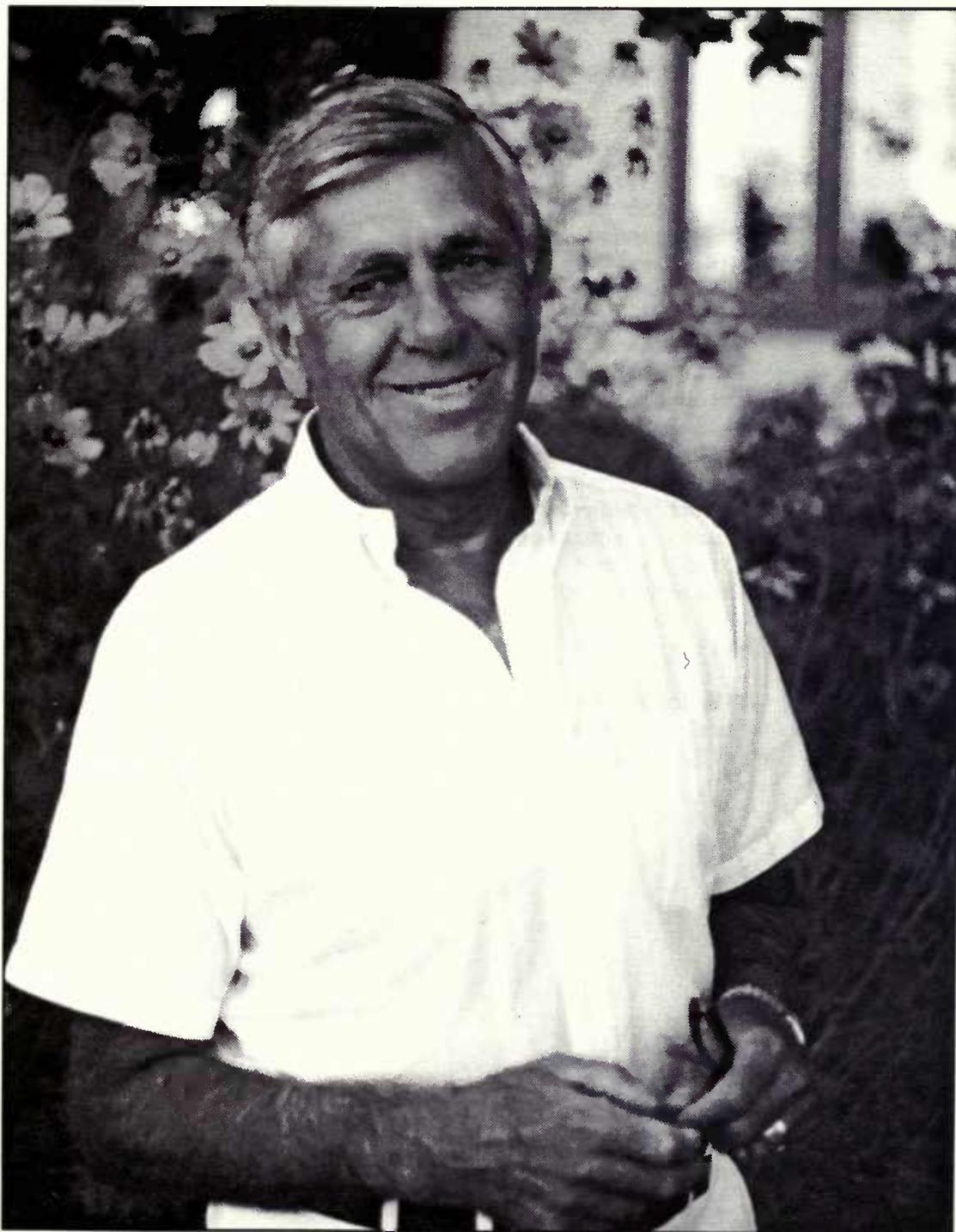
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Gary J. Torre, 1989.

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Cataloguing information

Gary J. Torre

Attorney, foundation trustee

Labor and Tax Attorney, 1949-1982; Sierra Club Foundation Trustee, 1968-1981, 1994-1998, 1999, x, 303 pp.

Italian ancestry, family and youth in Oakland; wife's Goodrich family history in California; boyhood experiences in Yosemite National Park and the redwood forests; UC Berkeley 1936-1941: anti-war demonstrations, reflections on Willard "Bull" Durham, Benjamin H. Lehman, Henriette de Saussure Blanding, Bertrand Bronson; effect of war duty on choice of law career; Boalt Hall graduate; clerk for Supreme Court Justice William O. Douglas; the Lillick law firm and labor, tax law work: mechanization and modernization agreement between the Pacific Maritime Assn. and the International Longshore and Warehouse Union, representing the Sierra Club before the IRS; urban sprawl and inner-city issues; reflections on David Brower, Sierra Club reorganization committee; Sierra Club Foundation board member: Frontera del Norte fund for environmental and social programs in northern New Mexico, dispute with Ray Graham and Ganados del Valle over the Fund, malicious prosecution lawsuit against Ray Graham; functioning of the Sierra Club Foundation, legal and ethical obligations of the foundation board, relations between the Sierra Club and the foundation, trends in fund raising, reflections on the accomplishments of the foundation.

Introduction by Edgar Wayburn, Sierra Club Honorary President.

Interviewed 1998 by Carl Wilmsen for the Sierra Club Oral History Series and the University of California, Source of Community Leaders Series, Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

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Sierra Club Foundation
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PREFACE--Sierra Club Oral History Program to 1978

In fall 1969 and spring 1970 a self-appointed committee of Sierra Clubbers met several times to consider two vexing and related problems. The rapid membership growth of the club and its involvement in environmental issues on a national scale left neither time nor resources to document the club's internal and external history. Club records were stored in a number of locations and were inaccessible for research. Further, we were failing to take advantage of the relatively new technique of oral history by which the reminiscences of club leaders and members of long standing could be preserved.

The ad hoc committee's recommendation that a standing History Committee be established was approved by the Sierra Club Board of Directors in May 1970. That September the board designated The Bancroft Library of the University of California, Berkeley as the official repository of the club's archives. The large collection of records, photographs, and other memorabilia known as the "Sierra Club Papers" is thus permanently protected, and the Bancroft is preparing a catalog of these holdings which will be invaluable to students of the conservation movement.

The History Committee then focused its energies on how to develop a significant oral history program. A six-page questionnaire was mailed to members who had joined the club prior to 1931. More than half responded, enabling the committee to identify numerous older members as likely prospects for oral interviews. (Some had hiked with John Muir!) Other interviewees were selected from the ranks of club leadership over the past six decades.

Those committee members who volunteered as interviewers were trained in this discipline by Willa Baum, head of the Bancroft's Regional Oral History Office (ROHO) and a nationally recognized authority in this field. Further interviews have been completed in cooperation with university oral history classes at California State University, Fullerton; Columbia University, New York; and the University of California, Berkeley. Extensive interviews with major club leaders are most often conducted on a professional basis through the Regional Oral History Office.

Copies of the Sierra Club oral interviews are placed at The Bancroft Library, in the Department of Special Collections at UCLA, and at the club's Colby Library, and may be purchased at cost by club

regional offices, chapters, and groups, as well as by other libraries, institutions, and interested individuals.

Our heartfelt gratitude for their help in making the Sierra Club Oral History Project a success goes to each interviewee and interviewer; to everyone who has written an introduction to an oral history; to the Sierra Club Board of Directors for its recognition of the long-term importance of this effort; to the Trustees of the Sierra Club Foundation for generously providing the necessary funding; to club and foundation staff, especially to Michael McCloskey, Denny Wilcher, Colburn Wilbur, and Nicholas Clinch; to Willa Baum and Susan Schrepfer of the Regional Oral History Office; and last but far from least, to the members of the History Committee, and particularly to Ann Lage, who has coordinated the oral history effort since 1974.

You are cordially invited to read and enjoy any or all of the oral histories in the Sierra Club series. By so doing you will learn much of the club's history which is available nowhere else, and of the fascinating careers and accomplishments of many outstanding club leaders and members.

Marshall H. Kuhn
Chairman, History Committee
1970-1978

May 1, 1977
San Francisco
(revised March, 1992, A.L.)

The Sierra Club Oral History Program, 1978-1992

Inspired by the vision of its founder and first chairman, Marshall Kuhn, the Sierra Club History Committee continued to expand its oral history program following his death in 1978. In 1980, with five ROHO interviews completed or underway and thirty-five volunteer-conducted interviews available for research, the History Committee sought and received funding from the National Endowment for the Humanities for a major project focusing on the Sierra Club of the 1960s and 1970s. In a four-year period, NEH and matching Sierra Club funds made possible the completion of an additional seventeen major oral histories conducted by the Regional Oral History Office and forty-four volunteer-conducted interviews.

Oral histories produced during and following the NEH grant period have documented the leadership, programs, strategies, and ideals of the national Sierra Club as well as the club grassroots at the regional and chapter levels over the past thirty years. The work of the club is seen in all its variety--from education to litigation to legislative lobbying; from energy policy to urban issues to wilderness preservation; from California to the Carolinas to Alaska, and on the international scene.

The Sierra Club oral history program, together with the extensive Sierra Club papers and photographic collection in The Bancroft Library--a collection of 1325 linear feet of archival records, more than 34,000 photographs, and films, tapes, and Sierra Club publications, all recently processed and catalogued--help celebrate the Sierra Club centennial in 1992 by making accessible to researchers one hundred years of Sierra Club history.

Special thanks for the oral history project's later phase are due Maxine McCloskey, chair of the Sierra Club History Committee 1988-1992; Ray Lage, cochair, History Committee, 1978-1986; Susan Schrepfer, codirector of the NEH Sierra Club Documentation Project; members of the History Committee; and most importantly, the interviewees and interviewers for their unfailing cooperation.

Ann Lage, Coordinator
Sierra Club Oral History Program
Cochair, History Committee
1978-1986

Berkeley, California
March 1992

INTRODUCTION by Edgar Wayburn

One day in 1966, a small man in a dark suit walked into the Sierra Club headquarters at 220 Bush Street in San Francisco and stated that the Internal Revenue Service of the United States could no longer guarantee tax deductibility to donors who made gifts to the Sierra Club. This decision was the result of the full-page ads which the Sierra Club had put into such newspapers as the New York Times, the Washington Post, and the San Francisco Chronicle. The IRS considered the ads evidence that the club was engaging in too much legislative work for it to maintain its status as an organized charity under the provision of Section 501(c)(3) of the Internal Revenue tax code. At the time this action produced considerable consternation among the hierarchy of the club. It was thought this penalty would interfere with the ability of the club to attract donations other than the usual contributions from its members.

Will Siri, the immediate past president of the club, and I were deputized by the board of directors to recommend the best lawyer possible to represent the club in possible legal action against the IRS ruling-- which was to become final in 1968. Will and I made inquiries about firms in New York, Washington, and San Francisco. We settled on San Francisco, and on the law firm of Lillick, Wheat and Charles. We selected as the best possible attorney one Gary Torre.

Gary Torre investigated our status thoroughly. He ended up knowing more about the Sierra Club than any of the directors or staff. He was extraordinarily thorough. In 1968 he appeared before the board of directors with his final report. He said that the IRS action was not justified and that a lawsuit would be easy enough for him to win, because the IRS did not have enough evidence for their action. But in order for the club to win through the courts, it would take \$100,000--no mean sum in those days. Would the directors rather spend this \$100,000 and win the lawsuit, or would they rather put the money into conservation? Opinion was unanimous; we would put our \$100,000 into our conservation program. We would become an organization classed under the Internal Revenue code as 501(c)(4), an educational league.

So began the club's and my own intimate association with Gary Torre-- which has now lasted more than thirty years. It has been a very rewarding experience. The Sierra Club has been exceedingly pleased with the results of the decision to give up our charitable tax status. The club has accomplished a great deal in the legislative field. Whereas only a small amount of our resources went into legislative activity in 1966, perhaps 85 percent does at the present time. Influencing legislation favorable to the environment of the United States has become our principal focus, although public education has also assumed an ever greater role. And we owe a great deal of that to Gary Torre's advice.

In addition, Gary's contributions to the Sierra Club Foundation have been large. He was in considerable part responsible for the Foundation's becoming active as the organized charity (501(c)(3) organization) which could furnish funds to the Sierra Club for its non-legislative, deductible work. He has served the Sierra Club Foundation as a trustee and as its president, and has done so very ably. Although he lays claim to not being a conservationist, he has proved his worth many times over in that regard. I am indeed pleased to write this introduction to Gary's oral history.

Edgar Wayburn, M.D.
Sierra Club Honorary President

August 1999
San Francisco

INTERVIEW HISTORY--Gary Torre

In 1966 the Sierra Club board of directors asked Gary Jerome Torre of the Lillick, Geary, Olson, Charles, and Adams law firm to serve as their counsel in their appeal of an Internal Revenue Service decision to rescind the club's tax-exempt status under the provisions of the IRS code. The board chose the Lillick firm because of Mr. Torre's expertise in tax laws pertaining to nonprofit organizations which he acquired through his work on the pension and medical benefits agreements between the Pacific Maritime Association and the International Longshore and Warehouse Union. Although he had previously eschewed association with the Sierra Club, representing it in the appeal was the beginning of a long, intimate involvement with the club, and in particular, its sister organization, the Sierra Club Foundation. Indeed, after the unsuccessful appeal of the IRS decision, the Sierra Club board decided to activate the Sierra Club Foundation as the tax-exempt, fund-raising arm of the Sierra Club.

Serving for twelve years on the foundation's first active board of directors, and for another four years in the 1990s, Gary Torre has been instrumental in shaping how the foundation operates. Throughout his years on the board, he has served always with an eye to legally and ethically discharging the foundation's fiduciary responsibilities. This has meant, in part, assuring that the Sierra Club activities which the foundation was supporting were permissible under the sections of the IRS code governing 501(c)(3) tax-exempt, charitable organizations. It has also meant assuring that the foundation not only receives and distributes funds in a manner consistent with the larger mission and short-term goals of the Sierra Club, but in so doing, also adheres to current norms and ethical standards of charitable organizations while simultaneously honoring the wishes and intentions of the donors of the funds.

As a result of Gary Torre's many contributions to establishing and maintaining the professional standards of the Sierra Club foundation in its day-to-day operations in this way, as well as his direct involvement in the appeal of the IRS decision and his intimate knowledge of the first twelve years of the foundation's activities, Steve Stevick, the foundation's then executive director, approached the Regional Oral History Office in August of 1997 with a proposal to conduct an oral history with him. Because Mr. Torre's insights into tax law had been so important to the foundation's operations, Mr. Stevick also felt it was important to record his memories of his career in law.

A total of seven interviews, beginning on February 9, 1998, and ending on April 20, 1998, were recorded with Gary Torre. All interviews took place in a study in his home in the Montclair district of Oakland,

California. There, surrounded by the works of Shakespeare, Chaucer, and other English masters, we talked with few interruptions save for the chiming of the clock on the wall, and Mrs. Torre serving us coffee. On a few occasions we broke for lunch halfway through the interview. After dining, Mr. Torre would continue the interview with such clear connections to what we had been discussing prior to the break that it seemed as though we had taken no break at all. Mr. Torre did not use notes, but spoke entirely from memory. We had discussed, however, in a preliminary meeting, which included Ann Lage of the Regional Oral History Office, what to cover in his oral history. I had also supplied him with a brief outline of the topics that seemed important to cover prior to beginning the interviews. It was evident also that Mr. Torre thought deeply about the material we were covering between the interviews. All of the interviews were two hours or slightly less in length, except for the fifth (on March 16th) which was nearly four hours long.

While the interviews covered a wide range of topics spanning every stage of Gary Torre's life and career, a few of them require special comment because of the circumstances surrounding their inclusion in the interview. First, additional funds from the Regional Oral History Office's Class of 1931 endowment, which was established to support oral histories of community leaders who are alumni of the University of California, allowed us to include a discussion of Mr. Torre's (class of 1941) student days at the university. It also enabled us to record his recollections of his wife's family, some members of which have papers included in Bancroft Library collections.

Second, Mr. Torre's comments on David Brower's relationship with the boards of the Sierra Club and the Sierra Club Foundation are noteworthy because some members of the latter board had expressed an interest in having the story told from the point of view of the club's legal counsel in the dispute with the IRS.

The chapter on the Frontera del Norte fund also deserves comment for a number of reasons. First, the dispute between the Sierra Club Foundation and Ganados del Valle which arose over the management of this fund was a special interest of mine because of my earlier research on environmental issues in northern New Mexico and how they relate to social justice issues. Second, as the interview itself shows, Mr. Torre had been supportive of the Frontera fund (indeed he drew up the papers which established it as a fund within the foundation) from the time of its establishment because it promised to deal simultaneously with social justice and environmental issues as he felt environmental organizations ought to do. Third, while the oral history interviews were underway, an appeal of a court ruling in favor of the Sierra Club Foundation was being heard in the California Court of Appeals. The foundation had filed a lawsuit against Ray Graham, who had initiated the litigation against the foundation over its management of the Frontera fund,

charging him with malicious prosecution. When the court found that Graham had litigated with malicious intent, Graham appealed. Due to this ongoing litigation, Gary Torre did not feel that he could be as forthcoming about the dispute as he otherwise might have been.

As the editing process on this oral history was drawing to a close, however, the appeals court ruled on the case, upholding the lower court's ruling in favor of the Sierra Club Foundation. The ruling thoroughly deals with the legal issues concerning Ray Graham's original complaint against the foundation, and in so doing corroborates Mr. Torre's presentation of the case in this oral history. Because of this, we have included it, at Mr. Torre's request, as an appendix to this volume.

I began the editing process of this oral history by very lightly editing the transcript to assure that the intended meanings of the spoken words were evident in the written text. During this initial editing I also created the chapter headings and subheadings, summarizing the contents of each division of the text. Mr. Torre then reviewed the edited transcript (with my editing marks still in place), and edited it further to clarify remarks he had made. In some places, which are marked in the text, he added new material. After these changes and additions were made to the transcript, Mr. James R. K. Kantor, former university archivist, proofread it for editorial consistency and overall clarity. I then reviewed the transcript again, editing out repetitious passages and rendering it generally more readable.

In addition to James Kantor's proofreading, many individuals contributed to this oral history's completion. The oral history was made possible by a grant from the Sierra Club Foundation, which raised special funds from generous donors for this purpose. The foundation's former executive director, Steve Stevick, was responsible for initiating the oral history and seeing that funds were made available. We are grateful to all of these individuals, named and unnamed, for their efforts, as well as to Dr. Ed Wayburn for writing the appreciative introduction.

The resulting product of all these efforts is the story of Gary Torre's life and career as it relates to his involvement with the Sierra Club Foundation. It is the story of a man who has applied his legal expertise to support the efforts of environmental activists whom he felt could make a difference in improving the quality of the environment for the enhancement of human well being. As he, in characteristic modesty, has stated, "really, if I've made any contribution to the environmental movement it's the support I have given to environmentalists like Ed Wayburn and Will Siri and the leaders of the Sierra Club...as to what was legally acceptable, whether [the club's projects were] consistent with the funds we had received, and whether those funds were being used for purposes that a 501(c)(3) organization could support."

Tapes of the interview sessions are available for listening at The Bancroft Library. Other oral histories in the Sierra Club History and Sierra Club History Committee series are also available for use in The Bancroft Library (see the list after the index in this volume), as are the papers of the Sierra Club and the Sierra Club Foundation (including Gary Torre's).

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Carl Wilmsen
Interviewer/Editor

August 1999
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

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BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name GARY JEROME TORRE

Date of birth October 14, 1919 Birthplace OAKLAND, CALIFORNIA

Father's full name GIOVE M. TORRE

Occupation Warehouse Foreman Birthplace SAN FRANCISCO @ ALIEN

Mother's full name JESSIE L. TERRE

Occupation Housewife Birthplace Italy

Your spouse CAROLINE Goodrich TERRE

Occupation Housewife / Artist Birthplace SAN FRANCISCO, CALIFORNIA

Your children Michael Durham TORRE; Alicia Hayden TORRE;
Nicholas Goodrich TORRE

Where did you grow up? OAKLAND, CALIFORNIA

Present community OAKLAND, CALIFORNIA

Education AB & JD

Occupation(s) LAUNDRY

Areas of expertise TAXES; Labor; probate

Other interests or activities Theatre; reading; swimming
Symphony, opera, Chamber music

Organizations in which you are active Sierra Club Foundation (retired)

I ITALIAN ANCESTORS AND IMMIGRATION TO CALIFORNIA

[Interview 1: February 9, 1998] ##¹

Wilmsen: Okay, today is Monday, February 9, 1998 and this is the first of our interviews with Gary Torre. We're looking over the letter and outline of the interview I sent right now, and I guess we'll start with your family background, if that's okay?

Torre: Fine.

Wilmsen: Do you want to start with your family or your wife's family?

Torre: Since it's my oral history, I'll start with my family.

Wilmsen: Okay. [laughter]

Torre: My grandparents were both immigrants from Italy, on both sides of my family. My mother's father and mother came to this country, I think, some time in the 1880s, I'm not exactly sure when. They came from the area around Chiavari, which is in Liguria, southern Liguria, near the Tuscan border near where Carrara is. And actually, my grandmother's family were Luccase, originally, who had apparently moved away from Lucca to the mountain areas. My grandfather--I never knew either my grandmother or my grandfather, they were both dead when I was born--I suspect was Ligurian and not Tuscan.

He had met his wife while he was attending a seminary. The family myth is that he was attending the seminary to become a priest in order to inherit a parish that his uncle owned, more or less. I mean, you didn't own a parish, but you were assigned to it, so you passed it on to some heir. And he met my grandmother, who was the daughter of an innkeeper, and he couldn't go into the

¹## This symbol indicates that a tape or a tape segment has begun or ended. A guide to the tapes follows the transcript.

inn because of the ethics of a seminarian, and he would stop at the inn outside for refreshment and he came to know the innkeeper's daughters who couldn't go into the inn either. But they'd be outside talking to him. Well, he ultimately left the seminary, and he married my grandmother, which is very fortunate because they had twelve children, and three miscarriages.

The family myth is that he had been trained as an architect. I don't know that he was. He never worked as an architect. He was a laborer. After he came to this country, he was in Stockton, and--

Wilmsen: He came straight from Italy to Stockton? To California?

Torre: What apparently was the case, my grandmother's sisters and their husbands, they had each married brothers, had come to this country and they were living in Stockton, and they had written letters back urging their sister and her husband to come because of the great opportunities there would be for a man with his training. I suspect, I don't know, I never knew them, but I suspect that they were homesick and they wanted more family in the area. So they wrote--

Wilmsen: So they were referring to his training in architecture?

Torre: What I think is he probably worked on construction projects.

My grandmother had three children, four children, actually. My mother was her fourth child, and when her husband came to this country, she was pregnant with my mother and her family would not let her come pregnant. So she was kept at home with her other three children. My mother was born in Italy. But when she was about three months old, her mother packed her and the other three children up and came to this country to join her husband.

One time I was in the area where they left from. The family story was that they lived about a mile in from the coast. What I suspect was the case, I don't really know, the area they lived in was south of Chiavari, a mile inland. It was a farming community. She used to walk, apparently, down to the beach with the three children to sit on the beach and entertain them. The area, the beach area, looked very like the Carmel beach south of town, behind the mission, looking towards Point Lobos. Simply extraordinary, the similarity of the two. After she came to this country, she never saw the ocean again. Never.

Wilmsen: They stayed in Stockton?

Torre: Stockton. The Central Valley was their life. She was supposed to meet her husband in San Francisco. When she got here, he wasn't there. He had developed pneumonia. He had been ill and he had gone to Stockton where his sisters-in-law and their husbands were, and he never left the area. What I suspect was that he worked on construction of some kind. And this was the period at which a series of tunnels on the southern highway of Liguria were being constructed. I suspect that he was working on those projects, not as an engineer, but, I think, as a foreman, but in some capacity where he was supposed to have skills his brothers-in-law thought would be very marketable in this country. Well, he never really did. He worked on construction in Stockton. At one point he moved outside of the city limits because he wanted a farm; he wanted what he had had in Italy. And when he left the city limits he lost his job working for the city and thereafter, his work was as a factory laborer. But he raised his family in Stockton. I never knew the man. I never knew him, I never knew his wife, but I did know all of his children. They were my--

Wilmsen: Your aunts and uncles.

Torre: He had four sons and eight daughters.

Wilmsen: Wow. They had big families back in those days.

The Only Boy

Torre: Well, I'm emphasizing that because of the eight daughters, seven of them married, six of them had children. They all had daughters. I was the only son, the only boy in the family. All my cousins were girls, so I grew up in a woman's family.

Wilmsen: You didn't have any brothers of your own?

Torre: No. No brothers. I had a sister who was five years older than I am, also most of my cousins were older than I was. What had happened was that the first World War had intervened between my sister's birth and my birth. And my cousins, the same thing, so that my mother and father did not want to have children while the war was progressing. So I wasn't born until 1919, when the war was over.

One of my mother's younger sisters had two children younger than I and one of her sisters, who was a contemporary of my mother, had one daughter who was younger than I. But we were the

four youngest of the family. The family was very close, so basically I grew up with them. I don't know, something like ten female cousins and a sister. And I did not have a brother.

Wilmsen: Did you grow up in Stockton?

Torre: In Oakland. My mother came to Oakland in her late teens to work. And at her work she met my father's family, I'll get to that, because that's how they met. As you will see, it's a family pattern that fathers-in-law bring people together because that's how I met my wife, ultimately.

Paternal Grandfather: A Baker

Torre: My paternal grandfather, I did know. He died when I was six years old, but I do remember him, and I have a very vague image of my paternal grandmother. She died when I was about three years old. But I remember certain qualities, since as a child I visited them regularly. They were clearly Ligurian. My grandfather had grown up on a farm near Genova, I think it was probably a little south of Genova; I'm not sure exactly where. It could have been north because my grandmother had a lot of amazing recipes that ultimately were passed down to the family that were clearly Piedmontese. So I have a feeling my grandfather and his wife were from the North. My grandfather was a farm boy and was born, let's see if I can figure it out here. He was in his seventies when he died in 1925. So go back, probably, in 1850.

Wilmsen: California had just recently become a state.

Torre: He was caught up in the magic of the development of science of the mid-nineteenth century. It engaged his mind. He always wanted to be an astronomer. He apparently was interested in Darwin, also. I'm sure he never read Darwin at that point, but Darwin and Huxley and that whole scientific world was a thing that engaged his fancy and created an alienation between him and his father. His father felt that the proper thing for a boy to do was to work the farm and go to church--say rosary at night.

But my grandfather didn't want to live it, himself. He wanted to go on reading and he wanted to read books. His father didn't see any reason why, after you've learned to read, you have to read anymore. This resulted-- this of course is family legend, with all I'm repeating--this resulted in his running away from the farm when he was about ten years old, ten or eleven

years old, and he went to Genova. And he had to support himself. He went to work as an apprentice in a bakery, and that became his profession. He became a baker. He never became an astronomer.

His only connection with astronomy was that he had three sons and he named them all after the planets. My father was Giove. I was quite old before I realized this was the god Jove, that is, Jupiter. He was known in this country as "Joe." He had a brother, Mars, and a brother, Saturno, who was Uncle Tud. It also was a long time before I realized he was Saturn. The only girl in the family was called Maria. My grandmother was a devout Catholic. Venus was out of the question. [laughter]

He apparently was fascinated with languages. He learned French, but you have to realize that in the middle of the nineteenth century, particularly in this country, but it was true in Europe as well, Italy was a third world country. It was not what it is today. In fact, Rome and the Italian Renaissance were not important to Europeans. Modern Europeans in the nineteenth century were interested in England and France. Germany was beginning to attract attention. He had been born before the Franco-Prussian War so that the two great nations were England and France, and learning French was very important to him. He studied and learned French and, ultimately, English.

What brought him to America was probably opportunity. Europe did not provide for, as a boy, farm boy, the same kinds of opportunities as a new land. And he came to New York, went to work in a bakery in New York, and then gradually found his way across the continent to San Francisco.

I never have known how any of my grandparents crossed the continent. I'm sure they all crossed the continent and did not come around the horn. My wife's grandparents, one set of them, came around the horn. I've never known how my grandparents reached California. After all, railroad was new, I think, when they first arrived and they were poor people.

Wilmsen: That was in, I think you mentioned, the 1880s when they came here.

Torre: Yes. My paternal grandfather may have arrived in the seventies. I'm sure he came to this country in his twenties, and when he came to this country, he came to San Francisco. San Francisco was sufficiently developed that it had a big library, and he spent all his time in the library reading astronomy apparently. And he became undernourished and ill and was told by the doctors at the time that he was not going to recover and better go home.

And he did go back to Italy. I would guess he was in his twenties when this occurred, and he thought he was dying.

When he got home, his mother fed him something like five or six times a day. Mush, polenta mush, grains, gruel. Just reopened his stomach, to stretch it, and succeeded. So he became healthy.

And while he was there, he met a cousin. I don't know whether she was a first cousin or a second cousin, but she was a young woman who was teaching school in a farm community. It was my grandmother. They married and he brought her back to this country. They settled in San Francisco where he had a bakery in the North Beach area. His bakery was apparently at the juncture of what is now Chinatown and North Beach, probably on Grant Street.

The Earthquake and the Move to Oakland

Wilmsen: Do you remember the name of the bakery?

Torre: No. I never knew it. He had retired by the time--oh, and the earthquake came, 1906. San Francisco burned down. They came to Oakland.

They had had at that time four children, the three boys and a daughter, Maria. My father must have been married in 1913 and he was in his early twenties, so in 1906 he must have been about thirteen years old. He must have been in his teens. He was the oldest of the--no, the daughter was the oldest. Maria was the oldest. But my grandmother was terrified by the fire and the earthquake and she never wanted to go back to San Francisco so my grandfather closed the bakery and basically retired. His savings were such that they bought a flat in west Oakland on Linden Street. At that time, it was the residential area of Oakland.

For an occupation, he became a watchman in a California packing factory which was under the management of my mother's oldest brother, who was the superintendent. When my mother was a girl, she came to Oakland to live with her brother and his wife and work for him. And while she was working there, she met the watchman, who was my grandfather, and they became great friends. He persuaded his oldest son, ultimately, to meet her, and they married.

A year later, on the day the Archduke Ferdinand and his wife were killed in Sarajevo, my sister was born.

Wilmsen: On that day?

Torre: On that day. June 28, 1914. See, the first World War is very clearly marked in my mind. Those are my roots.

Oscar Shafter: Wife's Paternal Great-Grandfather

Torre: My wife's roots, they're somewhat parallel, but very, very different results. Her paternal great-grandfather is a man by the name of Oscar Shafter.

He was a farmer lawyer in Vermont and was hired by a law firm in San Francisco in 1848, '47, '48. It was right after the Mexican War. California had been ceded. And what he was hired to do was to come out and help settle land titles. He was to be in San Francisco, work as a lawyer for a year. As inducement, he was paid ten thousand dollars.

This is, you understand, this is all family legend also. I did not know any of these people, nor did my family know any of them. So I'm repeating legend, not history. }

Wilmsen: But there's always a grain of truth in the legends.

Torre: Well, there are because there are a series of letters he wrote during that year to his wife in Vermont that his daughter, Bertha Shafter, gathered together and had published. There is a copy of them in The Bancroft Library.

Wilmsen: Oh, I'll look for them.

Torre: It was a private printing. It wasn't a public printing, but I think somebody must have given a copy of them to The Bancroft Library.¹

Wilmsen: Yes. I'll check on it.

¹"Life, diary, and letters of Oscar Lovell Shafter, associate justice Supreme Court of California, January 1, 1864, to December 31, 1868" is available for use in The Bancroft Library (call number xF864.S52). There is also a circulating copy in the Doe Library (call number F869.S3.S4).

Torre: We have lost our copy or I would loan it to you. Somebody in the family has it that we loaned it to. The letters are fascinating. If you can find them and read them I think you will learn more of the era from those letters than anything I can tell you, certainly. I have read them and was very interested in them.

Basically, he had left his wife in Vermont on a farm with, I think, four children at the time. And he had come out, theoretically, to get the money in order to be able to take care of the rocks on the farm.

Well, actually I think that the real thing that had happened was that he had run for public office. This was obviously before the Civil War. He was a Democrat in Vermont. The Republican party didn't exist yet. The Whigs were people he was opposing, but the Democrats were unpopular because they were a southern party, Jeffersonian party. And they were unpopular in Vermont and he wasn't elected because Vermont was opposed to the slavery that the Democrats in the South were tolerating. I think that the reason he came out here was to escape the indignity of having lost the election because he had held in town, public office.

The letters he wrote were a description of what life was like in San Francisco at the time. It was pretty turbulent. A vigilante world was forming already. Also he advised his wife on how to take care of the farm and how to prepare for winter and make do.

Wilmsen: That sounds interesting.

Torre: I know he had come to the West Coast by crossing the Isthmus of Panama via caravan. The result of his experience here induced him to see, in the West, a future. And he went home and packed up his family and brought them to San Francisco, arriving some time in the fifties. Then he had, I think four more children. He had his Vermont family and his California family.

My wife's grandmother, Sarah Shafter, was born in California.

Oscar Shafter ultimately became an important figure of California law. He was on the California Supreme Court for a while. He was a successful lawyer. And Shafter Avenue in Oakland is named after him. That's where the name comes from.

Shafter Farms at Point Reyes, and Chauncey Goodrich

Torre: He had a brother who came out also. At some point he acquired land that is now known as the Point Reyes National Seashore. It's up in Inverness, an important town on the land. I don't know whether he acquired it as a lawyer's fee, or if he used money that he had earned to buy the land, but he was essentially seeking farmland, country land.

He had been a farmer in Vermont. His wife was interested in a farm and they apparently would take holidays--they would take the ferry either way up to this seashore area, this farming area --and ultimately acquired that land. The land was developed. It became tenant farming. It was rented out to people who kept cows and poultry.

The farm produced milk, butter, and eggs for San Francisco. It was shipped out of Tomales Bay to San Francisco. It was an overnight trip. Again, you have to realize there were no highways. There were no trucks obviously, and there were no railroads. So the waterway was a major means of communication and this made the farms of the area very profitable. And that continued, apparently, up to and through probably the First World War. But as a result of the First World War, automobiles developed. Trucking became a significant means of transportation. Roads were built and it was easier to bring butter and eggs from farming communities in Santa Clara, Sonoma, and Napa Counties to San Francisco, than to sail from Tomales Bay. You could get the goods to market faster and cheaper.

By the 1920s Oscar Shafter was dead. My wife's father, Chauncey Goodrich,¹ was the only boy in his family. I never knew him. (Curiously enough we had similar backgrounds.) But as a result of this, he was managing the Shafter Ranches, or trying to manage them, because the daughters, elderly women at that time, of Oscar Shafter were dependent upon whatever income they received from these ranches. A number of them had not married.

Wilmsen: So one of Oscar Shafter's daughters then was Chauncey's mother?

Torre: I guess I've jumped too far ahead.

¹The Bancroft Library holds the Chauncey Shafter Goodrich papers covering the period 1917-1934.

Oscar Shafter's daughter, Sarah, married a New Englander. His name was Edward Goodrich. Well, here I'll show you the paternal grandmother.

Wilmsen: I'll just put this on pause while--

[tape interruption]

[Mr. Torre took me into the dining room of his home at this point to show me a portrait of his wife's paternal grandmother.]

Torre: Edward Goodrich was a New Englander whom Sarah Shafter met when she left California to go East, probably to school. I'm not sure exactly how they met in New England, but they did meet. Edward Goodrich was the, I think grandson, it may have been great-grandson, but no further back than great-grandson, of Noah Webster. An ancestor of his was the first president of Yale University. They met in New England--

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Torre: --but spent the first ten years of their married life in Florence, Italy. And that's why the tall picture you saw in the dining room looks as it is. It was painted in Florence.

All of their children were born in Italy. So in a curious way, my grandparents came to the San Francisco area, San Francisco or the Central Valley. My wife's paternal grandparents went to Florence.

My wife's father--whom I never knew, he was dead at the time I met my wife's family--was the only boy in his family. His first ten years of life were spent in Florence. His first language was Italian. My wife's mother said whenever anything emotional, anger or pleasure, came up he slipped into Italian.

But he was brought home to be educated. In fact, the family came back because of the need to educate him in America. And my wife's grandfather had the dream of establishing an olive oil business, vineyards. He did ultimately buy property down in Saratoga and tried to produce Italian olive oil, but failed. At any rate, that's what they came home for.

My wife's father was ultimately educated here at Yale, Harvard Law School. Yale as an undergraduate then Harvard Law School.

Wife's Mother's Family: The Mexican War and Migration to California

Torre: My wife's mother's family also came to California right after the Mexican War.

Her paternal grandfather, which would have been my wife's great-grandfather, was a man by the name of William Blanding who lived in South Carolina in Charleston. He had been in the Union army during the Mexican War and had been in Mexico City during the occupation of Mexico City. He, too, was trained as a lawyer. After the war, the family story is that he foresaw the division between the states and found himself caught between loyalty to the Union, because he had been an officer in its army, and loyalty to his state, since he was a South Carolinian. When the Gold Rush occurred and people rushed across the continent, he wanted to migrate West to escape the conflict between the Union and his state that he foresaw as inevitable. California was brought into the Union as a free state, and was far enough away from any conflict that could occur between the Union and independent states. In short, he would not be caught in a situation where he had to break his oath to the Union.

This is the family legend. Looking at the man and reading his letters I think he was a great adventurer. He came home from the Mexican War; he married and had a son, my wife's grandfather, Gordon Blanding. I don't know whether his two daughters had been born yet, they may have been. But I think he was very high-spirited. He was very handsome, a very handsome, dashing man.

He was the first attorney general, U.S. attorney general in San Francisco. You see, while my family, my grandfather was baking, William Blanding was enforcing the law. That was the paternal side of my wife's mother.

The maternal side, the Tevis side, was quite different. They came from Kentucky, and Lloyd Tevis, her great-grandfather, was an entrepreneur. He ultimately became a go-between between the big four of San Francisco--Crocker, Huntington, Hopkins, and Stanford--who apparently avoided personal contact. Lloyd Tevis delivered the messages between them and was compensated with pieces of the West. They all lived up on Nob Hill. I suspect they ate some of my grandfather's bakery products.

Lloyd Tevis was an investment man. He ultimately was the president of Southern Pacific, the president of Wells Fargo. He had significant holdings in gold, silver, oil. He was successful, thank heavens. Financially successful.

An Extraordinary Woman: Mother-in-Law

Torre: My wife's mother, in talking about that era--she and my mother were almost contemporaries. My mother was a couple of years older. But they were both married the same year, 1913. They had a daughter, each of them one year later. They had had very different lives. My mother had grown up in a laborer's family. My mother-in-law grew up on Nob Hill. She went to Vassar, a very bright woman, an extraordinary woman.

I never think of her as my mother-in-law. I always think of her as a very good friend. My mother-in-law was my wife's nurse. It was a very different relationship.

A Marriage across Social Divisions: Wife's Parents

Torre: Apparently, my wife's parents, Chauncey Goodrich and Henriette Blanding, bridged significant social divisions in San Francisco. Its social realm was divided into three groups of people circa 1910. There were the Southerners, the New Englanders, and the Spanish or Mexican groups and they did not mingle. That's where the divisions, the social divisions, were. The fact that my wife's father and mother married was earth-shaking to each of their social worlds because one was a New Englander and the other one was a Southerner and they weren't supposed to know each other.

However, the Southern family did have a son that married the daughter of Governor Pacheco, so that bridging had occurred. These divisions were as intense as people think of the multi-racial divisions as having been. So it was explained to me, which seems very odd. But none of them, none of the social groups would have known the descendants of factory workers or bakers.

Wilmsen: Those divisions were among the upper classes?

Torre: They were the top. My wife's family were the top social world.

Wilmsen: I mean there were Southerners and New Englanders--

Torre: Southerners, New Englanders, and Mexicans were in the top social world. It was divided into three groups, and they associated with members of their own group and not with members of the other groups.

Wilmsen: And then there was another layer of division between the top social world and the working--

Torre: There was the top and then there was the bottom. And of course they did not associate at all, except to work. Through work.

Mother-in-Law: A Great Philanthropist

Torre: My mother-in-law, who was a great philanthropist, I asked her once how did it all begin. And she said, well, when she was a girl there had been a maid in the house that she was very fond of, that had looked after her. And then she wasn't there anymore even though she'd been there all the while. And when she asked her mother, "Where is she," her mother said well, she really didn't know, that she had left. Well, "why had she left?" "She was sick." She had been sick, she went to her own family to be looked after. And my mother-in-law said she kept nagging her mother to find out what happened. Nobody knew. You didn't pay any attention. Somebody left your employment, they went away.

And to my mother-in-law as a girl, that was shocking. It was a lack of concern. If she were sick, they should have taken care of her instead of letting her just disappear. That was a governing principle of my mother-in-law's life forever. She did take care of people.

Wilmsen: Let's talk a little bit about that because she was on the San Francisco Foundation.

Torre: She was extraordinary--Henriette de Saussure Blanding. She was born in San Francisco, the daughter of Margaret Tevis and Gordon Blanding, being the youngest of three children. She grew up in San Francisco on Nob Hill in her grandmother's home, Mrs. Tevis, Sarah Tevis. Their house was next to the Crockers which was kitty corner from the Pacific Union Club on Nob Hill, and it was there until the fire. She would go on Sundays with her mother and father to visit her grandmother and play with William Crocker. She grew up in that affluent, protected world.

Her father, Gordon Blanding, was a lawyer and was Lloyd Tevis's personal lawyer. He was the founder of the law firm that ultimately became known as Pillsbury, Madison, and Sutro which was at one time the largest law firm in San Francisco and California. It isn't any longer. Things have changed. The largest firm, I think, is Gibson, Dunne, and Crutcher in Los Angeles.

But at any rate, Gordon Blanding, who was a Southern boy, came from what would be, in the South, considered a very old aristocratic family, and I think Lloyd Tevis, who was a Southerner, came from a Southern family that was on the make. But he did make it. And so Gordon worked for him and ultimately married his daughter, with whom he had three children.

When the earthquake came in 1906 they were living on Franklin Street and he managed to get his family out of the house and down to the waterfront to take a boat to Belvedere Island where he had a summer house and they went over to Belvedere. As a result of that, they decided to make Belvedere their home. And they built homes. I think Gordon Blanding owned about half of Belvedere at the time. He lived into his nineties. He was ninety-five in 1945.

He tried to give the property to the state for a park. It was the whole eastern end of the island. But the state wouldn't accept it because it didn't want to take the property off the tax rolls. It was an important means of revenue, they thought.

There were about a half a dozen houses on Belvedere in 1940. It was not what it is today.

At any rate, that's where my mother-in-law grew up. She was a very bright woman, a poet. She did the unusual thing of going to college. Before the First World War, well-born women came out at eighteen and married at nineteen. She did not; she was not interested in that. Her father, Gordon, was an intellectual man, a highly intellectual man; many of the old books in this house were his. He was quite happy to have his daughter want to go to college. He was very proud of her poetry writing, and she wanted to be a poet. She went to Vassar.

Wilmsen: She went to Vassar.

Torre: And graduated from Vassar. Did write. She was there at the same time Edna St. Vincent Millay was at Vassar.

Susan Blanding, who was the president of Vassar College in the forties, late forties, early fifties, was a distant relative, but she wasn't there at the time.

She came back to San Francisco; she met Chauncey Goodrich who had just come back from Harvard. He was ten years older than she was, so he must have been established. He was an established lawyer in San Francisco. They married and they had four children. The youngest of the children is my wife, Caroline.

Jungian Psychoanalysis

Wilmsen: Now we have an oral history in our office of Ben Lehman, and I think he mentioned in there that your mother-in-law was one of the Bay Area women who went to be analyzed by Carl Jung. Is that correct?

Torre: Yes. I will refer to Chauncey Goodrich as my father-in-law, although I never knew him. He had two sisters. No, he had three sisters. His oldest sister died quite young after her second child. He was the oldest of the family. His sister Elizabeth, who would have been the sister closest in age to him, and who was known after her marriage as Elizabeth Whitney, did the unusual thing of becoming a doctor during the same period, 1913.

Wilmsen: That's very unusual.

Torre: She was a contemporary of my mother-in-law. My mother-in-law, Henriette, and Elizabeth Whitney became extremely great friends. They were sisters-in-law.

Elizabeth had married a man by the name of Whitney. He was a doctor and ultimately was on the UC [University of California] medical faculty. James Whitney, Dr. James Whitney, one of the founders of Langley Porter clinic. I never knew Dr. James Whitney. I knew his widow, Elizabeth, and I knew his sons and daughter and grandchildren, but I never knew him. He was an important figure in the medical world in San Francisco during his lifetime. He's also part of the Whitney family that Mount Whitney is named after. He was, I think, a nephew of the man [who led the survey party of which some members climbed Mount Whitney]. He too was a Yale man. I think the first president was a Goodrich and the first graduate of Yale was a Whitney. There was always much debate between the Whitney and Goodrich cousins as to who had the longest heritage at Yale. {laughter}

After World War I, Dr. Whitney came back, went on to the UC faculty. His wife had a practice in San Francisco. And for what reason, I am not sure, he did go to Europe to meet and work with Carl Jung. As a result of that involvement, several things happened. He was one of the founders of a mental health clinic at UC hospital.

And the whole family became involved with Carl Jung. My father-in-law went to Zurich and spent a summer in Zurich and did an analysis with Jung. Actually, I think the men did analytical work with one of Jung's colleagues, it was a woman, and the women did their analytical work with Carl Jung himself.

Ultimately Elizabeth Whitney went to Zurich also, and did some work with Jung. They were very impressed by him. She ultimately came back to San Francisco and she was the first psychoanalyst, woman psychoanalyst, Jungian analyst, in San Francisco and Berkeley. She had ultimately come to Berkeley where she had a practice. By the mid-twenties, it had become a family thing to go to Zurich, and my mother-in-law spent the summer in Zurich doing analytical work with Carl Jung. They were all, the whole family--the other sister of my father-in-law, Frances Lèon, went to work with Jung. All the Jungians knew each other and they were very close to each other.

A very distinguished Jungian by the name of Frances Wickes whose major work, I guess, is *The Inner World of Childhood*, met my mother-in-law in Zurich at Jung's. They became great friends. My wife's brother did analytical work with Frances Wickes. My wife's sister did some analytical work with friends of theirs who were Jungians. It was the thing to do. You absolutely had to study Jung. This is 1920, it was in the 1920s.

Wilmsen: Was it a popular thing to do even outside of your wife's family?

Torre: No. As far as I was concerned, I knew nothing about psychiatric psychoanalysis. It was not a subject I knew anything about. The only contact I ever had with the subject was through movies. The movies of the 1930s occasionally touched upon the subject, but it was not something really respectable people would be doing in the movies where psychoanalysis was associated with craziness and promiscuity and things that were quite wrong.

That of course is not the case. Obviously the interest in psychoanalysis was a concern of dealing with mental illness, hysteria primarily, which afflicted numerous people in the turn of the century. It has almost disappeared as a medical problem. This was going to open the door to curing a mental illness. And this is what I am sure engaged Dr. Whitney's first interest.

I am sure it's why Elizabeth Whitney--who was a really great lady; I had a great affection for Elizabeth Whitney--I'm sure why she spent so much of her life as a psychoanalyst. It's certainly why Frances Wickes went into the field. My mother-in-law was, I'm sure, deeply concerned and interested in the subject. And given the ties that she had to her sister-in-law, Elizabeth Whitney, it was inevitable that she would have done this.

It was a very, very special thing to do in the twenties and in the thirties. It was a very limited group of people who were so engaged, and they were usually wealthy people or intellectual

people. After World War II, it became a fashionable thing to do that the middle class plunged into.

And your generation is the generation that is breaking ties with psychoanalytical work. And there are some very good reasons for it. One is there are medical drugs now available that were not available before the 1960s that alleviate some of the distress of mentally ill people. Psychoanalysis is an art, it's not a science. And a lot of unskilled people practiced as analysts and very little was achieved. A lot of damage resulted, and all the repressed memory stuff that finally exploded into the courts caused an enormous skepticism about the value of trying to dredge up childhood memories or pre-childhood experiences to understand who and what you are today.

Have I finished that lecture? [laughter]

But at any rate, she did a lot of work. The whole family did. The whole Goodrich-Whitney family did. Willard Durham, who was my English professor and my mother-in-law's second husband and really my wife's stepfather and my father-in-law, went to Jung also. He was induced by his friends to go, and he found it very valuable.

The respect that this family had for Carl Jung was enormous. My wife was fed up with it because she grew up with people always using the vocabulary, the Jungian vocabulary, and as a little girl she found it quite tedious. So she is probably the only member of the family who has not plunged into Jungian psychology. So again we have something in common.

How did I get diverted to Carl Jung?

Wilmsen: Because I asked you about that.

Pension Fund for the San Francisco Symphony

Torre: My mother-in-law was a very intellectual woman. She was, apart from being a poet, a very bright person. She had studied the piano. She loved music. She was an enormous supporter of the musical world. She had had an aunt who had been one of the founders of the San Francisco Symphony and I suppose this ultimately led to her involvement with the symphony association.

After her children were raised or at college age, she was on the symphony board. This was when the San Francisco Symphony was

being revived, when Pierre Monteux came to San Francisco. He was brought out here in the mid-thirties. She was on the board and remained on the board until she was in her seventies, which would have been some time in the mid-sixties, late sixties. She made enormous contributions to the San Francisco Symphony, or what were enormous in that era. She was an important financial supporter. However, quite typical of my mother-in-law, she was head of the committee that was set up to try to establish a pension fund for the aging musicians.

Willard "Bull" Durham ##

Torre: At this time [late forties and early fifties] my mother-in-law was married to Willard Higley Durham. Her husband Chauncey Goodrich had died in 1940, and she and "Bull" Durham married. I'll explain the relationship of Chauncey Goodrich and Willard Durham so as to clarify some things in Ben Lehman's oral history, perhaps.

Chauncey Goodrich and Willard Durham had been students together at Yale. And this is where their lives had come together. I'll refer to Willard Higley Durham as "Bull" Durham. He became an English professor and was first employed by Yale. He was one of the founding members of the Yale Shakespeare which --I don't know whether you know about this edition of Shakespeare--was to make the text of Shakespearean plays available in handy pocket editions at a price students could easily afford. While there are notes regarding the vocabulary and on relevant historical matters, they were limited to fundamentals, so that students could have scholarly productions of Shakespeare's plays. This was a creation of Yale University at the turn of the twentieth century, and Bull was one of the three editors. I'm emphasizing this because it gives some insight to Bull's intellectual commitments.

Willard Durham was not a socialist or committed to such organizations, but he was a great liberal, a profound liberal. My mother-in-law was also a profound liberal when liberalism was personified by Theodore Roosevelt, Woodrow Wilson, and ultimately Franklin Roosevelt.

Willard Durham remained on the faculty at Yale until the 1920s. In that era, it was very difficult to advance. You were kept in the lowly state. That was one reason why he considered leaving the East Coast and came West and joined the University of California faculty. Another reason, and a very important reason

I think, was he had found that most of his students at Yale had, by and large, attended prep schools and were so well founded in literature that he had very little to add to their development. On the other hand, he found that the students at the University of California had not attended prep schools, and there was an opportunity to add to their development.

Also, I think by 1920 he realized that the scholarship that really engaged his interest would have been to be one of the first research people of Shakespeare, cleaning up the text. As he said later in his life, if he had known at the beginning of his career what he knew at the end of his career, he would have been a musicologist because all the work of cleaning up Beethoven and Mozart and Haydn and Handel scores--music that he cared a great deal about--had not yet been done. All that work had been done on Milton, Shakespeare, and Chaucer by the beginning of this century, and scholars were spending their life on unknown people who were insignificant. Thus, he became a teacher. He became really interested in teaching, and he was interested in teaching people who needed it, who, on a rainy day when they couldn't play bridge or go play golf, might read Shakespeare. That's what brought him to California.

And when he came to California, he renewed his relationship with my wife's father, Chauncey Goodrich, and came to know Henriette and members of their family. When Chauncey Goodrich died, Bull never married until he married Henriette, who was his only wife. He was a bachelor most of his life. I think that as a result of the transition from the East Coast to the West Coast, and the need to build a career, he simply couldn't afford to marry and live as he wished to live. And then the Depression came, and then World War II. So there were a lot of reasons why he had not married. I suppose--no, I don't suppose, I know this to be so.

Roland Stringham had built a house for Bull at the top of Euclid Avenue, on Woodmont Avenue. It was then opposite an iris farm in the early thirties. And Bull had a live-in college student, Tyr Johnson, who was a farm boy who was supposed to keep the house clean, and cook. Well, he couldn't cook, but he could keep the house clean. Tyr lived with Bull in the early thirties while he was a student at the university, and he became something like a son for him. Throughout his life, Tyr always was like a foster child. And I think the experience of coming to know Tyr not as a student but as a youth and later as a young man provided Bull with parental experiences and responsibilities.

Bull was basically a very familial person, but he was a bachelor. As a substitute for a family, he took interest in some

students not as students, but as young people, so that he might have a son. You could not safely take interest in a girl. There was always the risk that it could get you into the sort of trouble that President Clinton has.

Wilmsen: Right. It's still dangerous.

Torre: Yes. You could know male students without being exposed to the risks that you would be exposed to today. That did not exist in the thirties.

II BOYHOOD IN OAKLAND AND STUDENT DAYS AT CAL

Becoming Friends with Bull Durham

Torre: Why I'm going into this is that I was a student. I entered the university in 1937. My first class with Bull was in 1938 and I was invited by him to dinner one night. Well, this was about the time when Tyr was marrying, and I think that he was just looking for another son. Another student--there were two of us at the time that kind of overlapped. Kevin Wallace who ultimately became a newspaper man on *The Chronicle* and *The New Yorker* magazine. He worked on *The New Yorker* magazine for one part of his life.

When I went to dinner, Bull made it very clear he did not want to talk about scholarship. He wanted to talk about my life, what I did. I belonged to a fraternity so we talked about fraternity life.

Bull was an extremely intellectual man, introverted man, highly gregarious, very, very witty, had a large social life in San Francisco, drove a convertible automobile, a Buick convertible. I guess I told him bawdy stories and he told me anecdotes. He gave me a good dinner and we talked. But it wasn't often. It was at most, twice a semester. At least once a semester; some semesters it was twice a semester. And I dare say he was seeing other students the same way. And it was basically how he stayed in contact with the young.

Now, at that time, Bull shared office space with Ben Lehman and they were very, very good friends. Ben Lehman had been divorced and then had married Judith Anderson and then was separated from Judith Anderson. Ben's first wife, Gladys, was a writer in Hollywood--she wrote the Shirley Temple movies as well as a number of other movies. And Judith, of course, was the leading, most distinguished actress of her day on the American stage.

Bull was a professor of drama and very much engaged with the theater. And I'm sure one of the reasons I was among the students he talked to was because I was wild about the theater, and trying to be a theater man myself. I was writing plays, directing, and trying to act. I was not very good as an actor, or I suppose as a writer either. But at any rate, in those years I was very much engaged in theater, and--I think--Kevin Wallace was very engaged with the theater. Tyr wasn't. He was an agricultural economist. I think Bull's interest in drama and the theater might have been one of the connecting reasons of why he took some interest in me. I felt we had become friends, and obviously we had.

When my wife's father died, he some time thereafter married his widow. My wife was twelve years old when this happened. Her father had suffered a major heart attack when she was four years old, so she really had never had a healthy father. There had always been a nurse in the house. He had been forced into retirement.

In that day and age, you treated heart problems by not doing anything--by staying in bed a great deal, inactive, lots of cream and butter and rich foods--the absolute opposite of what modern medicine will do.

She had grown up as a little girl into a twelve year old girl really, without a father. And her brother, who was my age--I'm seven years older than my wife--was off in boarding school. Her older sisters were off in boarding school, in college, so she was a lonely child. When her mother married Bull, he became her stepfather, and she could duck him in the swimming pool. Finally she had a father.

I shouldn't say that, because she did treasure her actual father. She would sit on her father's bed and talk with him. She had enormous respect and love for her father; she was taught that. But she didn't have a father to play with.

As World War II came--Bull and Henriette were married in '41, I guess it was. At any rate, he was on sabbatical, or on leave, and he was away from the university when the war developed and I was drafted. So I didn't see him. That semester I didn't see him.

When I came home on leave from the war in 1944, I discovered from my family that my mother had had telephone calls from a professor at the university. She didn't know him, they had never met. But she had his name and he had telephoned to see what was happening to me. So when I came home on leave in 1944--I'd been

in England for nine months with the Eighth Air Force--I went to the university to call on him and another of my professors, Bertrand Bronson, who was a great English professor. These were my two favorite professors. And I really went to call on Bull because he had called my family. I had thought that such relationship as we had was over. Well, he was very pleased that I had come. He invited me to dinner and I met my mother-in-law for the first time, and my wife who was at home from--she was in high school. She went to high school in Marin County at a Dominican convent. This was at Christmas time so she was home on Christmas vacation. I thought that she was home from college. That's how we met. And so I met my wife at her stepfather's hearth, and my foster father's hearth.

There is a connection to all this. I'll ultimately get to the Sierra Club, which is why you're taking this history.

Wilmsen: Yes. Well, let's back up a--

Torre: Sure. You know, you must shut me up.

Wilmsen: No, it's fascinating.

Torre: Well, I know that you're taking this for the Sierra Club archives and I can divert into many, many things. And I can become garrulous and don't let that happen. Shut me up.

Wilmsen: Okay. I will. But so far I think it's good to get this. We've got not only a rich description of your family and your wife's family's backgrounds, but also the way it fits into California history and the history of the University of California. And I think that's important. So it's not just--I mean it is about your family, but it's also about how your family has fit into the wider history.

Pierre Montoux and the San Francisco Symphony, and the Support of the Jewish Community

Torre: Well, I obviously have an enormous affection for Bull and for Henriette. When I was in law school, I would be asked to dinner at their home about once a month, once every six weeks. I became friendly with my wife's mother before I knew my wife really. She was a charming woman. Witty, amusing, concerned, but not sentimental. She had deep feeling, but it was a deep river flowing under a discipline of intellect so that when you met at dinner there was much to talk about.

She was deeply involved in music. This later turned to pension because of Pierre's devotion to his musicians, his loyalty to his musicians. And because of her understanding of that, that the people who have served you have to be protected, she became the head of the committee that began to negotiate with the musician's union to create a pension program.

I know a little bit about this because it was when I was beginning to practice law in San Francisco. These negotiations began in the very late forties, and continued into the early fifties. The San Francisco Symphony had aged and was suffering, because the musicians were no longer in their prime. However, Monteux would not terminate their employment because they had no means of support. My mother-in-law, who was very fond of Pierre Monteux and Mrs. Doris Monteux, saw a lot of them, and, as a result of this association, was aware of the "aging" problem.

The terrible thing was she was probably the only person on the board at the time that thought [a pension program] was important. My mother-in-law really would be quite unhappy to know that I'm telling this story, but it so describes her and Pierre. When he retired from the head of the Symphony--and he had built the symphony. He had built a symphony in San Francisco. You have to understand Pierre Monteux was brought to San Francisco in the thirties. The symphony had been formed before the First World War, and it had had various conductors, but it had deteriorated in the twenties, and with the Depression it ended. It was re-created in the mid-thirties when he was brought out here.

The reason he was available-- He had been the head of the Boston Symphony, but a grand scandal had developed regarding him and Doris Monteux. They were not married at the time, they were having a love--well, she was his mistress. This created an enormous scandal and he was run out of Boston and became available and was brought to San Francisco.

There was another reason, in part. Pierre was a Jew, although that was not made much of at the time, but it did mean that it would help to consolidate the contributions to the Symphony. However, I understood that when Pierre was going to retire, Leonard Bernstein was available. He was a kid. But gossip circulated that Jewish supporters of the symphony, who were absolutely essential to its financial life, did not want to hire him because he was so obviously a Jew, and they did not want to appear to dominate the association. That may have been a local reason why he was not offered the opportunity to succeed Pierre. This, you realize, was in the forties, it was in the early fifties.

Wilmsen: So they were afraid that there would be some prejudice against the Symphony then, if somebody who was obviously Jewish was conductor?

Torre: Yes, yes. And I mean, all of the knowledge of the Holocaust and the world guilt that has developed because of the existence of anti-Semitism had not occurred yet. And this was something to avoid.

San Francisco's cultural life would be nonexistent without the support and financing of its Jewish community. It's been very responsible, at every level, whether it's music, medicine, social welfare, art museums. None of those things would exist in San Francisco if the Jewish community had not given the support it gave. And yet none of them have ever been identified with the Jewish community. Mount Zion hospital was so identified, but it's an extraordinary community of people that have served there. But they did it quietly behind the scenes. They did not stimulate anti-Semitism. I don't think this area has ever suffered from anti-Semitism as New York and New England did. It's an unusual community of people.

That seems impossible. In my growing up, I would say that the era I grew up in, anti-Semitism was, at least in California and in America, the north of America, was a far more significant factor than anti-blacks. Racial discrimination was not nearly as important as religious and national: anti-Irish, anti-Jews, anti-Italians, wops.

Wilmsen: There weren't many blacks in California until after World War II, were there?

Torre: Not many. No, they were in the South primarily. They were in southern California. But I'm not just talking about California, I'm talking about in the country.

Wilmsen: For the whole U.S., I see.

Torre: The South was anti-black, which was pretty bad. But the anti-Jew, anti-Irish, anti-Polack, anti-Italian. These were the minorities that suffered.

Wilmsen: What about anti-Asian sentiment? What you've heard.

Torre: Oh very much so. Very, very much so. Oh, how do I get into all of this?

Beginning of the San Francisco Symphony Pension Plan

Torre: At any rate, when Pierre retired--I'm going to tell the story, but I'm not sure my mother-in-law would want it told--the board gave Pierre as a gift, a great silver tray that all the members of the board placed their autograph on. My mother-in-law was appalled by this. She felt it was like giving the retiring employee a gold watch on a chain. And that was not quite what they should have done with a great artist. And she made a donation of several thousands of dollars to establish the Pierre Monteux pension plan. And that was the beginning of the pension program.

But I don't know today whether the board is contributing to the pension program as part of the annual financing of the musicians. That occurred in 1952. And I know as late as the 1970s, the only money in the pension plan had been raised by the concerts at which once a year the musicians donate their services to give a concert. The board donates the hall and the janitorial work and all of that. And the proceeds of the concert go into the pension program. The artist appearing, if it's Yo Yo Ma, donates his services. That still is going on. But up between '52 and 1970, that was the only money that ever went into the pension program, which is quite appalling. The musicians need financial support, like everybody else.

But at any rate, it was typical of her that that would have been the thing that she would have put her intellect and energies on to, and ultimately her own private means. She did a lot of financial support of chamber music in the area. She was on the governing board of Mills College, Scripps College, and made contributions there. She supported the NAACP, when it was in its infancy, very significantly. And I really don't know all of the things that she supported because she was a very private person. She never talked about these things and she was not a public person at all. Very few people know anything about her.

Sadly, her books were never published. Her poetry was published in magazines. Partly because of raising a family, she didn't seek public printing. But her friendship with Frances Wickes, who was in New York and the publishing world, got her involved with some publishers. And, at the end of World War II, she had assembled a volume of poetry that was supposed to be published, but the publishers walked out on the contract. This was 1948 and they walked out of the contract.

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Torre: Her children tried to have much of her poetry published after she died. The volume put together was for the family's benefit. It was not her best poetry. In fact, her daughter who is also a poet, Elizabeth Chamberlain, was a little distressed that her mother's best poems were not being gathered together. I think there's copy of the poetry published by the children in The Bancroft Library.¹

Wilmsen: I'll look into that, too.

Torre: I think the literary world missed something. That's that.

Family Life in Oakland

Wilmsen: Yes. Now let's move on to your childhood. You were born in Oakland.

Torre: Born in Oakland.

Wilmsen: When were you born?

Torre: 1919. October 14, 1919. The First World War had ended. I was raised in Oakland. The Oakland public schools are where I went to school. From the Oakland public schools I went to the University of California in 1937.

Wilmsen: Did you mention what your father did for a living?

Torre: Yes.

Wilmsen: You talked about your grandfather.

Torre: My father, when he married my mother, was working in the post office in San Francisco. He was not a clerk, but he was working in an administrative job inside the post office. My father had been educated in San Francisco. There was one period when he had gone--when his father's family died, when the family property and farm in Italy was to be disposed of, he took his family back to Italy to arrange for the disposition of the family property in Italy. And my father was a boy and he went back at that time. But that's the only time he ever was out of San Francisco or

¹Three volumes of poetry by Henriette de Saussure Blanding are shelved in The Bancroft Library. The library also has a set of photographs of the Goodrich-Blanding family.

California. He was raised in the public schools of San Francisco and Oakland. In 1906, he came here [to Oakland]. He would have been--how old did I say he was--thirteen. He might have had a year of schooling, two years of schooling. He went from the eighth grade to business college and was educated I think two years at the business college.

Wilmsen: Which business college?

Torre: I have no idea which one it would have been. It may have been Healds which was the only one I could ever remember. Or Armstrong. Those were the two business colleges of the area at the time. They were not universities.

Before World War I, a typical man's life would be to leave school after what would be the eighth grade, what we would consider the eighth grade, and you either went to a crafts school, or you got a job at the bottom of the ladder and you worked up, or you would go to business college. To go to a university, Bull used to say, before the First World War, you were considered an odd sex, one of the odd sexes. University people, they were doctors and lawyers. Maybe engineers, probably not architects. You became an architect by working in an architect's office as a draftsman.

Wilmsen: More of an apprenticeship. That kind of thing.

The Cost of a University Education

Torre: Everything was done by apprenticeship. At the bank you began--one of my father's friends, boyhood friends, when he went to business college, went to work for what was the Bank of Italy. It ultimately became Bank of America. He had a minor officership in the Bank of America. He went up from the apprentice level in that fashion.

The First World War ended that because it was discovered by the army--which had to be created, since there was no army at the time--that the college graduates, the few college graduates that the army had, could be taught faster. They could learn their job faster. And so college education became, as I understand it--I wasn't alive, but it has been explained to me--became a premium. It was the beginning of "You have to have a college education if you're going to have a successful life."

But when I graduated from Oakland High School in 1937, about 10 percent of its graduates went to some school after high school. At that time, Oakland High School was the best high school in Oakland, which was a middle middle-class community. And out of that 10 percent, I don't know how small a percentage went to a university. Most tried to go to work if they could, if they could find work--this was in the middle of the Depression--or they went to a business college, or they went to a craft school, mechanic school, to try to get some skill. You didn't go to university. Only a few people went to universities.

Wilmsen: Was there a perception that university education was for the wealthy?

Torre: Well, it was by and large, except for the University of California. Stanford, which had been formed by the Stanford family primarily for poor children, for the poor, had become the school for the wealthy, the exclusive school of the Pacific Coast. It was the Harvard or Yale of the Pacific Coast. And the University of California was where the poor and the middle class went.

When I began the university, the tuition was twenty-one dollars a semester. And ten of those dollars, I think, paid for an ASUC card. Maybe we paid an additional ten, I don't remember. A hundred dollars a year was what it cost to go to the university for your books--if you didn't have high laboratory fees--for your books, your paper, your tuition for two semesters, your ASUC card. And if you lived at the university, many, many, many people, certainly boys, had jobs. Like Tyr, they had room and board working in somebody's home--a basement apartment.

Wilmsen: How did that hundred dollars compare to the people's income? It was probably worth a lot more back then than a hundred dollars is today. If you say a hundred dollars today that doesn't sound like very much.

Torre: No, it is not. It was not a large percentage. I suppose at the time I entered the university, it probably was about 8 percent of my father's annual income. You could earn your way through school through summer and Christmas employment, and by working for room and board. Your family may not be earning very much money. It was a small sum of money to earn. Well, let's see what did we get paid. I guess we could earn two dollars a day.

Wilmsen: As a student?

Torre: No, no. As a workman in a factory, where I did work. I could earn, through laboring jobs, maybe a hundred dollars in three

months or so. But my father's salary wouldn't be very high. He worked like the devil.

Family Aptitude for Mathematics and Father's Career

Torre: You asked what was his job. He was working in the post office during World War I. He had very bad eyesight.

First of all, I guess I should say, my father had a mathematical aptitude which I now realize. I didn't realize this as a boy, but he had a very high mathematical skill. And there was obviously a mathematical gene in the family. It's obvious in my daughter. Well, mathematics always came easily to me, but I didn't study mathematics. My daughter has skills in mathematics. My youngest son has a PhD in mathematics. My grandchildren all are highly developed and responsive to mathematics. And in looking back on my childhood with my father I realize that he was very impatient that I wouldn't learn to count by tens. The new mathematics was automatic to him. It was the idea of counting one, two, three, four, five. You made groupings.

He did work in the post office, zoning. It was probably early zoning work that he was doing in the post office, but he was very lowly paid. He was very ambitious. He dreamed of making a great fortune before he was through with life. He didn't succeed.

During World War I he was lured by his brother-in-law to come to work for him, to run the warehouse in Oakland of a California packing company, Del Monte. This job was more highly paid, much more highly paid, than his job in the post office. It was considered a necessary job because in war, there were not men in the production of canned goods. It was very important to feed people in the army and cities. It was a way of service.

My father had very bad eyesight. He had had an accident as a boy that had damaged his eyes and so therefore he was not eligible for the draft. He also had a daughter, which is why he was not drafted in the First World War.

He had thought he would have an opportunity at advancing from his first job to the executive or high administrative level. After the war, what happened was companies began hiring college people that they could get their hands on. This is when the college education became valuable. So instead of becoming an apprentice and going up, you went to college. He spent his life

training college men in how to run a warehouse. And they then left the warehouse and ran executive positions, and he remained in the warehouse. However, he worked hard and saved money, began investing in the stock market and was prospering through the twenties. And I think he saw himself as becoming an affluent person. Well, he ended up with a lot of debts.

With the crash of the stock market in 1929, the real property he owned was heavily mortgaged. He spent the thirties, the dollars of the thirties to pay off the debts of the twenties. He was actually bankrupt, but it would have been unthinkable for him to not pay his debts. He would not have dreamt of going through bankruptcy. He kept the loan. It was a matter of integrity. The idea of not paying what you had borrowed was unthinkable. He did pay off his debts before he died. But I know he and my mother never took a vacation at any time during the 1930s. He died in 1944. He never took a vacation in the forties during World War II. He never went to a movie. He had never had any recreation that cost money. Stopped buying records. He was fond of Italian opera and in the twenties he was buying Red Seal Victor records with Caruso and Schumann-Heink, and Galli-Curci. This was the music we grew up on, which at that time I thought was dreadful. I was lucky and didn't know it. But he stopped buying records, and that music stopped. His only recreation was books from the public library which were usually the books my sister or I had brought home, because he never had time to go to the library. He went to work early in the morning, came home at seven o'clock at night. He worked six days a week. So he read the books we brought home and the newspaper and listened to the radio. And that was his recreation. Played cards. He played bridge. That was my father.

More on Family Life in Oakland

Wilmsen: Did he have any interests that he talked about with your mother, like any interests in current events or anything? What were typical topics of discussion around the household while you were growing up?

Torre: Usually we were being instructed. My sister, who was five years older than I, was being instructed not to bring any babies home. And generally, morality scriptures--honesty, not lying. And then, when we left the table, who knows what they talked about. I think gossip.

My father was interested in the financial elements of the twenties. He saw great opportunities. In the thirties there was talk around the house about Hitler, Mussolini. One of his very good friends was of German heritage. He'd been born in this country. He was German. Like my father, his parents had been immigrants. And we saw them on holidays regularly. In the early 1930s there would be very large discussions and arguments between my father and his very good friend who was very defensive of Hitler in those days. And my father was very opposed to it.

In a curious way, my father had been a very modern man as a youth. And he was. After all, when my mother first met him, he still believed in free love--marriage wasn't necessary. And so she said, "Well, then I guess we're not going to know each other." And he gave that idea up. [laughter]

He was part of the modern movement of the Theodore Roosevelt era, his thinking. He took up photography. He was an amateur photographer. He developed his own pictures. He went walking with his friends, hiking to Tahoe. There were pictures of him-- [tape interruption--doorbell ringing]

Their courtship. My mother and he would go to Muir Woods, go on walks at the base of Mount Tamalpais. He cared a lot about that. But in my life with him, we never shared that at all because he was working all the time. He was working six days a week--leave home at about quarter to seven and he would come home twelve hours later. And he was grateful to have a job in the thirties.

My sister, who was five years older than I am, was very bright and very talented and very beautiful, actually. She had an unhappy life. She was a girl; she was blessed. And unfortunately, it put her two years ahead in school.

And because of the family, my father and mother's orientation--while they were both Californians (they had been raised in California), they essentially had Italian heritage and standards, and those were imposed upon my sister more than they were upon me because she was a girl that had to be protected.

That was an era when women in Italy did not go out onto the streets alone. They did not go to public places because they were not as chaperoned as they were in Spain and in Mexico. Actually, in Mexico, in my lifetime, women were still chaperoned. Upper-class women in Mexico City would--young women went out with chaperons. If you were in Mexico City, you would see the chaperons sitting at the table while a young woman was out with a young man. That had ended in Italy, but the implicit chaperoning

was still going on. And that standard had been the standard that both of my grandmothers had been raised under and passed onto their children, and which my father and mother were passing onto their daughter, my sister. So she had difficulty in adolescence; this was very difficult.

In her childhood, her teenage years in the twenties in America, she was two years ahead of herself in school and that in itself created a problem. When she went to parties, my father would take her. She couldn't go with a boy. This was what I heard as a child in my pre-teen years at the table.

The other thing was that she was a talented musician and they were constantly asking her to practice the piano. They had hopes that she would become a concert pianist. From my mother's point of view, an educated woman was a woman who painted, sewed, played instruments. I mean, going to Vassar was not in my mother's thinking at all. In her family's thinking, the arts were the womanly thing you did. So she didn't want her daughter to be a work woman, she wanted her to be an educated woman. And my sister had some musical talents; hence, they were at her all the time to practice. So the result was that I never wanted to learn to play any instrument. I didn't want to be bedeviled.

We had family life. My aunts and uncles would come for dinner. I'd see my cousins, friends of my father from his childhood and their wives and children would come. We would sometimes have overnight guests, and we would go overnight.

Bloody Thursday

- Torre: The two big things I remember from the era were two arguments between my father and his best friend. In 1934, I went to San Francisco with my father and mother on, I guess it would have been a Sunday. We were going to visit his German friend and family in the city. And this was at the time the waterfront was in turmoil. I'm telling you this because it ultimately gets into my life in an important way.
- Wilmsen: That was the Bloody Thursday or whatever they called it?
- Torre: Well, the State National Guard was out guarding the waterfront because the general strike that had been called by the longshoremen, with the guidance of Harry Bridges, was under way. And we got off the ferry. There was no bridge at this time. The boats that went to Marin County or to East Bay all docked at the

Ferry Building. And then you came out, walked across a bridge to a great turnaround of streetcars.

The old streetcars of San Francisco fanned out from the Ferry Building. They all came down to the Ferry Building and went out from the Ferry Building.

We were going out to Page Street, which was in the Fillmore District. We were all kept in the Ferry Building because the National Guard was out on the waterfront. There was shooting going on.

Wilmsen: You were there!

Torre: Yes. [laughter] I was scared.

Wilmsen: I can imagine.

Torre: My parents were scared. Shooting--that doesn't happen.

When we got out of the Ferry Building and got on the streetcar and went out to the friend's house, there was a huge argument, a discussion that ended up in an argument between my father and his friend, because his friend was very, very upset at what was happening with San Francisco. He lived in San Francisco.

Parents' Political Orientation

Torre: My father, who dealt with teamsters and warehousemen, was on the side, intellectually, of the longshoremen, that they *had* to represent themselves. If they didn't stand up, they would be trampled on.

It was curious because my father was not a Democrat. He had been a Democrat in his youth. My mother had been raised believing that the Democrats were fine, but she believed that you had to have a Republican in office because when the Democrats were in office, life was more difficult for working people, curiously enough. She'd been raised to be a Republican, and she persuaded my father to become a Republican, I now realize. At the time, I didn't think about it.

Yet, while he voted for Hoover and for Republican candidates, he was very opposed to Franklin Roosevelt, the things he believed in were the things that Roosevelt was trying to do.

I can't explain that. He was sympathetic to the workman's effort to secure representation and improve their lives even though he saw himself identified with the managerial class. Very low managerial class, but still the managerial class.

The argument about Hitler was just the opposite. Dictatorial behavior, militaristic behavior was unforgivable in my father's eyes. For his friend there was no alternative because people were starving. The inflation in Germany after World War I had so distraught him that he believed these things had to be done because it was so bad. Well, my father did not agree that that was the way you dealt with starvation. So you have here this curious contradiction. On the one hand, as long as you did it in a democratic way to represent yourself, collective action such as a general strike was acceptable; collective action based on military action was not.

Pacifism

[Interview 2: February 13, 1998] ##

Torre: I've been trying to organize my thoughts to stop some of the rambling that's been going on.

You asked a question during the last interview as to what we talked about at home--what I was raised on. So I'm going to start not necessarily with what I talked about at home, but what the governing ideas of my childhood were up through my entry into college and graduating from college. So I'm covering, let's say, 1925 to 1941.

Wilmsen: Okay.

Torre: There was one commanding, overwhelming idea, and that was pacifism. The consequences of the First World War--failure to make the world safe for democracy, the disaster of the front, and the war itself--were dramatically and overwhelmingly a part of our lives.

My father did not go to war because of his eyesight. But I had uncles who had been in the war. One who came home gassed with mustard gas, an uncle by marriage, and an uncle who had played in an orchestra in the army band in France.

And all the movies. All the movies we saw from the 1920s. I grew up on the movies. My mother sent me to the movies every

Saturday and Sunday to keep me out of trouble. But the memory of movies like *The Big Parade* with John Gilbert and Reneé Adare, *Wings*, Richard Arlen, Buddy Rogers, and Clara Bow--all of them had a single message to convey, and that is the hopelessness of war. That it must be evaded at all cost, that fighting a war can do no good, and you must refuse to fight. Also, the terror of war. Because all of these movies--*What Price Glory*, *All Quiet on the Western Front*--they all made one thing clear: you went down to the front and were killed. That was what war was all about. It was hopeless, and it was disastrous.

In 1934, it would have been, I was either in the first year of high school or the last year of junior high. I went to Oakland Junior High and Oakland High School, which were in the same building, so that I cannot be sure whether I was in the ninth grade or in the tenth grade. But Kathleen Norris, who was a pulp writer married to [Charles Norris, and sister-in-law to] Frank Norris, who wrote *McTeague* and was something of, I suppose, a socialist. Kathleen Norris was prolific, being the Danielle Steel of her day. She wrote novels published in the *Saturday Evening Post* and *Colliers* magazines. Of course her novels weren't like Danielle Steel at all, but since they centered on "liberated" women, they were popular in the same way. She was also respected as an intellectual.

She came to the high school to address the assembly. This was Oakland High School, again as I said earlier, a solidly middle-class community, middle middle-class community. This was at the time of the Rhineland episode--the first of Hitler's adventures--when Germany was going to march into the Rhineland and retake it as it ultimately did. There was a great crisis: Would England and France prevent it? Would they respond with military force and prevent it? And I can remember as a boy, I think this was 1934, I was fifteen years old, I was scared to death that there was going to be another world war, that there would be a war immediately. Well, as you know, as everybody knows, England and France did not do what they should have done.

And Kathleen Norris came to address the assembly that was assembled in this high school, to address the student body and tell us about a magnificent experience she had just recently enjoyed. She had just been in London during the critical period of this event and felt, *profoundly* felt, that because the young people of England had massed in picket lines outside the prime minister's house at number ten Downing Street, declaring they would not fight, England avoided creating a war and found a compromise. They negotiated the terms upon which the Rhineland would be returned to Germany. This was presented to us to learn that *if you refused to fight, you can end war*. And this was a

magnificent moment in the development of public control of disastrous affairs. And that was the guiding, overwhelming principle of my growing up. Whatever else we were taught, that was a--

Wilmsen: Did that come from your family or from school?

Torre: Everywhere. It came from schools, it came from the movies, it came from the books we read, it came from the family. As I mentioned, casually, I'd been a boy scout in a troop that was sponsored by the American Legion which had been formed to take care of veterans. And it came from them. We were being raised to resist war even though we were a troop that was sponsored by veterans.

ROTC Required at UC Berkeley

Torre: When I was in college in 1937, at that time at the University of California, the first two years of your college life you had to take compulsory ROTC. I think that's been dispensed with now.

Wilmsen: Yes. It has.

Torre: Well, in '37 it was required. You had to learn how to shoot guns and march in parades and learn to read maps, et cetera. And you had to pass it. If you didn't have a passing grade, you couldn't graduate.

At the same time, the student body was pretty much organized against war. It was eleven o'clock every Thursday, I think it was. Maybe it was every Tuesday and Thursday. There was one and a half units of credit you were given for this, the first two years. There would be parades on the Edwards Field, and you were supposed to be there in uniform and show up and learn how to parade.

The Daily Californian

Torre: At the same time, the pacifist organizations on campus, which at that time, I'm sad to relate, were primarily organized by the very left-wing student groups, and there were very many left-wing student groups. The editor of the *Daily Californian* at that time was a member of the Young Communist Party. And he went on the

rest of his life to be quite active, up until the fifties at any rate, to be a Communist supporter. I don't know what the rest of his life was like.

Wilmsen: Who was that?

Torre: William Murrish. I know about it because when I was a freshman I was--when I went to college, I had thought I was going to go be a journalist. I wanted to be a writer and this was the way to be a writer. In high school, I thought I was going to be a lawyer, but then I wanted to be a writer. And so I was going to go into the journalism department. There was no particular department at the time that mattered much. But you worked on the *Daily Californian*. But since I wanted to write plays and I wanted to act and direct plays, I was also involved in the Little Theater. Well, these were two very demanding student activities. You couldn't carry on both of them and stay in college. I ultimately dropped out of the *Daily Californian* activity after my freshman year.

Actually, the big moment which did not mean anything to me because I wasn't informed on foreign affairs at that time occurred one night when the paper was being printed for the night. Freshmen were assigned to watch the wire services while the rest of the staff that mattered, the senior staff, worked at the printers. The freshmen sat and watched the services. And I was sitting watching the service when news of the Rape of Nanking came across on the service. I did not know what it meant. I did not know what the Asian complication was and what all of this added up to. But I thought, well, I had to call and tell them that this was coming on as though they did know what it meant, and the whole front page was really redone. This is simply to show you how ignorant I was of the world.

Wilmsen: Not different from college freshmen at any time in history, I think. [laughter]

Torre: Well, I don't know. At any rate, I was pretty ignorant. But the seniors knew what it was all about. They redid the paper. The *Daily Californian* was a pretty good paper at that time. It had a lot of intelligent editors and people read it from cover to cover.

Demonstrations Against World War II at Sather Gate

Torre: But they, the groups they belonged to, and other groups would organize demonstrations at Sather Gate. And at this time, Sather Gate was really the entrance to the university because the administration building didn't exist at the time. In fact, on the street where the administration building is and opposite, where the student center now is, were shops. Clothing shops and places to eat. So Sather Gate was the entrance. And they had demonstrations. And the great question was, if you were against war, as I was, would you refuse to go and parade at eleven o'clock and come up and demonstrate at Sather Gate and then not graduate from college? Great problem. I guess I paraded.

I did, but they had great demonstrations. Some didn't. Some of the freshmen and sophomores who had to take ROTC would, in uniform, go to the demonstration. That's what I wanted to do, but I didn't do. I'm saying this to give you some idea of the depth of antagonism to war and the organization of the war and how it spread across the campus.

Wilmsen: You lost me there. So there were two things going on that were demonstrations and parades?

Torre: The compulsory ROTC people were supposed to be at eleven o'clock on Edwards Field parading. People opposing war organized demonstrations at Sather Gate to urge you not to go on parade and do your ROTC, but come to Sather Gate and stand and join your contemporaries who were fighting against war.

Wilmsen: Oh, I see. If you went to the demonstrations, then there was no--?

Torre: You didn't get credit for having shown up for ROTC. And if you didn't show up, you didn't get a passing grade and then you wouldn't graduate from college.

Wilmsen: Okay.

Torre: But if you were brave and believed in principle, believed in everything you had been taught, you would come to Sather Gate and not go down to Edwards Field. That was the commanding, truly commanding, doctrine of my generation.

And on September 1, 1939 when Hitler walked into Poland, the Eshleman Court, the *old* Eshleman Court, not the present Eshleman Court, where the student union *used* to be, there were broadcasts coming out all the while. And I remember, I was a junior at the

time, sitting there and feeling my life had ended as we heard the broadcast.

At three o'clock I had a class in Chaucer with Tatlock, who was a great Chaucerian scholar of his day. In fact, if you look at the Cambridge Chaucer, you will find that well over half the notes are assigned to Tatlock. So anyway, the question was, was I going to go to class or not go because war was here? But I went. And Tatlock was really great because he knew what the class felt. He then commented on being in London at the British Museum in 1914, in August 1914, when the First World War began, and everyone thought it would be over with by Christmas. He outlined his sense that the world was coming to an end. It was very curious, I think, that Tatlock knew very little about London, the contemporary London of his day. He knew the London of Chaucer inside out and walked its streets, and that's what he saw.

Wilmsen: Interesting.

Torre: But he then explained that he had considered closing his books and coping, but realized that he really was not able to, and that he had to find in Chaucer the material to sustain and see him through what was to occur. Tatlock was an American in England; he wasn't an Englishman. Of course, America did not enter the First World War for another two and a half years. And that was the message we were receiving from him that day--that these were terrible times, but Chaucer would sustain us if we looked for it. And he will.

Reaction at Berkeley to World War II

Torre: In those years before 1939, we would frequently have broadcasts from Germany. Usually they came at lunchtime and we would have the radio, we'd be replaying. There was no television, of course. The radio would play Hitler's speeches, which usually led--I was in a fraternity, a local fraternity north of campus--and the speeches usually led to long evening bull sessions until two o'clock in the morning as we discussed what our position should be. By and large the consensus was that Germany had been treated very badly at Versailles and one couldn't blame the Germans for being angry and trying to correct how they had been overreached. Of course, that was our position because we didn't want to go to war. We didn't want to be cast resisting the Germans. I would say that the overwhelming majority of young men in 1937 to 1940, '41 at the University of California did not want

to go to war. They did not want to be in the army. They did not want to go down to the front and die.

Wilmsen: That's interesting because then, my generation, we've been kind of taught a different view of history, that World War II was the great moral war and that everybody saw that--

Torre: I know you were taught that. The reason I'm telling you all of this, your generation thinks they were pacifist. You don't know what pacifism is.

Wilmsen: Okay.

Torre: No, I mean, I had a son who was graduating from college, Williams College, at the high point of the Vietnam War. And I know what your generation--you're a little younger, I think, than he is. He's forty-seven this year.

Wilmsen: Yes. I'm a little younger.

Torre: You're a little younger. Not a great deal, the same generation. You would have had the same outlook. And I know what you all felt about pacifism.

I was opposed to the Vietnam War, also. Very opposed. It was a disaster in my opinion, for this country, from which I don't think we've recovered yet. We've lost our self-confidence and our sense of dignity we once had as a country.

But at any rate, as the war in Europe deepened, got worse, we all knew it was inevitable that we were going to go in and win. When the Americans--what was the group that Lindberg headed up going around the country that year?

Wilmsen: America First.

Torre: America First. Resistance to entry into the war. We all gathered at Sather Gate to listen to him when he came. He not only was an American hero, the message he had to deliver was a message we all wanted to hear.

At any rate, where all of this ended up--and I will get off this subject in a moment--at graduation, the then president of the university was Robert Gordon Sproul, who was a very important figure in the building of the university, the Berkeley campus and the joint campuses. When he addressed our graduating class, the theme of his address was to apologize for the bad education we had been given. That we had been taught as no other class known --I was born in 1919, most of the class was--that war was

senseless and that if you would refuse to fight, you could make a better world and you could put an end to war. And it was now very clear that that lesson was erroneous--that war was not going to end and the world would not be better if we refused to fight. And we had been taught, trained to a position for the rest of our lives, immediate lives, that proved to have no meaning. And we would have to find the courage within ourselves and the thoughts within ourselves to justify what we were now going to be called upon to do. That was in June of 1941. And he was right. And it was obvious. And we did.

Trained as pacifists, all of our life, very few people maintained that they were conscientious objectors, although that really is how we felt, but very few of us were Quakers. The only conscientious objectors that had any opportunity of being given some alternative service and not sent to jail were Quakers. But even Quakers went to jail. After World War II, I met a man whose family was a very important family in the area, who had been a Quaker all of his life and was a conscientious objector and did end up in jail during the war. And curiously, I only had dinner with him once, but at that dinner his view was, if he had known at the beginning what he knew at the end, he never would have gone to jail. That had been a serious mistake. It didn't help anything. So that was a true conscientious objector's view about conscientious objecting.

You say that you'd been taught that World War II was a moral war, you have to realize that in this country--and I think it was true in England, when I was in England certainly, during the war --the populace at large had no understanding of the Holocaust that was going on to the Jewish people. They did not really know what terror many people like gypsies, homosexuals, communists, Slavs, were being subjected to by the Germans as their power increased. In fact, I would say my generation, by and large, thought the Germans had been cheated at Versailles and it was understandable why they were doing what they were doing.

[I don't mean to suggest that we were unaware of anti-semitism shaping German society. The horrors of "kristalnacht" had been fully publicized. There were popular movies that communicated the desperation created by the concentration camps for Jews and the tragedies of homeless refugees. Margaret Sullavan and Jimmy Stewart, star performers, suffered through "The Mortal Storm" and Glenn Ford, another star performer brought Erich Maria Remarque's *Flotsam* vividly alive. I personally had a close friend, Hans Schickele, whose father René Schickele, a distinguished Alsatian writer and intimate friend of Thomas Mann, had left Germany in 1934 because of the blooming Nazi tyranny. My friend in the spring of 1934 returned home from the Akademie

in Freiburg to report an incident of a student knifing on the school grounds with the result that the wounded victim was expelled and no action was taken against the knifer whose father was a leading Nazi in the area. Despite our awareness of the cruel tyranny engulfing Germany, we had no knowledge of the "final solution" ultimately adopted by Germany. Also, perhaps, because of the latent anti-semitism in our own land, we believed that this unacceptable behavior would ultimately be brought under control. Always, however, we believed that this intolerable situation was the result of one war and would not be cured by another.]¹

We did, however, as the blitzkrieg created havoc in Western Europe, particularly, and as we began to learn about the starvation, and how the Germans were living high, wide, and handsome in the Europe that they had conquered, we did come to realize that German tyranny, German military might, was not a happy thing to live under. I repeat, however, that the things that made World War II a moral cause were not generally known. In fact, I don't know how widely known they were in the highest reaches of government. We read that they were well-known and people did not respond to them, but I don't know. I don't really know what was known. Certainly, Churchill and Roosevelt and the people around them knew that if the Germans won the war and controlled the continent and the Japanese controlled Asia, they would be an organized world that would be quite different than the world that Englishmen and Americans had come to believe was absolutely essential. So in terms of the values embodied by the Anglo-American world, and the French as well--but France, the poor country, had been demolished right on. So it was the Anglo-American resistance to prevent the German domination--the German-Japanese-Italian domination--of the world that gave some purpose to the war. But I'm not sure that you can call that a moral purpose. It was a political purpose. It was what we value as a nation, our political values, which I do value and my friends value and my family valued even though we were pacifists. We thought the way to preserve and further it was to refuse to fight.

It would have been disastrous if the youth of 1941 had behaved as the people of 1968, the youth of 1968. It would have been a true disaster for the West. However, it wasn't because of what they believed, they were just more readily intimidated. The structure of society was more firm and more fixed. You did what you were told to do. It was only a handful of people who had the

¹Segment in square brackets was inserted by Mr. Torre during the editing process.

courage to resist organized society. At least, in the university.

That brings me through my childhood, in terms of what we thought. Now is there anything you want to ask about that?

More on Student Life at Cal

Wilmsen: I did want to follow up on one thing because last time you talked a little bit about how a university education was for the wealthy. I think you were talking particularly about your parents' generation.

Torre: Well, except for the University of California. Harvard, Yale, Stanford. I knew nothing about the University of Michigan or the other state universities. But the universities I had heard about were all Ivy League institutions which did require some means to go to. I don't think many of the students going to those institutions at that time worked their way through them.

It was fairly commonplace at the University of California for boys, at any rate. You certainly did work in the summertime and Christmas time. I did not work for room and board during the semester, but I had a lot of friends who did.

Also, it was during the Depression years and it was not unusual to have to debate mid-day as to whether you were going to buy a package of ten-cent cigarettes or a hamburger. Cigarettes would get you through the day, the hamburger would get you through the lunch hour. They were both ten cents. A good package of cigarettes was fifteen cents. But by buying a lousy package of cigarettes, you could have a cup of coffee. I certainly engaged in such decisions myself, and I did know many, many students at the university who had to consider that. I knew students at the university who ate one meal a day and it was probably a hamburger and coffee. It was not unusual. People did not have a lot of money. There were groups of students that were more affluent. But I think what I just described was not untypical of the university students at the time. Certainly, I knew so many people that that was true of.

In fact, I felt affluent because I had more spending money and more comfort than many of the people I knew. I did not have an automobile. Among my friends, I would say, oh, about 5 or 10 percent of them had automobiles at most. A lot of car sharing.

My family did not have an automobile. My father, because of his eyesight, when he was trying to learn how to drive, almost hit a pedestrian so he never would drive again. Never wanted to drive again, so that's why he never had an automobile.

I'm explaining what the average life was like. Public transportation was common.

##

Torre: We had three dances a year. This was the era of Benny Goodman and Artie Shaw and Tommy Dorsey. Some of these people did show up at the men's gym. Ray Noble I remember being there in the gym for an organized dance. Jitterbugging had just arrived. It was a major entertainment, but buying records, as people do out at Tower, was just unheard of. I had two friends who *did* have record collections, but one of them was a girl from New York who came from a very affluent family. The other was a boy from Alaska who used all his money to buy records and found himself impoverished. [laughter]

Wilmsen: He skipped a few hamburgers.

Torre: Skipped a lot of hamburgers. We did have recordings. We did buy recordings for the fraternity, for the dances at the fraternity because we had dances. Records were what we danced to; only one or two dances a year did we have live music.

Drugs were unheard of by and large. I don't remember anyone I know ever being engaged with drugs. Alcohol had returned; Prohibition was over with. And while you had to be twenty-one, there was a lot of beer drinking by people under twenty-one, occasional whiskey drinking, gin drinking. Drunkenness was not commonplace. The university world had alcohol in it. We had beer buffs who did a lot of drinking of 3.2 beer.

At that time, there was no alcohol served within a mile of the university. You had to go a mile away to get hard liquor. Alcatraz and Telegraph, a place that is now called "Alcatel" was known as "Donovans" was very popular. And down on University Avenue, a mile down from North Gate, was a bar and the bar at the Claremont Hotel was just barely one mile away. It was very carefully placed to be one mile away when the hotel was renovated.

All of that has changed, of course. And alcohol is far more prevalent at the university than it was in the thirties and forties. There was alcohol. I now realize that some of the people I knew were alcoholics that never recovered from it. They

were alcoholics when we were in school. They had disastrous lives as a result of it. But at the time, I did not recognize it or know it, nor do I think they recognized it. But that was very uncommon. It was extremely uncommon.

Sexual promiscuity--I would think that most of the girls were still chaste before they graduated. Maybe thirty percent of the boys. At any rate, it certainly was not commonplace. Romance might lead to sexual involvement, but the kind of sexual practices of today simply were not known at the time.

Wilmsen: So was the University of California seen as the school for just regular folks? Was the University of California regarded as a school for regular people as opposed to Harvard or Yale?

Torre: Yes. Yes, it was. I think there were 18,000 when I entered the university, full university. It was for the public.

The Ivy League school of the area was Stanford which is curious because Stanford, as I said before, had been formed by the Stanfords, Mr. and Mrs. Stanford, for poor children. And the senior man of the law firm I ultimately became a member of, Ira Lillick, had gone to Stanford because he was a poor farm boy from San Jose when it was first formed. When I came to know him in 1950 he was in his seventies, I guess, and he was a trustee of Stanford University. But that had changed. By the thirties, Stanford was for the upper classes of the area, for the affluent of the area.

Now, there were obviously affluent people at the University of California. Some of them belonged to some of the fancier Greek fraternities, the boys. Bowles Hall by and large was inhabited--it was a very fine place to be--by the youth that were more secure. The sororities had girls, by and large, that were from families that could afford to send them to school. The girls worked less than the boys. The girls who did work shared apartments rather than being in sororities.

There was a lot of apartment sharing, there was cooperative living. And for a lot of people, for boys in particular who lived in basement rooms of homes where they did gardening and household work for people in Berkeley in order to have room, and, in some cases, got board as well. It was a very common practice. Have I answered your question?

Wilmsen: Yes. There are differences, but there are a lot of similarities to student life now.

Torre: I'm sure there are. We've had students living in this house. I know that students still live in homes and undertake to do work.

Wilmsen: And sharing apartments and all that stuff.

Torre: Well, at any rate, I was now going to try to talk about my involvement with the natural, with wilderness.

Bertrand Bronson: A Favorite Professor

Wilmsen: Okay. Can I ask two more things before we move on to that? You mentioned last time that Bertrand Bronson was one of your favorite professors.

Torre: Oh yes. Great professor.

Wilmsen: I was wondering if you could just say what it was about him that made him one of your favorites.

Torre: Well, Bronson must have been in his forties when I was an undergraduate. He was a great scholar on the eighteenth century. I was an English major by this time, I was a junior when I took a class of his. I had begun thinking of getting a Ph.D. in English and teaching and writing. I still wanted to write, but this seemed a way of doing it and being able to earn a living.

Also, I had had English classes that were very engaging to me. Bronson--I took from him a class on Shakespeare that was a mandatory class for English majors. I don't think the class is given any longer, but we read *Macbeth*, *Antony and Cleopatra*, *Twelfth Night*, and one other play, I think, was the whole class. We spent on *Macbeth*-- We spent at least a week--three hours, it may have been longer--just on the opening scene with the witches. I don't know whether you know *Macbeth*, but the opening scene is the three witches. Even before *Macbeth* shows up there's a scene where they meet and talk. And the purpose was to acquaint us with what was involved in cleaning up the text of Shakespeare. The possibility of what the words meant, the changes in the words.

Wilmsen: So is that what you mean when you say cleaning up the text, is making it understandable for people?

Torre: No, no. What I mean by cleaning up the text was that, up until the nineteenth century, there were many lines in all of the plays and there probably are still, there still are some now in

Macbeth, where we know we don't know what Shakespeare wrote because the lines don't read. Getting a text that Shakespeare wrote took the work of a number of scholars--intensive scholarship, beginning I think, in the nineteenth century up to the turn of this century, the beginning of this century--getting a text that you had some confidence that these words were the words that Shakespeare intended, and read. But there are lines that don't read. They're magnificent pieces of poetry. They happen to be magnificent pieces of poetry, but if you try to analyze them as to what they have said, you won't be able to.

And some of these problems over this period--as I remember, I'm not an English scholar remember, it's as I remember these studies--were because finding out what the word meant in 1600 wasn't so easy. We think we know what particular words meant and that this word and this text make sense because if you read it with that meaning then the line makes sense. But is it possible that the word did not mean that, or could it have been this other word that was similar?

After all, the first printing of Shakespeare was done not under Shakespeare's control. I believe that he was still alive, but I'm not sure as to whether the printing was shortly after his death. In any event, the publications were from scripts that were in use at the time. And like every other thing the stage companies and opera companies do, they may or may not keep the work of the composer and author inviolate. The scripts had undoubtedly altered the original text and as reprintings occurred, further changes were made.

What I mean by cleaning up the text was to establish a text that scholars feel are the work of the author. Well, that was what we were being taught--we were being made aware for the first time of the ambiguities in the text. We were given all the possible readings of the words and lines and were shown what a variety of meaning can be assigned to them. Have you ever seen the Shakespearean Variorum?

Wilmsen: No, I haven't.

Torre: [walking to get book] This particular one was published in '73, 1901, 1903, and 1915. What a variorum is, is a collection of all the scholarship on the play. And it isn't all of it, it is what has been distilled down to that which is worth reading. That work has been necessary on all of Shakespeare's, Chaucer's, and Spenser's work. [moving around getting more books] This is the Cambridge edition of Chaucer. [flipping through pages] That's the body of the important notes to assist you when you're going

to read anything of Chaucer. At least at the time, and I think it probably still is a student's important book on Chaucer.

Well, Bronson was marvelous. He had gone to Oxford. He may have been a Princeton man as well. I'm not sure; I don't remember. But I know he had gone to Oxford. He was an Anglophile. He had an English manner about him. He was quiet-voiced, dry-voiced, very witty. His hair was slicked down on the top of his head. He was a handsome man. But he was an Englishman. He was a very sophisticated, very poised, quiet-spoken, not capable of being aroused by his students, but quite capable of controlling class and keeping the discussion going and the debate going. He was a brilliant man. He was a brilliant teacher. That semester was quite extraordinary.

I know something of his scholarship. He was very important on Johnson, Boswell. He did a collection of the ballads of that era that has been published. It was a leading piece of scholarship. But if you look him up in the library, you will discover he had honors galore by the time he died. But he was witty. He was very witty, dry wit. He was kind, very kind while he could be very cutting. He was very skillful at maintaining authority and emanating kindness at the same time and humor and knowledge. I have great regard for him.

Among other things, I came to know him because after I married, he was a very close friend of my father-in-law, Bull Durham. I learned that he was very interested in music. He had a quite highly developed, profound interest in music as well. His wife was an artist, they did not have children, and they were highly regarded by the people of Berkeley, of the university. Great respect was shown for Bertrand Bronson.

The professors I liked, Willard Bull Durham, my-- Well, I love Bull Durham so I can't talk about him. Bronson, I liked enormously. My first professor in the English department was a man by the name of George Hand who I had freshman and sophomore English from; he also gave a writing course. But he was a very important teacher for me. He ended up in Santa Barbara. He was a very fine teacher. He wanted to write novels, but he was an unstable man. I think he drank a lot. But I learned a lot as a freshman; I really became engaged in literature because of him. And I took a writing course from him as a sophomore for which I was very grateful for what he taught all of us.

There was then Bull my sophomore year, he came into my life my sophomore year, Bronson in my junior year. Cline, James Cline, who taught Elizabethan literature--poetry, among other

things--this is what mattered to me--was a fine teacher. Willard Farnum with whom I studied Milton.

Wilmsen: So it sounds like the focus of the English department at that time was on English literature from England as opposed to American.

Torre: Primarily. Jim Hart gave American lit. You would know Jim Hart; he was the former head of Bancroft Library, now deceased. Among other things, he was also vice chancellor at one point of his career. He taught American literature. In the years I was there, the focus was on English literature. The keys were Chaucer, Shakespeare, Spenser. At the end of your senior year we had a comprehensive test that we had to pass if we were going to continue English studies. If you were an English major you had to take the test and it was quite a test. It has been done away with, unfortunately. You would have something on Shakespeare, Chaucer, Spenser that you had to be prepared to deal with. You didn't really know what it was going to be.

Bull taught Shakespeare and other things, but he covered drama primarily. It was primarily English from the sixteenth century up through the eighteenth century and early nineteenth century. When you got into the twentieth century, you began picking up American drama as well. It was added. That's when American drama was added to the English. And I would say by 1925 to 1940, American drama was outplaying English drama. I think English playwrights have regained dominance in the theater, but I'm not quite sure about that. Tennessee Williams and Arthur Miller, Mamet, and maybe Shepard would be the American playwrights. And I think that I could find more if I started mainly in English.

While there were others, these were the professors I remember. They were the men who stirred me intellectually and emotionally.

Ben Lehman

Wilmsen: One more quick thing on the university before we move on to wilderness. You mentioned when I was here that day with Ann, that after Bull Durham died, then your mother-in-law married Ben Lehman.

Torre: Yes. What I was trying to explain was that Bull had been my wife's father's friend at Yale. He first began his career at

Yale and then he came out to California. When he came out to California, he renewed his friendship with my wife's father.

Wilmsen: Chauncey Goodrich.

Torre: Chauncey Goodrich. My wife's father was stricken ill in 1930, I think it was, and died about nine years later, eight or nine years later.

After he died, Bull, who had become a friend of the family when he came out to California, after some time married Chauncey Goodrich's widow. This was at the beginning of World War II. As I said, I went off to war and I didn't see him. He was on sabbatical leave; he had just married. I went to the army in 1942. In 1944 at Christmas time, I returned from England, and I called on him at the university. He invited me to dinner and I met his wife. It happened that I met my wife at the same time, but I didn't know I was meeting my wife.

Bull died in 1954 and Ben had been brought into my mother-in-law's life through her marriage to Bull. So, I should say it was inevitable that several years after Bull died, my mother-in-law would marry Ben Lehman. And that was how I came to know Ben. I had not taken courses from him at the university. He taught the novel, which was his big course. I did start it, but I couldn't understand him. His vocabulary was beyond my understanding at the time.

Wilmsen: Oh, really. Where was he from?

Torre: He was from Montana, no Idaho. Bull was from Montana and went to Yale. Ben was raised in Idaho, went to the University of Pennsylvania and Harvard; he came to Berkeley in the twenties. I just didn't understand his vocabulary.

Bull and Ben were close friends, very close friends. They shared office space. They were from, I would say 1925 to '54 when Bull died, as good friends as two men can be. It's some measure of the fact that a couple of years later he ended up marrying Bull's widow as Bull had married Chauncey's widow. And did ask my wife a couple months after the wedding if she had any advice, and she said, "Yes. Don't introduce mother to any friends of yours." [laughter]

My mother-in-law was a very introverted woman and while she had three husbands, she was the last person in the world you would have expected to have three husbands. But this is how Ben came into my life in a large way because I was married in '48, I

think they were married in '56, '57, and went into the seventies before death began to cut them down.

Did that answer your question?

Wilmsen: Yes.

[Gary, can you add a bit more about Ben Lehman as a father-in-law, and what he was like as a person?

Torre: Given the age of my wife and me when her mother married Ben, we did not share a child-parent relationship with him. Instead we discovered a worldly man who had a wealth of rare and engrossing experiences that he was willing to share with us. His conversation was always informative on theater, literature, politics, geography and people. His humor was unlimited. I was delighted that I finally acquired an understanding of his vocabulary. At the same time, he was a family man. This was evident from his relationship with his son, Hal Lehman, with whom my wife and I have formed a close relationship, and from his ties with many former students who visited him from time to time, and finally from his relationship with his grandchildren and our three children for whom he was a loving and attentive grandfather.]¹

¹Segment in square brackets was inserted during the editing process.

III EXPERIENCING THE OUTDOORS AND DEVELOPING VIEWS ON URBAN LIFE

Early Interest in the Outdoors

Wilmsen: Shall we move on to how you got interested in wilderness?

Torre: Well, I'm only going to tell you what my childhood was before--

Wilmsen: Okay. Because you were in the Boy Scouts.

Torre: I was in the Boy Scouts between my twelfth and fifteenth year. I never went very far beyond first class. I never became a life or eagle scout. I did it for about three years, I think, and then dropped out.

Wilmsen: Was that something you did on your own or did your parents encourage you or anything?

Torre: No, I did it on my own. I had a very good friend in my neighborhood. He and I were the same age and we were the younger members of our family and kind of discarded by our older siblings, each of us, and we held out together a lot. And one way or another, we did things together.

When the public library opened a branch in our neighborhood, the librarian formed a Saturday reading club for young students. I was at this point in grade school. I was about ten years old, ten or eleven years old. My friend was the same age, and we went to those Saturday meetings and started reading. And then I don't know who found the Boy Scouts first, whether he did or I did, but one of us did, so the other one joined it. And we belonged to the same troop for about three years.

Our lives diverged in junior high school and high school. He was interested in baseball and I was interested in theater. So he knew all the scores and the baseball players. There used

to be baseball cards you collected and he collected them and he knew them all. And I knew the private life of all the movie actors and actresses. We had different interests and began going different ways. And somehow, I think that's why we perhaps fell out of going to the scouts, but for three years, about two to three years, we went to regular meetings.

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Torre: I'm not really sure of the date that the Regional Park System--Tilden Park and Redwood Park and the parks that run the length of the hills today--were formed. But it was in the thirties; I don't think they existed in the twenties. I'm not sure exactly when they came into being in the thirties. I know that they existed by 1939 because I can remember using them when I was in college.

When we went hiking and on overnight trips, it was in those hills which were not then built upon--the era I'm talking about is before 1934. I was fifteen in 1934 so I'm talking about 1930 to '34. I can remember going up in the hills to hike and going over the ridge and looking down on what is San Pablo Dam, this great body of water. I was about ten years old, eleven years old. You had to be twelve years old to be in the Boy Scouts, so I must have been twelve years old. That was an amazing thing to look down on all that water.

Wilmsen: But there were some houses up here because you mentioned this house was built in 1920.

Torre: Twenty-seven.

Wilmsen: Oh, twenty-seven. Okay.

Torre: This house, and the one next door and about four others were up in '27, but the Boy Scout camp that serviced Oakland was about half a mile away, south, and a little east of what is now the Warren Freeway. In fact, there still is a road named Scout Road. And to go to camp we'd take public transportation to the end of Park Boulevard and then we hiked from the end of Park Boulevard to the scout camp.

Swimming, Tennis, the Beach, and Transportation to Recreation Facilities

Wilmsen: What was the public transportation?

Torre: A street car. There were no buses at the time. They were all street cars.

Our scout master or fathers, not fathers, people of the American Legion who were sponsoring the troop, would take us in their cars or trucks to where they would dump us off for the overnight hikes. Going on these overnight hikes or camping out! What it meant was that we would go out on Saturday and come back Monday, Sunday. But we were out camping and learning how to cook, avoiding being bit by rattlesnakes, and seeing the outdoors. This was my introduction to the outdoors.

As I said earlier, we did not have a car in the family, so that meant that most of my childhood we did not get into the countryside very often. I was always dependent upon either the excursions of a relative, an aunt in particular, or a friend of the family who would take us to the beach or some place away from town because there was no other way of getting there. We travelled around in street cars. The train and ferry commuted to San Francisco.

The result of all of this for me was to confine me to the city--and I think this was fairly typical of lots of children. I don't think I was a deprived child particularly; I don't think that it was absolutely typical, but I think they were fifty-fifty at least, maybe more than 50 percent, who grew up this way. Also you went to public swimming pools to swim. People did not have private pools of their own. Some people did. My wife's family in Saratoga had a private pool, but that was very, very unusual. The filters, heaters, and all of the equipment that goes with swimming pools to keep them running was unknown at the time. It had to be maintained manually which meant a lot of help was necessary. It was an expensive luxury, so if you wanted to learn to swim, and not everybody learned to swim, you went to public pools.

At that time, you couldn't graduate from the university without passing a swimming test because it was considered necessary to learn to swim. When I was about ten years old, my mother enrolled me in a class with the YMCA where I was taught how to swim. I didn't like it because we swam in the raw at the time and the idea of going down to the Y, being with all these boys with nothing on to learn how to swim was embarrassing which is very different from today. My children and grandchildren, they never wear anything when they swim. It is easier to keep them from catching cold. I suppose if you went to the Y today, you would have to wear something because they'd be too afraid of sexual stimulation if you didn't.

At that time at the university, you were not allowed to wear your own swimming suits. At the men's gym you had to wear the swimming jock that they gave you when you went in to swim. This was of course, for sanitation purposes--to be sure that you weren't bringing germs in with clothing that had not been properly taken care of.

I remember--it was very ironic--that there was not mixed swimming at that point, until after the war. There were so many married veterans in the university, in the summertime at lunch time your wife could join you to go swimming at the men's gym. You'd have a picnic at the men's gym. But everybody was still in swimming jocks, and some of them just in jock straps, which was very amusing. It was very amusing because there were girls around and here were men with their bare bottoms hanging out.

That could not have happened in my childhood. In my childhood, in 1931, a man was arrested in Alameda for appearing at a public swimming place known as Cottage Baths without a top on. He only had shorts on. Very long shorts, I might say. He dared to appear without wearing a top. At that time, the swimming tops of men and boys were like an undershirt, except the arms were cut very low and there were straps across. There was hardly anything to them. They might as well not have worn anything, but it was a top. It was not bare-chested. That was considered indecent exposure. [laughter] It is hard for you to realize that, I think.

Wilmsen: It's different. Yes.

Torre: At any rate, these were the outdoor experiences I was having. I learned to play tennis rather than to swim very much. I played a lot of tennis in my growing up.

But I had an aunt who had an automobile. And at that time, if you bought an automobile, it was presumed that you would have that automobile for the rest of your life. The idea of turning an automobile in every two or three years had not yet taken hold.

She bought a Buick in the late twenties. She happened to live next door to us, so she became my source of access to the outdoors. She was childless, she was married and childless, and she would take our family--my sister and me and mother and my father sometimes, not always--on picnics to Santa Cruz, Half Moon Bay, a couple of times to Carmel.

I can remember being at Carmel and seeing seaweed for the first time on the beach and thinking it was a great serpent and being terrified by it because there was always talk in the car

about how dreadful the snakes were. As you can tell from the number of times I've talked about snakes, I was raised to beware of snakes. Well, it took me a long time to realize the seaweed was seaweed. I was not automatically tuned into it.

Wilmsen: Well, some of them look like snakes.

Torre: Well, they're enormous. Long stretches of them. Well, I did learn. And we would use them as whips, chase each other up and down the beach, and play with them, and it was not terrifying.

I think, let's say from 1928 until 1939, I may have gone to Carmel twice, Santa Cruz two or three times, Half Moon Bay two or three times, and that's what I saw of the ocean.

First Trip to Yosemite

Torre: We did go, when I was about ten years old, eleven years old, to Yosemite. And that was an extraordinary experience. I'd obviously never seen anything like it. At that time, the Ahwahnee Hotel had not yet been built. There was a lodge, Camp Curry, and a very, very small village. Firefalls were dropped from Glacier Point every night which was a great, thrilling event that's been dispensed with because it is not natural. But it was a very thrilling event. A man standing up on Glacier Point called down to Camp Curry, "Are you ready?" And we'd all stand there. Everybody gathered for the falls to come over. Which was a big bonfire built on the top of Glacier Point, and when it came down to cinders, they pushed the cinders over.

They had just opened a trail known as the Ledge Trail, which was a mile up from the floor of the valley. You could only go up, you couldn't go down. It was considered very, very dangerous. Very, very dangerous.

The next trail up to Glacier Point was six miles or ten miles. Climbing Glacier Point was something to do. I did not do it as a boy. I did not do it. In fact, I never have climbed Glacier Point. I've only driven to Glacier Point and walked down. But that was something to do. It was a great event to do in the Valley.

But I did walk, on my first trip, up to the top of Vernal Falls over the Mist Trail which was a-- Have you been to Yosemite?

Wilmsen: Yes, yes.

Torre: You do know the areas that I'm talking about.

Wilmsen: Yes, yes I do.

Torre: Well, the Mist Trail was a great adventure. We were soaked wet and it was slippery and also dangerous to do, but we did walk up.

At that time, there were Indians still living in the valley, in an area, I think, behind what is now the Ahwahnee Hotel. And I remember my mother being at Happy Isles and falling into the company of a group of Indian women. And they began comparing notes about their respective lives.

One of the great things in the valley that is now gone, was that the valley was not then crowded. The emptiness of the valley has been lost. Many meadows have unfortunately disappeared because the roads have flooded them. Run-off from the roads flooded what were meadows. There's a lot of growth in the meadowlands that was not there when I first went there. The valley was more open. But because nature cannot be interfered with, at least once you've interfered with it you can't interfere with it again. In the national park system, the growth resulting from the run-off of water from the intrusive roads can not be eliminated.

One of the beautiful things of the valley was Mirror Lake at the base of Half Dome. At the base of Half Dome was a lake. There's a muddy hole there now. But there was a lake when I was a boy when I first went there, and it really did mirror the cliffs. It was large and deep enough, so that it was a mirror of Half Dome, which was quite beautiful. But one winter, there were avalanches that came down Tenaya Canyon, which fed into that part of the valley, and brought a lot of mud and pretty much wiped out Mirror Lake.

At night, one of the things you did was to go to the bear pits. The bears were fed with the garbage from camps, Camp Curry and the lodge, in a particular area in the valley which was known as the bear pits. And so to go down to the bear pits and watch the bears being fed was a great event. Occasionally, bears would come running through the camp areas and grab food if they could, which was a great terrifying event.

But at any rate, all that has been dispensed with. The bears have been taken out of the valley. They're not there in numbers anymore. At least they tried to get them out of the valley.

There were dances at Camp Curry's outdoor dance pavilion. Everyone went to the dances at night. Not me, not the children, but the teenagers and older.

I remember walking up to the first level, to the top of the last drop of Yosemite Falls, which was a very vigorous, thrilling thing to have done.

But it was basically the wonder of the valley. We learned something about the glacial formation. And I can remember as a child being quite dazzled by it. It was quite a marvel.

Wilmsen: How long did you spend in the valley?

Torre: Probably a week. I went back before I went to college on another automobile trip with my aunt and it was a similar experience. We drove up to Glacier Point. The first time I went there, there was no road you could go up to Glacier Point. My second visit we drove up.

I had as a very *little* boy, when I was four or five years old, been taken on two summers to the Russian River. I have no particular memory of these excursions other than we went to the Russian River and we were taken out on the river. I didn't know how to swim at the time, and we had to wear "wings". It was great effort to look after us. I know that we didn't go back because my mother did not think it was the right environment for my sister who was five years older than I was at the time. She'd have been entering her early teens and my mother did not want her daughter in the world of Rio Nido and Guerneville.

The Prohibition was on at the time, but there was a lot of bootlegging and it was a faster world than my family approved of.

Wilmsen: Guerneville and Rio Nido were centers of bootlegging?

Torre: There was bootleg liquor available. Yes. I wouldn't say they were centers, but they were places where people went and got drunk.

First Encounter with the Redwood Forest

Torre: The next occasion of any contact with the outdoors was the redwood forest. My sister married in 1935. Let's see if I got it right, '35 or '36. Her husband's first job took him to Eureka. They moved to Eureka, and shortly after they had moved

up there, my parents with friends of theirs and their friend's daughter and I went on an automobile journey to visit them. And that was the first introduction I had to the redwood forest.

At that time, the redwood forest began at Ukiah, and it truly began there. Today, while the signs say the "old Redwood Forest Road," there are no redwoods there. Instead, where the redwood forest *used* to be there are now miles of vineyards. I just recently, last fall, was in the area to purchase grapes. I now make wine. Incidentally, would you want some wine now?

Wilmsen: Well, whenever you're ready.

Torre: What would you like?

Wilmsen: Why don't we finish this, the part on wilderness.

Torre: Well, I'll finish this last bit of wilderness and then I'll be through.

Wilmsen: Okay.

Torre: The forest began at Ukiah and it was as dense as the area that is now the national park, Redwood National Park area, from there straight up to the Oregon border. There was logging in the thirties, but you couldn't see the area from whence the trees were removed. There was no strip logging. It was forest land. I had never seen anything like it. Yes, I had in Yosemite, when we went to Yosemite, but I mean, this was *just* redwood forest. When we went to Yosemite, there were the rocks, the river, and the falls. The forest was minor to the other wonders. Now this was, when you went up the redwood highway, it was just through forests. It was fascinating.

Sufficiently fascinating, that the next year I went on a camping trip with a friend of mine in high school to a place known as Lane's Redwood Flats. I was beginning to be independent, so I could go off with a friend. We were driven up by another friend who was being moved to Eureka. They dropped us off.

At that time, my brother-in-law who was a very adventurous man got back and forth from his home in Yreka to the university by hitchhiking. That way he traveled. Hitchhiking was a safe way for youth to travel.

Wilmsen: So did you hitchhike home, then, after that camping trip?

Torre: Oh no! Just to my sister's home in Eureka.

My sister and brother-in-law drove us to their home in Eureka for a visit, and we ended up hitchhiking back to Lane's Redwood Flat. But my friend's family came and picked us up to return home. Otherwise we would have considered hitchhiking because my brother-in-law had introduced me to that idea. My father and mother were not too happy with the possibility.

I wouldn't dream of hitchhiking today and I wouldn't want my children to hitchhike today. It was not entirely safe in the thirties, I'm sure there were dangers attached to it. There must have always been dangers. Human nature hasn't degenerated suddenly, but the use of the automobile is different. The attitude towards the use of the automobile has become so commonplace that you don't feel you're offering something special when you pick somebody up to give them a lift. In the thirties, you still thought you were doing something that was not commonplace, so that you behaved differently throughout, I'm sure. At any rate, hitchhiking was not the danger then that I would view it as being today.

What is your feeling? Do you think it is a dangerous thing to do?

Wilmsen: I think it is dangerous. I've hitchhiked myself and--

Torre: I wouldn't dream of doing it today. I wouldn't dream of it. And I don't pick people up, either, what's more important.
[laughter]

Wilmsen: No, I think it is dangerous now. A lot more than in the past.

Torre: Well, when I see hitchhikers on the road, I remember my youth and think, "Well, I did it and I was picked up and I wasn't frightened," but I wouldn't pick anyone up today. And I certainly wouldn't do it.

Well, at any rate, that was the redwood forest. We went up to Oregon. We went to the Oregon caves, then we came back down, Central Valley, and I saw Mount Shasta, the upper Sacramento River. This was all new country, nothing like that had I ever seen before.

And then there was one trip for four days to Lake Tahoe. I went with this aunt who took us off on excursion. That's about the sum total of my wilderness in growing up.

Wilmsen: But it sounds like, some of it, especially Yosemite, really made a big impression on you.

Impressions of Lake Tahoe

Torre: I've never forgotten Yosemite and I never will.

Tahoe made something of an impression. I think the gambling at Tahoe made its biggest impression. Cal-Neva was brand new at the time, and I can remember going in. I was about nineteen, I guess when we went to Tahoe. Cal-Neva is right on the borderline. On the California side is the bar and the dining room. Well, the bar was in the center, but the Nevada side was where the gambling was. And it was the Monte Carlo of the area. It looked like the books one read about Monte Carlo--the spy novels, the cheap spy novels that I read many of. It took place in Monte Carlo with Russian princes and femme fatales. The Nevada side of Cal-Neva had that aura to it. Today, it's appalling. It's just--all that's gone. That is what I remember --my first memory of Tahoe.

Tahoe is a beautiful place. It's a very beautiful place. And the back country is quite beautiful, but it isn't anything like Yosemite.

It has been overdeveloped, badly overdeveloped. When I first went to Tahoe, the Nevada side was absolutely bare and there were no trees. In the late thirties, there were no trees on the Nevada side of Tahoe. That was the result of the logging that had been done for the silver mines. It had been stripped. The silver mines being in Nevada, the Nevada side had been stripped of lumber to be used in the mines.

The California woods were still intact. This is where the great houses of the high professions and wealthy people of San Francisco were maintained. Great properties were primarily maintained, some of which have become public parks.

Wilmsen: Did you have any particular reaction to seeing the land with no trees on it, that had been logged?

Torre: I couldn't believe it. I couldn't believe it at the time. It just seemed appalling to me. And even as late as the mid-fifties, it was still pretty bare. And the road, Highway 40 from the high area was fairly well stripped. And at this time, I'm a much older person [now], it seemed a desecration of the countryside that was unforgettable.

But at this older age, it amazes me how nature does restore itself. The trees are coming back. And on the highway they're coming back and they're certainly coming back on the Nevada side,

but not as heavy as on the California side. But it's had some help. I'm sure it's had some planting help to do it, but it is not as Athens is. Have you been to Athens by any chance?

Wilmsen: No.

Torre: Well, the approach to Athens, ten, fifteen miles out, if you're coming up from the Peloponnesian Peninsula from the Corinth Canal area--you have hills, sort of like foothills, similar to what we have here, knocked down a little, that kind of thing--they're absolutely bare. There's *nothing* on them. There's no grass, trees, or flowers. Just rocks. They've been stripped, stripped and eroded in the most appalling fashion of anything I've seen. Of course, *all* the trees have been chopped down over hundreds of years to build ships and numerous other structures. But the desecration is appalling. And I'm not sure it can ever come back because I think the topsoil has been eroded away. And I think it would take a restoring of topsoil to be able to reforest the area. I don't know. I'm not a forester, so I don't really know, but I've never seen anything like the outskirts of Athens. Greece I'm talking about now.

Wilmsen: Right.

Torre: There are a lot of Athens.

But the hills of Tahoe, 1939, looked like that. But they had not been eroded as badly, so the growth has come back.

Population Growth and Urban Sprawl in the Bay Area

Torre: What we do to the world we live in concerns me. The changes that were occurring in the Oakland area, from the area I grew up in--I was delighted to see some of the changes. I do not protest the population increase in the area. It means we have better theater and better music, which mean a great deal to me, also. But that population increase did not have to bring about some of the natural desecration that's occurred.

I personally think a very serious social decision was made following World War II. It was very important in the thirties--the housing situation was so bad nationally, particularly on the East Coast. The rubric was that a third of the nation was homeless, without housing, but that was an exaggeration. But part of the New Deal's revitalizing of the economy and improving the quality of life for the country, which I approved of and

approve of, was to encourage homebuilding. Everybody should have their own home. And they set up financing, underwrote mortgages. It had a two-fold purpose: to provide work, commerce, and to provide housing that was desperately necessary because the eastern cities provided inadequate housing.

After World War II, one of the important measures was the G.I. Bill of Rights. And the G.I. Bill of Rights did provide housing and financing. Mortgages were underwritten for veterans. And the decision was made, in this area, to build subdivisions, to encourage subdivisions instead of encouraging condominiums and apartment houses and cooperatives.

Wilmsen: That was a nationwide decision, or do you mean here in the Bay area?

Torre: I think it was a nationwide decision but certainly was in the Bay area. I can remember at the time having a long discussion with this job interview. It was after I'd come back to this area after working for Douglas¹ and got into acrimonious discussion with the people interviewing me who were all for the development. They were for the development, not because they represented developers, they were for the development because they were quite passionate New Dealers and it had been such an important part of the New Deal. Now I personally was sympathetic to their political orientation. By that time, I guess I had become a New Dealer. I didn't begin as one, but I had become one in my political outlook.

The Value of High Quality Urban Life

Torre But I was commuting from Saratoga to San Francisco, or driving up, at the beginning of when the vast expansion of housing on the Peninsula had begun. And I could see what was going to happen to the countryside, and what kind of housing it was going to be, what was going to happen to the homeowners. It wasn't necessarily going to make their lives easier. They weren't going to have significantly better houses to live in than a fine apartment house or flat that goes up in a city.

¹Mr. Torre returned to California in 1949 after working in Washington, D.C., for a year as a clerk for Supreme Court Justice William O. Douglas (see pages 81-85).

And it did seem to me at the time, and it still seems to me, that the country would have been a lot better off, and will be ultimately better off when it happens, when we return to urban living where we have recreational areas, outdoor areas. Not just Golden Gate parks, but lots of smaller parks. Privacy, your own home, your own place to live in, but *not* spread out all over the country in what is the typical subdivision housing of the day which has desecrated the area.

Silicon Valley, Santa Clara Valley in 1950 was still a community of orchards: apricots, prunes, peaches. From, I would say, Los Altos south to San Jose, or even below San Jose, but that whole Santa Clara valley was one of the finest agricultural areas of California. It had a very bad setback as a result of the war [World War II]. Apparently, the prunes and apricots were marketed in this country, but the vast quantity were sent as a major part of the produce for central Europe. When war occurred, that market was cut off and then after the Iron Curtain fell, it remained cut off. So farmers in the area were having financial problems and were quite happy to see the subdividers come in and start buying their property up.

But there is no question--there is no question in my mind that the state has been impoverished by the loss of that magnificent valley.

Wilmsen: One thing that made those subdivisions possible, too, is the automobile.

Torre: Yes. But then the automobile ends up polluting the air. If you really want to cut down automobile gases, you will return to city living.

Wilmsen: Yes.

Torre: Well, these were views that I began developing in the fifties. Primarily, when I began developing them was not because of concern over the loss of Santa Clara Valley, it was really the loss of the city. I didn't think housing was going to be better. I didn't think that the segregation that would follow when you had cosmopolitan communities deteriorating was going to be healthy politically. And I thought the cities had the resources and provided the environment that was most creative and most productive to human life. And I still do. In short, I'm an environmentalist who believes in urban living. [laughter]

Well, I think it's extremely important that there be many, many open spaces in the city. I think it's extremely important that there be trees in the city, that there be recreational areas

in the city, that physical beauty is imperative for children growing up in cities. And I think they're going to be better off than growing up in suburbs, if you have them, and we *did* have them. We did have it when I was a child.

Wilmsen: You mean you had the open space and the things you were talking about?

Torre: In the cities. That's right. We had the physical beauty in the city. We had parks in the city. Lake Merritt Park, at least two lanes of highway, two lanes of road that exist today, used to be planted with trees in this park area. There was greenery completely around the lake which is not a great lake. It's a mudhole. [laughter] But there was a park there that doesn't exist today except in one very small sector. There was a park around the entire lake at one time. And it's a tremendous loss, I think, to the community that the greenery is gone. I think the quality of life available to people living in Oakland is of a lower quality. And they have moved to Orinda, Lafayette, or Fremont, because Oakland doesn't have what they want anymore. But in doing so, they have to have automobiles and all those problems.

Now I think it's time to give you a drink.

IV WORLD WAR II AND LAW SCHOOL: SETTING THE COURSE FOR A CAREER

[Interview 3: March 2, 1998] ##

World War II and a Change in Career Plans

Wilmsen: So you were just commenting that World War II was--

Torre: I think I'd ended with Robert Gordon Sproul's diagnosis that all our teachers failed to teach us for what we were going to have to do.¹

Wilmsen: Right. That's right. You did end there. And you were just saying that World War II was what--

Torre: It stayed with me all of my life. I mean that speech was with me all my life.

Wilmsen: That speech was.

Torre: Oh, yes. I've never forgotten it. And it was a painful moment for Robert Gordon Sproul.

Well, six months after that graduation, December 7th occurred. We got up on December 8th and we had draft notices to appear for medical examinations. On Monday, December 8th, they were out already. And we went for medical examination.

I had to change my program. I had thought I was working for a Ph.D. in English, but I knew I would never have time to complete it. I was concerned that if I survived the war, I should have a means of supporting myself, so I switched to trying

¹Robert Gordon Sproul's address to the graduating class of 1941. See page 41.

to get a secondary teaching credential so I would at least be able to get a job when I came home.

Wilmsen: Oh, a secondary education credential.

Torre: Yes. And at the same time, I kept my masters courses going.

Wilmsen: So you were enrolled in graduate school.

Torre: I graduated in June, I was in graduate school when December 7th occurred.

December 8th we had draft notices, December 9th finals began. There was no G.I. Bill of Rights at the time, and, as I have said before, I was a Depression child and having the means of supporting oneself was a very crucial consideration. Very different from the modern age.

I never completed that course of study. In February, I was instructed to report to Monterey for induction into the army and I was sworn into the army the day Singapore fell.

I had friends who had wanted me to go into the navy with them, or who had wanted me to enlist in the air force with them, but I had the foolish idea that the army would, of course, find the most appropriate place for me. Well, what it found was basic training in the infantry and a heavy weapons company. I found myself under the tripod of a fifty-caliber machine gun in no time at all, in Texas.

This was very depressing. I had no skills as a rifleman. In fact, I had the lowest score in a battalion for shooting the Browning automatic rifle. Generally, I was looked down upon by the sergeant running the unit.

Transfer to the Air Force

Torre: At the time, I was reading Saint-Exupéry's *Flight to Arras*. It's quite a good book. It's a fine book. My first encounter with the perspective from the air, of flying, really. I had read other books of his, but this was different. This was different because it was a war book and he was looking down upon the disasters occurring beneath him.

So, with a friend of mine from Berkeley who was in the unit I was in in Texas, I decided to try to get into the air force.

It was very different. The air force at that time, had priority over everybody because they suddenly found themselves in a war with insufficient people, and the young men were all being drafted into the army. Well they had managed to get a priority. If you could pass their test, they would take you out of any unit, off of a battle line, anywhere. And they did. A lot of people who had been literally in combat were sent back to the states for training in the air force.

Fortunately, I passed the test. At the time I thought I wanted to be a navigator. I did not want to be a pilot because I have always been clumsy and badly coordinated, and I knew you had to be well-coordinated to fly a plane.

After some months, [in November, 1942] I was sent to pilot training in Sweetwater, Texas, where the water was poison. [laughter] I think I had about four and a half hours of flight training before they washed me out and sent me back to Kelly Field in San Antonio for reclassification, where I discovered, as I hoped, that my screening had given me a very high score as a navigator. I had a very low score, relative, for flight training. But at that time, they needed pilots, so everybody was sent to pilot training.

I ended up becoming a navigator and ultimately was sent to England in a B-24, the 467th Bomb Group. The crew I ended up in had been assembled during training in Utah [in 1943]. It was one of the lead crews of the group. I think we had six lead crews-- something like that. I was in one of them, which meant we only flew when the group we were in was in some kind of a lead position for either the wing or the division. Consequently, our tour of duty was spread out quite a while. I was in England from March until November, the middle of November [1944].

We had gone through all the original group. Except for two other lead crews, the members of the original group had been relieved--either had died, been captured or finished their tour of duty. We had gone through about three-quarters of our first replacements and some of our second replacements before my tour was finished. It was a strenuous time and painful.

One of the blessings of being in the air force, army air force, was that you weren't in mud. You weren't cold, you were relatively clean and when you weren't in combat, you had a relatively attractive civil life. However, the hard part was that the gap between a combat tour and coming home to the green meadows of England which, in East Anglia, were quite removed from war damage such as you found in London, was very difficult to adjust to. Very painful to adjust!

Vowing to Help End War

Torre: I can remember on one occasion coming back from a rather painful combat flight. I and my friend who now lives in Tucson had rented a cabin cruiser which was on Wroxham Broad, about five miles from our air field at Rockheath and we could bicycle out to it very easily. After a combat mission, I would go out to our boat, and I can remember sitting on top of the boat weeping and thinking that if I ever survived this I would spend my life trying to prevent another war from occurring. Which brings me to why I became a lawyer.

Well, when I came home--I was demobilized in the fall of '45. At that time, you were given points for decorations, tour of duty, and all of that. And you were demobilized based upon the number of points you had. The more points you had, the earlier you got out. I got out pretty early, so that I had some time to think of what I was going to do for the rest of my life.

I was at that time, twenty-six years old, which was old. I'd been one of the oldest flyers in the bomb group I was assigned to. I was in my twenties when I went into the air force. Most people going into the air force at that time were in their late teens. So I was an old man.

Deciding to Go to Law School

Torre: I wanted training that would enable me to go into the State Department because that was where you served to avoid wars. I had that idea.

I had decided not to return to my studies in English because there was so much I would have to redo. I would have to revive my knowledge of Middle English, I'd have to learn Anglo-Saxon, as well as acquire a reading knowledge in French and German. I had begun these studies, but four years of not doing them had eliminated what I had learned. I would have to begin again.

At that time, you have to understand that in the forties, late thirties and forties, you could be in graduate school for ten years before you graduated and got a degree and could find employment.

Wilmsen: It's still like that.

Torre: Oh, it's like that now, but you see, not in the fifties. As it turned out in the fifties, because of the G.I. Bill of Rights, all the universities across the land found themselves without adequate faculty so they were rushing their graduate students through and hiring them. Employment for Ph.D.s through the whole fifties and into the very early sixties was readily available.

The overclogging of the field of Ph.D.s began in the sixties, mid- to late sixties. And then the exploitation of Ph.D.s by universities began, which is going on today. I know. I have a son who is on a faculty, and another son who has a Ph.D., and my daughter has an MBA. And all their friends and relatives [have degrees, too]. So I know how very difficult it is for Ph.D.s today. That wasn't true in the 1950s.

In the 1950s, quite mediocre graduates were accepted by great universities. Demand was great.

Wilmsen: It is different now.

Torre: Yes, it is. Your comment goes back to the thirties. I'm sure you understand what I am talking about.

Wilmsen: Yes, I do.

Torre: You'll understand why I did not--believing I was still in the thirties, the early forties--why I did not return to my graduate studies in English, because I would have been approaching forty by the time I graduated with a degree, I thought. As it turned out, I'd have been thirty because I would have been rushed through. And some of the requirements about Anglo-Saxon and Middle English were dropped. The English department began to change, but it was very clear to me at that time that--or I *thought* at that time--it was just a profession that was closed.

Furthermore, having survived the war, having been in London frequently during the latter days of the war, having flown out into the Pacific, there was a great excitement of being where things happen that did not attach to university life. I thought I wanted to be in the center of things. And I still have this view. I wanted to save the world from ever having to fight another war which would make my life useful. I was intelligent enough to know that I wouldn't save the world--but I might contribute to the efforts that were being launched by numerous people to try to have a sane world. A world free of violence and ugliness. We still did not know about the Holocaust at that point, and the cold war had not begun. The United Nations was first being formed, and there was promise, one thought.

I thought I would like to go to the Harvard School for International Relations or to Georgetown, but my father had died in 1944. My mother was alone and had been very stretched out by my being away and my father's death, so leaving the area was not the easiest thing for me to do.

I did interview at the graduate school of public administration, in the political science department at Berkeley and also at Stanford to see whether the training there would help. But I felt that was just simply going into another graduate Ph.D. program with all the problems and uncertainties attached with that. So law seemed like a way of achieving a means of earning a living and acquiring a discipline that might ultimately lead to public service.

The father of a very good friend of mine, Randolph Paul, who was a great expert on tax law, author of the withholding tax laws passed during the war, advisor to Franklin Roosevelt, and senior man of the Paul Weiss law firm in New York, advised me to go to law school. He believed that it would give me more standing in Washington than a Ph.D. in political science. So, I went to law school on an accelerated program.

Boalt Hall

Torre: I began at Hastings; Cal and Stanford and Harvard wouldn't enter you until the Fall semester and I was out of the army in November, early December, '45. Hastings had an accelerated first year program from January to August. Straight through you could finish the first year. Boalt Hall said if you had a decent enough record, they would accept a transfer. Well, they didn't realize how many people were going to be applying. They did accept transfers. Eight of us did transfer from Hastings to Boalt Hall at the end of the first year, but I had some concern about it in the middle of the semester.

Well, Boalt Hall had a wonderful faculty at that time. Max Radin was the great star of the faculty--a great intellect. He would have been on the supreme court of the state of California, at least, if not the federal Supreme Court ultimately. Governor Olson had appointed him to the California Supreme Court in the forties. But at that time--I think this is still the law--the governor appoints justices. The chief justice of the state supreme court, the senior justice of the court of appeals, and the state attorney general have the right to veto. And if two

vetoed occur, a nominee will be rejected. Max was vetoed by the attorney general and the senior judge of the court of appeals. The supreme court chief justice voted for him. The attorney general at that time was Warren and he felt--this all happened while I was away at the war, so I only know it by report, but it's a historic record--he felt he had to explain why he had vetoed Max's appointment; while Max was a great scholar, great writer, highly respected person, Warren considered him too radical, too leftist to be on the court.

Well, Max was not a leftist, he was a New Dealer. He was an intellectual. Ironically, he was a very good friend of William Douglas. In fact, Douglas thought so highly of Max, he allowed Max to select for him, his law clerk every year. And it's always seemed to me so ironic that Warren--who later became the chief justice of the federal Supreme Court, and whose court was dependent upon the energy and intelligence of William O. Douglas, who had been Max's friend and who apparently became a friend of Warren's, as far as I know--should have blackballed his very good friend for the supreme court of California. I think if he'd been on the supreme court of California, he would have ultimately been appointed to the Supreme Court of the United States. As it turned out, Traynor was appointed in his place from the Cal faculty and became a very brilliant and very valuable chief justice of the California Supreme Court. In fact, under Traynor, the California Supreme Court enjoyed an enormous reputation as being one of the great courts in the land, which I don't think is the current reputation of the California Supreme Court. But under Traynor, it had a lot of prestige.

Anyway, I went to Boalt Hall. Barbara Armstrong, who was the first woman to ever be assigned to a legal faculty, was teaching labor law. I had enormous affection for her and admiration. Great lady, great scholar! Ballantine, who wrote the California corporate law, was teaching corporations. McBaine was teaching evidence. These were all people in their time that were renowned--a very small, intimate faculty in a small building that now is where the Chinese department is, down by California Hall. A little small building [Durant Hall]. Well, there were a hundred of us in the class. It was a delightful thing. There were ten girls, who were probably the only non-veterans in the class. There may have been one or two men who were non-veterans, but basically it was a class of veterans, most of whom were married. I was not married at the time.

Well, I was lucky. I succeeded in law school. I became an editor of the *California Law Review*.

Wilmsen: Now you earned a J.D. didn't you?

Torre: Yes. That's where I got it.

I was the article editor in '48 of the law review. Harry Bamford was the general editor. At graduation, Max Radin asked me if I would accept appointment to Douglas's clerkship, which, of course, I accepted. I had not anticipated that offer; that was not something I had gone to Berkeley for; I didn't know about it, to start out with. But, of course, it fitted what I wanted to do. I could go to Washington. I would have begun at the Supreme Court. It might open doors, so that I would go forth to save the world.

Wilmsen: So could you have stopped with a degree less than a J.D.?

Torre: No, no. J.D. is really L.L.B. I mean, it's three years of law school. Boalt Hall at that time, prided itself on being a school of jurisprudence. It was turning out legal philosophers, not practicing lawyers. That's what Stanford turned out.

Some years after they went into their new building, they switched to an L.L.B. for a while, and then they went back to a J.D. They're a J.D. now. They're back to being a school of jurisprudence.

A More Mature Student Body

Torre: Boalt Hall is a very different place today. It's much larger, to start out with. I think they must have three to four hundred students per class, maybe more than that as far as I know. They're in a much larger building. We shared a kind of intimacy; we all knew each other; we all knew the professors; because we were all older people, there was a lot of interchange between us and the various professors and each other. Most of the class was married. Most of the class had children. I happened not to be married, had no children. I was in the smaller number. And that's why I was lucky enough to do well in school. I didn't have the diversions that some of the other students had.

Wilmsen: How do you think the fact that most of the students were married changed the dynamics of the school?

Torre: Well, they were more mature, to start out with. By being more mature, they were more identified with the legal problems. They weren't just things they were talking about, they were adapting them into their own lives.

What were the legal problems? The civil rights movement had not yet begun. The labor problems of the thirties and forties were still very important. Taxes were extremely important. Income taxes were something like eighty-five percent. Federal income taxes. The top brackets were certainly eighty percent. I think the excess profits tax was still in place. The questions of federal law superseding state law were still very acute. The battle between the states and the federal government had not been fully resolved, although the foundation for resolving it had been laid.

The First Amendment was getting a lot of attention--clear and present danger of serious social evils being applied with great force--and really ultimately, laying the foundation for the civil rights movement. The major racial discrimination issues that were coming up were primarily the structure of grand juries and juries--were the black people being given adequate opportunities to be represented on those juries?--and qualifying to vote. Mostly that applied in the southern states. In California, it was relatively an irrelevant issue at the time. And it was a relatively irrelevant issue in the northeast. It was in the southern states primarily. And it was no issue at all in central America, I mean in the center of America, not Central America. But it was a very important issue, and because of the war years and the experience of this [Boalt Hall] class with tyranny in the army, navy, and at large, these issues were very important. They were issues that everyone felt were shaping their lives.

Memorable Speeches at Cal: Circa 1948

Robert Gordon Sproul Introducing Harry Truman

Torre: My last year of law school was 1948. It was the year Truman was running against Dewey and Warren, the southern candidates, and Wallace. The Democratic party had been split into three parts. There was the Truman part, there was the southern part who had walked out of the convention because of the racial issues that Truman sponsored, and then there was the Wallace, the IPP--dreadful name for a party, but that's what it was--the Independent People's party, which was thought to be a very left-wing party.

Truman was considered a lost cause. There was no expectation that he would ever be reelected president.

In fact, this is a piece of gossip primarily, but I think it's quite true. Robert Gordon Sproul was in Washington in the spring of '48 and he was an ebullient man, and stated how wonderful it would be if they could someday have the president come and deliver an address to a graduating class. When he returned to Berkeley, he found that Truman had accepted the invitation, which had not been formally extended. Well, this was a great problem because Robert Gordon Sproul was a Republican, to start out with. The governor of the state [Earl Warren] was going to run as vice president with Dewey on the Republican ticket, and Truman was considered a nothing. And he had ended up with being stuck with having him come to address our graduating class. Truman did show up.

I know that there was a great flap on this because one of my classmates had a wife who was working in the president's office in the administration building. And for over a week, Robert Gordon Sproul became unable--nobody could get to him. There were numerous people who wanted to get to him. That's the gossip part. It's not a fact of history, it's just gossip.

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Torre: But what *is* a fact of history was the insulting introduction that Robert Gordon Sproul made of the president that year. When he presented the degree, Doctor of Letters, L.L.D. to the president, and presented him to the audience, instead of just the President of the United States, he told the audience how here was the champion of the little man; the little man who championed all little men. It was an appallingly insulting presentation of a president.

My mother, whose strong tendencies towards the Republican party had faded because they were not treating Robert Taft, who was her favorite, properly, was so appalled by what Robert Gordon Sproul had to say about the President of the United States in that address, she became a Democrat, which was a pleasure to me. But at least, it was surprising.

Now that *is* history. You can get the address and read it.

But Truman was not expected to win. He was not expected. He was president only because he had been the vice president when Roosevelt died, and he had no power of his own to win. The years, the achievements of Truman, were to come in the future.

Actually, he had had the terrible necessity of taking over the British responsibility in Greece and in the Mediterranean. He had to face up to what the United States was going to do in

China. The revolution that was occurring in China was sweeping across the land.

George Marshall on the G.I. Bill of Rights

Torre: One of the great experiences of those years was hearing George Marshall address the university on Founder's Day, or at least at some meeting. On his way back from China, he stopped at the university and he gave his address explaining why his advice to the president would be to keep hands-off and basically let the course of events--the enormous sweeping revolutionary changes that were occurring--occur; why we did not have the capacity to do anything about it given the other responsibilities we had at the time and why, in a sense, it was really none of our business. It was a very profound presentation to the group which was, I would say, 80 percent of the group were veterans and their wives. The rest of the group were faculty members and students who had not served during the war.

Marshall read the whole address he gave. And at the end of the address he folded his papers and faced his audience. We were in the Greek Theatre on a very cold day. Apart from the faculty, it was basically a veterans' audience that Marshall was facing.

You know Marshall had been the chief of staff during the war years. You know who George Marshall is, I hope?

Wilmsen: Yes, yes.

Torre: All right. [laughter] Well, this is long ago. Fifty years ago.

At any rate, he folded his papers and apologized to the audience for having read the address to them. But he explained that he knew that every word he had spoken was going to be read in embassies and chancelleries around the world, and he felt it was extremely important that the words be carefully put together as to what would be read. And that was why it was an address that he had read.

Then he proceeded to explain why he had given this address--why something that important had been done before this audience. He had recently presented the Marshall Plan at Harvard. He explained that he had two reasons for doing so. One was to extend an apology to the audience for the mistaken view he had had earlier in his life, when the G.I. Bill of Rights was pending before Congress. He had opposed it and had used whatever

political influence he had to try to defeat the bill. He did not feel that this was a proper use of public funds. That the duty of the young men and women was to defend their country and not to be rewarded with money for having done so.

Well, that did deepen the silence in the Greek Theatre because none of us would have been there if there weren't a G.I. Bill of Rights. We would not have been able to afford to be there, unless--some of us would have been there, maybe a half of one percent. The G.I. Bill of Rights had opened the doors of the universities of the land.

And he said he had felt that it was just a waste of money, that the people who would be going wouldn't benefit from it. And he had learned that he was wrong. That wherever he went at the university level, he learned that the veterans were giving the performance the like of which their professors had never seen and that they were profiting from the education that they were receiving. The country would profit from it. So he was ashamed of himself. And he came to believe that it was very important that the important decisions that were being made by the older generation be explained to the generation that was going to have to implement them and live with them. And this is why all of his major addresses on public policy had been rendered at a university. The Marshall Plan had been presented at Harvard, and as each occasion caused him to make an address on an important public matter, he found a university audience to present it to.

Wilmsen: Now, you were talking about Harry Truman's address.

Torre: Well, I got to George Marshall because Harry Truman had appointed him. He was not at that time secretary of state yet. It was a special appointment, he was sent to China to find out what was going on and come back.

Wilmsen: So Harry Truman--

Torre: He was not yet elected. He was still running for office, I think, at this point.

Wilmsen: But then when George Marshall came, was that address to your graduating class?

Torre: No. I don't know whether it was Founder's Day [Charter Day, March 19, 1948], but it was an audience. It was not a graduating class. I think it was in the early spring of '48 or the late fall of '47. I'm not sure what the date was, but it coincided with the exodus of Chiang Kai-Shek to Taiwan and the sweep of Mao down to the coast. That had not occurred yet, but it occurred

afterwards because the United States withdrew military support from Chiang Kai-Shek as a result of Marshall's mission; this is why Republicans for so many years made much that the Democrats had lost China.

Wilmsen: Oh, I see.

Torre: Senator Knowland *lived off of that lie*, and to some extent, Nixon.

But this was a special commission that Truman had appointed. And it was *shortly* after the withdrawal of the British from the Mediterranean, from Iran. You see, the British maintained a balance of power in the Middle East. They were the force that supported offers to defend the nations of the Middle East.

And at that time, the Communist world in Greece, particularly, and Iran--Russia was threatening Iran at that point--and the British, because of their condition following World War II, could no longer provide the help to that part of the world and withdrew. And Truman picked up the responsibility. It was the beginning of America's involvement as a super power to maintain the balances and the peace of the world.

Henry Wallace: An Ineffective Speaker

Torre: There was a tremendous amount of discussion at the law school between classes. Henry Wallace, who then came to be running for president, gave an address at West Gate. He wasn't allowed on campus to do so. Campus was being kept out of politics at that point. It was before Mario Savio changed things during the Free Speech Movement, 1964. He had to address the student body, who came down to hear him on the City of Berkeley's land, at the West Gate.

Wilmsen: Was it well-attended?

Torre: Oh, yes. It was very well-attended. We all went. It was a very bad address. It was not very effective. It's understandable why Henry Wallace did not get elected. He was a man of ideals that were not very carefully thought out. And the radical left was supporting him and not helping him by doing so. He was being supported by the Fellow Travelers of America. I don't think the Communist party was. They probably had their own candidate. But the Fellow Travelers were backing him.

In the left wing of the New Deal. The leftist segment of the New Deal was supporting Wallace. And we all went from law school and came back and talked about it. It was a period of great turmoil. And then of course, this was why I had gone to law school. It interested me enormously.

Well, as it turned out, to get back to my personal history-- But I hope that gives you some sense of what you asked me--why did our being veterans matter.

Wilmsen: Yes, it does.

Torre: Well, all of this was happening as we were studying the law to earn a living and to be of public service. Many people were there because they wanted to be of public service.

Robert Oppenheimer: Guilt over Unleashing Atomic Energy

Torre: Events that shaped the postwar world were in process. I remember Oppenheimer appearing at a university meeting in the men's gymnasium, in Harmon Gymnasium, when he had accepted the job at Princeton. He was leaving Berkeley to go to Princeton and he basically was addressing the university to apologize to the university. People apologized in that day. As Marshall apologized to the audience, Oppenheimer apologized to this institution that had meant so much to him, that had given him so much, had backed him up, that made so much available. He was leaving it. And leaving it when he was a very famous and valued scientist. This was before the security clearance had been lifted. But he explained that he was going across the country a couple of times a week. That the conferences he had to attend had made it impossible to continue living on the West Coast.

And this was something he felt, this was when he gave his great speech of the sense of guilt he and his fellow scientists bore for having unleashed atomic energy into the world and that it was necessary, having sinned, that--I've forgotten the moral terms he used, but it was a tremendous speech that has been quoted I think, many a time--that they had to correct it, they had to control it, they had to do something about it, and that's why he made these trips. And now he had to leave the place he loved and that had meant so much to him in his life. And he went to Princeton.

Marriage to Caroline

Torre: At that time, my wife's mother, who was married to, as I think I explained earlier, Willard Durham, Bull Durham--I was not yet married. I had met my wife when I came back from the war, but we didn't really meet and speak; we didn't become involved with each other. We didn't know each other until Christmas of '46 and the summer of '47. I was in my second year of law school. She was at Scripps College and was going to go with her mother and Bull to Africa in the fall of '47, and had come to Berkeley to go to summer session and intersession, because she was going to miss a semester at Scripps. It was her senior year at Scripps. So that she would graduate on time, she was doing the work during the summer and intersession at Berkeley, which was how I came to know her. In that era, people graduated in four years and it was a matter of principle they not drag it out. That has changed.

Wilmsen: Yes, it has. [laughter]

Torre: But I did come to know her. We became engaged in summer of '48. I was seeing a lot of Bull Durham and his wife, while my future wife was away at school, having dinner with them. They were really my friends. I came to know her because I had had a friendship with them.

I think that was the year my wife's mother went to Princeton with Einstein, the conference that Einstein had pulled together of public people to try to sell the international nuclear treaty he was sponsoring through the United Nations. Because of her role in public life in San Francisco, she had been recruited in the committee. And I was hearing about that.

Clerk for William O. Douglas

Torre: This was all very vibrant so that when I was asked, would I go to Washington, it just fitted into everything I wanted to do.

I went to Washington to work for Douglas, which I did for a year. The justice had one law clerk. It was a one-year tour of duty. It was a very difficult job. You worked six days a week. I always had to be in the office before he arrived, so I would get there about a quarter to nine. I always stayed until he left which was usually some time after seven. And I went home, I would bring work with me, and I'd work until midnight. That was five days a week. Saturdays he usually left the office around

six o'clock, and I would bring work home. Saturday night I took off. But Sunday I worked at home. And I was hard pressed.

It was a very exciting job. He was an extraordinary man. He had an extraordinary mind, a tremendous memory. That year he was writing a book, *Of Men and Mountains*, his first book. I think it was his first book. I helped to do some research on it. He delivered the Cardoza lecture in spring at Columbia University. Also, he shook the country by attending the CIO convention and delivering a speech.

Wilmsen: By attending the CIO convention?

Torre: Yes. Unheard of. The Supreme Court--

[tape stopped while Mrs. Torre served coffee]

Wilmsen: Okay. So Douglas gave the CIO address.

Torre: Maybe it was the CIO-AFL Convention. It may have merged already, but I believe that it was the CIO Convention. I think it was just CIO. But the point is, he was addressing a highly politicized group of people who had cases that were still coming with the Supreme Court in numbers. Organized labor was still organizing. And it was thought while Supreme Court justices have, of course, appeared before the A.B.A. and chambers of commerce and like organizations, they had never appeared before a labor organization. This was considered quite shocking at the time. I don't think it was. I think it was quite an appropriate place for him to appear.

Wilmsen: Why did you think it was quite appropriate?

Torre: Because I think you can make a case that a justice should be like a monk and not appear publicly, should only appear through his opinions and on the court; you can make a case for that. But if you're going to have him appearing before organizations, whether they are professional organizations of lawyers, or religious organizations who are only interested in moral questions, or chambers of commerce that are interested in economic questions, there isn't any reason they shouldn't appear before labor units, civil rights units, environmental units or anything else. I mean, if they're going to appear in the world to give speeches and tell you what their underlying controlling philosophy is, then they should say it to any audience that invites them that they want to attend to. Or none at all.

Justice Black was very upset by it. He was a very good friend of Douglas at that time. They almost always voted

together, but he was upset and he did make a public statement criticizing it. Black's view was that a Supreme Court justice shouldn't appear publicly. When you go on to the court, you withdraw. You withdraw to the sanctity of the court. And he felt very strongly about that.

You have to remember at that time Robert Jackson had taken some time off of the court in order to participate in the Nuremberg Trials. He was head of the American prosecutor's team at the Nuremberg Trials. James Byrnes, who was a justice, had left the court to become secretary of state.

In '48, there was no doubt that Truman was trying very hard to get Douglas to join his ticket to run for president. When he was running for president, Douglas would have given him liberal support in quantity, and he wanted him on the ticket. There was a lot of speculation in '48 about that. There's no doubt today that was a fact. There has been, in the various archives, there has been confirmation of it. I knew it to be of fact because I saw some things when I was a law clerk that confirmed it. Had Douglas accepted running as the vice-president with Truman, I would never have gone to Washington. My life would have been very different. So I'm very glad he didn't accept.

Disillusionment with Washington

Torre: However, I suppose the most important thing that I got personally out of that year was--well, the most important thing was that I had a wife. We married on Christmas night in California. And I was given a day off so I could go to California and come back, which was typical of what Douglas expected of law clerks. It was very difficult getting that day off, but I'm not going to go into that story.

The main thing that I got out of it was I wanted to come home to California. I no longer thought what I had to contribute to saving the world would matter very much, but what I did have to do, to make a life for myself and my wife and the family I hoped to have, meant that I had to be somewhere where I would be happy and contented. And I knew I wanted to come back to California after the three and a half years of the war and a year in Washington. I was thirty and that was very clear to me. And it was also clear that my wife would be happier in California than in Washington. I'm not going to go into all the reasons why I no longer wanted to remain in Washington, but I did not.

Wilmsen: How about just touching on one or two of the most important reasons?

Torre: Well, I think I changed my view as to whether people were engaged in public service or personal aggrandizement.

Wilmsen: I see.

Torre: I had been, I feel now, very naive in believing that the people who were working for the government were there because the service that they were giving to the public shaped a better society--that that was what motivated them and made them run. After a year in Washington, I came to believe that they were there because they liked power. This was the place where you could get a lot of power.

Wilmsen: Can you give some examples of what helped you to reach that conclusion?

Torre: Well, some of the splits that existed on the court at the time were not splits of principle. They were the splits of power between justices. Douglas and Frankfurter never signed an opinion of the other one. Even though they frequently were voting for the same result, they never would trust each other's written word. That was very surprising to me.

The gossip that was loose in the land all the time. Washington has become a far more cultivated city today than it was then. The art galleries were there, but that was it. There was no music, no theater, no restaurants. We went to parties to participate in the public events. And conversation was political, totally, wherever you went, all the time. Am I answering your question?

Wilmsen: Yes.

Torre: Also, another thing happened. It was a very, very hot summer. And this was an important thing. The government buildings, which were not then air conditioned, were shutting down at twelve o'clock because the humidity inside was so bad they couldn't keep people in them. *The Washington Post* every morning ran a box in the right-hand corner of the front page which listed the number of people who had died from heat prostration and the number who had passed out. I happened to develop a sinus infection which knocked me out. I was tired to start out with. But the infection was basically from the humidity. Doctors in Washington and New York who I saw just said it was the environment and that I would have to expect it. My sinus was such that in that environment I would have to expect an infection. Antibiotics

were just beginning. So it was a very unpleasant--I had low-grade energy through the whole summer.

Wilmsen: They didn't prescribe an antibiotic?

Torre: Aureomycin was a new antibiotic at the time and I was given several pills.

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Torre: My health, my age, my absence from California, the absence of cultural values that I valued, such as an interest in theater, literature and music; the personal jealousies that existed and drove people in a very high place; and, finally, the sense that I had that people were more engaged in confirming their own power than in public service: that was what the year added up to. I wanted to go home. I said at the beginning of this interview that I was a provincial. I am a provincial. I'm a Californian. My wife is a provincial and that's the way we are.

So I came home. I hadn't passed the bar yet because in order to go to work for Douglas I had to be there in September. The bar examination was in October at that time. So I had to come back and become a member of a bar.

Applying for Work As a Lawyer and Return to California

Torre: I didn't completely give up on my goal in participating in saving the world. I did apply for a job at the state department. A man by the name of Fisher, known as Butch Fisher, was the general counsel. I was given a very lengthy and I would say, friendly interview. The fact that I was Douglas's law clerk was the reason I was given that interview. Until that emerged, when I went to the personnel office to inquire as to what job may be available, I was being brushed off. But as soon as I wrote out where I was then working, I was immediately moved into executive offices of the legal staff, which was typical of Washington. A small detail, but it was typical. And they showed some interest in me.

At that time, they were putting together a staff to work at the United Nations in New York. I had been very disappointed that the United Nations had not been established in San Francisco which I had hoped would occur. And the staff was growing.

Since I was not a member of the bar, they felt they could not offer me a job because civil service required lawyers to be a member of some bar. I understood that this was a legal requirement. But I had not had time to take a bar examination. I was going home to do it. And all I really wanted was assurances that if I passed the bar, they would give me a job.

Wilmsen: Sounds reasonable.

Torre: Well I thought it was reasonable. But they wouldn't do that. They indicated that they were very interested in me, but they couldn't commit themselves. And of course, from their point of view, somebody as well qualified or better qualified might show up and they had limits as to how many people they could hire and they weren't going to tie their hands for an unknown quantity for several months.

Well, I said that if they offered me a job, I could go back to California, take the bar and I would not seek further employment. I could manage. But if I didn't know I had a job coming if I passed the bar, I had to find employment. And if I were employed I just didn't think it was proper to accept employment and walk out a few months later. Well that was my decision to make. So in a sense, I left Washington knowing that if I passed the bar, there was only a chance I could be employed by the state department and participate in making the world safer.

But I did want to come home, and I was a little relieved that I had not been offered the job. I knew I was relieved. And in 1949 there was a depression on. We were gradually returning to the economic environment that I had grown up in. So I decided I better look for a job. And I went around to law firms in San Francisco while I knew, from Randolph Paul, that all I had to do was to decide what law firm I wanted to work for in New York or in Washington and just go in and present myself and I would be employed. Because of my clerkship, they would employ me, period.

That didn't happen in San Francisco. I was advised by a number of firms that this was not the place to pitch your career, I should go to San Jose or Sacramento. The opportunities were limited. But I went around and had interviews. And did not have a lot of offers. What I had been told would occur in Washington and New York did not occur in San Francisco. But I was interviewed.

Wilmsen: Why do you think there was that difference between the East Coast and the West Coast?

Torre: Well, San Francisco was still pretty much a closed community for one thing. There was a depression on. And I think the people advising me to go to Sacramento or San Jose or Los Angeles were being kind. They felt that this was where the big opportunities for the future lay. San Francisco was like Boston. It was highly structured. You were either in or out. And despite the fact that I had worked for Douglas, I was not in. While my wife's family were important San Franciscans, I never broadcast that fact. I did not want to get a job based upon my mother-in-law's standing in the community. So that never was a part of my resume. But Douglas was and my education and my war years and my own life was my resume.

A California Graduate in a Stanford Law Firm

Torre: Curiously, the firm I ended up in--Lillick, Geary, Olson, Charles, and Adams--was a Stanford law firm. Ira Lillick was a trustee at Stanford University. It was the leading admiralty firm of the West Coast.

Wilmsen: What do you mean by admiralty firm?

Torre: Admiralty law. Shipping law.

When I was in law school I had taken a course in admiralty law. Dean Dickenson at that time, one year would give a course in admiralty law, and another year it would be international law. In my third year he was giving admiralty law and not international law. Since admiralty law was the closest thing to international law, I took the course in admiralty law.

Admiralty law is very international. It is not civil law or common law. It was really built upon Roman laws, codes developed in Cyprus in ancient time. At that time (when Dean Dickenson was teaching the course)--I don't know how much today, the whole world is changed so differently--at that time the sovereignty of nations as maintained by their flagships sailing around the world had created a body of law that was a universal body. And it was very important. It was probably the most important practical international law. There was no other. There was no United Nations law and all of its various subcommittees. The World Court existed, but was irrelevant. The League of Nations had been a failure and had not provided the unity--so this was a body of commercial law that was generally recognized. So I took it because it fitted into what I'd been going to law school to do.

When I was in law school, Dean Dickenson had commented about this Lillick firm. He considered it a very important firm. He had served as a consultant to it, and he was determined that some day he was going to get a California graduate into the Lillick firm. But it was totally Stanford.

Reflections on Ira Lillick

Torre: Ira Lillick was not only a Stanford graduate, he was a member of its board of trustees. He had been a close friend of Herbert Hoover's. And in a sense, was Herbert Hoover's eyes and ears on what was happening to Stanford. I don't mean he was a spy. Everybody knew what the relationship was.

His partners at that time were all graduates from Stanford. It was, I would say, a liberal Republican law firm in orientation but it was non-political. Ira Lillick had been offered, by Hoover a cabinet post--these things I learned later in my life--when Hoover was president, but he had turned it down because he wanted to be a lawyer. He did not want a political life. As I came to know Ira Lillick, I think he turned down Hoover's offer for much the same reason I wanted to leave Washington.

At the time I began my employment there, he was semi-retired. He was retired. He was a widower, no children. His children were his then-senior partners who were in their fifties. He was in his late seventies and he was turning his practice that he had built single-handedly over to them. He had turned it over to them.

He was an extraordinary man. He was a handsome, very handsome and charming man. Wide ranging interests. I would say not a great intellect, an intelligent and cultivated person, but he was a broadly based man who had wisdom. And he was delightful.

I was offered employment by them. I know why I was offered the employment. They had a lawsuit involving prisoners of war who had sued American President Lines for additional money based upon interpretation of its shipping articles; they had been interned during the war, which was contrary to the collective bargaining agreement. And basically the Lillick firm was representing the United States government, not the American President Lines because it was the United States government that was going to pay the additional sums. The defendants represented by the Lillick office had won in the U.S. District Court.

Then the plaintiffs appealed. It took the Court of Appeals three written opinions before it reached a final decision. It had to correct its opinion twice. The third opinion stood. The Lillick office wanted to try to get the case into the Supreme Court, so then when I came around looking for a job, they wanted my opinion as to what were their chances. I didn't think they had any chances. It wasn't--

Wilmsen: As a result of having worked for Douglas?

Torre: Yes.

Well they hired me to write a petition certiorari on the case to see if they could get it into the Supreme Court.

Basically they wanted to find out what I was like for two reasons. I was a Democrat, it was Republican law firm; I was a University of California graduate, it was a Stanford law firm. They had never hired any Democrat or anybody from the University of California. They had people from Harvard and from Stanford and that was it. That's not the way it is now, but that was the way it was in 1949. 1950 I went on the pay roll.

V THE LILLY FIRM: CIVIL RIGHTS, TAX LAW, AND THE "NEW LOOK" ON THE WATERFRONT

Power Struggles between the ILWU and SUP

Torre: The major reason I was hired was that in 1947 there had been a huge upheaval on the Pacific Coast waterfront--what came to be known as "new look." The phrase the "new look" described the styles that Dior, who was a nobody at the time, introduced after World War II into ladies' fashions, which were elegant, expensive, luxurious. It was France's bid for control of the fashion world. Italy's fashions did not exist at that time. And the new look was what all the women of time wanted to have. So it was the "in" phrase in '47.

At that point on the waterfront of the Pacific coast, there was a huge jurisdictional battle that existed between Harry Bridges, who was the head of the ILWU [International Longshore and Warehouse Union], and Harry Lundberg, who was the head of the Sailor's Union of the Pacific [SUP].

Through the thirties, every two years the waterfront would be shut down by strikes. There had developed on the waterfront an ideological battle between the ILWU and the shipowners and their respective counsel. At that time the counsel for the waterfront was Brobeck, Phleger, and Harrison. Phleger and Harrison were the major players and various other people, such as Marion Plant. Bridges was considered by them, and by numerous other people, as a radical Communist.

Wilmsen: He testified. He was brought before Congress, wasn't he, on those charges?

Torre: Well, he was tried in various cases. I think he had three trials. At least one of them or two of them went to the Supreme

Court. He was never found guilty. I mean, he was found guilty, but the decisions never stood, for a variety of reasons.

Whether Harry Bridges was a Communist, a card-carrying Communist, or not is still a question that remains unanswered. He certainly was a Fellow Traveler. He certainly did rely very heavily upon the extreme left wing activists of the thirties.

But you have to realize that this was not the era of the Cold War. These were the liberals. These were the activist liberals of the time. Many people who became card-bearing members of the party had, by the fifties, dumped it. Of course during the McCarthy era they suffered all manner of horrors because of their liberal activism in the thirties.

Whether he had been that unwise or not, I don't know. I happen to know his wife, the woman he was married to when he died, is now married to a retired president of the Pacific Maritime Association, which represents waterfront employers. While I know her, it's a question I would never ask her. And I'm not really sure she would know because she wasn't married to him in that period.

But at any rate, an ideological battle had shaped up. The shipowners built up Harry Lundberg's union, the Sailor's Union of the Pacific, which is somewhat ironic because it had been created by an IWW man back in the twenties. And actually, in the beginning of the thirties, Lundberg himself was an avowed socialist. However, he liked power. And there's no doubt about it that the shipowners through their counsel, the Brobeck office, built him up to be a counter-force to Harry Bridges.

Through the thirties, there would be a strike every two years. When the war came, the War Shipping Administration took over shipping. Labor remained at work. It was during that period the International Union integrated and made jobs for black people. It was in the forefront of the civil liberties developments. Curiously, they're criticized today as discriminating, and perhaps some locals do in some ports, but not the International Union. The International was a forerunner of the civil liberties movement. And Harry Bridges was the moving force behind the International Union. Nothing was black and white. I don't intend a pun by that remark. [laughter]

The Strike of '47 Stimulates a Desire to Negotiate

Torre: A big, enormous strike occurred in '47. It lasted, I think, for ninety days or a hundred and twenty days. The result of that strike was that the power in the industry shifted to a group of shipowners and executives in the shipping industry who wanted an end to ideological warfare. They wanted to make money and the opportunities were very great. And they decided that they were going to abide by the laws that favored collective bargaining. They weren't going to fight unionism. They would represent their economic interests, let the unions represent their interests, and they would negotiate and make a deal. It became known as the "new look."

The ILWU strike was resolved. The jurisdictional issues were supposed to have been resolved with a "status quo" agreement. The following year, the SUP negotiated. And they didn't go out on strike, but they got provisions in their agreement that proved to be in conflict with the ILWU.

Because a "new look" had been adopted, the lawyers were shifted. And a man by the name of James Adams, James L. Adams, who was a partner of Ira Lillick's who had been in charge of labor matters in Washington during the war for the War Shipping Administration, was employed by the waterfront employers. He was known in the industry. He was respected and honored by the unions and he was known in the industry as a liberal, a liberal conservative. He was a Republican, but he was a liberal.

Wilmsen: Why did the new look require a change in the counsel?

Torre: Because the prior lawyers had been the people who had shaped the ideological warfare to cut down Harry Bridges. He didn't like them and he didn't trust them. If the shipowners were going to make peace with Harry Bridges, they had to get new lawyers.

Wilmsen: I see.

Torre: But that created a problem with Harry Lundberg who had been built up by the other law firm. That occurred in '47 sometime. I came around in '49. There was a strike on. The negotiations were on between Lundberg and the shipowners. The Lillick office had James Adams who was a distinguished labor lawyer that had a distinguished job, had brought an extraordinary client into the office.

The waterfront employers were organized in associations in each port on the Pacific Coast between Canada and Mexico as well

as in a coastwide association; they employed longshoremen and marine clerks. The shipowners were also organized in an association that dealt with the unions representing seamen. In 1947 or 1948 all of these associations were merged into one organization which is known as the Pacific Maritime Association. At the outset it represented all employers of longshoremen and marine clerks employed on the United States Pacific Coast and all shipowners operating American flag vessels manned by American seamen.

The waterfront employers of the Pacific Coast, which came into being when the ILWU was certified by the NLRB [National Labor Relations Board] as the legal representative of all of the longshoremen on the Pacific coast, had been merged into the Pacific Maritime Association.

While the Pacific Maritime Association is still operating, its responsibilities are limited to representing employers of shoreside employees.

Sometime in the 1980s, I think it was because of the shrinking American flag fleet, vessels serving the Pacific Coast were reduced to three lines: Matson, American President Lines, and Sealand. All American shipowners employing American seamen shifted their representation to an organization based on the East Coast.

The unions representing offshore employees, that used to bargain on this coast when there were numerous American flag vessels serving this coast, stopped doing the bargaining for the offshore employees. Their contracts are all negotiated on the East Coast now. So the Pacific Maritime Association, which once represented the employers in order to bargain with the Sailor's Union of the Pacific which is the unlicensed deck department, the Marine Firemen which is the unlicensed engine room department, the ARA, the American Radio Association, which were the radio operators, the MCS which were the Marine Cooks and Stewards, and then the Master Mason Pilots and the MEBA which were all the offshore unions, doesn't represent any of them anymore. That's done on the East Coast for Matson lines, APL, and Sealand. I don't think there are any other American flag vessels serving this coast any more. If there are, it's still done on the East Coast.

At the same time, the waterfront employers represented the employers, the terminal operators, and the stevedore contractors who were hiring the dock workers on the Pacific Coast. That is the primary responsibility of the Pacific Maritime Association today.

Do you want me to shut up?

Wilmsen: No, I want you to keep going. I guess what I'd like you to do is talk about how you got into all of this.

More on Job Choices

Torre: Well, the reason I was hired was because Adams needed somebody to do his research--and leg work--for him. Because of my training, he had some confidence in me. Because I had worked for Douglas, I passed as a liberal. And he wanted to keep that orientation in order to maintain the confidence of Bridges. Well, the fact of the matter is it didn't matter. They never came to know me. I did all the work backstage. But I think that may have been why he was encouraged. It was an unusual thing for the Lillick firm to do. They had hired a Democrat from the University of California. Although none of that was ever mentioned, you understand. That was not ever discussed.

I went to work for Adams at a time when there was a tremendous jurisdictional battle raging. Though I went to work for him, when he offered me the job, I said, "Well, you know, when I was in law school, Barbara Armstrong referred to waterfront employers as the last Bourbons in America. And from what I know of their behavior, I don't think I'd want to represent them." And he said, well they were. But there is a new look, and if that new look doesn't hold, we won't be representing them either. And then he talked to me. And I needed a job. And I knew this was a highly respected--because of my studies with Dean Dickenson--a highly respected law firm. And they were willing to employ me.

Well, curiously enough, to finish my state department connection, oh, about five weeks after I'd been employed by Lillick, and--

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Torre: --about three weeks before the bar results were out, I got a telephone call from Washington. Butch Fisher was offering me a job. I said, well, I really didn't know. Well, he began by asking if the bar results had come out. And I said no, the bar results weren't out. They were expected in three weeks. He asked what did I think the results would be. I said, "Well, I had sleepless nights. I don't know." And he said, well, he was willing to gamble if I would come back to Washington. He would

employ me. And I said I couldn't because I had just accepted employment. What I'd said was that I would not accept employment and walk out on the employers. So he asked me if I really appreciated what I was doing. And I said, yes I did. But the fact is, I really didn't want to leave California, I suppose. I don't think I was being as honorable as I was presenting myself. But that ended my opportunity for public service. I was stuck in San Francisco in a back room doing research for the waterfront employers.

Legislation for an Exception to the Closed-Shop Provisions of the Taft-Hartley Act

Torre: It happened that there was a tremendous battle for power on between Lundberg and Bridges. It was fought over the representation of the Marine Cooks and Stewards. Bridges was friendly with the National Union of Marine Cooks and Stewards. Lundberg created a Marine Cooks/Stewards AF of L union to challenge them. The first union had a radical reputation. In fact, I think one of their officers ended up going to jail because of his political activities.

The McCarthy era had begun. Taft was in charge of the Senate. Lundberg had a relationship with Taft. The Taft-Hartley Act had just been adopted. Closed shops were outlawed. It was a time of enormous turmoil.

Wilmsen: So Lundberg supported the Taft-Hartley Act?

Torre: He supported Taft, and he worked his way around the Taft-Hartley Act. He had a gimmick for his closed shop that worked okay.

It was a matter of ideological principle with Harry Bridges. It was a period in which the Pacific Maritime Association drafted a law to have an exception from the closed shop provisions. We drafted it in the Lillick office. I helped out in its drafting. James Adams presented the draft in Washington to the labor committee in the Senate. And Lundberg had learned of this activity. After Adams presented his draft to Senator Taft, Lundberg was informed, with the result that the next day Taft, on the Senate floor, charged the Pacific Maritime Association with being under the domination of Communists. That really meant Adams, because he was the representative with whom Senator Taft had talked.

Well, he wasn't a Communist, really. He was a conservative liberal man. He was a very fine man. He was a pragmatist. I had a lot of admiration for him, a lot of affection for him. I worked with him very closely for my first five years of being at the Lillick office.

Wilmsen: The legislation that you helped draft--?

Torre: It was dumped.

Wilmsen: And then they passed the Taft-Hartley Act?

Torre: The Taft-Hartley Act had been passed in '47. Our draft proposed an amendment. One thing, though, when I first went to work for the Lillick office, the negotiations for what--and this will tie into my later life--the negotiations for what was the welfare program had been completed and the negotiations for the first coastwide pension plan for longshoremen was under way.

Wilmsen: Is that different from what they later adopted in the modernization and mechanization agreement?

Torre: It was different. Yes. The pension program was just that, a pension program. After a certain number of years you retired and you'd receive a pension. The welfare program is for medical benefits. These were the first programs organized labor had put through. Adams drafted them; the negotiations were underway when I began work. I only did legal research because the union tried to gimmick the plans to have them in effect implement closed shops, which couldn't be done under the Taft-Hartley Act. And I had to do legal research for Adams. But it was basically a program that he worked out with the Gladstein office. Norman Leonard, I think, was probably co-draftsman along with Adams.

What is important as far as my life is concerned is that while these events occurred in 1950, I became in 1965 the industry's legal representative in connection with the administration of both of those programs, which I'll get to in a bit. I didn't realize that was going to happen, nor did I plan that to happen in those early years.

Becoming a Tax Lawyer for a Diversified Lillick Office

Torre: What did happen was that in '52, a man by the name of Paul St. Sure who was the leading representative of employers in northern California--his father had been a district judge in San Francisco

in the federal court--he was a very distinguished lawyer himself. Barbara Armstrong, in referring to him in law school, said he had dragged the northern California employers into the twentieth century. He had accepted the underlying philosophy of the Wagner Act and the amendments of the Taft-Hartley Act. And he had implemented them in the spirit in which they had been adopted, which was quite contrary to what employers wanted in the thirties and forties and into the fifties.

He became president of the Pacific Maritime Association in the fifties. He picked up the burden of resolving this tremendous jurisdictional battle that was continuously tying up ships. Long NLRB proceedings, murders had occurred on the Pacific Coast as a result of it. And he was employed to find a solution. Well, he did find a solution. He and Harry Bridges won each others' confidences.

Wilmsen: How did they manage to do that? Do you know?

Torre: Well, they were both brilliant negotiators. They both loved challenges, and they both kept their word. Both of the men, when they said they'd do something, they did it. Both of the men were honest men with integrity. Bridges had a lot of humor as well. And he represented the interests of the workmen and St. Sure represented the interests of the employers and they found a mutual meeting ground.

But for my life--he [St. Sure] came on in '52 and we were in the midst of a big trial--but it really meant that he needed Adams' services less than the prior officers of the Pacific Maritime Association, and, therefore, Adams needed my services as a labor person less.

It happened that a new tax code was adopted in 1954. The Lillick office did not have a tax department at that time. They had one of the senior men, Gilbert Wheat, watch the tax code, but it farmed out most of the tax questions.

I had studied tax law with Stanley Surrey who was the draftsman of important legislation regarding joint income tax for husbands and wives. He was the moving party behind that legislation. He had been a protege of Randolph Paul. Surrey was a brilliant man. He ended up teaching taxes at Harvard. He happened to teach at Berkeley when I was there.

I had been very excited by taxes, but I had not had any training in accounting. And I thought you *had* to have accounting training, and it had not fitted into what I'd wanted to do. Well, I found myself in a situation where the employment I had

been hired to be engaged in was shrinking. There was a new tax code. The need for tax people in the Lillick firm existed and I liked the man who was in charge of taxes very much. So I went to a course at Stanford [laughter] to find out what the new code was all about, and began working as a back room man helping on tax questions in the Lillick office. And that is what I did from '54 until '61.

I continued to be involved in some waterfront labor problems as crucial labor disputes were, from time to time, referred to the Lillick office and I would assist Mr. Adams. However, at that point in time, the tax rates were still very high; they had been reduced from 85 percent to something down around 75 percent, and I was very busy with tax problems.

Wilmsen: That was for upper-income people.

Torre: Yes, the upper brackets, but many solid middle-class persons found themselves with heavy tax bills.

The Lillick office had a lot of family businesses. Medium-size, small businesses. They represented some big businesses, but among its clients, they represented a lot of medium-sized businesses, family businesses.

Because they were an admiralty firm, they represented a number of lumber companies because one of the big important trades at that point was known as the Steam Schooner trade, which involved the shipping of lumber up and down the Pacific Coast. That's all done by barge now as a result of the jurisdictional battle between the sailors and longshoremen in the early fifties, and because it's more economical. In fact, barges now ship lumber across the Pacific to Hawaii. They tow it across on barges. But when I first began it was all done by ships. And certainly, before I began in the twenties, thirties, forties, the lumber trade was carried on by ships.

The lumber companies had formed shipping companies. Weyerhaeuser had its own shipping company, for example. Pope and Talbot had their own shipping company. But they were basically lumber firms, but, as the result of its position as an admiralty firm, the Lillick office was also representing lumber companies.

Thus, the Lillick office had a corporate practice and a commercial practice. This had all happened before I was employed. Actually, Lillick was the largest admiralty firm on the coast when I was employed. The bulk of its business was commercial business, corporate and commercial business, and estate planning and that kind of work. The admiralty work was

the foundation of its client contacts and it was an important admiralty firm, but it had grown into a far more diversified organization, which I did not know but came to realize later.

The firm, I think, was certainly among the ten largest firms in San Francisco. I think it was the eighth largest, or something like that. It was a unique organization.

Because of the friendship between Ira Lillick and Herbert Hoover, when Herbert Hoover was Secretary of Commerce he had referred radio companies which were formed during that period in the twenties to Ira Lillick when they were interested in finding lawyers in San Francisco. So Ira had a radio practice as well. He represented American Broadcasting Company and National Broadcasting Company when it was all radio.

When I was employed, radio was on its way out because television was beginning to come in. With the arrival of television, San Francisco, which used to be an originating center for radio, was no longer an originating center for television. There are only really two originating centers for television, Los Angeles and New York. And San Francisco's radio practice had sunk into a provincial practice. But there was a period in the fifties when I was working on local American Broadcasting labor problems with the National Association of Broadcast Engineers and Technicians [NABET].

Beginnings of Tax Practice: Corporate Reorganizations and Estate Planning

Torre: What happened in the fifties as a consequence of the tax rates for family organizations was it became economically undesirable to cut lumber and to sell it. The taxes were higher if you'd sold the company and paid only capital gains taxes. You'd have more money. And this began the process, and this began in all industries across the land--the family-owned, the medium-sized businesses--began merging into the larger businesses. And the merger process is still under way.

In the fifties, the antitrust laws were a far greater concern. It was a matter you had to consider. It amazes me how antitrust considerations have diminished, or prohibitions have diminished. The restraints of the antitrust laws are not what they were in the fifties and sixties.

Well what happened was, the tax practice of the Lillick office--the tax practices, the tax consequences of how you can accomplish mergers tax free or with minimum tax impact, and the relative concern of whether you went on operating and committed yourself to operating income, whether you could justify it through depletion allowances, or whether the intelligent thing was to accept selling out--got me into corporate tax law, reorganization law.

Wilmsen: Let me make sure I'm following you here. So prior to 1954, the tax law--

Torre: The tax law prior to 1954 was not a lot different than what it became in '54, but it was all pulled together and made clearer. That happened to coincide with an economic development in America where medium-sized businesses were finding that operating and submitting yourself to the high income taxes on operating income was less desirable than merging into larger organizations or selling out to larger organizations. Through the merger, you could have tax-free mergers where you would take an interest in the larger organization in exchange for all of your assets and you could do it in a way where that act in itself was not a taxable event. Or you could sell and have a capital gains taxable event instead of an ordinary income. And because the code, because the principles that had been evolving in the revenue code from 1939 through--during the war years everything remained static. But after the war years, it continued to evolve. It led into legislation in the early fifties. It had developed all the way through the late forties into the early fifties into legislation that encouraged mergers, basically rather than going on operating income.

I'm trying to explain how the shape of my tax practice had begun on corporate reorganizations and estate planning. That was how it began.

Wilmsen: Now this was mostly with small and medium-sized businesses?

Torre: Family businesses that were finding it more attractive to give up their independent business status by merging in or selling their assets to a larger company. Either by a merger being tax free, hanging onto it with the basis they carried forward until they died and stepped it up, or selling the stocks that they merged, having a capital gain at that time. And this led me into estate planning.

Wilmsen: Now were most of these small and medium-sized businesses lumber shipping firms?

Torre: Many of them were lumber and shipping but there were some manufacturing. The Lillick office had a mixture of them. Shipping led to lumber shipping, lumber shipping led to terminal operations, terminal operations led to machinery, stevedore contracting firms. And all of these tended to be closely held, if not family-held, held by small groups, and when they were giving up the family business--they were not passing it on to their heirs--then the generation that had put it together, or had made it something, now had an estate planning problem. And so, I had estate planning tax questions developing.

Wilmsen: Can you quickly explain to me, a layman, what changed in the tax code that made it more attractive for these small companies to merge?

Torre: All right. What made it more attractive was the tax rate. If they went on operating--let's take a lumber company, which is an easy one to show you--if they cut the lumber and sold it, they would have income at the corporate level. At that time they'd have to pay corporate taxes. If they declared a dividend, they would have income on the dividend. Well, in '54 or shortly thereafter, the subchapter S corporation came in so that in the closely held businesses--meaning not more than ten shareholders--you could eliminate the corporate tax. You had one tax only. But it would be at the operating income rate which I think--the excess profit tax had been eliminated--was about 75 percent in the mid-fifties. The capital gains rate was 25 percent.

Wilmsen: Oh, I see. Okay.

Torre: So if you sold \$50,000 and had to pay 75--well let's say \$100,000 because I think it would be about at \$100,000 you got in at the 75 percent rate. The difference between 75 percent of a \$100,000 and 25 percent of \$100,000 was quite significant. That was just the sale process.

Now if you wanted to stay in operating yourself still, you could merge in where you could exchange. You and the larger organization would form a new organization and you would exchange--you wouldn't have money--you would exchange stock for the assets. And then you would carry that stock at the basis you carried the assets. And you then, you might be able--you'd be a minority holder, a very important minority holder--you might be able to hold some kind of social or operating position in the larger organization for a few years, or your son or daughter might be given some opportunity of employment because you had done that. But if it didn't work, you could always sell the stock because the larger organization could be traded in the public exchange. You'd sell the stock at a capital gains rate.

So you were ahead again from operating income to capital gains rate. Is that clear?

Wilmsen: Yes. Then, after a merger, if the smaller company remained a subsidiary of the bigger--

Torre: Of the larger company, or it blended into the larger company.

Wilmsen: Okay. So let's take the example of the lumber company again. So they're cutting their timber and selling it--

Torre: Well, the lumber company, Georgia Pacific, gathered up a lot of the Pacific Coast lumber in that era.

Wilmsen: And so they were taxed differently.

Torre: Their operating income goes on being taxed the same. And all you get is dividend income now because you're a minority holder, and you're like every other shareholder in a large company.

Wilmsen: Oh, okay. I see. But the tax on the timber then remains the same.

Torre: Oh, yes. For the large company. But it's a bigger operation instead of being \$100,000 sale, it's a million-dollar sale of the year.

Of course the larger company has larger depletion, more operating deductions and a lot of other things that can keep it from, perhaps having the same impact as a smaller company. But all of the small lumber companies have disappeared. As a result, there are only big lumber companies. Pope and Talbot which used to be a big western lumber company, I don't think matters anymore in the lumber field.

Of course this was a period when there was a lot of building going on in America, particularly on the Pacific Coast. Now lumber is primarily newspaper. I mean it's still important for building, but its being cut for newspapers, primarily.

The big companies moved into the Pacific Coast from Alaska, straight up and down the coast. The exploitation of the forest has been more severe. The small lumber companies cut lumber-- don't misunderstand me--they cut forests down, but on a different scale and with greater care as to the renewal of the asset. They had to renew. They had to cut in a way that the forest would keep on producing.

Weyerhaeuser introduced farming, forest farming. They're not the same forest. Don't misunderstand me. The forest that the Weyerhaeuser Lumber Company produces are not the forests that they cut down. But they are still planting, and forest growth of a sort is still continuing, which is better than nothing at all.

A Brief for *Brown vs. Board of Education*

Torre: One thing that is a little different that may interest you. When the Brown case--I'm now going back to the earlier part of my legal career--was before the Supreme Court. The Brown school case, the school segregation case is what I'm talking about.

Wilmsen: Oh, right. *Brown vs. Board of Education*.

Torre: Brown versus that school district.

Wilmsen: Right.

Torre: The case was argued twice before the Supreme Court. And during the first argument, the Supreme Court asked a series of questions that it wanted additional briefs on. And one of the questions it asked was, "What did the various states to whom the Fourteenth Amendment had been presented think the effect of the equal protection clause on public education would be?" William Coleman--who had been one of Frankfurter's law clerks the year I was Douglas's law clerk and who was doing legal research for Thurgood Marshall, who was arguing the case for the NAACP (this was before Marshall was on the Supreme Court)--wrote and asked me if I would do a memorandum to answer that question from the point of view of California which they were very interested in because the Fourteenth Amendment became part of the Constitution without any action by the state of California.

California stalemated at that time. One house of the state legislature was controlled by southerners, and the other house was controlled by New Englanders. And the long shadow of the Civil War prevented California from ever taking any action on the Fourteenth Amendment. They never ratified it because one house ratified it, the other house didn't and they never resolved the split. So this made California's position of special interest to the attorneys representing the NAACP. And I suppose the other attorneys as well, I don't know.

But at any rate, I undertook to do a memorandum on what the position was in California.

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Torre: The issue raised by the Supreme Court did not present itself at any time to the state legislature, as far as we could tell, prior to the enactment of the Fourteenth Amendment. However, very early on in California public education, I think by the 1870s--the amendment came in in the mid-sixties, 1860s--and I think in the 1870s, questions concerning integration in public schools did come up in California. And the position of California very early on was to support integration completely. Certainly black-white integration.

The racial issue that mattered at that time in California was the Indian against all the peoples--all the peoples against the Indian is what I should say--and the Chinese. As I think I told you earlier on when we started this, in writing that memo I used research that my wife's father had gathered for a book he was preparing in the late twenties on racial discrimination in California. There was material, his files. He never wrote the book. His health intervened. He had bad health develop. But I did use some of his notes for the memorandum.

The memorandum was never used by the Supreme Court. I think it was filed at the Supreme Court along with all the others, but the Supreme Court never dealt with the issue.

What was interesting, why I got into this, was not to tell you about my writing a memorandum for William Coleman. But it was to tell you about the Lillick firm at the time.

I asked Adams--I told him what I was doing and that was fine --and I asked him what was his feeling about my submitting the memorandum under the name of the Lillick firm. His feeling was, if that was what I wanted to do, I was at liberty to do it. But from his point of view, it was an unwise thing to do because he didn't think either political party really believed one bit in integration. He believed in integration and he hoped it would come about. But he felt from a political point of view, that both parties had no interest in it and they were only giving lip service to it. So identifying a firm with a position on this was not a particularly wise thing to do even though you may believe in it. So I did not submit it under the Lillick name. I had been employed two years.

I'm giving you this anecdote because that was the state of the country, I think, at that point. Adams was a very astute man. He spent a lot of time in Washington; he was going back and forth to Washington. He was a very liberal Republican. He had the trust of the ILWU because he did believe in integration. He

believed in employment and education, socially, but he thought it was a long ways off.

Wilmsen: Did you submit the memorandum under your own name?

Torre: My name and my colleagues', my fellow associates who helped me on it. There were three names: George Hellyer, William Brinton, and my name. We were all young lawyers in the Lillick office.

It did not ever get published. It sounded unimportant. But I do think where the world was at that moment--it was so different from where it is today--I thought that was worth noting. At any rate, that was my legal career up until 1960s.

Featherbedding: A Gross Waste

Torre: Paul St. Sure and Harry Bridges in 1960 negotiated the first program that was to control mechanization.

Wilmsen: That's the modernization and mechanization agreement.

Torre: Yes, well there was a coastwide one first, for one year that preceded it. It took them about five years to negotiate the program. At that time, featherbedding was--do you know what featherbedding is?

Wilmsen: No.

Torre: [laughs] You see, you do live in a different age.

Well, featherbedding was a huge issue in the steel industry the first year Kennedy was president. Featherbedding is making work that is unnecessary. It provides incomes for workmen and it makes the cost of labor, as it affects the cost of products, very much higher.

Wilmsen: So is that a broad term that covers practices like the four-on-four-off rule?

Torre: That's right. That's what featherbedding is. It is creating an appearance of work that is unnecessary. And the four-on-four-off was--how do you know what that is? Have I talked about that or did you know?

Wilmsen: No. I did a little research. [laughter]

Torre: A longshore gang is made up of eight people who would work eight hours a day. But they allocated the work among themselves. There would be four playing cards or doing nothing while four were doing the work. But there were all manner of ways in which featherbedding occurred. For instance, in jurisdictional battles between longshoremen and teamsters. This was before containers existed. The pallet board was the first step towards mechanization. These came into use in the thirties when you had forklift trucks that could lift heavy weights. You would load up the cargo on what was a pallet board. It was a board that could be lifted by a forklift truck and you would load that, and then you would put that into the hold of the ship.

Well, when cargo came to the docks in a truck, who put the cargo on the pallet board became a big argument between the teamsters and the longshoremen because that meant work for the members of one of the unions. That argument was resolved--oh, there were strikes on this and work stoppages--but finally resolved where the teamsters took the cargo off pallets on the truck and put it on skin of the dock, and the longshoremen picked it up off the skin of the dock and put it on the pallet board, instead of having put the cargo from the truck onto the pallet board. That was how the issue was resolved. And of course, that is one form of featherbedding. And there was a lot of featherbedding, protecting jurisdiction and protecting work.

Well, of course this was an extremely important matter through the whole thirties when unemployment was rife. Making work for working people was crucial to the power of a union. So the skills of building up featherbedding practices in all the industries of America had determined the strength of union and American industry. Worldwide industry was rife with it. And it of course increased the cost of production. It was a waste. It was a gross waste.

Well, in the fifties, a couple of things I think occurred. I think excess laborers had been somewhat curtailed by the casualties of World War II and then the Korean War in this country. The tremendous expense, expansion of production that had occurred created jobs itself. So the need to make work diminished.

But getting rid of the featherbedding practices was not an easy thing even though they were less necessary. And it took about five years of negotiation for PMA and ILWU. And there's no doubt about the fact the ILWU was dragging its own membership into accepting modern practices and mechanization.

Wilmsen: Because mechanization, in addition to eliminating featherbedding, also meant reducing--

Torre: Meant that containers would be introduced. There were no containers at that time.

Wilmsen: Right. And that meant reducing the work force overall.

Torre: Yes. It did. Enormously. The ILWU work force was made up of two groups of people: the registered workers who had first priority for work, and they were the union members, and the unregistered work force who were people who worked regularly on the waterfront but they didn't have the priority claim to work through the hiring halls. They did get regular work through the hiring halls though they didn't have the first claim if there were registered people seeking it. This was a way of controlling the number of people who were qualified. You didn't have to belong. You couldn't make it just for union people anymore, but it happened that most registered people joined the union. Not all, but most. Overwhelmingly.

Wilmsen: Was there a "right to work" law?

Torre: They were being enacted for the first time. They were coming in following the Taft-Hartley Act. But they were not on this coast. They were in the south more than on this coast. This is how the south stole industry away from the northeast, with the "right to work" laws.

The registered membership of the ILWU in 1960 was about 28,000, and an equal number of unregistered workers were in the longshore industry working. The registered work force today in the industry, I think is about 10,000. And there aren't more than 10,000 unregistered people working in the industry. The shrinkage in work opportunity in the dock worker field is enormous.

An Incentive to Negotiate with Labor

Torre: Once they got rid of the featherbedding, the industry was prepared to pay almost any price to be able to not have a row with labor and to be able to turn ships around as fast as they wanted. When I began in the maritime industry, it was very important that when a ship came into port that had been loaded in a way where the cargo on top would come off at the first port it came into, whether it would pick up cargo to take into another

port would depend upon whether it was going to be taken off at that port before the cargo down below had to be unloaded. But being able to go from port to port with full ships was desirable. It is no longer in shipping. Today they come in loaded with containers, they want to get rid of the containers as fast as possible, and go back *light* as fast as possible and get more containers.

The whole attitude towards shipping is absolutely different. And of course that affects trade and international commerce enormously. Things that used to move between countries because the shipping companies wanted to carry a cargo back to where they came from no longer concerns them. For instance, after the war, the European shipping that brought European products to the Pacific Coast began carrying canned goods back to Europe in order to have a cargo to bring back. And this favored the canning industry of the Pacific Coast. Today they don't do that. They don't favor the canning industry of the Pacific Coast. There are frozen industries that have replaced it. But partly it is--

Wilmsen: The shipping companies specialize in one way shipping.

Torre: That's right. Because it's faster. And speed is what is important.

Wilmsen: So overall, if they do it faster, that means in the long run they carry more freight.

Torre: They make more money. That's right. Ships are so expensive to build today. When I began in the shipping industry, a day's tie-up cost about \$3,000. I think today it costs something like \$100,000 because of the depreciation, the insurance, and what they have to pay. I'm not sure of today, but I know in the 1950s you counted every day's tie-up of the ships \$3,000. This is how we explain what a strike meant when the whole fleet was being tied up. How many ships times \$3,000, and how many per day. I know today it's up in the many tens of thousands. How many tens of thousands--I said a hundred thousand--I'm not certain of that. But it's so much larger than it was.

What makes it larger is that the cost of building a ship is very much more, so that the depreciation over twenty years per day is very much more. The insurance--because the ships cost so much more, are very much higher--the premiums are higher. And then you come down to the pay that has to be paid out to offshore people is very much higher. So the daily cost of operating a ship is enormous. And being sure that its maximum earning power is being realized, today means sailing some days light back to where you get a cargo that pays a damn good rate to carry to the

port you're serving, rather than to carry a low rate cargo back. Whereas in former days, being loaded and carrying a cargo was what mattered, whether it was a high rate or a low rate cargo.

Does that explain it?

Wilmsen: Yes, it does.

Torre: I have reached the point at which taxes and labor and nonprofit organizations come together.

Reducing Man Hours and Increasing Pay

[Interview 4: March 9, 1998] ##

Torre: Do you have some more questions?

Wilmsen: I have one more follow-up question. You were talking about featherbedding and at one point you mentioned that once they got rid of featherbedding that industry was prepared to pay labor just about anything to turn the ships around as fast as they could. And I was wondering if you could comment a little bit more on what you meant by that.

Torre: By reducing the number of man hours on a gang, man hours per ton of cargo moved, the stevedore contractors could pay more for each of those man hours. Featherbedding meant that you had more man hours per ton moved than was necessary. Therefore, what you could afford to pay was lower because your ability to pass it on ultimately to the market was curtailed. But the moment you cut the cost per ton by reducing the man hours, then you could increase the reduced man-hours pay.

While they won't pay anything, practically speaking, stevedore dock workers' salaries have gone up enormously. I don't know what the average is today. A dock worker who works five days a week, six hours to eight hours a day in those weeks--of course, weekend days get paid more, holiday days get paid more, and nights get paid more, and the dock worker has control over how he makes himself available. And if he wants to make a lot of money from his work, he will make himself available for the time-and-a-half and the double-time rates.

But when I retired sixteen years ago, the typical Pacific Coast dock worker--just the dock workers, not the foreman--was earning between \$50 and \$75,000 a year, and was working not more

than five days a week, and probably six hours a day--certainly not more than eight hours a day--and probably not more than ten months of the year. The walking bosses, many of them were earning over \$100,000. Now I'm sure all that's gone up because the hourly rates have gone up.

For just straight manual labor we're discussing. There is some skill in the operating of the cranes, but by and large it is, at best, manual labor. It's quite an income. And in addition to that, they have a tremendous welfare program. The medical care that is extended under the welfare program is probably better than very rich people can afford under the insurance they buy. The pension program is generous. You can build up healthy pensions, twenty years of work. So it's a very attractive place to go to work.

Wilmsen: And all of that came out of the modernization and mechanization agreement?

Torre: Yes, it did. Now we'll get back to what you're really interested in.

Eliminating Double-Handling under the Preliminary Modernization Plan

Torre: In 1960, a preliminary modernization plan was negotiated. Fixed sum--what was known as a coastwide plan--paid, I think, a million dollars or fifty. It was a fixed sum that was dispersed to the work force I think, as bonuses. But it was a preliminary plan to modernization.

The mechanization program became effective in 1962. The contracts were signed in the late fall of '61. It became effective in '62. It introduced containerization. It permitted, for the first time, the containerization of cargos.

Now what that meant, for the shipping industry, was to eliminate labor: containers were packed at the factory and moved to the ship site, taken off the ship site, put onto trucks or railroad cars, and moved to markets and wouldn't be unpacked until then. This of course was, in terms of shippers who could fill a container.

Wilmsen: That eliminated a lot of the handling.

Torre: A lot of handling. A lot of the breaking down to put on the pallet boards and then the breaking down of the pallet boards to put them on other pallet boards so you put them on the trucks. It just eliminated an enormous amount of handling. Truck handling and dock worker handling.

For shippers who could not fill a container, there were yards formed where their stuff was all brought there and put into a container, but not at dockside. It might be in Nevada or areas where they did not have the organized labor costs that they had to worry about. And they'd fill the containers and the containers moved to the ship and the ship started moving them.

Well, this meant that when a ship reached the port, unloaded all its containers and wanted to turn around, go back, and get some more containers, it would not waste time: partly, because shipping containers of cargo that could afford to pay high shipping rates was more attractive than carrying cargos that you could pick up at the port where the ship unloaded that may not be able to pay the rates, but, partly, a large part of it was, the cost of building a ship. It's gone up *enormously*. And so the daily depreciation costs--a ship has about twenty years of life--and the daily depreciation costs, the insurance premiums that you're carrying are very, very high. And so you want to tie those days to the making of money, making as much money as possible. Making a little money isn't worth it. It's better to make no money if you can make substantial money on the days you're carrying cargo. And this has changed the whole pattern of shipping.

Well at any rate, the mechanization program came in. It really introduced containerization and it began the process of eliminating double-handling. It eliminated a lot of it, a tremendous amount of it. Not *all* of it. It's still under negotiation. There are still arguments about whether there is featherbedding going on. But the basic policy today is to eliminate it.

Today it is safety questions that may result in some featherbedding. But at any rate, the industry set up this program and they set aside, over a term of five years, twenty-nine million dollars that was to be used--nineteen million were to be dispersed in increased welfare and termination benefits. I think about five million went into the welfare benefit that covered medical benefits. Ten million were held to pay a supplemental income benefit as jobs were eliminated and income fell below a reasonable level. As a precaution--and it was pure precaution, because people making projections knew it would never be dispersed--ten million was set into a fund that was to pay

supplemental wage benefits. After the first five years, the ten million dollars wasn't even touched and so at the end of the five years, it was dispersed as a bonus to certain groups of dock workers. The remaining fourteen million went into what was known as a vesting benefit. This created a great tax problem. That was my reintroduction to the labor field.

Funding the Benefits Program

Wilmsen: Okay. Can I ask something first?

Where did the twenty-nine million come from?

Torre: It came, ultimately, from carriers. It was a charge to the employers of dock workers--that is, stevedore contractors, and terminal operators, and walking bosses. Well, no. The walking bosses weren't in this plan. They had their own plan.

Wilmsen: What's a walking boss?

Torre: A foreman who supervises the work of gangs of longshoremen.

The employers of the dock workers had to make contributions to these programs. They in turn then negotiated with the carriers for whom they were working to raise the money to cover their out-of-pocket costs. And that is the basic pattern of the industry. The employers have salaries that they have to pay, fringe benefit programs that they have to participate in funding, and insurance they have to cover. The whole overhead out-of-pocket figure of employers of dock-workers is the basis of what the carriers will ultimately pay for these services. And actually, I think it's something like 85 percent of the contract price that they enter into with the carriers.

It's an extremely competitive industry. It appears to be something that you're just passing it on, but that isn't the case. It is highly competitive because the skills of the various employers using the dock-workers and the equipment at their disposal varies a great deal. And those that are extremely skillful in the use of their employees and their equipment will have lower out-of-pocket costs per ton so that they can compete with the less skillful stevedore contractors.

And this then runs into all manner of problems as there is in some ports. Slowdowns of the work force. There's no question of the fact that some slowdowns are just corrupt ways of getting

more money out of an employer. The employer whose public relations with his work force is such that he is subject to more of those slowdowns and has to pay more to get out of them is going to have a heavier out-of-pocket cost than an employer who will pay under the table more for his employees. And he won't suffer the slowdown. And his out-of-pocket costs will be buried in some fashion.

Wilmsen: What do you mean pay "under the table more"?

Torre: Well, he may pay the foreman and the people working on the crew-- I'm looking for the key word that's not "gang"--the crew that is unloading for him, he'll pay them more than the contract requires; pay them money that the contract does not require that they be paid.

And from time to time there's been complaints in the industry that some employers are undermining--there's an industry contract, you understand, what the employees are to be paid--are undermining it. I think at the present time--I don't really know--but I think at one time in the years when I was most active it was considered illegal for employers to pay higher wages than the contract requires. Today I think the contract is being construed as only setting a minimum that the employers have to pay. And if they want to pay more, and do pay more, okay. So under those circumstances, you can get perhaps a more highly skilled group of men to work for you. You can get them to work *harder* for you. You can turn the ship around faster. And this is a large part of the competitiveness in the industry.

I don't really know about that because I've never been down on the docks working. And what is going on on the docks is not necessarily brought to the attention of lawyers, the lawyers of the companies, unless it results in a lawsuit.

Wilmsen: So when you say "under the table" what are referring to?

Torre: Making payments that are not appropriate payments to workmen or to the walking bosses that are supervising the work, that will drive them more.

Wilmsen: But not specified in the contract?

Torre: It's *not* in the contract. That's right.

Wilmsen: Usually I think of "under the table" as meaning getting paid cash so you don't have to pay taxes.

Torre: Oh, yes. That's right. That, too.

Wilmsen: That, too.

Torre: That, too. Yes. And what is paid, I don't know. And I dare say that in some ports--probably in southern California--there are illegal immigrants who have entered and who get employed at certain times--the employment of which is illegal--and the union has to be bought off, or at least--not the union--local people would have to be bought off so they could get these people and drive them to work harder. These are all things that people say are going on. Whether they're going on or not I don't know. But I suspect they are because it's a very dynamic and highly competitive and tough industry. Fortunately, I did not have involvement with any of that.

So I don't really know. I meant, I'm only at this moment talking about gossip. I don't know because I never really had any direct contact.

Tax Problems of the Mechanization Agreement

Torre: What I did have contact with was the mechanization program and particularly, the benefits it was paying. I drafted the documents that set up all of the trust funds that were being created to dispose of the first twenty-nine million. Then after five years, it became sixty million. For ten years, there was this particular program. And ultimately, the program itself had achieved its end and these benefits had been superseded by increased benefits and the supplemental wage benefit that the industry was then paying--the welfare benefits and the upgrading of pensions.

The thing that caused me to be brought back was that the term "vesting benefit" was attached to a benefit that really was not a retirement benefit. It was a contingent benefit that depended upon whether the employee who wanted the benefit would give up employment rights. And it was sufficiently contingent that it was not a retirement benefit. However, to sell it to the membership it had been given the label "vesting benefit," which sounds like a pension benefit, and this created a very serious tax problem.

If it had been a pension benefit, the contributions would have been subject to internal revenue rulings pertaining to pensions that these contributions did not meet, and therefore would not have been deductible. Obviously, the employers were not going to pay any expense--direct salary or fringe benefit--

unless it came off of their income taxes. They were not going to pay the taxes on such a sum of money. So the whole program depended upon being sure the contributions to the program would be tax-deductible.

Because of the wrinkle that the term, "vesting benefit," had created in the program, the first reaction of the Internal Revenue Service in Washington was to deny deductibility because a portion of the contributions were going to be used for pensions under conditions that did not comply with the rules for funding pensions. This was before the adoption of ERISSA. It was just the internal revenue rules that I'm talking about now.

Wilmsen: What's ERISSA?

Torre: ERISSA is legislation adopted by Congress in the seventies, I guess it was, that governs the employee retirement benefits primarily. The purpose of the law is to assure workmen that the pension programs that they are winning in collective bargaining--and they had become very commonplace--were being properly funded so that when they retired, the money would be there to pay them.

Pension programs began to appear in American industry after World War II in the fifties. And between 1950 and the adoption of this legislation, which is very important legislation--I think maybe your employment is governed by it. I don't remember now whether the state is exempted from it. Public employment such that you are engaged in would be exempt from it. But *all* employment, by and large, is subject to it. And it is to protect working people from being exploited. It's basically to protect their pension, but there is some protection for medical programs as well.

This legislation was adopted subsequent to the mechanization program. It became very important in my life because as a result of the mechanization program--let me go back.

Because of the tax question the mechanization plan created, our office again became deeply involved in the setting up of the mechanization plan, drafting the documents, and getting the tax rulings that were required to have the plan work. And since I had become the tax man in the Lillick office and had had labor experience previously, I had to get those rulings.

Now, all of the fringe benefits programs that are negotiated, that are set up in industry--welfare, pension, supplement vacation programs, supplemental wage programs that are put into trust funds and funded--all of those trust funds are nonprofit and tax-exempt organizations.

The Pacific Maritime Association itself is a tax-exempt organization. It's like a chamber of commerce. It's not a charity. Its tax exemption depends upon different sections than those applying to a charity. It can do things, and still keep its exemption, that charities can't do. Yet, there are differences all the way along the line. However, it is in the nonprofit area and this is one of the areas of internal revenue code that is an expertise within an expertise.

As a result of the mechanization program and the work I did in obtaining the exemption from the Internal Revenue Service, I became deeply involved in that area of the code. And while the sections are different, I began to cover the whole area. And because of that involvement, other matters were being brought to me. And I began doing nonprofit tax work as well. Predominantly I began to do more of that than corporate tax work, or even estate tax work.

In a curious way, the mechanization program was challenged--certain aspects of the funding of it, not the tax aspects--were challenged under regulatory laws of the shipping industry. The Shipping Act of 1916. There were questions presented under that act. The challenge--which I think was an improper challenge and decided improperly by the Supreme Court ultimately, but I'm not going to discuss that--resulted in litigation.

The man in my office who had been involved in that phase of the program had been general counsel for the Maritime Commission at one point. And he did conduct the hearing before the hearing officers at which the industry prevailed, and the hearing on appeal to the Maritime Commission, again where the industry prevailed but narrowly so, but he withdrew from the appellate court proceedings which I had to take over.

I happened to be in Washington to argue the Shipping Act issues before the court of appeals on the morning that the *Washington Post* carried the ad that David Brower had run in the *New York Times* and the *Washington Post* designed to save the Grand Canyon.

You see, I am getting gradually to why you are here.
[laughs]

VI THE SIERRA CLUB'S LOSS OF TAX DEDUCTIBLE STATUS

View of the Sierra Club as an Elitist Group

Torre: I was reading the paper at breakfast and saw this ad. Now at that time, I had no connection with the Sierra Club. As I said at some point in this hearing, my wife and I--while we are Californians, several generations of Californians, and have known a lot of people who belonged to the club--we had the view that the Sierra Club was a very elitist, closed group like the Daughters of the American Revolution.

Wilmsen: What gave you that view? >

Torre: Some of the people we had known and the very special position that it had had in the twenties, thirties, forties, and during our earlier lifetime.

Neither of us are club people to start out with, even though I did belong to a fraternity when I was in college. After the war, I had nothing to do with it. I never wanted to belong to any of the clubs in San Francisco. Never have. There are a lot of reasons why I avoid clubs. And my wife, likewise. So we had never seen any reason to belong to the Sierra Club.

We did go to the Sierras, the high country, hiking. And we would stay at the high camps.

Wilmsen: Just on your own?

Torre: On our own, yes. My wife's father had been an avid explorer of the Sierras when he was a very young man in the teens and the twenties before he became ill.

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Torre: The mountains and the shoreline and the forests of California and the west meant a great deal to both of us.

I spoke earlier of the beauty and unique value of Yosemite Valley. However, when I discovered the high country of the Sierras, I was overwhelmed. This is the country I truly love.

Wilmsen: Did you belong to any other environmental groups?

Torre: No. We did not belong to any, any groups at all. We just went for our own pleasure.

Wilmsen: Can you give an example of why you thought the Sierra Club was elitist?

Torre: Well, some of the people we knew and their attitudes.

At that time to become a member you had to have two sponsors nominate you for membership. So that suggested a very closed organization. They were picking and choosing.

And then some of the people we knew we felt were not people with whom we wished to associate. But the mountains and the seashore and the forest did matter to us.

Predicting the Sierra Club's Tax Troubles

Torre: But that morning, when I read the newspaper and saw the ad, I thought, well--and I remember commenting to my wife who happened to be in Washington with me at the time--that I thought they were going to have some trouble, that it did not seem to me the kind of ad that a charitable organization could run without having trouble. Well, that ad--as you know and everyone knows--did result within, I think, forty-eight or sixty-four hours, in the Internal Revenue Service lifting the 501(c)(3) status of the Sierra Club.

Wilmsen: Now are the stories true that there--in a couple of our oral histories at the Bancroft Library, I guess David Brower, largely blamed Morris Udall for the--

Torre: Oh, I think Morris Udall has admitted publicly that he--when he read the ad that morning in the newspaper--he called the Internal Revenue Service to ask them "What's the meaning of this? How can a 501(c)(3) organization run this sort of ad?" He's admitted that he brought it to the attention of the Internal Revenue

Service. He admitted it in Congress. It's in the *Congressional Record* somewhere.

Now, how much more he did, if anything more, I do not know. And I don't know that anybody in the Sierra Club really knows, but I can assure you, if any congressman calls the Internal Revenue Service and says, "What's the meaning of this?" the Internal Revenue Service is going to look into it. And I would have thought, when it happens to be the brother of the secretary of the Interior, they're going to jump and hurry.

And the ad was sufficiently aggravating that I, as a layman in a sense--I was a lawyer of course, as I say had been working in the nonprofit field at this time, but I knew nothing about the Sierra Club's internal operations--it was just the impact of that ad that made me think.

Wilmsen: What was it that caught your eye that made you think that they were going to have trouble?

Torre: Well, it was calling for--"We have to save the Grand Canyon, get your congressman off the dime to do so." The ad was seeking grassroots legislative effort to save the Grand Canyon from being destroyed by being dammed.

Wilmsen: So that in effect amounted to lobbying?

Torre: Yes. Grassroots lobbying. At the time the ad was run, a charitable organization was not to engage in any substantial lobbying activities.

The key word was "substantial." What are substantial lobbying activities? Well, they can engage in some lobbying but you have to look at their overall operations to see what percentage of their overall effort, of staff, volunteers, budget had been devoted to lobbying. And there were tax court decisions which had resulted in--I think, if I remember correctly, there were some federal court decisions as well as tax court--which had resulted in a handful of rulings that suggested that anything in excess of 5 percent of your overall effort would be substantial. So that was the rule of thumb. If you spend over 5 percent of your budget, your volunteer time, and your staff time lobbying, this constituted substantial lobbying.

I have been told in subsequent years that, in fact, if you were backstage in the IRS--I don't know if this is true, I've only been told this--that the IRS by and large was using 10 percent as a test, but they had not publicly admitted this was its policy. I don't know whether that is true or not. I would

suspect it was true because 5 percent is almost trivial. If you were going to say a substantial, you would have to get up beyond 5 percent. But 5 percent was the rule of thumb. And I'll comment on that later.

Don Harris and Fred Fisher: The Lillick Firm's Connections with the Sierra Club

Torre: But at any rate, it was not until some time later that I was employed by the Sierra Club, our firm was employed by the Sierra Club, and the circumstances that brought that about involved two partners: Don Harris and Fred Fisher, very young men at the time. I think, they must be fifteen years to twenty years younger than I am. And I think they had been admitted to partnership when this occurred, or they were on the verge of being admitted. They were partners. They were admitted as partners. They had spent a large amount of time doing volunteer work for Phil Berry who was in charge of the legal program of the Sierra Club.

Phil Berry is now on the board of the club. I'm not sure he was on the board at this time, but he was certainly intimately involved in heading up the legal program. Phil has been a very, very active and valuable member of the Sierra Club, certainly in the last thirty-five years. And is still so today. Very intelligent, dedicated environmentalist, and a very good lawyer. You probably have his oral history.

Wilmsen: Yes, we do.

Torre: Well, I speak highly of Phil. He is entitled to whatever credits he has been given. He can't be given too many.

He had been working with Don Harris and Fred Fisher on environmental litigation.

Wilmsen: Now Fred Fisher had gone to law school with Phil Berry.

Torre: Yes. Stanford Law School. And he had been Roger Traynor's law clerk when he graduated from Stanford Law School. Don Harris had gone to Harvard Law School. They both had been employed by the Lillick office. Don had first worked in New Haven, I think it was, in Connecticut. Fred, from his job at the California Supreme Court as a clerk for Justice Traynor came to the Lillick office. And they both were young associates and built careers there so as to become partners. Fred Fisher is still practicing law, but he is representing a shipping association--general

counsel for them. There were reasons he left the firm to do that. Don Harris is retired at the moment, a few years ago.

They became, both of them, extremely active with Phil in forming the Sierra Club Legal Defense Fund which is now the Earth Justice Fund. But at this time, it didn't exist. It was a committee. And because of their involvement with Phil, Phil's committee was charged with the responsibility of finding a lawyer to represent the Sierra Club before the Internal Revenue Service.

Wilmsen: Was the Lillick firm trying to get involved in environmental matters?

Torre: No. Fred and Don were doing it on their own time because of their own interests. And they were dedicated to the issues that were environmental issues at the time. That's what they were interested in. Other people in the firm were interested in world affairs and they gave lots of time to the World Affairs Council or to the United Fund, United Crusade, or Rotary, or whatever. But these were things that individuals in the firm made their own choices to what--if they wanted to do anything. Some people didn't do anything.

Wilmsen: Were you involved in any volunteer efforts?

Torre: At that time, we supported organizations. We were supporting, we made contributions to the NAACP and to university scholarship funds, whatever. But I did not work in any organization as a volunteer. Nor did my wife at that time. We were raising children.

The Lillick Firm Meets the Sierra Club's Needs

Torre: The finding of a lawyer created some problems for the committee because they had to find a law firm that would have the skills to be able to represent the club, which meant by and large, law firms that were representing the business community of the country. And the club itself did not want to hire a law firm that was representing the oil industry or the lumber industry, or things that they were opposed to. And they would have had some difficulty finding a law firm that would be happy to take on their issues because their major clients weren't too happy with what the club was beginning to do.

The club, at the time it ran the ad, had become a very different organization than what it was in the twenties,

thirties, forties, and early fifties. But I did not know that that difference had occurred. I have been told that the genesis of the present club developed from the position the club took on the Dinosaur Valley Dam in opposing it. And that's when it really began to be a nationwide organization. It's when they began to become more publicly involved in public affairs. And it was when they began to be more involved in the environment in general rather than the more limited aspect of the national park preservation, of the unique and special areas of nature that they believed should be a national park. Now that is something I had not been following because I didn't know anything about the club really. We had closed our eyes and ears to it in this household. But it had become a very different organization.

Now my friends--I was very close to both Fisher and Harris-- I knew some of the cases in which they were engaged. At that time, they all tended to be primarily scenic cases. Preserving trout streams. Mineral King was one of the very big cases of that era, to keep Disney from turning it into a ski resort.

Wilmsen: That was an important case.

Torre: Very important because it determined the status of an environmental organization to be able to bring a lawsuit, whether they had standing to sue. Went to the Supreme Court. It was an extremely important case.

Wilmsen: Don Harris was involved in that?

Torre: Yes. Very much involved in it. And Phil Berry--by that time, there was a Sierra Club Legal Defense Fund that had been formed-- they were directors of that organization at that time. They were very deeply involved.

We represented the shipping industry and we represented various other industries, as I had said earlier in this history. We had represented lumber companies that ran ships: Pope and Talbot, and Weyerhauser, at one time. However, that representation had, by the sixties, dissipated. So we were not identified as a lumber firm. Had the case come up in the forties and fifties, we would have been a law firm representing lumber interests, lumber interests the club was opposed to. But that was no longer a significant part of our practice. So that did not disqualify us in the eyes of Phil Berry.

My young partners were anxious to get into this glamorous lawsuit and they were close to me personally, individually, and thought I was the person that the club should hire.

Wilmsen: What made it a glamorous lawsuit?

Torre: Oh, we were going to be fighting the Internal Revenue Service. We would be getting a lot of newspaper publicity.

David Brower: The Grand Canyon Ad, Environmental Rights, and
Opposition to Hiring the Lillick Firm

Torre: Also, this was at the beginning, in a sense, of David Brower's public career. He had been hired as the executive director of the Sierra Club. I think it was in the fifties when he had been hired.

At first he was spending a lot of time leading High Sierra trips. Again, I'm repeating only hearsay because I wasn't around. But I understand that the board was having difficulty getting him to pay attention to some of the other business that the club had. At that point in his career, Brower considered getting people involved with the outdoors, with the High Sierra, on the level Muir had known the High Sierra, was the way to build a public that cared about the environment and would protect it and keep it. So he was leading these trips.

I think it was the late fifties, Ansel Adams and a director from the Modern Museum of Art in New York [Nancy Newhall] staged a photographic show in Yosemite, I think it was, called "This is the American Earth." And it was very popular and very successful. And I do not know who was the moving force behind it.¹

After the show was about to be disbanded, everyone felt it was too bad that it had not been perpetuated. And the Sierra Club decided to bring out what was a book of the photographs. It was the first of what became known as the "Exhibit Format" series. David Brower--who was the executive director and who had worked for the University of California Press before he went to the Sierra Club--was the editor of that book, which was a tremendous success. It had very positive reviews.

¹The exhibit opened in the spring of 1955 in Yosemite's LeConte Memorial Lodge. The Sierra Club published the book, under the direction of David Brower, in 1960. Financing for publication came from former Sierra Club board member Marion Randall Parsons, and Max McGraw and the McGraw Foundation.

I had bought a copy of it. The copy we have in the house was acquired before I had any contact with the Sierra Club. But based upon the glowing reviews that the book had received--my wife, who is an artist, and I, as a layman, had much interest always in the photography of Ansel Adams, and the reviews indicated that the book had great photographs by Adams and many other photographers--so we were both drawn to it, and I bought the book.

What I did not know when I bought the book was that the book was to become the turning point. David Brower was unknown to me. I didn't know anything about him. But it was the beginning of his public career because he brought out as editor a series of books thereafter, known as the "Exhibit Format" books, all of which had favorable reviews. Some of them had stunning reviews. And it brought attention to the Sierra Club, the like of which it had never had before. They were winning prizes for their publications. And he was becoming a public figure. The Grand Canyon ad brought him really into the public eye.

Now, to get back to how I got involved, then we'll get into the ad.

The Lillick firm was selected to represent the club. That was not what David Brower had wanted. David Brower had hoped that a law firm in Washington particularly, with a big name, would have been selected by the board of directors to represent the club. And he had hoped--this he did tell me--he had hoped that the case that now existed could result in a Supreme Court decision in which the Supreme Court recognized the First Amendment rights of the environment. Not of environmental organizations, but of the environment. Wilderness would be given constitutional recognition. Well in my judgment, that is a silly idea. But that's what he wanted. He wanted to bring the subject of environment up to a constitutional level. And he thought he now had the means of doing so with this litigation. And he wanted to have a very prestigious law firm with a big name in Washington representing them. He didn't get what he wanted.

I did not learn that until after we had been employed and when I had to start working with David Brower on preparing the case before the Internal Revenue Service.

The Board Selects the Lillick Firm

Torre: I discovered when I started working with him that he really wanted to get rid of me, but he was not going to because the board of directors wanted a local attorney. The reason they wanted a local attorney was to keep control over David Brower. They were not averse to having a prestigious law firm in Washington represent them if it meant they could save their tax status, but they knew that if they had a Washington law firm, the only continuous contact that would exist between the club and its counsel would be through David who was going to Washington all of the time. They didn't want that. They wanted to control it because of some matters that I will be getting into in a few minutes. That was why they did not hire this prestigious firm, and did ultimately accept Phil Berry's recommendation to employ the Lillick firm. They employed the firm and came to know me.

I didn't know any of the people on the board of directors at that time. Don Harris and Fred Fisher did, but nobody else in the firm was particularly involved with the Sierra Club or knew any of them. They were relative strangers to all of us and we were a stranger to them.

Will Siri was on the board at the time of the employment. Ed Wayburn was president of the board of directors. Charles Huestis was on the board, I think. He was the chief financial officer of Duke University. He had won many credits by reorganizing Howard Hughes' industry in earlier years. Howard Hughes had RKO and TWA as well as Hughes Tools, and lots of money and problems. He had not yet retired into the world he ultimately died in.

Richard Leonard was on the board. George Marshall, Ansel Adams. [pause]

Wilmsen: They're all men. Were there any women on the board at that time?

Torre: I don't think there were any women on the Sierra Club board at that time. Lots of women were engaged in environmental activities as volunteers, but I don't think any of them were on the national board.

It was a pretty distinguished board. Don't misunderstand me. There are distinguished women on the board today. The members of the board had public reputations that stood with distinction in ways that very few people on the board today have. It was a very different organization. It was an elitist organization.

For years, the board was made up of people who had high positions in the professions: medicine, law, accounting, architecture, university teaching. That was what it was predominantly.

Wilmsen: Who approached the Lillick firm? Was it--

Torre: Phil Berry. Phil Berry approached Don and Fred Fisher, who he was working with and knew as his contemporaries. They recommended me. It happened at the time they recommended me I was home with the flu. Phil Berry came here and sat where you're sitting right now to interview me because he knew that if he hired the Lillick firm that I was going to be the guy in charge. That's how I met Phil.

Well, I passed. [laughs] He recommended hiring the firm. Will Siri came to meet me. And Ed Wayburn, ultimately. And we were hired. They accepted me.

Wilmsen: There was a third member of the Lillick firm, I think Pete Swan?

Torre: Peter Swan. Yes, he was involved, too. But less so than Fred. There may have been even other associates. Swan never became a partner in the firm. He would have been a senior associate at that time. Or near being a senior associate. And there were other people in the firm on the associate level who were working with Fred and Don.

Board Concerns over Loss of Tax Exempt Status

Torre: When I was hired, I had to find out what was the structure of the Sierra Club and its activities and to what extent it engaged in substantial lobbying activities. I accepted that the ad was a cry for grassroots lobbying. I made a preliminary examination.

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Torre: And my conclusion was that the club was not engaged in substantial lobbying activities.

Wilmsen: That was before you had gone deeply into it?

Torre: Before I got very deeply into it. From my preliminary examination, I didn't think they were substantially engaged in lobbying.

But I also thought that they had a terrific burden of getting their exemption back. The burden was completely upon them. It was going to cost them money because the involvement with the Lillick firm was on a hiring basis. It was not on a volunteer basis. And it was going to cost money.

My first advice was that the club not seek to reestablish the exemption. I understood that an independent organization, which is known as the Sierra Club Foundation, had been formed as a precaution against the possibility that they would one day lose their exemption. And this was an organization that would be set up to maintain only charitable environmental activities so they could still collect charitable funds. I said, with such an organization--at that time its board of trustees was comprised of retired Sierra Club presidents--it was a waste of money for the club to attempt to restore its exemption. Even though I thought their exemption had been improperly lifted, they were wasting money to hire a law firm that was expensive, to try to get the exemption back when they could operate in this other fashion. In short I was saying don't employ us or anyone.

Well, that advice was rejected. And the reason it was rejected was that there was a fear that if they look to the Sierra Club Foundation to raise funds for its charitable activities--the primary educational activity was its publication program--the foundation would seek a role. (At this point the publication program--comprised basically of Exhibit Format books and to some extent, handbooks for hiking in the Sierra, outing books, the enormous range of books that make up the publication program today--was just beginning. It had not yet begun; yet the club had a very important publication program.) The board members were concerned that the board of the Sierra Club Foundation, as it was then comprised, would begin exercising power over what the club could publish.

And the other major charitable activity that was under way was studying what lands constituted wilderness. The Wilderness Act had been enacted a few years before. The Sierra Club was deeply involved in making field studies on what were the wilderness areas of America to be able to make submissions to the secretaries of the departments of Agriculture and Interior who would then--informed with these works--pass upon what was wilderness and have the area set aside under the Wilderness Act as a wilderness area. The club was spending a lot of money--sums that seem minuscule today, under today's budget, but what were a substantial part of its budget at the time--on this activity.

Wilmsen: And that was considered a charitable activity?

Torre: Oh, yes. It was a study. It is clearly an educational matter to find out what was a wilderness; the definition of wilderness roughly, is an area that has never had roads in it, that is, it never had any development of any kind: no mining, no agriculture, no lumbering. What areas of the land were then left that would meet that definition? Because if it weren't a wilderness, it could not be set aside and protected. So making these studies of the lands of America was very important because it had never been done. This was something different than the significant areas that make up national parks. And the club was one of *many* organizations--it wasn't the only one--it was one of many organizations carrying on these studies.

The studies not only were sending people out to review the area. It was taking pictures of the areas that they were talking about and getting zoological, biological, botanical information that has built up, and then bringing in people who were skilled in these specialties. A lot of it was volunteer, but their transportation had to be paid for, they had to be fed when they were in the field. And a lot of it was hiring experts to pass upon what had been gathered, the information that had been gathered, who were receiving fees. So there were expenditures to conduct those studies that were basically to educate the departments of Agriculture and Interior and the public at large. To bring to the attention of the public at large what were the dwindling wilderness areas of America.

They were concerned that the foundation would become involved in the decision process. The club wanted to keep control over what they considered very important educational activities.

At the time this all occurred, I can remember--Ed Wayburn, who was then president--I can remember talking to him. I didn't know him very well at the time, as I know him today. He has become a close friend of ours. His family and his wife, his children. Some of his children--I don't know them all--but some of them have become very close friends. When I spoke to Ed about conserving assets rather than spending them on lawyers, he was concerned about the loss of charitable gifts. Such funds were a small part, but a significant part of the budgetary expenditures of the club. At that time, it collected approximately \$100 to \$150,000 a year in charitable gifts which made possible these programs. And that was what he and the board did not want to lose.

Wilmsen: Why were they concerned? If the foundation board was made up of former club presidents, what was the concern?

Torre: Because they were older men, they were former presidents, it was less responsive to the membership desires at large. And there was a large division in the former environmentalists with the current environmentalists as to what were the important environmental issues of the day.

To take one that was pending at the time, was whether or not we should have a redwood national park or whether we should go on with the activities of Save the Redwoods League of setting aside stands of redwood to be administered by local agencies in the state of California.

Wilmsen: The club was in favor of the park?

Torre: The club was supporting the idea of the park. But there were people on the foundation board, and certainly among the older environmentalists, who felt that the Save the Redwoods League's approach was more desirable, who were opposed to more national parks. Wanted to keep it under state administration. And there are a lot of arguments on that very subject as to whether you're going to save the redwoods by just setting aside significant stands because if you allow the hinterland to be logged, you're going to have erosion come down from the hills that had been stripped bare that will flood the stands--most of the stands being in the lower elevations along the water--and they won't stand very much longer.

There were lots of differences of views on this. And you ran into people who didn't want more federal government and preferred to have local governments in charge. Well, they felt that the club had to resolve these decisions. In short, there were matters of principle that they didn't want another organization to be deciding. And they feared an independent organization would get into policy questions instead of just being a fundraising organization. That was always a fear at that time. It was a needless fear in my opinion and my experience as we will get into it. And it certainly is not a reasonable fear today.

Wilmsen: It's no fear today?

Torre: It should be no fear today. As far as I am concerned, in the years I became associated with the Sierra Club and the Sierra Club Foundation. I ultimately, as you know, was on the board of the Sierra Club Foundation for, I think, something like twelve years. Ten or twelve years. I was president for two years before I went off the board.

In that period I am certain that the foundation made no policy decisions conflicting with the Sierra Club itself on educational conservation issues. Any disagreements we've ever had is whether or not the activity was a charitable activity or a lobbying and political activity because the foundation must stay out of all political, and for many years, all lobbying activities. But today, it may engage in minor lobbying activities. And they have a great duty to protect their status by staying out of those things.

And the only policy areas that there's ever been a disagreement on is to whether or not a particular activity was something they had to stay out of. But not on whether you should have a national park or a local park. That is a policy question that is none of their business. Whether you should worry about ozone standards or not, this again is not the foundation's business. And it's never intruded into those areas.

What Constitutes Lobbying

Wilmsen: Now what about David Brower's--

Torre: Well, David Brower did not want to have to deal with the former presidents and at that point, he had a faction of the board of directors that were supporting him. So there were a lot of reasons why they had to fight the lawsuit. And we went on with it.

Wilmsen: But didn't David Brower feel that the club should lobby quite vigorously?

Torre: David Brower thought that it was lobbying very vigorously at the time. David Brower wanted it to have a public role, and the public role was to be a big role in Washington and lobbying was the thing to do.

The reality at *that time*--not the reality today--but the reality at that time was the work they were doing in Washington was not with Congress, it was with the executive department. It was with the Department of Interior and the Department of Agriculture primarily. I think only those departments. I don't even think they were going to the White House at that time. They were going to the White House through those departments, if at all.

What they were consulting with those departments on was the enforcement of laws that were already on the books, not to urge the departments to shape laws to bring to Congress to put on the books. That is not lobbying. The work you're doing in the administrative area was unlimited. You could do unlimited work in that area and keep your charitable exemption.

I don't think that that was understood by many of the people in the club or on the staff. Whether it was understood by Brower I do not know. It's my own personal opinion that he didn't understand that because he seemed to think that whenever you go to Washington, you were lobbying.

And that was the exciting thing to do. That was the thing that got you newspaper interviews and helped to bring attention to your organization; increase the membership; you had more money to bring out more exhibit format books as you gathered more dues from your members. This was very important to him. The growth of the club and the increase in funds to increase the activities was extremely important. He wanted that public role very much.

And I think that there were a lot of members of the club who were afraid if you went to Washington, you were lobbying, and you shouldn't do that because its incompatible with your exemption. Well, that isn't true. Seeking enforcement of laws that are on the books is a quite legitimate activity of a charitable organization.

They all know that today. Today that's recognized. They know it. They know that when they go to see the executive department its different than when you're trying to get legislation shaped and passed. They also know that if you go to see the executive department and there's legislation pending and you're discussing with the department how it can get that legislation passed, you are participating in lobbying activities. Talking to the executive department *could* be lobbying, but it rarely is. It never is if it is to enforce legislation.

The Wilderness Act was on the books; to tell the executive department what is wilderness was not lobbying. Educating it as to what is wilderness so it would know what to classify as wilderness is not a lobbying act, even though the classification will ultimately be brought back to Congress for adoption; the communication to Congress was a routine act. Securing the underlying legislation was the important lobbying act. I don't know whether the club had anything to do with that. I don't know. I wasn't around when that happened.

But I do know that at the time I was employed, the club's contact with Congress was negligible. Members of the staff and volunteers would be called before congressional committees to testify as citizens. That was not an organizational activity. And it isn't included in lobbying either. There are some restraints upon what you can do in that area, but basically being a witness is not lobbying, generally speaking, even today.

Constitutional Rights for the Environment: A Legally Preposterous View

Wilmsen: David Brower wanted to keep the--

Torre: He wanted to make it public, as public as possible. And he saw the lawsuit as curtailing its public role. He did not want the exemption to be returned to the club unless it was returned to the club on terms that allowed it to do whatever it wanted to do under the First Amendment. And he went so far in his thinking, he wanted wilderness to be recognized as being protected. Wild animals and wilderness to have constitutional rights. The environment has constitutional rights. Not the organizations, the environment. That is still his view.

Wilmsen: He was anticipating deep ecology, the philosophical orientation.

Torre: Yes. And he was urging that the Constitution had anticipated it in the eighteenth century.

Wilmsen: That's interesting.

Torre: Well, it is legally preposterous in my judgment. The environment will be protected through legislation and the environment will be protected through litigation under that legislation, and by environmental organizations that bring the lawsuits. There's a lot of law that is involved. But to say that it's all a constitutional right, I don't think will ever happen.

The constitution wasn't written to do that. To start out with, most of the first ten amendments are framed in terms of Congress will not interfere with any person's rights of free speech or due process. You have the word "person" running through most of the first ten amendments and you're not going to suddenly find that a wild animal is a person in the eyes of the law, in my judgment. I don't want to get off into the legal arguments.

But at any rate, David did not want the status returned to the club upon the curtailed terms that he knew I was going to urge, to wit, the club was not engaged in substantial lobbying activities.

Wilmsen: I see. Okay.

Torre: So he really didn't want us to be employed. He didn't want us to prevail.

Serious Interference in Presenting the Case in Washington

Torre: I went more deeply into the affairs of the club. And my first impression, I think, was confirmed. I know the club was not making 5 percent of its annual financial expenditures in lobbying activities. I don't think 5 percent of the time of the staff and volunteers or the other resources of the club were being so devoted. And that was the subject of my case and a brief that I did prepare to submit to the Internal Revenue Service which I'm sure there's a copy of in The Bancroft Library.¹

We went through a hearing in San Francisco. The auditor in San Francisco was quite frank. He said, "This has to go to Washington, so don't waste our time." It then went to Washington.

Now I'm going to tell you something that I don't know whether I want to use. I don't think I want it used at this moment. I will tell you though.

The day I appeared in Washington before the Internal Revenue Service on this subject, I spent the morning actually presenting the case I had that was basically in this brief and answering any questions they had. The morning I appeared in Washington--it was a full morning, ten o'clock, nine-thirty, until noon--and I submitted the case. I went back to the hotel to join my wife who happened to be with me again. We were going to a wedding in New Haven and were leaving that evening for New Haven. But we were at lunch--the hotel I was staying at amusingly was the Watergate Hotel. This was long ago. The telephone operator ran me down and the man I had appeared before in the IRS had received a wire

¹The brief is filed with Dr. Edgar Wayburn's papers in The Bancroft Library. It is in the Sierra Club Members Papers, call number 71/295c, carton number 239.

from David Brower. And the wire had been sent to the commissioner of Internal Revenue, secretary of the Treasury, and I think the secretaries of Interior and Agriculture informing them that I was appearing in Washington that day to make a presentation for the return of 501(c)(3) status to the club. The wire reported that my presentation rested on improper grounds-- and to warn the IRS that I didn't know anything about the club and therefore the presentation I was making was not to be trusted. The wire urged that really what was necessary was the calling of a conference of the highest level of the cabinet officers to go into the proper constitutional application to the matter, and the recognition of the constitutional rights of the club and the environment. But basically it said that the present attorney of the club is not qualified to appear. He doesn't know what he's talking about, and let us have a constitutional convention on the environment in effect.

Well, that is an unfortunate position for any attorney to be placed in.

Wilmsen: Yes. Did you actually see a copy of the wire?

Torre: Yes.

Wilmsen: Do you have a copy?

Torre: No. No, I think I destroyed it. I did have a copy of it. It was sent to me at the hotel. The man called me to find out and it was sent to me by messenger, and I read it.

My response was to call my office, Don Harris in my office, and tell him to get a hold of the president of the Sierra Club and if there was not a wire sent to all the same officers immediately, and if he was not in a position to immediately send a wire to all the officers, that we were resigning. And we would decide afterwards what we were going to do.

This was--I don't know whether you realize this--but, this was a very serious libelous comment about an attorney appearing before a federal agency, or a court, or anyone saying he's pretending to represent somebody he's not qualified to represent. If true, we could have been chastised by the local bar association.

So I said that the board of directors were either to withdraw that charge or we would resign immediately. Well, as it turned out, Wayburn, as president, sent the wire withdrawing it, stating that Mr. Brower's comments were improper, and confirming our authority and knowledge.

As I learned later, the day before Brower sent the wire, he had a luncheon meeting with Ed Wayburn and Will Siri. Will Siri I think was treasurer, at that time, of the Sierra Club. But at any rate, he was on the executive committee. And they had met--I think it was at the Sir Francis Drake for lunch--and David was urging Will and Ed to send the wire he sent not to allow us to go forward, that I was all too likely to prevail and that it would be a disaster for the club. And they refused it. They refused. They had read the brief. They knew the brief as well as I did, and felt that it was a valid presentation.

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Torre: But if it succeeded, it would have been an exemption that curtailed operations. The organization would still have been unable to engage in substantial lobbying activities.

David sent the wire on his own initiative, and they--Wayburn for the Executive Committee--therefore, tried to recall it. At that time, it would have been impossible to reinstate before the IRS the validity of that brief after David Brower, the executive director, the person who was then a public figure already, had sent the wire described above. So the status of the club as a 501(c)(3) organization was never restored. The question arose as to whether the club was going to litigate in the federal courts.

Wilmsen: Because he sent--

Torre: David shot it down. David shot down any opportunity of prevailing on the brief I had submitted, basically, even though the board of directors, the president of the board of directors, tried to shoot David down. But practically speaking, David was the person who had a public position at that time. A big public position.

And the IRS wasn't going to get into an argument with the executive director and the president as to whether or not the presentation made to it was valid or not. The IRS had a row within its own ranks as to whether this was a fair description. So they felt--I'm sure on very sound grounds--to continue the withdrawal.

Now, we still had the courts that we could go to. You had to have somebody who wanted to claim a charitable deduction who would sue the government for having withheld a deduction that they have. They had to indirectly challenge the government's action. That was one way of doing it. Another way of raising the question was through the social security laws; charitable organizations have some exemption from some social security

coverages; 501(c)(4) organizations do not have the same exemptions. You could act as though you were a charitable organization and refuse to pay social security assessments so as to raise the issue. But you couldn't just go to court and present your claim that you're a charity to the court. It was complicated. And that was a complication that was going to increase costs enormously. The costs already in my judgment, were high and a waste of money.

And, in any litigation we were going to get into, we still had that wire we were going to have to deal with. We were still going to have to deal with a hostile witness in the form of David Brower, who was still executive director.

I urged the club not to go on with the litigation and to accept the status as a lobbying organization under internal revenue code, become a 501(c)(4) organization and to activate the Sierra Club Foundation. Well, that advice was ultimately accepted. And that is what happened.

VII EARLY YEARS ON THE BOARD: DAVID BROWER, THE REORGANIZATION COMMITTEE, AND TRADE OFFS IN ENVIRONMENTAL PROTECTION

Reorganization Committee: Seeking Control of David Brower

Wilmsen: But didn't the club go through a long internal appeals process in the IRS?

Torre: I was going to tell you something about what was going on collaterally with all of this.

Wilmsen: Okay.

Torre: I don't know whether you have this in your records. Do you have anything on the reorganization committee in your records?

Wilmsen: Yes.

Torre: From whom?

Wilmsen: Ed Wayburn, I think, talked about that a little bit.

Torre: Well, Ed Wayburn was president and he was the moving force for creating a reorganization committee. Charles Huestis was the head of the committee which was, as you will see, right in his ballpark of expertise, in a moment.

The need for the reorganization committee was primarily because the club was teetering on the verge of bankruptcy. The board of directors could not control David Brower's use of the club's funds. And he was using them wildly, which he thought necessary to have the prestige that would attract the proper public attention and give influence to the club.

For one thing, he always flew to Washington in first-class passage at a time when corporate officers of major industries

were now beginning to fly second-class. When he was in Washington, he had not a room: he had a suite. It was set up to receive people to talk to. The living room of the suite had a table that had every form of alcohol on it so you could mix whatever drink you wanted.

I was stunned the first time I went to the Palace Hotel. Early in my representation, I was invited by David to a meeting at the Palace Hotel of the people I was interrogating, at lunch. The most elaborate lunch I've ever attended! We had a private dining room. There was every form of alcohol for cocktails before lunch, wine at lunch, and a very elaborate luncheon menu. It all seemed quite an improper use of charitable money. Because the money that the club had at that time were dues and gifts that would have qualified as charitable gifts. But this was David's view of the proper way, the stylish proper way, for an organization that wants to be a public spokesman to behave. And it was costing a lot of money and the club was borrowing lots of money.

The exhibit format books that were being published did not come out on time. The preparation of the books was being delayed. Even when they were in process for editorial reasons, they would be called back and be redone. Had the revisions been necessary, or had they not have been necessary, I don't know. But it was costing a lot of money. They were carrying at that time a very heavy inventory, and they were carrying it with borrowed funds.

Now at that time the club did have an endowment which it could use the income of, and that's what it was borrowing against. It also had various pieces of real estate that it had acquired to protect wilderness areas, some of which were quite valuable. The Tuolumne Meadows--land that the club owned, which is now part of the National Park Service--was ultimately sold to the National Park Service a few years later for a couple of hundred thousand dollars, which was a lot of money in those days. It's not today, but it was then.

The club was in very precarious financial straits. Also, the board couldn't control what David Brower did. He ran the Grand Canyon ad contrary to the directions of the board of directors. Just as contrary as the wire he sent to the Internal Revenue Service and the cabinet officers.

You would think that the simple way would have been to discharge him. Well, number one, he had great popularity. He was bringing credit to the club that people valued. He did care about the environment, which they knew. He was an eloquent

spokesman. He attracted attention that was causing the membership of the club to increase. Also, he had on the board of directors some directors that were very supportive of him. The board of directors was split. The majority were trying to control him, but some very important directors supported him very much.

Ed Wayburn, as president, had formed this reorganization committee which was to try to find some way to reorganize the internal operations of the Sierra Club so that they could continue to receive the contributions David Brower made, and at the same time control the prolificacy he was living under.

[tape interruption--lunch break]

Torre: How to save the club from bankruptcy, how to keep the contribution that Brower was making, and how to do it. That was what the reorganization committee's mission was. It was primarily financial. It was well-recognized that if you could get control over the financial affairs of expenditures of the club, that you could control the bankruptcy and would get control over what David Brower could do. But how did you reorganize the staff so that you had an executive director who was the front man, and an administrative officer who controlled him.

It did turn out that the then controller of the club--a very fine guy, honest man--had okayed certain expenditures that David engaged in that the board had not authorized. When examined by the board--I'm not going to tell you who this was because I don't want to. If somebody else identifies him, okay. I'm not going to. Why did he do that when he had had instructions from the board that there was a procedure he had to go through before expenditures of that level? He said, "Well, when you're working with David, it's very difficult sometimes to remember those restraints when there's a great issue and a great need in his mind." He was a very persuasive advocate.

But it's rare for an honest, ethical, well-intentioned man to be pushed into ignoring the operational procedures, and that did indicate that some kind of significant reorganization of staff was necessary. And that was what the committee was supposed to come up with.

I had just joined the club because when Ed Wayburn learned that I was not a member of the club, he felt that that was vulnerability for him, if not for me. And I agreed. So I had joined the club. He had read the preliminary drafts of the brief and realized that I had come to understand the internal functionings of the club quite thoroughly and that with that

knowledge and with the legal knowledge I had on corporate and tax matters, I would be a valuable member on the reorganization committee. So this new member was added to the committee.

The committee was made up of Chuck Huestis and Will Siri, Robert Cutter (the president of Cutter Laboratory), Paul Brooks who was on the board of directors, publisher of Houghton Mifflin, Rachel Carson's literary executor, was on the board of the Sierra Club and head of the publication program which was a very important primary program at that time. And we met from time to time and tried to come up with a program, a plan, for the reorganization of staff.

Well, it happened that the Brower slate increased in power on the board of directors, and his slate would oppose what we were prepared to propose. Basically, we were going to propose an administrative vice president. Brower's job would have been a public relations job. The running of the business affairs would have been placed in the hands of somebody who was independent of him. It was not adopted. It was never presented. It never happened.

Wilmsen: Okay. So we'll pick up there next time.

Lobbying as a Privilege, Rather than a Constitutional Right

[Interview 5: March 16, 1998] ##

Wilmsen: Okay, what I wanted actually to ask you about was a couple of things we were talking about last time: David Brower and his role in kind of undermining the club's case with the IRS, and then also the reorganization committee which was occurring at the same time. You've indicated that David Brower wanted really for the club to lose its IRS status, which I think our other oral histories show, and I was just wondering what you--

Torre: That isn't quite accurate. He wanted to win it on his terms. Not on the terms that I was presenting.

Wilmsen: Oh, I see.

Torre: What he wanted was to win his case by construction of the Constitution that would uphold his right to lobby, and deny the limitations that were in the internal revenue code.

Wilmsen: Right. You did talk about that last time.

So basically he wanted a court decision that would change IRS rulings?

Torre: He wanted a court decision that would have in effect abrogated any limitation upon nonprofit organizations as to lobbying and political activities that they engaged in.

Wilmsen: I see.

Torre: In which there wasn't a prayer, there isn't a prayer today, of his getting that. [pause]

I am no longer an active lawyer, but the little bit that I do know about the subject--right now there's a tremendous movement on to revoke nonprofit status of organizations. There are congressional committees and studies underway that want to take away charitable status. And I think that, except for churches and established institutions like universities, long-time universities, all nonprofit organizations--opera companies, theaters, museums, Sierra Club type organizations, Sierra Club Foundation--are in a very dangerous position at the moment. There are forces in Congress that want to take away this privilege. It's not a Constitutional right. It's a privilege. It's been granted by Congress and granted on terms that Congress is entitled to remand it. Which is something David doesn't understand. He still doesn't understand it.

There's no question that the Grand Canyon ad that was run was grassroots lobbying. But it was a very minor activity on the part of the club. It was not something that was done continuously. Volunteers were not out spending time conducting such activities and very little money had been spent upon it.

The Grand Canyon ad was an exception to what the club did--not typical of what the club did. But it had brought members. It had created a great public distress and it had increased the membership of the Sierra Club when people read it in the *Times* and *Washington Post*. And it created a lot of talk and David was quite happy with the results of the ad. But the amount of effort, time, and money of the club that had been spent on that ad and like activities--there weren't like activities--but related lobbying activities was insubstantial. After reviewing the records of the club--issue after issue of what was then the Sierra Club's monthly publication--looking for material and adding it all up, lobbying requests--requests for support of pending legislation or opposition to pending legislation--were very insignificant.

Dinosaur Dam: The Club's First Foray into Lobbying

Wilmsen: Okay. Now, in Dick Leonard's oral history, he's remarked that a problem with having nonprofit status is that you're always looking over your shoulder and wondering--if you take on a campaign, if it's going to put you over that somewhat subjective substantial amount of lobbying--whether you should take something on or not.

Torre: That's correct. That is correct. One of the campaigns they had taken on was the dam in Dinosaur Canyon. And it was very frightening to them because--I was not connected with the club at the time, but I've been told this, not only by Dick Leonard, but also by Will Siri and Ed Wayburn, who were deeply involved--that was a huge step for the Sierra Club. I think that the issue came up in the mid-fifties or late fifties. It was a huge decision that they made to take a public position seeking to oppose the construction of a dam in Dinosaur Canyon.

The club really had not since the very earliest days of its formation--when John Muir tried to prevent Hetch Hetchy from being built--engaged in such public activities. Their activities had been the preservation of national parks, the administration of national parks. They were deeply involved in that. Any public positions they took were incidental. But this was apparently a very significant campaign. Ed has said this was the point at which the Sierra Club began the process of becoming a public activist organization and that would have been lobbying. And it was lobbying. It was something to take into account. It was a single event and I think probably the only real event, where they took a public position before the Grand Canyon ad.

Wilmsen: Was there legislation for Dinosaur that they were--

Torre: Oh, yes there was. As I understand what happened--this is all hearsay as far as I'm concerned, and I'm sure you'll find it in Ed Wayburn and Dick Leonard's oral histories because it was so important--but the hearsay I have had and what is being publicized now within the club, right at the present moment, is that a compromise was reached with the club and the executive department and Congress, that if the federal government withdrew its proposals for a dam in Dinosaur Canyon, the club would not object to the building of the Glen Canyon dam. And that is what happened: the Glen Canyon dam was built.

Now at the present moment, Dave Brower, who participated in that compromise and approved it, has been expressing a lot of public regret about compromising. It's David's position that you

never should compromise. You should always remain fast to principle. Compromises are dangerous and dreadful. And there's some merit to that, but it's not a politically wise position. He would like to correct that compromise and salve his conscience by seeing the government tear down the Glen Canyon dam and release the waters of the Colorado that are behind it. That is the current project of David Brower and it is one that has won some support from other members of the board of the Sierra Club. Adam Werbach, who is the president of the club, and his book that he just recently wrote advocates the position presented by David Brower. So the compromise that had been entered into between the club and the government, now--many years later--some members of the club are attacking the result of that compromise.

I will be very surprised if the federal government tears the dam down.

Wilmsen: Yes. That would be surprising.

Torre: Well, with the population influx into the Southwest--without considering for a moment the environmental arguments for tearing it down--the political possibility seems very remote to me. And it does not seem likely to me that they are going to spend millicns to waste millions.

The only environmental argument that I saw that could raise any question was that the lake created by the dam results in more evaporation of water than the running of the river. Since the purpose of the dam is to preserve freshwater, the loss of more through evaporation means you're not preserving it. Whether that argument has any merit, I don't know.

Wilmsen: Yes. I don't know either.

Torre: You lived in the area. You lived in Arizona, so you know what the importance of the water is to the area.

Wilmsen: Well, I don't want to get into that, but it's an issue with the Central Arizona Project because by the time the water from the Colorado River reaches Phoenix and Tucson through the canals, there's been so much evaporation that the water quality is very low. It's very high in minerals.

Torre: Yes, I understand. My friends that live in Tucson told me that Tucson is presently not using the water because of the damage it has done to the old pipes servicing the houses in Tucson. But that is a correctable problem.

More on Tax Deductibility and Lobbying

Wilmsen: Yes. Anyway, was that an issue when you were preparing your argument for the IRS?

Torre: What do you mean?

Wilmsen: Was the issue of whether the club should retain its tax-deductible status or--there have been allegations--for example, the Wilderness Society, I guess, had been engaged in some lobbying activity as well.

Torre: Audubon, Wilderness, Izaak Walton. There isn't an environmental organization who has not at some time made a public statement that would be considered lobbying activity. But I don't think any of them have been substantially engaged.

Today, you have to understand, the internal revenue code has been modified to allow charitable organizations the privilege of engaging in limited lobbying. It distinguishes between grassroots lobbying--which is the kind of lobbying the Grand Canyon ad was, trying to get the public at large to write to their congressman--and taking a limited position and making your own direct pitch to congressmen and to the public at large without seeking to enlist the public at large. The internal revenue code now permits charitable organizations to engage in such activities, but in a limited amount based upon what they're expending on their total budget. It's a percent. You take the total budget, and now the larger the organization, the more they can engage; the more money the organization is collecting and spending, the more it can engage in lobbying. But it is such a small percentage.

Wilmsen: What is the percentage?

Torre: I don't know what the exact percentage is, but I know that in an organization like the Sierra Club Foundation which, let's say is spending somewhere between five and ten million dollars a year in charitable activities, you measure the amount of expenditures that they can make in lobbying activities--which would be not just out-of-pocket expenditures, but also expenditures reflected by time of staff who have been paid salaries; you would have to allocate overhead--it's in the low thousands of dollars that you can spend.

Congress today allows charitable organizations to engage in lobbying without using the word "substantial." The percentages are in effect, an implementation of non-insubstantial lobbying

for the organization. Except that a very large organization, an organization like the Ford Foundation, could expend a lot of money in lobbying if they wanted to. I don't think they want to. Their budget is so high. Hundreds of millions of their spending would allow large staff time and expenditures that an organization that's in the very low millions simply cannot spend. I think this sounds a little crazy. [laughs]

As I say, I'm not a lawyer anymore. This is why I don't know what the exact figures are, but that's the general principle. I know the general principle.

The Burden of Proof is on the Taxpayer

Wilmsen: Right. In the late sixties, if the Sierra Club was not engaged in substantial lobbying activity, then is there any merit to David Brower's allegation that the IRS was out to get the Sierra Club?

Torre: Yes, to some extent I think. My own view is that the IRS as such was not out to get the Sierra Club. The IRS wanted to satisfy congressmen who were angry with the Sierra Club.

Wilmsen: Mo Udall?

Torre: Yes. I think at that time that was the issue. And the ad had created a big enough flap that they had grounds to move. And so they withdrew the exemption. What I don't think David at that time appreciated was that the burden was on the taxpayer, and the organization, to prove their right to an exemption. It is not something that is given as a matter of law. And the fact that you have had it does not mean that you can't have it suspended if your conduct is such that the IRS can reasonably say, "Prove to me that you're still a charitable organization."

David's view is that such organizations--particularly environmental organizations--have a constitutional right that no executive department can interfere with. A right to express themselves on anything they want, and not have their status changed. They do have a right, a first amendment right, to express themselves on anything they want, but it can affect the status that has been conferred by law.

Wilmsen: I see. Did you have any contact with Mo Udall at that time?

Torre: None. I never have met any Udall.

Wilmsen: Oh, okay. Or any of the other congresspeople?

Torre: No. Just with the Internal Revenue deputies.

Wilmsen: But you nonetheless think that the Sierra Club's actions had angered Mo Udall enough to prompt him to bring the matter to the IRS.

Torre: Well, he said so. He admitted--I think I saw in a congressional record or it was reported to me--that he had appeared before the Congress, and it is in the record, admitting that he had telephoned the IRS after seeing this ad. And its not surprising that he would have done so because his project [The Central Arizona Project] was [laughing] going to suffer as a result of the ad, and he was going to have trouble in Congress. It was very important to him in his congressional district to carry out the program he wanted. I don't know the man, but I suspect he was also angry with being charged with wanting to dam up the Grand Canyon. I don't think what he wanted to do was a dam in the Grand Canyon, which is what the ad said the project would ultimately result in. I don't know Mo at all, but I understand he has prided himself on being an environmentalist. He was being charged with a heinous act and that probably made him very angry, I would guess.

The Reorganization Committee

An Alternate, Unbiased Source of Legal Advice

Wilmsen: Then the other thing we were talking about was the reorganization committee.

Torre: The reorganization committee was unrelated to why I was employed by the club and it was unrelated to that particular ad, although the ad was a factor for why the committee had been established. The committee had been established to try to control David as the executive director who was doing what he wanted to do. He was running press conferences and making statements that he wanted to make even though the board would have to refute them--just as he had sent the wire when I was appearing in Washington. It was contrary to what his executive committee was willing to do. He was doing other things like that. But most seriously the club was going into debt.

##

Torre: I was asked to serve on the committee because of the amount of work I had done for the brief I wrote in analyzing the affairs of the club, and also because of my legal knowledge.

Richard Leonard was a very good lawyer on the board of directors and available to provide whatever legal knowledge the board wanted. By that time, Richard Leonard and David Brower were somewhat at odds. They had once been, I understand--I don't know this of my own experience--but I understand, in their earlier youth they had been very close to each other. They were both rockclimbers, although apparently Richard Leonard was the more skilled climber. In fact, I think there is a peak named after him in the Minarets. I understand from Nick Clinch, who is also a rockclimber, that Leonard was extremely useful in the whole world of climbing as the result of the safety equipment that he introduced into the sport. It has become commonplace for rockclimbers. He was very analytical and knowledgeable, and climbed with great skill, but also with concern for safety. He was one of the moving forces in the quality of equipment that is presently in use. I know nothing about this. I'm not a rockclimber; [laughing] I don't want to be a rockclimber. But Nick Clinch is, and I did know Nick, and he talked about it a lot, and I did understand that that was what in his youth Richard Leonard did.

In the years I knew Leonard, he was not a young man any longer. I understood that David Brower had climbed with him, but I gather in a subordinate capacity, so that Dick was the one that gained fame, and David gained pleasure. However, I also understand that David's employment by the Sierra Club was at the instance of Dick Leonard, so that it all began in a long-term friendship.

By the time I came to know the two men, I don't know whether the friendship had ended; it certainly had stiffened. I don't know what their personal relations were, but publicly and within the club, they had stiffened. So the members of the board who were looking for a way of retaining David's contribution while still controlling him would have wanted legal advice from a source other than Richard Leonard. They felt that Leonard might have been overstrict from a legal point of view.

And that was why I was asked to serve on the reorganization committee. I had just become a club member, but I did probably know more about the operations of the club--how the club operated--than most of the members on the board knew because that's what I had to learn.

Reining in David Brower, and Brower's Resignation

Torre: The reorganization committee was trying to find a way where they would have an executive vice president--a chairman and a president of staff, not of the board. The president would be in charge of operations and have total authority. The chairman would be in charge of talking, public relations. And that was a structure they were trying to work towards. They never really came out with it.

At one of the elections of the board of directors it became clear that the members who had been elected to the board would support David Brower, and they would not support a reorganization that would in any way curtail his authority. So a majority of the board, or a substantial minority plus persons who would not take either side, would have foreclosed a real reorganization of staff. Therefore, the committee never came up with any meaningful recommendations.

While it was working, I failed, in any event, to get the charitable status returned, so that they now had very large problems of how to operate without the charitable funds coming in, and the issue of reorganizing the staff abated. The fact is, a few years later--I'm not sure, but two or three years later--David Brower left the executive director's position because the board finally imposed a discipline upon him that he had to submit an expense account or he wasn't to receive his salary. That resulted in his resigning from his position and that was when he became the moving force in creating the Friends of the Earth. Thus, reorganization no longer became an issue. What became an issue was how to remain solvent and not go through bankruptcy: how to restore the assets that had been impaired.

I think this transition occurred about 1968, I'm not sure. I think--my memory may be wrong in this regard--that I had already become a member of the Sierra Club Foundation board when David resigned as executive director because of the financial disciplines that had finally been imposed upon him. I may be wrong about that. He may have resigned before I was asked to serve on the Sierra Club Foundation board. But at any rate, they were events that were almost contemporaneous. They had no relationship to each other, except in terms of my memory.

Joining the Foundation Board: Protecting Environmentalists

Torre: As I think I said before, when I was asked to serve on the foundation board, I accepted the job because I felt rather guilty about having failed to produce what I had been employed for. It seemed so much money spent in hiring my firm had been wasted, in my view, and I felt under some obligation to make my services available as a volunteer if they were of any use to the foundation.

Wilmsen: Did you have any feelings that you could also contribute to helping protect the environment? Did that interest you?

Torre: Only by helping the environmentalists. As I've said earlier, I enjoy the mountains and the seashore, I enjoy the beauty of the natural world, but I do not have any environmental knowledge. Botany and biology, and zoology are not subjects that had ever engaged me. I'm not a scientist. All I know about the natural world is what I learned as a navigator in the air force: how to take star fixes. It's something about astronomy. I did learn a little bit about astronomy. [laughs] I would not be qualified to have an opinion without advice from people who are qualified. So I didn't see myself as an environmentalist. I only saw myself as somebody who enjoyed the natural world and felt that it needed protection. There is no question about that, as I have said earlier. The damage that had been done during the Gold Rush to the Sierras, the way in which the forests have been stripped, the ways in which, in my lifetime, the redwood forests had been decimated, were appalling to me.

Wilmsen: Were those then part of your consideration in accepting the appointment to the board?

Torre: I had come to respect enormously the people who felt very deeply on the subject, and who knew something. I had enormous respect for Edgar Wayburn and Will Siri, George Marshall, who were deeply involved in seeking preservation, and who were informed. I had respect for their intelligence, not just for what they were doing--the knowledge they had and what they were concerned about, and why. And they felt they needed help--help on legal questions--to be sure they did not err. They were all members of the Sierra Club Foundation. They were now in a position where they had to be hypercareful not to violate the restraints that a charitable organization must operate under, but at the same time, they didn't want to limit the activities they could engage in.

And there were members on the board of the foundation who were overly cautious. For example, an exhibit format book might

be in the process of being brought out on some natural area--the book that covered the coast of California and the Robinson Jeffers poetry, or the Glen Canyon book. The books are primarily picture books to educate the public as to what these areas look like, and tie them into literary and cultural interests. Obviously, if people are moved by the books and aroused to care for an area they knew nothing about, that may ultimately affect what public policies they are going to support. There's no question about that. But that is education. That is not lobbying, clearly so. But any reference in, say a foreword to such a book, that Congress has responsibilities that they are one day going to have to face up to, caused some of the people on the foundation board to say, "We can't possibly support that, that's a lobbying statement."

Well, that isn't true. I mean the fact that you recognize that the political process--particularly in a democratic country --is ultimately going to have ultimate responsibility for the protection or the destruction of this world is not a call to lobbying. This is a simple fact of how society works, and we've simply acknowledged that fact in the preface. Well, for some members of the Sierra Club Foundation Board, they were very fearful of making any contribution to publication of such a book unless those statements were going to be taken out. This request, of course, raises a huge question with authors. (Most of them were being written by David Brower, but not all.) Authors don't like being told what they have to take out unless there's a very good reason for it. There was no very good reason.

There is no doubt in my mind that I was asked to serve on the board because of my position as a lawyer, and what I would be willing to accept, because I was not going to ask to have such things deleted. It was one of the earliest issues that I confronted on the board of the Sierra Club Foundation. There were a number of older men on the board--some of whom were lawyers, perfectly intelligent, responsible people--who felt that their favorite organization had just got burned and they weren't going to have it happen again, and they were hypersensitive. And I know that on some occasions I had to disagree with them, but I think I usually prevailed in the disagreement. They were gracious gentlemen. I took the responsibility and let them off the hook. So we went forward from there which is what I felt was probably why I'd been asked to serve on the board. No one ever told me that, but it was thought that I did care enough about the environment, and had enough legal knowledge that was of value at that moment in their history, that I did serve. What I cared about were the environmentalists--the people who I respected who did have knowledge and who were engaged in what I thought was a

desirable project--that they be protected to do what they wanted to do that was within the constraints of the law. That was the service that I rendered.

Do you want me to go on with this?

Wilmsen: Well, I guess just say what you want to say.

Torre: No, I've said enough. I told you to shut me up.

David Brower: A Rash Spender

Wilmsen: Well, I'm kind of jumping back and forth between topics because there were so many things going on at that one time. But to get back to David Brower's resignation, in his oral history, he guesses that Will Siri and Dick Leonard wanted him out because he disagreed with their position on Diablo Canyon.

Torre: I don't think they wanted him out, if that's your question. No, I don't.

I can say this. On one occasion soon after I had been hired, I had a telephone call from David Brower. I think that David must have seen that I was working with Will Siri, who I think was treasurer of the board at that time. He was on the executive committee. And he lives in El Cerrito, and he was coming over with information for me. I think that David must have realized that I was working very closely with him, and he did not approve of that. And he did call on one occasion--and it happened that he called me just before Will Siri was supposed to arrive--to complain that I had to understand that I couldn't trust what Will Siri was saying because Will Siri was trying to get him fired so he could take his job over. I told Will that, what I'd just been told, and he was furious because he had been president just the year before, and he had been a moving force in allowing David to do whatever he wanted.

Will Siri at that time was working at the Lawrence Laboratory and I think the professional position gave him much interest. He remained there until he retired. He certainly had full opportunities for taking over environmental work. He was one of the major forces in the Save San Francisco Bay Association, and in the activities that resulted in the forming of the commissions that did help to protect the Bay. He had the confidence of Sylvia McLaughlin, whose husband was a regent of the university, on the faculty, a moving force in this

organization. I believe to call regarding Will was paranoia on David's part. I don't think it was the disagreement over the Diablo Canyon case that caused them to want to be rid of him.

I think that both of them wanted to be rid of him, or cut his wings, because he was causing the club to go into bankruptcy. He was spending the assets like mad and they were beginning to be very concerned. I think Richard Leonard was, as a lawyer, concerned that as a member of the board of directors, were they discharging their fiduciary duties properly? Could he be subject to ultimate legal criticism and lawsuits if the club did ultimately go under? I think Richard Leonard would have been very concerned about that. I would have been concerned about it certainly because they were not exercising proper restraint over the executive director, and he was being rash.

Wilmsen: How did you feel about it at that time?

Torre: Same way as I feel right now.

I had a very curious experience with David Brower. This I don't think--oh, I don't care whether it's used or not. Well, it was an amusing experience. One day--this was shortly after I had gone on the board of the foundation, shortly after he had formed Friends of the Earth. I guess it was in the mid-seventies. I was in Verona. We were in Verona, Italy during the summer festival season and the Arena had several weeks of music, opera and other kinds of music. It was a big festival in northern Italy. And I was travelling with my wife and two older children. We were staying at what was a very high-level hotel, the Due Torre--an old hotel in Verona--primarily because it was the Torre I suppose, the two towers, but there are other reasons. It was a hotel that had been there a long time--a hotel of great prestige, but the rooms were small. There was no question about that: they were small rooms. It was an old building, probably a palazzo, that had been converted into a hotel in an older part of Verona.

But as I went to check out, there was a man at the desk who was irate. He was furious and complaining bitterly because he had ordered, required a larger room. I don't know whether he was asking for a double room, a suite, or what he was asking for, but he carried on about the necessity--he had work to do. And as I later learned--well, I'll finish the story. This went on for quite a while and the clerk behind the desk was having difficulty finding another room, assuring him that they would transfer him; they would do the best they could. Of course this was very difficult for the hotel because the hotel was packed with people who had come to the festival. And whether they were going to be

able to move him to what he wanted I don't know. But when he turned around, it was David Brower. [laughs]

Wilmsen: [laughs]

Torre: I'm sure the last thing David Brower wanted was to have me, of all people, hear him complaining about the quality of the room he had, and demanding a room that was going to cost substantially more in this already expensive hotel.

Wilmsen: So he was there on Sierra Club business?

Torre: No, at that time he had left already. He was on Friends of the Earth. He was there because he was bringing a book out on Wales. Verona is a very important center for high grade printing of all kinds. There are outstanding printers there--people making high-grade papers as well as high-grade type and everything--so he was there in connection with bringing out this book on Wales. Then, I suppose feeling a little chagrined as to what would I think that he was staying in this very expensive hotel, explained that when he was in the army he had been with a force that had helped to liberate--this is during World War II--helped to liberate Verona, and they had been stationed in the Due Torre. So he returned to the Due Torre when he had to do work in Verona.

Wilmsen: Okay. [laughs] But that doesn't explain why he needed a bigger room.

Torre: It does not. Oh! His reason for a bigger room was so they could lay the proofs out on the floor. He was traveling with another person that he was sharing the room with, and studying the proofs and they had to have space that they didn't have.

Wilmsen: I see.

Torre: I'm sure that doesn't appear in his oral history.

Wilmsen: I haven't seen that one, no. [laughing]

Torre: [laughing] It was typical. It was typical of David that he wanted to be comfortable and live luxuriously. That was his desire.

Wilmsen: Did it ever occur to him or you or anybody that living luxuriously like that might have some kind of negative effect on the environment? I mean, I don't know how people thought back then, but now it kind of seems a little hypocritical.

Torre: [laughing] I don't think it ever occurred to him and I personally don't think it does have the effect upon the environment that some puritans--environmental puritans--think it has.

Turn it off. I'm trying to think. [tape interruption]

This is a pompous comment that I'm willing to risk. I felt so strongly about the waste that was under way during those years when I first had contact with the Sierra Club, in terms of luxurious living, luncheon meetings and dinner meetings, and places that you stay. If I have a luncheon meeting, I insist upon either picking the check up or paying for myself and I won't claim--even though I *could* and it is an allowable deduction, could claim it as a deduction of services to a charitable organization--I won't do it because it seems to me a waste of charitable funds.

Now this is a silly attitude. It's not a justifiable attitude in terms of the law. But I have it because I was so appalled that charitable funds--funds collected from people for charitable purposes--were being used in this fashion. I don't want to be subject to such conduct. And I would never have felt that except for the extreme waste that was under way. It's a pompous remark.

Wilmsen: [laughs] But it makes sense.

Torre: Well, not really. I mean, if you're in a meeting and you have to have a lunch and you are truly serving the organization, it's a proper use of the resources of the organization. But I had seen so much *improper* use, I was bending over backwards not to ever claim it.

Wilmsen: Was the improper use mostly David Brower, or were there other people, too?

Torre: Certainly other people were attending these functions and luncheons, but I think it was David who set the tone of these events.

##

Torre: It had been fairly common to hold evening executive committee meetings of the club in Jack's Restaurant, one of the upstairs dining rooms which were large enough for the executive committee. Jack's was then a very good, but expensive restaurant. We would hold dinner meetings there which were charged to the foundation. David was not participating in that, but it was a practice which

had been established at the Sierra Club and many organizations would follow such a practice. Normally the people attending the meeting were professional or businessmen who were coming in at the end of a long workday to deal with the affairs of the organization, having dinner and going home after the meeting, and dinner would not have been an unreasonable expenditure.

However, one of my board members when I was president of the foundation's board, a woman by the name of Melissa Wade, raised the question as to whether it was an appropriate use of charitable funds. Because she raised the question and because of the way I felt, we dispensed with that practice. If we had meetings at mealtime, we had them in what were then the headquarters of Sierra Club Foundation and we had sandwiches brought in, which is being overly austere, but since the question had been raised, and because of the feelings I *did* have about the excesses that had once been participated in, we went to the other extreme. The executive committee was quite happy about the change.

A Falling out between David Brower and Ansel Adams

Wilmsen: Now another question on David Brower's resignation: Ansel Adams withdrew support of Brower in a letter that he wrote to the board.

Torre: I understand--I don't know--I'm giving you the gossip I heard and at most all it may do is to confirm other gossip you have already heard.

Wilmsen: You weren't on the board at the time.

Torre: I was never on the board of the club. Ansel Adams was never on the board of the Sierra Club Foundation. I only met Ansel Adams twice, I think. They were at board meetings of the club that I attended as an employee of the board, as a professional employee; usually they were meetings to discuss my fee.

I have enormous respect for Ansel Adams's work. I think he is one of the great artists who's lived in California, and I think his work is beautiful and important. I never knew him really as a man. He was a gracious, amusing person at the two meetings I attended and the kind of person you would think *could* produce beautiful work. Frequently the work is more beautiful than the person, but in this case he seemed a beautiful person as well.

I'm told that after *This is the American Earth*, which was the first exhibit format book that David brought out--it was the show that Ansel Adams had put together with Nancy Newhall, a member or employee of the Museum of Modern Art (MOMA) in New York, and it was then later, I think, amplified and brought out in a book. Nancy Newhall brought out a book on Ansel Adams that was to be in the exhibit format series, and there were some problems in that book that caused a rift between Adams and Brower who had prior to that--certainly during the mounting of "This is the American Earth"--they had worked closely, and had been good friends. Also, it was at about the same time that David Brower enlisted Eliot Porter who did color photography and who became a member of the board of the club, also. David set him up and stopped using Ansel's black and white photography and began pushing Eliot Porter and other color photographers in his exhibit format books. I would not be surprised that there wasn't some merit to the gossip that Ansel Adams was angry at the infringement, particularly since he felt that David had been given his start in his exhibit format books through the significant work that he and the New York editor had contributed in mounting the show.

Wilmsen: What was the problem with the *This is the American Earth* book?

Torre: It wasn't *The American Earth*, it was the book that followed *The American Earth* which was, I think, a biography or something dealing personally with Ansel Adams himself. That book did not go as well.

Wilmsen: Okay. What was the problem with it?

Torre: I don't know. I just heard it as gossip that they had a falling out over that book. It may well be that David was insisting upon eliminating pictures that Ansel and that the other editor wanted included. I don't know what the problem was, but I would not be a bit surprised if it wasn't an artistic argument. I have no knowledge. All I can do is to give you that hearsay gossip and I'm sure you've got it from other people before.

Wilmsen: Actually, I hadn't heard that one.

Saving Nipomo Dunes at High Environmental Cost

Torre: Well, at that time, Ansel Adams was supporting Will Siri and Richard Leonard in opposing Diablo Canyon. The problem was that the club had opposed PG&E's development in Nipomo Dunes. I don't

know whether you know what the issue of Diablo Canyon was, but apparently the Nipomo Dunes, which are an area on the shore south of San Luis Obispo--when you first come to the shore, the first town you reach at the shore, the Nipomo Dunes are in that area. PG&E had considered putting a nuclear plant there that ultimately was located in Diablo Canyon. The Sierra Club had opposed it because there apparently was a very unique and special wildflower or some endangered species whose home was in the Nipomo Dunes. To protect that species, the club had opposed the project and had negotiated with PG&E to relocate it. The relocation was in Diablo Canyon. David Brower had participated in that, but probably because of his views that had hardened by that time--that you always fought, you didn't compromise--was opposed to the Diablo Canyon as a solution. But the board, the majority of the board, wanted to save the Nipomo Dunes and it was apparently a very close call. And then came the issue, were they going to keep their deal with PG&E? The disagreement about Diablo Canyon really was, were you going to keep a deal that you had made or were you going to create a public disturbance over it? They kept the deal. And it did split the board. This was occurring while I was preparing my brief, which is why I learned something about it.

Subsequently, I learned--I heard, I don't know whether I learned--but I heard from an environmental activist and his wife who--his wife is the activist--who created an organization that saved small things like oak trees in a highway division. I don't remember the name of the organization, but it was something like that, and it was in San Luis Obispo. But they did a lot of very important work. He was an architect on community planning in San Luis Obispo.

What I came to understand was that in that area among the activists, this Diablo Canyon location was far more serious a matter than the damage that might have been done to the Nipomo Dunes. The endangered species was not quite as endangered or as rare as the fuss that had been created over it, but placing the nuclear plant in Diablo Canyon resulted in--in order to get the electrical energy out to the customers, particularly in the Central Valley--resulted in high tension wires and development such as clearing a large area to avoid fires that was quite a beautiful, important valley area between San Luis Obispo and the ocean. That area has been very seriously damaged aesthetically as a result of that relocation in a way that less damage would have occurred in moving from the Nipomo Dunes east to the Central Valley.

I do know that there was tremendous damage done scenically and aesthetically to that area because I have a friend who was a

partner of mine and a friend, David Strain, who had been working on the Sierra Club legal committee and also flew an airplane. He did take Martin Litton, who was at that time on the board, to do an aerial survey of what had been done by PG&E in getting its wires out. My friend, whose judgment I trust in this regard, was appalled by the criss-crossing and damage that had occurred--trees cut down in order to create safe corridors for these wires carrying so much energy. So there was good reason other than just the fact that nuclear energy is something to avoid--there are other good reasons, environmental reasons, to have avoided the installation in Diablo Canyon.

But the question at that time, unlike today--today there's grave question as to whether nuclear plants are justified at all and I think they are on their way out. But at that time, that question did not exist. A plant was going to go up, and it may have been better that it be at Nipomo Dunes than in Diablo Canyon or in any other place on the coast.

Does that answer your question?

Wilmsen: Yes. Is there anything else about the David Brower controversy?

Torre: David Brower may have believed that the fact that he and Ansel Adams and Will Siri and Leonard were on opposite sides was the reason the board wanted to fire him. I don't think it is the reason. I don't think it is the reason because Ed Wayburn, who was then president, was the person who had formed the reorganization committee. And I know from Ed--my experience--Ed was in the middle between the David Brower faction and the people who were opposing that faction. And I do know from my association with him that he was very concerned about the inability of the board to control its executive director. He did not want David's job.

Early Days on the Sierra Club Foundation Board

Wilmsen: Then you became a board member of the Sierra Club Foundation.

Torre: That's right. The foundation had been formed, I think, about eight years before. It was within the first year of its activities when they were quite in their infancy. We used to meet quarterly at Richard Leonard's home in Berkeley. We had just hired an employee, Cole Wilbur. He was the sole employee of the foundation. He was to keep the books, raise money, and see that whatever the board had to do, that it was being carried out.

I don't know what--he wasn't the executive director at that time. He was a chief administrator or a similar title.

Cole Wilbur ultimately, after he left the foundation, became I think--he is the executive director of David Packard's foundation. He has had a very important contribution in his lifetime to the managing of large charitable funds for many different types of charitable activities, many of which are environmental.

The gifts we were making at that time, the funds we were disposing of, the grants we were making, were in very small amounts. We also were making grants to many different organizations. The Sierra Club Foundation board was most anxious to make clear that it was independent of the Sierra Club--that it had an identity separate from the Sierra Club. Even though it was supporting the Sierra Club's charitable projects, it was supporting the projects of other organizations. We would have requests for grants from something like the Point Reyes Bird Observatory, or from somebody who was doing a book on the environment.

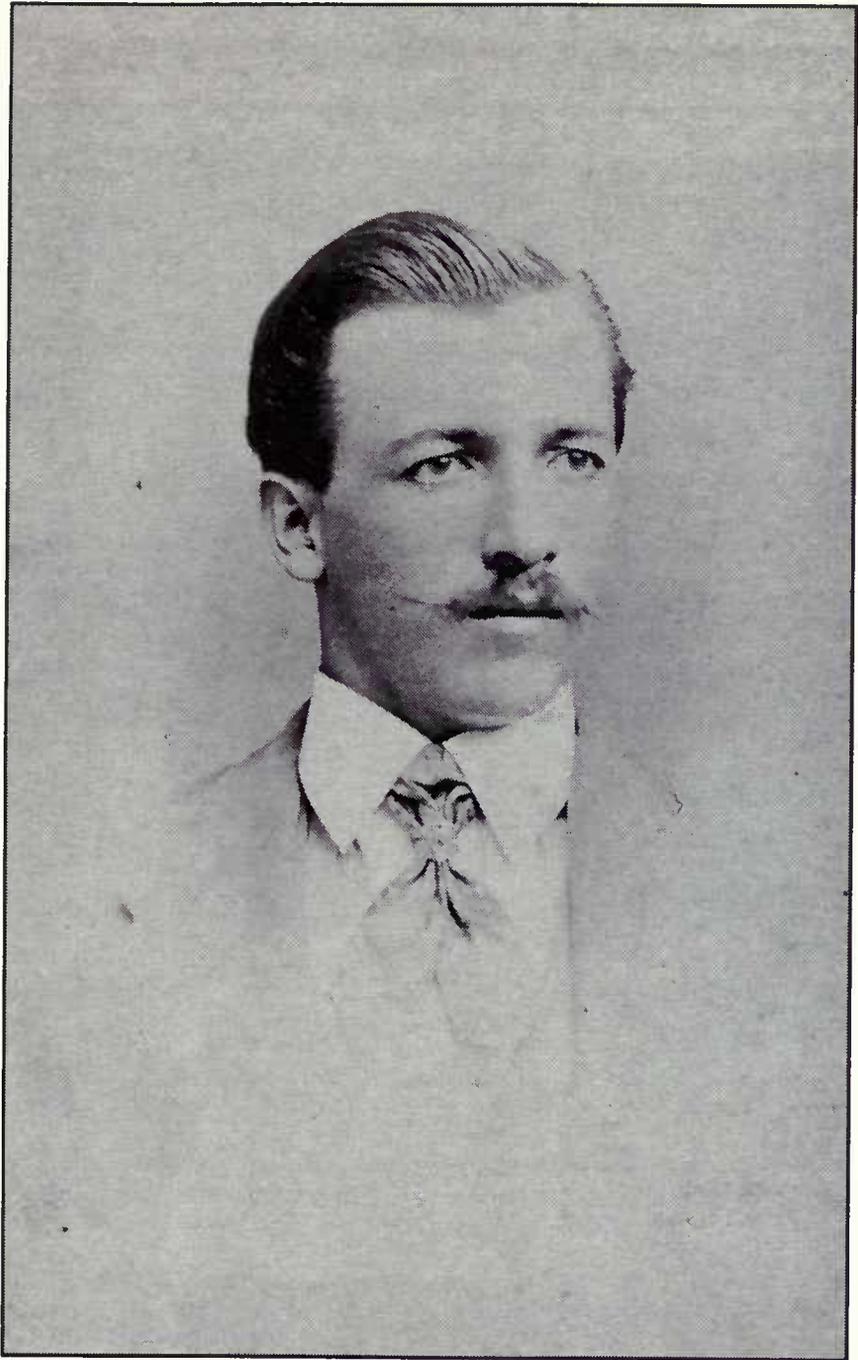
Well, the grants we were making were very, very small--fifty dollars, I think, a couple hundred dollars. They were hardly grants, but they were grants that were being granted, made within the limit of our funds. The grants to the Sierra Club were primarily being made, at that time, to aid publication of exhibit format books: the publication and the printing of exhibit format books. They were very small grants, too. They were in the very low thousands. The amount of money flowing into the Sierra Club Foundation was extremely limited, extremely limited. We could hardly justify having an employee. But we could. We did not pay rent anywhere; we did not have other overhead expenses.

The members of the board at that time--Will Siri was a member, Ed Wayburn. Richard Leonard was the president, Wayburn was a vice-president. Charles Huestis came on the board at the same time that I came on the board. We were the first two members of that board who had not been a president of the Sierra Club. I'm having a little difficulty remembering all the people. The two Clark brothers, Louis and Nathan, were on the board, George Marshall was on the board, an older man who was a CPA, a very fine man--retired CPA, and a professor of the university--I can't remember all the names at the moment.

But at any rate, we had these meetings and the major question that came up was, "Was there lobbying material that we were supporting?" And there was some disagreement on it. The

board was very, very anxious that no question could be raised over whatever the foundation supported.

I don't know whether I'd been on a year or six months, but at one meeting Charles Huestis, who was chief financial officer of Duke University and lived in North Carolina, delivered a little lecture. Charles was an outstanding financial man, a practical man in financial affairs. He was also a mountain climber. He'd been brought onto the board by Will Siri who was also a mountain climber. The last thing in my life that I ever thought would happen is that I would become associated with mountain climbers. I did not climb with them, but they were interesting men. *And* women, I gather, I didn't know any women who were mountain climbers, but the men were. He lectured that Cole Wilbur had been talking to him, that he needed help in his fund raising activities and that one of the responsibilities of the trustees was fund raising and that we had to help Cole Wilbur when he called upon us. If we could initiate fund raising ourselves, that would be fine.



Geronimo Torre (paternal grandfather), circa 1874.

Wm. Shew's Photographic, San Francisco.



Portrait of Sarah Goodrich, painted in Florence, Italy by H.D. Chéne de Verre, 1884.



Annunziata and John Garibotto (maternal grandparents), circa 1910.



Giove and Jessie Torre (parents), 1913.



Gary with mother on the Russian River, 1923.



Giove Torre, circa 1939.



Caroline Torre, 1989.

Photograph by Michael Torre

VIII THE FRONTERA DEL NORTE FUND

Establishing the Frontera del Norte Fund

Torre: Shortly after that lecture, Cole Wilbur asked me to accompany him to Santa Fe to meet a man who might make a substantial gift to the Sierra Club Foundation. This is the Frontera Del Norte that I'm now talking about.

Wilmsen: Right. So you went to meet Harvey Mudd.

Torre: Harvey Mudd. Yes! This trip was to meet Harvey Mudd. You said you wanted to know about the Frontera del Norte Fund; I finally got there.

Wilmsen: Yes. [laughter]

Torre: As a result of Charles Huestis' lecture, I had very little choice; I had to agree to go to Santa Fe with Cole. Well, now the background for that meeting was this: I didn't know any of these people. I hardly knew Cole Wilbur. I came to know him on the airplane.

Wilmsen: Why did he ask you to go with him as opposed to some other board member?

Torre: I suppose I was one of the younger members. At that time I was in my forties and Cole was in his thirties. I was in my late forties, maybe my early fifties, but at least I was younger than [laughing] the other members on the board. Secondly, he anticipated that there might be some legal questions presented by what the meeting was going to involve, and I was obviously supposed to be the legal brains. Richard Leonard was a lawyer-- knew just as much law, as much of this law as I did--but as I said, there were reservations in the minds of some people as to whether Leonard would give legal opinions and not personal

judgments. That's a question about all lawyers at all times. I don't mean to suggest that there was reason to distrust Leonard's opinion. The difference between a legal opinion and a legal judgment is a very fine difference, but it is a difference. I think those might have been the reasons Cole asked me to go to Santa Fe.

What he told me was that a man by the name of Brant Calkin who lived in--I don't know whether he lived in Santa Fe or Albuquerque--but he lived in that area, had been applying for a job as southwest representative of the Sierra Club. Brant had not been hired; he did not have the job. A friend of his had been hired. Just recently I've been told by Brant that three people applying for the job were very good friends who stayed in the same hotel together, in the same room when they were being interviewed; he was disappointed, but there were no hard feelings about not having got the job. I'd always thought that there might have been hard feelings, and I had made a comment reflecting that. This is just about two months ago I learned all this.

Wilmsen: From Brant Calkin?

Torre: Brant Calkin, yes. He said, "Oh, no"--he corrected me--"there were no hard feelings." At any rate, I had never met him before. He had written to Cole, chief administrative officer, identifying Harvey Mudd as a potential donor who wished to establish a trust fund to carry out charitable environmental projects, education projects, in the Southwest, and had written to Friends of the Earth, which had been recently created--because he was a great devotee of David Brower's--indicating he wanted to make a substantial gift. The gift that he had in mind was \$125,000, which in 1969-70, when this occurred, was a large sum of money.

Wilmsen: Harvey Mudd had written to Friends of the Earth or Brant Calkin?

Torre: Harvey Mudd had written to David Brower because he was devoted to David Brower, probably because of the Grand Canyon ad. He was living in Santa Fe. He was a young man at that time; I think twenty-nine, thirty-one, something like that. Brant Calkin was a contemporary of his. They were at least fifteen to twenty years younger than I was. He never had had a reply to his letter, but he still wanted to commence his project, and that's why Brant was writing to us. But, he had understood that our organization was not going to be a very active organization in the environmental world. So I went to Santa Fe to meet him. We met at a college campus--St. John's. A beautiful day! I'd never been in the Southwest. I had driven across the Southwest. I had been on trains across the Southwest, but I never had been out on the

land. Driving from Albuquerque to Santa Fe was more intimate than I had ever seen. It was a beautiful day. The mountains were quite beautiful. I had flown over those mountains when I was in the air force training in Utah and in Texas, but I never had been on the ground. They were quite beautiful and the campus was a lovely campus.

Harvey explained what he wanted to do. He wanted to establish a trust--first of all, he wanted to be sure that the gift would be a charitable gift that he could deduct from his income taxes. He was with his own attorney at the time, a man who later became a member of the supreme court of New Mexico, Seth something or other. All I had to do was assure him that we were a 501(c)(3) organization, which I had no difficulty with, and that we intended to remain one. He wanted to establish a trust fund, the income of which would be available for educational environmental projects that he would want to conduct in the Southwest--that he wanted to propose and conduct.

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Torre: --[He] wondered whether he could establish a working relationship with the foundation. He was going to call his project the Frontera del Norte Fund because that was a phrase that mattered to the Mexican population--Santa Fe having been the frontier of the north of the Mexican government when New Mexico was part of Mexico--and it still had significance for the Mexican or Latin Americans, Latino population of New Mexico. Well, the idea of such a fund was not incompatible with the responsibilities of the foundation, *except* that he could not have absolute control over it. On the contrary, we had to have absolute control. First of all, we could not be a pass-through organization. The project--

Wilmsen: Could not be a what organization?

Torre: A pass-through organization. We couldn't just receive money to hand out to somebody else and still have it be a charitable gift. We had to use it for a project that was compatible with the work we supported.

But it was my view that there should be no difficulty. The fund would have to be set up in such a way where we had the ultimate control over the funds, but there was no reason why he couldn't manage--either by himself or with a board that he appointed--the projects to present to us to see whether we wanted them, whether they were compatible with our activities. If there were a disagreement--if we fell into disagreement--we would have to have a means of terminating the relationship. We would agree to such a means that the funds would be transferred to a

charitable organization under court order that confirmed the other organization was a charitable organization engaged in work compatible with the foundation's, and we would go our way. He could second the transferee. But we could not give him control to do what he wanted without that discipline because it would be incompatible with our restraints.

We talked about that, and he then talked about the kinds of projects he was interested in, all of which seemed perfectly compatible to me with the educational activities that the foundation could and should support and would support.

Wilmsen: So what kind of activities was he interested in?

Torre: Well, he was primarily concerned about the deterioration of the southwestern environment, that the development that was under way that was not only destroying the land, but polluting the air and the water--this was the beginning of concern about pollution rather than just what are significant places of beauty that should be set aside. The air and the water were being damaged in the Southwest as development occurred. These were in the Santa Fe area. These were of great concern.

One of the projects that was under way at this time was a coal plant, I think it was, in the Four Corners.

Wilmsen: Right. The Four Corners power plant.

Torre: Yes. The power plant that was being fueled by coal, if I remember correctly.

Wilmsen: Yes.

Torre: Also, there were, I think, proposals for the placement of nuclear facilities in the Southwest. While nuclear power was not under the cloud it presently is under, the cloud was beginning to form publicly.

He was also concerned about environmental projects within the impoverished classes of the Southwest--the Latinos primarily, the Indians secondarily, the inner city problems--and he wanted to do things about that, to alleviate it. Well, this--particularly his concern about inner city problems--was, to me, a very attractive concern because I felt they were serious problems that were properly within the jurisdiction of organizations like the Sierra Club and the Sierra Club Foundation--if just to clean up empty lots and turn them into play fields in the slum areas of cities or into small parks would improve the quality of life that was pretty desperate in lots of places. The club had not yet

embarked upon an inner city program and actually when this was presented to our board, Dick Leonard felt that if that's all Harvey wanted to do, he had the wrong organization because he did not feel that we were qualified to deal with inner city problems. These were the problems of other organizations, not environmental organizations. This was an older view. That was how Dick felt at that time, and from the years he had committed to environmental matters, contributions he had made, it was not surprising.

Today dealing with inner city problems is viewed as being compatible with dealing with environmental problems. At the time I was a little annoyed that immediate support wasn't going to be given to inner city problems, but I was hopeful that if this fund were accepted, Harvey would come up with projects that would lead us to such work.

Revitalizing Urban Centers: The Most Important Environmental Project

Wilmsen: You felt that inner city programs were compatible with the foundation's mission?

Torre: Yes, I did. I still do. Yes, I do. In fact, I think the most important environmental project today is to revitalize the urban centers of America. I think if we want to end the gasoline pollution, we have to get the automobiles off of the road. Public transportation may reduce it, but it's not going to eliminate it. And public transportation will probably let its own fumes out of some kind.

I think getting people to return to the cities, to be happy to live in the cities, is desirable. That cannot be done unless the cities are made into comfortable beautiful open spaces--that there be parks (many of them), squares, recreational areas, trees; and housing, that whether it's detached housing, or apartment housing, condominiums, all the different forms and shapes of housing that at the turn of the century--the twenties--brought people to the cities in numbers. I think it's a crucial, crucial need. And I think that environmental organizations are beginning to think in those terms.

Wilmsen: That's why you mentioned earlier that in the 1950s you were beginning to formulate ideas about--

Torre: Well, I felt very strongly in the 1950s but I don't think the country felt strongly about it. [laugh] What happened--you see, cities deteriorated. A depression occurred, housing certainly in the thirties in the cities was pretty poor. I think apartment houses had deteriorated into tenements.

The number of families that had to live together in limited spaces because of the Depression were numerous. In the neighborhood in which I lived, which was a middle-class neighborhood in Oakland, I don't think there was a family there that had not doubled up, that hadn't either become two families or had elder members of the family who had once lived in independent quarters living together. People were living under more crowded circumstances.

"A third of the nation," was the great phrase of the New Deal. A third of the nation was lacking housing. (That was a little bit of an exaggeration, but a third of the nation was unemployed, unhoused, or something.) One of the great moves of the New Deal was to get people into better housing by encouraging them to move out of cities into suburbs and build small houses and borrow money which the government guaranteed. This was a way in which they were trying to improve the lives of the people amidst the Depression. Following the war it became a very, very important part of the GI Bill of Rights. The two important financial assistances that were given were to finance the education of veterans and to guarantee the financing of homes. And this is what the New Deal had wanted; it is what the then-liberal government of America wanted--to encourage building.

It was a means of employment, to get building going again. And it was easier to build on the outskirts of the city rather than in the cities. And the idea of everybody owning their own home and having their own garden and eating outdoors began the appalling spread of suburbs across the land in every area of America. And the deterioration of the cities.

Instead of building in the cities, instead of rehabilitating the housing in the cities, the housing went down. And so the cities came to be the home of the very rich and the very poor. And that's what it still is, although I think there is now in process--and I think it began about ten years ago--an effort to reverse that process and get people to come back into the cities. At least that's what I think I've seen and I hope I'm correct.

Wilmsen: So in the fifties were you concerned about the environmental effects of--

Torre: Yes, I was. I was very concerned because in San Francisco, and this northern California area--first of all, there's the peninsula. The peninsula was being completely built up, to the way you see it today.

It happened that my wife's family had a home in Saratoga. And in the summer my wife and children were in that home, and I would commute from Saratoga to San Francisco where I was working. The public transportation was somewhat limited--there was a Toonerville Trolley you could take but you had to be able to leave the city at a fixed time in order to take it, so I was driving a lot. It was just the time when freeways were being built, but the more roads that were built, didn't help a bit. The congestion got worse. It kept getting worse because of the amount of building that was going on on the peninsula.

And then Marin County, which was totally rural in 1950, began the process of what it became today--its high level of residential area and the rural aspects disappeared. The same happened beyond the tunnel here in Orinda and Lafayette, as people fled from Oakland first and then from Berkeley. I know there are tremendous traffic jams and problems of automobiles, though not quite as bad as L.A. And I hope we never get that bad, but we certainly are not free from the discomfort that such developments produce. That did begin in the fifties. And has kept going and is still going. And is of great concern to me, as you can tell.

If environmentalists want to save the countryside, they must initiate projects to rehabilitate and save our cities. I do feel very strongly that the problem is to begin with the inner city to the benefit of the people living there, primarily, who are living there and who are going to continue to live there. I think it's extremely important from the point of view of the young people that the physical environment that they grow up in be more gentle than it presently is and has been in the past. The facilities that will make their surroundings more attractive will be very important.

Also, what you wouldn't realize is that the people using national parks and regional parks, at one time were never people from the poorer areas of the city, what we would call the inner city today. Today, fortunately, one of the good things is that people who do live in the inner city do have access to regional parks and to national parks and they're welcomed in them and use them. I would say my wife and I first became aware of the change in the population using these facilities in the late fifties; before then it was not common.

Americans began to enjoy America, I would say in the late fifties. Well, I think it's extremely important that they be taught young how to protect America, how to protect those facilities because if you want to prevent litter you have to begin teaching the young. We will have appalling public areas if we don't do something about it.

And those programs, I think, are necessary. I think young people have to be brought to regional parks and national parks and seashores and taught how to use them when they're getting great pleasure out of them. If they live under the conditions of most of our inner cities, they will never learn that. So I think it's a very important environmental program. Plus the fact it'll make them healthier people--the most important fact, I think.

Did I finish my lecture?

Wilmsen: Yes. [laugh] Okay, and so--

Torre: That was not a question to ask me. [laugh]

Wilmsen: No, I think I got some good information that we hadn't gotten before.

Torre: Well, you asked me what did I feel about the environment; that's what I feel most strongly about.

An Enormous Gift

Torre: Anyway, getting back to the Frontera del Norte. The real issue was: could Harvey trust us? Would we be able to work together, and could we trust him, because it was going to be difficult to transfer the funds to another organization, and he didn't want legal problems. We understood that he was going to use Brant Calkin as a right hand man in finding, developing, and implementing projects. And we had some knowledge of Brant because of his activities in the Sierra Club. There were reasons why mutual trust could exist. Of course, it was extremely desirable from the point of view of the foundation that this enormous gift of \$125,000 be available for its use. We had not seen such assets before.

Wilmsen: Was that the single largest contribution to date?

Torre: At that time, yes! Oh, yes it was. Nothing like that had been received previously.

Wilmsen: What kinds of amounts of money had been donated before, prior to that?

Torre: Some appreciated stock that may have had value. We had to sell it. Sometimes we didn't sell it because we knew they hoped we wouldn't. Maybe \$20,000 in those cases, but I think most of our gifts were in the hundreds. Hundreds, thousands, small thousands.

Wilmsen: I see. So \$125,000 was really--

Torre: Oh, \$125,000 in 1969 was a lot of money! Remember when I was hired, I was told that charitable money that the club was collecting was about \$125,000 a year, and that made all the difference in their program.

When you look at the club's budget today, \$50 million, it's very hard to believe that such small sums could have been so important.

Concerns about the Fund: Mudd's Reliability

Torre: I came back, reported. The board members were primarily concerned as to whether this young man was going to be reliable, or whether he was going to try to sneak lobbying programs by us. I said I thought he'd be reliable, but in any event we were going to set up a fund and structure the fund in such a way that nothing could be sneaked by us. And we would be hopeful we'd have some discipline from Brant Calkin who was going to help him.

Well, I drafted the documents and they went to his attorney. And they were changed here and there, and basically the Frontera del Norte Fund was as we talked about it. We had ultimate control, but there was going to be a Frontera committee of three people all under Harvey's control. So really the Frontera Committee was Harvey. The committee was there so that if Harvey died or had an accident then the fund would still have an ongoing life, how it could be administered. That was basically why we had to have a committee because the fund was immortal.

Wilmsen: So what kind of control did Harvey have? Or, what was his role?

Torre: Over his committee, well, he could appoint or fire the committee. They came up with projects--had to be submitted to us--what the project that they were carrying out was going to cost, how much money they were going to need from the fund. And we would look

at it and see whether the project was compatible with our overall program. If they had come up with a project contrary, for example, to the kind of objectives that the Sierra Club was seeking to achieve, we would have considered that. But since we were prone to favor the Sierra Club's environmental projects--charitable, educational environmental projects--if they were proposing something absolutely [contrary to the club's objectives]--for instance, if they were proposing an environmental project that was to put a power plant somewhere where the club did not want a power plant, we wouldn't have supported it. We would have looked into it and we would have not okayed that project.

But that was what Brant Calkin was supposed to be advising Harvey Mudd on. He was never our employee, he was either an independent contractor helping Harvey Mudd or an employee of Harvey Mudd. He never was an employee of the foundation, although he worked very closely with Cole Wilbur and kept him informed of what Harvey Mudd's projects were and what he wanted them to be.

The Effects of the Fund on Mudd and Calkin's Finances

Torre: Oh, the one thing I should tell you that had distressed me was that Brant was an engineer, had been employed as an engineer, and he was going to give up that work because he wanted to do environmental work. He was basically going to become an environmental consultant, primarily to Harvey Mudd. He had not been hired by the Sierra Club. Who else he was going to consult with and be employed by I don't know, but it was going to be with Harvey Mudd.

I, personally, was very concerned about these two young men who seemed to me to be taking a wild gamble with their future. Brant was not a rich man, it was obvious. He was a trained engineer, he had been hired as one. He was giving up his job and was going to live by his wits to serve the environment. And Harvey was, as I say, twenty-nine to thirty-one, I would have guessed at that time. I knew that Harvey Mudd was a member of a very rich family, and I assumed that he had received capital from his parents or grandparents. But \$125,000 was a lot to be giving up and I was concerned that he might be giving up assets that were essential to his own independence.

Actually, at this meeting I delivered a long lecture to them along the lines that they were the endangered species and not to

go down because of financial disasters they might be bringing upon themselves.

Wilmsen: What was their response to that?

Torre: Well, they said they could look after themselves. They said I'd grown up in the Depression and what they were both beginning were very dangerous things but they felt, well, they could handle them. And so they thanked me. I really meant what I was saying because I felt that they may have stars in their eyes, and here I was, an older person, taking their lives away from them. I didn't want to be in that role. So I was a pompous ass.

They went forward and we accepted the money.

The Cost of Administering a Restricted Fund

Wilmsen: Now a quick question--the papers in your files that we have in The Bancroft Library call the Frontera del Norte Fund a *restricted fund*.

Torre: Yes, it's a restricted fund, so it can only be used for projects presented as those papers outline how they're to be presented and okayed by us.

Wilmsen: For the Southwest?

Torre: Oh. Yes. Primarily the Southwest. It was not just New Mexico, it was Colorado, Arizona--Mexico, I think was included--but it was environmental projects of the Southwest, primarily. It was to be a regional administered fund, but it also recognized that something could be occurring in southern California [laugh] that might affect the Southwest. And the fund might be used for a project there. It wasn't likely because there wasn't going to be that much money.

Now one of the things that I had overlooked and not thought about because of my naiveté was that it costs money to administer funds. No discussion had occurred as to what, if any, contribution Harvey was going to make--that the fund was going to make--to the general funds of the Sierra Club Foundation. And we would be using our general funds to cover the costs involved in administering the Frontera del Norte Fund. A major cost would have been Cole Wilbur's time.

Cole Wilbur would have to spend time--that was the one employee we had. I think Cole was on the verge of hiring a secretary, but it would have been his time that would have been spent on those projects, which would have meant that he would have less time to spend on the general work. And maybe we would have to have more employees because of that. Our overhead! Basically, I think our concern was that if we were going to carry responsibility, which meant the board's time--which was an uncompensated board--there ought to be some recognition of that responsibility we were carrying. We were going to carry a responsibility by using general funds of the foundation for the Frontera fund's general use. This would reduce the funds available for Sierra Club projects.

I had not discussed this matter with Harvey. And it was the sole matter that did hold up acceptance of the Frontera del Norte Fund. I'm telling you this because it does bear on what became a very important matter later.

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Torre: It was the interest of the endowment that was going to fund the Frontera projects, so that means the interest could hardly be diverted to the general funds of the foundation. I was at that time a member of the board. I had attended this meeting, I drafted the documents, but I did not participate in the discussions that ensued between the officers of the foundation's board and Harvey. I don't know whether the discussions were held by Richard Leonard with Harvey, or whether they were held by Ed Wayburn with Harvey, or both of them with Harvey, but there were discussions.

It was reported to me--I was not a party to them, so again, I'm commenting on hearsay which I believed to be true at the time, and still believe to be true--that when the subject was brought up with Harvey, there were various proposals presented to him about covering the administrative costs, all of which were rejected. I think you will find in my correspondence on the Frontera Fund some of those proposals--the documents that were sent to him. It was explained to me, ultimately, that Harvey had indicated that in addition to the endowment he was setting up, he would be giving other funds for the projects. He would be seeking to solicit funds for the Frontera projects which funds, before being expended, would be held by the foundation and be productive of interest, or dividend income, which would be diverted to the general funds of the foundation to cover its responsibilities and expenses.

Now this is compatible with the universal treatment of restricted funds by all foundations. If somebody makes a gift to a charitable foundation for a restricted project, unless agreed to expressly otherwise, any earnings on those restricted funds divert to the general funds of the organization holding the restricted fund. Now the donor of the restricted funds can negotiate and insist, just as the Frontera's (a restricted fund), income was not to be diverted. It was to be held for the projects of the restricted fund. However, unless provided to the contrary, such income automatically goes to the general funds.

And I had been told that that had been talked out with Harvey. And Harvey had assured the people discussing it with him that there were going to be sufficient funds earning money, whose earnings being diverted would more than cover the expenses. And he, in any event, had indicated that he had no intention of exploiting or taking advantage of any organization--that it would work out. So in a sense, they went forward on trust.

And the trust was perfectly justified. Harvey was true to his word. I did not know it at the time and it's only quite recently that I learned from Steve Stevick, the retired executive director of the foundation, that Harvey, over ten years of activity, had donated upwards to a million dollars in money to the projects of the Frontera Fund. Money added to the \$125,000 approached a million dollars. It wasn't a million, but it approached it. And I don't know what other funds--I don't know whether the funds had all come from Harvey. My understanding was that they did. But there were other funds flowing into the Frontera project, so that Harvey was true to what he had represented.

We went forward with this fund and it was a happy relationship, as it turned out. And I was associated with this great gift.

Ray Graham's Gift and a Plan to Purchase Land for Environmental and Social Purposes

Torre: About a year after the fund had been established--I don't think it was two years; it was a year plus some months I think--I was told by Cole Wilbur that Harvey had received a gift from a man in the Southwest. Rather, the foundation had received a gift that was to be used for Frontera purposes, of \$100,000--or to be used under the Frontera procedures.

Harvey wanted that gift earmarked for the acquisition of real property that he was looking for to do two things. He had a project in mind that he'd wanted to acquire some real property that could be used for herding sheep, which was a primary activity of the Latin community in the Southwest who were in need of land to get the wool, use it, sell it, for weaving, or whatever. He wanted the project to be conducted in a way where the grazing was compatible with sound and proper use of the environmental resource and did not exploit and destroy the land. Also the land was to be used for recreational purposes for the inner city children of Santa Fe and Albuquerque. This was a project that he wished to carry out to prove that you could provide economic support through grazing without damaging the land and that the land could be used to sustain and enhance the lives of poor children. Well, it was a noble project on both counts.

Wilmsen: And how did people on the Sierra Club Foundation board feel about grazing?

Torre: Well, that's a very good question. [laughter] The fact is, the issue of grazing was never in my memory explicitly discussed. Looking back upon it, I wonder now how Harvey could have thought it was possible that a project would have ever been shaped that involved grazing that was economically feasible and acceptable to the people running the herd that would have also been acceptable to the foundation's board. And I feel a little naive if not a little stupid that it never had occurred to me to think about it.

The fact of the matter is, environmentally sound uses of land for grazing can only be undertaken by the largest, largest, richest projects that can discipline themselves. Small users will overgraze because economically they have very little choice. If you have a large enough holding and you have a large enough herd, and a large enough discipline, and care enough, I think you can use the land responsibly. As I understand now, the people who really rip into--not all, there are large lumber companies that rip into forests and strip them, but a lot of damage is done by the small loggers because they cannot do the cleanup that's necessary. They do not have the means to use the forest in the responsible way that is environmentally sound. And I think this is true of the use of land for grazing or any agricultural purpose. To be environmentally sound requires self-discipline. And self-discipline requires economic soundness that small operations seldom have. I think this is the reality. I hope I'm wrong, but I fear not.

Reservations about the Foundation Becoming a Landowner

Torre: It was never discussed. Looking back on it, I don't think such a project could have ever been put together. The acquiring of the land for recreational purposes, recreational land--that was possible. There's no doubt about it. The main thing that was discussed was that there were a number of board members--George Marshall being the most articulate--who did not want land, did not want to become a landowner because the responsibilities attendant with being a landowner, he appreciated quite rightly, are enormous.

I had personal reservations about becoming a landowner. If we became a landowner in New Mexico we were submitting ourselves to the jurisdictions of the state and county. We would have responsibilities for the maintenance of the land; we would have insurance problems. So I was very nervous about earmarking this gift, which turned out to be \$100,000, that Harvey wanted set aside for land acquisition.

The donor who was making this gift was a man by the name of Ray Graham. No trustee knew the man. No trustee ever had any contact with the man. The only contact that we ever had with the man that I knew of was a letter from his accountant seeking the assurances, documentation that we were a charitable organization who had a 501(c)(3) status. And that the gift to our organization, even though restricted to be used under the Frontera--not to be added to, but to be used under Frontera procedures--was compatible with the charitable deduction. Cole Wilbur wrote a letter which he cleared through me confirming that. And that was the only contact that I think the foundation had with Mr. Graham at that time. I don't think Cole ever talked to him or with his attorney. He may have, but I don't think he did. The only official communication was that letter.

Now what communications Harvey and Brant Calkin had with Mr. Graham I don't know, except what they have said. They have said that he was a friend of Harvey's. I don't know if he was a friend or an acquaintance that Harvey knew socially, or had known socially. And I gather Harvey, who was high as a kite about his Frontera Fund, and what he was undertaking to do with it, and had done with it, had told this man--who I gather had some connection with the Firestone family and was a very wealthy man, and why he decided to make a gift to use for Frontera del Norte--designed projects, I do not know--but Harvey and Brant had been emphatic that they gave him no assurances that it was going to be used for any particular project. He evidently never did read any of the documents. (This is testimony from lawsuits that ensued, or from

depositions in lawsuits--not testimony; none of them ever went to trial--except, yes, one did. And Brant and Harvey both testified.)

The fund, at any rate, was received by us so earmarked. A few months after it was received at one of the board meetings--oh, I had said the board was--you want me to go on with what I'm talking about?

Wilmsen: Yes.

Torre: You have it all already?

Wilmsen: No, I don't have any of this.

Torre: You see, this became the subject of the lawsuits that were of such pain and suffering for the foundation.

Wilmsen: Right. How did the board resolve the issue of not wanting to own land?

Torre: They didn't. The board had a very great problem hanging over its head. I think I've already mentioned at some point that the Sierra Club owned various tracts of land that had been either purchased or given to it to protect natural important areas like the Tuolumne Meadows land that they owned, and land in Kings Canyon, and land on Shasta--plots that were either given or were about to be developed and were acquired by the club. Some of these parcels of land were extremely valuable in terms of potential use.

The legal committee of the Sierra Club at about the time I went on--following David Brower's resignation, and therefore contemporaneous of when I had gone on the board--had become very concerned that some of this land might be attached by creditors of the club because the means of satisfying the creditors--liquid means--were not available. And that could have been a very serious matter, so before anybody made any claims on these lands or anything like that, the club wanted to give it to a charitable organization for protection. And they wanted to give it to the Sierra Club Foundation.

This was extremely difficult for me because one of the members of the legal committee was my partner, Don Harris. I did not particularly want to have the foundation receive land. But I also did not want to frustrate my legal partner's project. So I did support the acceptance of that gift, which was discussed at length, very, very reluctantly. Very reluctantly, the Sierra Club Foundation board did accept the gift from the Sierra Club of

all parcels of land it owned. As you can appreciate, the Sierra Club Foundation board found itself in a position where land that each of the members of the board were familiar with and considered precious was endangered, and they had a means of protecting it--a means that was not incompatible with their charitable status. And to have turned it down would have put at risk something they held valuable, and would only have been because they didn't want to have to assume responsibility of being landowners. Well, they reluctantly had assumed that responsibility.

So at the time Harvey Mudd wanted to earmark a \$100,000 gift for acquisition of land in the Southwest, we were already landowners. We could not refuse to become landowners. Also, having accepted the gift from the Sierra Club, we had accepted a gift of land in British Columbia which we were landowners of. In short, we had become landowners reluctantly. We did not refuse to be landowners so we couldn't very well refuse Harvey Mudd. We couldn't say, "That's against our policy, it's not compatible with our activity." We already were landowners, but we were scared and worried. So we allowed him to earmark it and we would wait and see.

Our dealings--and this is extremely important on the earmarking--were with Harvey, not with Ray Graham. As far as we were concerned, the money was a gift that was to be used for Frontera del Norte-designed projects, not for a land project. However, Harvey had the right to earmark funds. He did not place it within the endowment and it was one of the gifts of many that were received that produced income that was diverted to the general fund.

Harvey and Brant, however, went to work immediately, trying to find land to buy. And they did come up with a project: the High Mountain Meadow Land, I think it was called--or Ranch Land--that they wanted to buy, or that they felt met the criteria of the kind of land they wanted for Harvey's project and they thought it could be acquired for \$250,000. They wanted authority from the board of trustees to start negotiations on it.

There was a long, long discussion about it. And I can remember George Marshall was very reluctant to authorize any negotiations for the land until they knew what the project was going to be--what, specifically--and how they were going to implement the project. George undoubtedly recognized, although it was never discussed, that the grazing aspect of the project was unrealistic. It was never discussed.

Wilmsen: Why wasn't it discussed?

Torre: Because it never was presented--how the grazing was going to be done, how it was going to be made. It was just generally described "for grazing practices that were compatible with sound environmental use."

Well, before we would have okayed the grazing project, the practices would have had to been presented. And then the discussion of whether the practices were compatible would have come under discussion, and undoubtedly we would have then gone into, with expert advice, on whether it was sound grazing, protecting the land. As I said earlier today, it was very unlikely that a project that was going to be small herds could be economically sound and environmentally sound at the same time. It's very unlikely. So I suspect George knew that and was therefore expressing reluctance about even authorizing acquisition of land. He couldn't discuss the grazing project because it wasn't presented yet. We hadn't got the land--

Wilmsen: I see. The project hadn't gotten to that point, yet?

Torre: Not gotten to that point. One step at a time. I was concerned that what they were asking for was authority to make a bid that would be \$250,000 purchase price with a down payment of \$100,000. But I wanted to know where the other \$150,000 was going to come from because unless there was some reasonable, practical, source of the other \$150,000 it would be gross negligence on our part to put up \$100,000 that might be forfeitable--that we could not complete the contract and then we might have some complaints coming from the donor of the \$100,000 that we had wasted his gift. I was concerned about our fiduciary responsibilities and conduct. These questions were not ever resolved.

The authority was given to negotiate, but before a final contract would be accepted by us, these questions were going to have to be resolved. So Harvey was given qualified authority.

And I'm sure you'll find this in the minutes. I think I wrote a letter to Harvey or Brant Calkin complaining, saying that I felt that they would clearly have to get some kind of clearance from the donor of the \$100,000 that they were going to risk it, unless they were able to give some reasonable assurance where the balance of the purchase price would come from during the term of the contract. Fortunately the contract never materialized and so none of this became relevant. And I was somewhat relieved.

That particular purchase was a bad one, but there were one or two others that came up soon after. None were ever quite as detailed as High Mountain Ranch. The authority that they were given to look into the others was far more qualified than the

authority they were given on the High Ranch. And ultimately the money just sat there earmarked by Harvey for such acquisition. They apparently kept looking, but land values in the Southwest were skyrocketing and they couldn't find appropriate land.

I think--I don't know this, I never have been told this--I think that Harvey had assumed that if he couldn't raise the balance of the purchase price, \$250,000 was what he was thinking of, he would cover it himself. He would not have risked the loss of the money; he was more responsible than that.

It was with some relief, from the point of view of the board, that they couldn't find land. This was their dream and we weren't going to take it away, but we weren't going to have to assume responsibility for their dream. It became a cause celebre for the Sierra Club Foundation, because in subsequent years--

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Torre: I was not on the board when Ray Graham started lawsuits against the Sierra Club Foundation alleging that it had misappropriated a gift that he had made.

The Burdens of Owning Land in Another State

Wilmsen: Can I ask a question before we get into that? You mentioned earlier that the foundation was concerned about if you owned land in New Mexico then you'd be subject to the jurisdiction of the state and the county that the land was in. What would be wrong with that? Were there legal issues about that?

Torre: Well, there could be, yes. I mean we would become a landowner in New Mexico. We were a corporation; we would become subject to the laws of New Mexico--corporate laws as well as landowner laws. The fact that we raised money by solicitations in New Mexico, Nevada, Michigan does not automatically subject us to the jurisdictions and the regulations of the laws of each of those states.

If you receive money in San Francisco that has been sent to you by somebody living in Chicago or New Mexico, Illinois and New Mexico do not get jurisdiction because the donor lived there. They don't get jurisdiction over the organization receiving it. Other activities by that organization are necessary to bring it within its jurisdiction. Now, owning the land within the jurisdiction is quite a substantial activity and you may become

subject to regulation. If we maintained employees, an office in the area; if we sent employees, traveling salesmen to raise money; there are lots of ways in which you can subject yourself to the jurisdiction of another state when you're incorporated. And as the laws evolved and developed, the less you--you don't have to do a lot, today, to submit yourself. In 1970 you had to do a lot more to become subject to the regulations of another state than you have to do today. Owning land was one of the sure ways to submit yourself to that regulation. And that means more legal opinions, it might mean more filings, it might mean lots of things. You are going to have to find out what the law of the state is. Every state has different laws on these subjects and it is a burden.

Wilmsen: Okay, so it sounds like a burden in both staff time and maybe overhead?

Torre: Staff time, professional expenses, lots of things. We were a very small organization. If you're a landowner you can become responsible for the maintenance of fire hazards on your land, or pollution problems, poisonous streams, or allowing people on the land--the use of the land you own in ways that damage other people. You not only have to look at what the use is going to be, you have to look at the laws, the regulatory laws.

For instance, here in Oakland, every spring since the fire in the hills, the fire department comes around and looks at your land to see if you're maintaining a fire hazard on the land. And every spring they will send me a notice that I have a fire hazard because of the weeds. Well, I don't have weeds; what I have is a ground cover that keeps weeds out, never dries up, and is not a fire hazard. And I have to reply to the fire department every year exactly with what I have and why it's not a hazard, and then I get a letter telling me it's all right, I don't have to remove them. [laughter] That could be true in New Mexico, if you don't turn the ground over. I don't know, you can have dry weeds that are considered a fire hazard that you have to plow under. I don't know that that's the law, I'm just imagining.

Wilmsen: I don't think it is. There are weeds everywhere in New Mexico. [laughter]

Torre: Well, at any rate, being a landowner means you have responsibilities. And if you're not on the spot, you hesitate to carry the responsibilities. Did that answer your question?

Wilmsen: Yes.

Mudd Earmarking the Gift, and Lawsuits Charging Misuse

Torre: Now, where was I? Oh, I got to the lawsuit. There were two claims made in the lawsuit that did bear upon what I had been talking about in terms of Harvey's earmarking the gift. And I want to emphasize as far as our board was concerned, Harvey had earmarked the gift to carry out a project that he had formulated. And as far as we then knew or now know, it was not Ray Graham's earmarking the gift.

Graham did maintain in his lawsuit, though, that he had made this gift to buy land and that we had misused the gift for two reasons. One of the ways we had misused it, we had not bought land. The funds had not ever been used for the purpose for which they had been given. Well, an effort to find land had clearly been made by Harvey and Brant Calkin. They did try and they were seeking to acquire land that would have cost more than any gift they had received for their designed project. That much I do know, that they did try, and I do know that it came before the board and it was a matter of great discussion before the board. That is some answer to Ray Graham's claim.

The other claim that he made was that our reason for not having bought the land was that we wanted to use the income in our general fund. It is true that the income on that earmarked gift was used in the general funds of the foundation. That use was compatible with the understanding that had been reached when the Frontera Fund had been set up. It was never even discussed, or thought about, or considered by the board at any time as to what income they were deriving from that earmarked gift because it was Harvey who had chosen to so earmark his gift. And as long as he earmarked it, it was earning income. He had committed himself previously that that was the way in which he would discharge the Frontera responsibilities. So that it was not a matter to be considered or discussed or thought about. It had never been discussed by any member of the board or employee of the foundation with Ray Graham.

Harvey Mudd in his affidavits and Brant Calkin in his testimony have maintained that it was never discussed with Ray Graham. So these two claims which were made, and if they had had any merit would have indicated outrageous behavior on the part of the foundation, were invalid claims. Certainly, from my knowledge as far as the foundation was concerned, Graham had never discussed anything with the foundation.

I met Graham last spring--early summer--during the lawsuit pending in San Francisco. What I should say is--and I think you

have this from other sources--Graham first complained to the attorney general of the State of California about our misuse of the funds, and his complaint was dismissed as having no merit. He brought a lawsuit in the Superior Court of the State of California, charging misconduct, various forms of misconduct. That lawsuit was dismissed on demurrer. Then he brought another lawsuit--

Wilmsen: What does dismissed on demurrer mean?

Torre: The pleadings fail to state a cause of action.

Then he brought another lawsuit in the federal court in San Francisco. That lawsuit was dismissed on summary judgment entered against Graham. I had a deposition¹ taken for use in that lawsuit, but it was never used because the suit was dismissed on the basis of motions that were filed, which is very difficult to win on because if there's any conflict in fact, you'll go to trial. If there's any conflict of fact that is material to the claim, you will go to trial. But apparently the federal court was convinced on affidavits that were filed and depositions that were filed that the facts alleged by Graham could not be proven, so a summary judgment was entered against him.

A third lawsuit--do you know all this already?

Wilmsen: No. I know the general outlines of the story, but I don't know all these details.

A Third Lawsuit in New Mexico

Torre: The third lawsuit that was brought was brought in the State of New Mexico. And that lawsuit was brought primarily by a nonprofit organization.

Wilmsen: Ganados del Valle?

Torre: Yes. It was María's second organization.

Wilmsen: The first was Cooperativa Agrícola.

¹Mr. Torre's deposition is among his papers which are in the manuscript collections of The Bancroft Library.

Torre: Oh, that's right. That lawsuit brought the claims of Ray Graham that he made this gift to the foundation with the understanding that we were going to buy land and give the land to Cooperativa so that it could carry out the grazing projects and the recreation projects--but the grazing projects were the primary projects that Cooperativa was supposed to carry out--and that we had fraudulently misused the funds so that we could appropriate over a million dollars of earnings from the funds over the term in which they had been held. The attorney general of the State of New Mexico supported that lawsuit.

Wilmsen: Another Udall. Tom Udall.

Torre: Yes. Another Udall. Russell Udall's son, I think.

That lawsuit was ultimately settled for a very large sum of money: something just short of a million dollars, part of which was paid to Cooperativa without any strings attached, and part of which was earmarked for land acquisition. And that part still apparently is sitting somewhere earmarked for land acquisition.

The claims of the lawsuit were based on the claims of Ray Graham which had been defeated in two courts at the time the case was settled. There were reasons for settling. The Sierra Club Foundation has always denied and continues to deny any validity to the lawsuit. There were reasons for settling that I don't want to go into because the reasons were discussed and the settlement was framed as a result of executive sessions of the board of trustees, and executive sessions are supposed to remain secret. Having criticized Ted Snyder for publicizing an executive session, I'm not going to do the same. That's the only reason. I would like to, because I think there were good reasons for the settlement that did not justify Graham's lawsuit which I will get to.

It should be very clear that the foundation never would have accepted a sum of money to buy land that we were committing ourselves to turn over to another organization that was relatively unknown to us. Cooperativa was only known to us because of gifts that had been made to it through the Frontera Fund--very, very small gifts--or gifts that we had received before Cooperativa had gotten its own charitable status for projects to be shaped by Cooperativa that were compatible with projects that we were maintaining. We did not know--I couldn't even remember the name of Cooperativa when my deposition was taken, although there were a number of occasions when the executive committee okayed very small--\$50, \$500--kinds of grants that had been received in its name or granted to its projects from Frontera. But we never would have agreed to accept the gift

for the use of an organization--any organization--in the acquisition and use of land without knowing how that use was going to be. We did not agree to that with Harvey. We hardly would have agreed with a strange organization, but that was the source of the claim and the source of the lawsuit.

The ultimate resolution so far to date is a result of the litigation that Graham had maintained. That's not the New Mexico litigation because he was not a party to that litigation, but the litigation in California. The foundation sued Graham for malicious prosecution.

Small Grants from the Frontera Fund to Cooperativa Agrícola

Wilmsen: Can we back up a minute? I have a question. So those gifts or the funds that the foundation released to Cooperativa, was that before they gained their tax deductible status?

Torre: Yes.

Wilmsen: So that was a long time ago then?

Torre: Oh, long, long ago. This was in the first years of the Frontera Fund.

Wilmsen: Because then the Cooperativa folded and it became Ganados.

Torre: Yes, that all happened many years after I had left the foundation board. But in the early years of Frontera del Norte, apparently --and once again let me be very clear, this is all hearsay; I have never met María; I never knew what Cooperativa was doing overall, I would only know specific projects--but it apparently was an organization that Brant Calkin had unearthed in New Mexico. I don't know whether it's in Albuquerque or Santa Fe, but in one of those two cities or in both of them--where its work was being carried out.

Wilmsen: It was actually up in the rural areas.

Torre: Was it in the rural areas?

Wilmsen: Yes, about ninety miles northwest of Santa Fe.

Torre: All right. It was an organization that was engaged in alleviating some of the inner city conditions that Harvey wanted to alleviate, and some of them did involve environmental issues.

And Brant was working with María on some of those projects and there were two things that happened: they would need funds. They were usually relatively small grants that were made from the Frontera Fund. And we would get an application forwarded to us by Brant to make a grant from the Frontera Fund to Cooperativa so that Cooperativa could do X, Y, and Z environmental activity. Now, the activities were new environmental activities. They were activities to alleviate usually poverty conditions as I remember them, but they did have environmental aspects. So that while it was a new form of environmental project, it was still compatible with what the Sierra Club Foundation, as a charitable organization, could support. Which meant that they were educational projects that were to educate about poverty conditions as the environment was affected.

And they were usually very, very small amounts of money. Five hundred dollars I think would have been a large amount. That was one expenditure, that was being made from Frontera Funds. I don't think there was ever a project involving Cooperativa that the grant was of such an amount that it required the attention of the board of trustees or the entire executive committee. I think most of the amounts that were being given could be okayed by the executive director, the head of staff--whatever his title was--or by the president and the head of staff, maybe. Maybe some of the amounts were of the size that required two members of the executive committee, but the fact of the matter is, I don't think the whole executive committee had to pass on any of them because the procedures that were then in effect allowed the very small grants--\$50 grants or \$100 grants--to either be okayed by the chief of staff, the chief of staff with the okay of the president, or the president and the treasurer together. As the amounts got larger it took more upscale approval, but none of them ever were of such a size it went to the full board.

Normally the board learned about these at its quarterly meeting when a report was made of what grants had been made under these small procedures. And the board had either to approve or turn them down. I don't remember them ever disapproving such a grant, they always ended up approving them because the officer making the grant had been very careful about it. Whoever did it had enough evidence that it would be compatible with something the board would approve and not turn down.

I think that the only thing that I really remembered about Cooperativa was that there were grants sometimes made by third parties to the foundation that were restricted grants that were to be used solely for Cooperativa projects.

Wilmsen: Who were the third parties?

Torre: I don't know who they were. They were people in New Mexico who wanted to support Cooperativa, but they wanted a charitable deduction. Cooperativa was not yet a charity, and these were people who I think Brant was working with, and working with María. What was her last name?

Wilmsen: Varela.

Torre: Okay, working with María Varela. Brant undoubtedly encountered people who were very concerned. They didn't want to make a gift to the Sierra Club Foundation for Frontera del Norte projects. They wanted it to be earmarked for a Cooperativa project. They may have been friends of María Varela, people she had worked on, or brought to Brant. This is possibly what happened: she was out fund raising and brought them to Brant. They were going to do this. But they wanted a deduction that she couldn't give them because she didn't have 501(c)(3) status, so she asked Brant, "Would the Sierra Club Foundation accept the gift?" And we did accept such gifts--again, for the use of Cooperativa on projects compatible--it was a restricted fund, but it had to be compatible with projects that we maintained and supported.

While we did not know Cooperativa, they were presented to us through Brant Calkin and we did know him well enough that he was trusted. And again, the amounts were so small that it was trivia.

That was our only contact. I'm stating this: in the years I was on the board of the Sierra Club Foundation, which were the crucial years for the claims in the New Mexico lawsuit, those were the only contacts that I knew of involving Cooperativa. What her relationships with Brant Calkin were, I don't know. Brant Calkin was not our employee. I don't think she had any relationship with Cole Wilbur or Nick Clinch in those years. At least I did not know of it. If she did, I never have heard of it.

Reluctance of the Board to Support the Land Project

Wilmsen: Yes. Now backing up a little bit again, you mentioned that giving funds to projects that educated people about poverty in relationship to the environment was a new kind of project for the foundation. How did you feel about moving into that new area?

Torre: I was very glad that we were moving into that area but I don't think everybody on our board was glad. I think they moved in reluctantly and only because the amounts were small. They had made a deal with Harvey Mudd, and they didn't want to be in any way restrictive in an improper way because most of the projects, the big projects being presented by the Frontera Fund, were very important environmental projects, such as the Four Corners Power Plant.

Efforts to educate the public as to the damage--I think most of the money was being spent to invoke the regulatory authority's attention to something that was going to violate laws already on the books. It was these kinds of projects that Harvey was presenting, frequently.

Also, Harvey had been very amenable to supporting projects that we presented to him that reflected some of the goals of the Sierra Club Southwest Committee--educational conservation goals of that committee--which were primarily at that time involved in identifying the wilderness areas that were to be brought under the protection of the Wilderness Act. (You, as a member of the Wilderness Society, probably know more about that than I do.)

Wilmsen: Maybe. What was the reluctance of other board members to move into that new kind of project area?

Torre: Well, as I said, Dick Leonard, who was a dedicated conservationist, felt that the knowledge and the expertise of the Sierra Club and its volunteers did not embrace the sociological aspects of inner city environmental problems; that their knowledge dealt with the physical, natural universe, the unique areas of nature that needed preservation--how to preserve them, the species that were being threatened--that volunteers and the people associated with the Sierra Club had knowledge in those areas. What areas, and how to deal with inner city environmental problems was something they did not have any particular knowledge of.

I don't know how he felt about the responsibility for places like Golden Gate Park, which are large environmental areas within city limits. I don't think he would have considered working for the Golden Gate Recreation Area incompatible with environmental work, but I never discussed this park with Dick.

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Wilmsen: Now, where were we?

Torre: Well, we were talking about María Varela and her Cooperativa. And I was saying under no circumstances would we have accepted a gift where we were going to buy land and give it away to an unknown group for their use. As we discussed earlier, the use of the land had never come up. It was serious enough just to have bought it, but to buy it and turn it over to somebody who might abuse it so badly, we would have not accepted that risk. So those claims just were preposterous.

Wilmsen: You felt that they might abuse the land?

Torre: We wouldn't have known!

I mean, what the claim of the New Mexico lawsuit was that the gift had been made to us with the understanding that we would buy land, that we would turn over permanently to an organization, Cooperativa, that we knew nothing of. Even if they used the land honorably and whatnot, our board was not a board that was likely to run the risk of being a conduit to somebody who *could* abuse the land if they had absolute ownership of it, and risk being associated with an abuse of a natural resource.

Wilmsen: Okay, so was there ever a proposal from Harvey Mudd or Brant Calkin specifically suggesting that the funds be used to buy land for Cooperativa or Ganados?

Torre: Never, never. The only proposal that we had was that the foundation would buy the land and use it for Frontera projects that they would be shaping and carrying out. And those projects could only have been carried out--that use could have only been carried out with our okay. So they would have had to have presented to the board specific uses that the land we owned were going to be put to.

Wilmsen: Then, as far as you understand, the bases for Ganados' lawsuit were Ray Graham's lawsuits?

Torre: It was the absolute foundation for it, yes.

Wilmsen: I see. Okay, now backing up again, I'm curious about your use of the term "inner city" because the problems in--as you know, I did my doctoral dissertation on environmental problems in rural northern New Mexico, not specifically with Ganados--

Torre: Rural New Mexico would not be an inner city.

Wilmsen: It's not inner city, but many of the problems that you have in inner cities also occur in rural areas in northern New Mexico--not just poverty, but also high drug use, high crime rates, and

all those kinds of things--a lot of very similar kinds of problems. But I'm just curious that you use the term "inner city" there, in describing, for example, why Dick Leonard was reluctant to move into this new kind of project area?

Torre: Well, I guess when I use the term "inner city" what I'm really thinking of are the inner parts of cities like West Oakland, not even the whole of Oakland, Hunter's Point in San Francisco and such places. And as far as we really knew, I don't know that we really knew that the Cooperativa was operating in the northern rural areas. As I indicated today, were they operating in Albuquerque or Santa Fe? Well, I guess the northern rural area up to ninety miles out of Santa Fe, we would have considered part of Santa Fe.

Certainly, the foundation does not have any expertise to deal with drug use. It does not have any expertise to deal with criminal behavior, as such. And it really does not have the medical knowledge or expertise to deal with the underlying sociological problems produced by poverty: medical and economic problems. And, in that regard, Leonard is right in my judgment.

But it does have some knowledge of what is a liveable, pleasing, and healthy environment: air, water, recreational areas; and how that does bear ultimately, particularly on the young, on how they develop, and whether they are prone to joining the drug world or a criminal world; how it can alleviate the limitations of poverty for health reasons. Now, I think if you care about the environment, that is part of the inner city's problem. But Richard Leonard saw the inner city problems as being something different than environmentally-based. And they are not environmentally-based but they can be alleviated, in my judgement, by how you deal with the environment of the inner city. Does that answer your question?

Wilmsen: Yes it does.

[tape interruption--lunch break]

Specific Allegations of Misuse of the Frontera Fund

Torre: Okay, what were we talking about?

Wilmsen: You were talking at lunch about the allegations in the lawsuit that that money was misused to buy land in Santa Fe. In the newspaper accounts, one of the allegations they said Ganados was

making was that the foundation had taken that money from the Frontera del Norte Fund--at least some of it--and bought property in Santa Fe for an office building.

Torre: Oh, they did. They did, ultimately. As I told you when we were having lunch, about from the early seventies--certainly through to the mid-seventies--there were efforts being made to find land that were being presented to the foundation by Harvey. During a part of that period, Harvey had become a trustee. He was appointed to the board of trustees, so we knew more about what they were looking for. Even though purchases were not presented to us, we talked about it still, informally, at different times about what he still wanted to do. We knew they were looking.

Also during that period, Brant Calkin was elected to the board of directors of the Sierra Club and became the president of the Sierra Club. And during the year he was the president of the board of the directors, he became a member of the board of trustees. I don't remember whether Harvey and Brant were both trustees at the same time or whether Harvey had resigned and Brant became president and a trustee at a subsequent time. But at any rate, for a period of time, Harvey was at our quarterly meetings. And Brant was always at our quarterly meetings--whether he was on the board or whether he came as a representative of Harvey's when Harvey was not on the board. So there was an intimacy and an association that developed between the trustees, and Harvey and Brant. And we knew more clearly what they were doing and what they hoped to do, and this subject of land acquisition for their project was always something that came up. And we learned that they had been looking, certainly, up through the middle seventies to late seventies. But they couldn't find land, appropriate land, for a price that they felt they could pay. I gather from what you have said today, that they would have to also have had it in this specific area where they wanted it. At any rate, the funds sat there so earmarked by Harvey.

In the late seventies or early eighties--I don't know whether it was '79 or '80. It was during the period when I was president of the foundation, which was the last two years that I was on the board, we had received a bequest under a will from a decedent in Washington which had left a substantial sum--I think it was either \$250,000 to \$500,000--to the Sierra Club Foundation for the acquisition of land.

And at that time we were receiving requests from the Sierra Club for funds to support its annual block grant in an amount that we could not meet. While we wanted to support the grant because that block grant was engaged in activities we felt were

appropriate and wanted to support, we didn't have the cash to do it. We had been unable to raise money in the amounts that were being requested. And Nick Clinch dreamed up the idea that if he could get Harvey and the Frontera Committee to release the \$100,000 that was in our funds to the general funds, we could then, if not meet the whole request, we could meet most of it. And in exchange for that release, promise when the cash from the bequest came in to hold \$100,000 of it for acquisition of land in the Southwest.

Harvey did agree. He okayed that release. It also was found compatible with the will by the attorney who drafted the will which I had requested because I wanted to be sure that he would not take a view that the decedent intended his gift to be in addition to other funds we had, because what we were really doing was we were going to use the bequest for land purchases, but we were going to release other funds that we had that had been so earmarked. And he might consider that incompatible with the terms of the will he had drafted, but he did not; he okayed it.

But even though Harvey, who was the person who had to okay the release of money received for Frontera projects that Harvey had earmarked for a specific project, had released it, I was personally, as the president, concerned that the donor of that money, Ray Graham, having known that it had been earmarked for a specific project by Harvey, may not approve of the release for our general funds. And I wanted to know what his reaction would be to Harvey's action and insisted that the subject be raised with him. Brant did raise it with him and reported back that it was okay, that the release was okay, so it was released for the general project.

Then when the money came in from the bequest, \$100,000 was set aside and earmarked for acquisition of land in the Southwest.

I went off the board, I think it was in '81--at the beginning of '82--and nothing had been done on the acquisition of land. I did learn, subsequently, that some of the money they had acquired from the bequest had been used in the acquisition of the real property that was used to build Sierra Club headquarters out on Polk Street. It was later abandoned, and I understood that some money had been used to acquire--I think it was in Santa Fe--an office building that was used by charitable, nonprofit organizations, Frontera being one of them. And I think there were others. I don't know what others were involved. I don't know about that acquisition. That's what I understand had happened. The foundation doesn't have that land now--that building now--so I don't really know what had been involved in

those transactions. It all occurred at a time when I was not involved with the foundation. But if it was so used, it could only be so used because that's what Harvey, as the controller over the Frontera Committee, had approved. And why the foundation felt that was compatible with their projects and policies, I don't know. I hadn't been on the board, but there must have been some reason. Okay?

Wilmsen: And then, again, in the newspapers, it said that the foundation borrowed money from the Frontera del Norte Fund, and then did pay it back, but they should have paid more interest back.

Torre: There would have been no reason to. Harvey released the funds; they weren't borrowed. He released \$100,000 to our general fund. The income earned on the \$100,000 from the time it was received in 1970 had always gone into the general fund, which was compatible with the understanding Harvey had about any money raised by the Frontera Fund when the fund was set up, and which he knew and approved all the time. He knew that was occurring. It was not a surprise to him and he approved of it. So there had been no reason to pay any interest on the \$100,000 that had been diverted to our general fund when the \$100,000 was put into an account--actually, it wasn't put into any special account, it was put into the foundation's financial accounts--and earmarked for the use of acquisition of land in the Southwest as we had agreed with Harvey we would do. The money earned upon that fund was being diverted to the general funds of the foundation just like the original money that was so earmarked as being diverted. So there was absolutely no reason why there should have been anything more being paid into the fund. Now, what else do you learn in the newspaper?

Wilmsen: [laugh] I think we covered everything else. Those were the only questions I had. But then there's the matter of the foundation's countersuit against Graham.

Torre: Oh, after all this litigation in which we had been the defendant had been terminated, the foundation sued Graham for malicious prosecution. Now, malicious prosecution would have been for the two suits in California. While the Graham suits in California were the basis for the New Mexico lawsuit, he did not maintain those suits; he was simply going to be a witness in them. And he had undoubtedly discussed his claims and testimony with the plaintiffs. What that was, I have no way of knowing. But we did consider his suits in California and the publicity that he engendered and fed to the press as having been done for malicious reasons.

He was sued in California Superior Court and went to trial last summer in 1997. And in a jury trial he was found liable for malicious prosecution and a verdict entered together with penal damages which totalled approximately two million dollars for the damage he had caused the foundation. That does not take into account, at all, any of the damages that we suffered through the New Mexico lawsuit. It was the damage he caused by his two lawsuits, and because of the malice, the jury multiplied the penal damages, I think by two, or something like that.

I think the verdict in that suit was brought in the summer time, early summer. There were a lot of motions to set it aside. In the late fall, at any rate, a final judgment was entered.

And he has appealed. Graham has appealed that judgment and it is presently pending in the district court of appeals of the State of California. It probably will take another year or so, or more, before it is finally settled. I certainly don't expect it to be reversed.

Wilmsen: Was the board united in wanting to pursue litigation against Graham?

Torre: Again, that was a decision that was made in executive session. [laughter] But I will say that it evoked a substantial debate extending over a long period of time. And it is not surprising because malicious prosecution suits are extremely difficult to win--to be a plaintiff and prevail; it's a very, very hard case to win. Of all of the lawsuits that you can bring, to prove malicious prosecution is very hard because the law and the courts like to keep the door open for people who think they have been wronged. It's hard to prove that they've taken advantage of that public policy, basically.

Wilmsen: What was the evidence you presented that swayed the judge? Or it was a jury trial, you said.

Torre: Well, basically, when I appeared, my testimony covered what I have told you this morning about how I became involved in going to Santa Fe, New Mexico, and the process by which the Frontera Fund was set up. I covered my understanding of what the documents meant, having drafted them.

There was a great fuss at one point in the Graham lawsuits that the foundation never insisted upon decisions being made by the committee, we just did what Harvey Mudd said. That was quite consistent with the documents because he could fire the committee any time he wanted to and find a new committee. So whatever he okayed was sufficient. And I basically did explain that, and why

we even had the committee: the committee was director of the fund if anything happened to Harvey Mudd.

Also, I testified to our not having any personal involvement with Graham. And the last thing was this statement of release: discussing, and getting, the release of \$100,000 with him to be sure he would not be offended by something Harvey was doing. Because the gift had been made to the foundation, not to Harvey--only subject to Harvey's direction.

That was my testimony. I think the day I testified was the first time I ever met Ray Graham. He introduced himself to me.

Wilmsen: Do you think that's what swayed the jury?

Torre: No, I don't. I think the jury was bored stiff with my testimony. [laughter] I think what swayed the jury in the malicious prosecution suit was the testimony of Brant Calkin, primarily--maybe Harvey Mudd (a very charming man). I'm certain it was their testimony that demonstrated, or at least showed the jury, that there had been some lies told by Graham in his lawsuits and assertions, and in the way he handled himself to the press (which you have referred to: the press accounts). He stimulated much of that publicity, and things were reported that Brant and Harvey would have refuted. And I think the jury believed them. And I'm not surprised; they're both straight forward and I think quite ethical, quite high-minded persons. It just shows.

I think my testimony was not of very much importance to the jury. Maybe to the court.

Wilmsen: Is there anything else that we should cover about Frontera del Norte?

Torre: I don't think so. I think I've said everything.

Wilmsen: I think you've already pretty much answered this question, but in looking through the annual report of the Sierra Club Foundation in the early days, back in the early 1970s, it lists the Frontera del Norte office in Santa Fe as an office of the Sierra Club Foundation.

Torre: I gather that. I learned that in the nineties. [laughter]

Wilmsen: Was that because of the size of Harvey Mudd's initial gift, because it was just so big compared to other gifts the foundation received?

Torre: That, and I suppose because we wanted to show how active we were. It was very unwise to do so because that placed us under the jurisdiction of New Mexico. But the Frontera Fund was an asset of the foundation. Harvey had an office out of which Brant was working, and I suppose Harvey was working, also, and I suppose they had secretaries. What else they were doing in that office, I don't know. And if they identified the office publicly as the Frontera del Norte office, which they may have done for the people who had projects they wanted to carry out, they were in effect identifying it as the Sierra Club Foundation office because the Frontera del Norte Fund was our fund.

We didn't pay the rent on that office, we didn't pay the salaries of any of the employees in that office, that would have been covered by Harvey, directly. This was unwise. We did not watch with sufficient care how the foundation was being exposed by advertising that office.

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Torre: We were pretty green.

IX THE FUNCTIONING OF THE SIERRA CLUB FOUNDATION

On Funding Disputes between the Foundation and the Club

Wilmsen: I guess we can move on. I was wondering if you could comment a little bit about the generational differences between the Sierra Club board members and the foundation trustees, I guess it was around the time that Ted Snyder was president?

Torre: Oh, well, by the time Ted Snyder was president, not all but most of the original trustees were gone. I think Lewis and Nathan Clark may have remained at that time. They may still have been on the board when Ted Snyder was president. But the trustees had been replaced by persons appointed by the trustees. And the other trustees had resigned, retired. I don't think any of them had died but they were of an age where they were at the end of their lives. Under the bylaws, the trustees would appoint other trustees.

We appointed Charlotte Mauk as a trustee. She was the first woman who served on the board. I don't think there were any women on the Sierra Club board at that time. And Melissa Wade was a trustee when Ted Snyder was on the board. Also Abigail Avery and Nancy Wheat were trustees. A former state representative was a trustee. Parker Montgomery from Santa Barbara was. I don't think Bob Gerard was on the board yet. One of the owners of the *Sunset* magazine, Melvin Lane, was a trustee.

Wilmsen: Yes, I've seen his name.

Torre: Very, very highly spirited, responsible, publicly responsible person. I think the board of trustees at that time were older than the board of the Sierra Club even though they were new trustees. I would think the average age might have been a decade and a half or so more than the Sierra Club board.

At that time, the board of the Sierra Club was being more popularly elected. Previously it had been elected by the members, but it was pretty much whoever the nominating committee put up. And there was something of a repeating of contemporaries who were already on the board. Substitutes came on in their middle to later age rather than as young people, whereas when the board became more popularly elected, younger people were elected more frequently. Younger volunteers were more prone to be elected than previously. I don't know that there were any women on the board yet at the time Ted Snyder was president, but there certainly are a number now on the Sierra Club board, and there are also a number on the Sierra Club Foundation Board. But the foundation board tends to be older, if not a whole generation older.

Wilmsen: Yes, were there differences in interests in what kind of conservation activities the club should be involved with, or what kinds of things the club should be involved with at all?

Torre: Oh, there's been a lot of fussing on the subject you're asking about. And I would be glad to comment on that. I've been on the foundation board from the late sixties to the early eighties. I went back onto the foundation board about 1994. I had been asked to go back earlier, but I didn't want to. However, I went back later and I'm presently on the board now.

At no time that I have been on the board did the board seek to impose its environmental interests upon the Sierra Club. The Sierra Club's projects that were compatible with the interests were funded by the foundation, but the foundation did not seek to fund or set up interests that were not compatible with the Sierra Club. Policy has not been a source of disagreement. It's been asserted by people that the Sierra Club Foundation tries to fix Sierra Club policy, but I think that is an erroneous, unsupportable assertion. It is true that the foundation does not always have the money necessary to support all of the projects that the club presents to it and that the foundation would like to support. Therefore, some of the projects do not get supported. But there's no picking and choosing among the projects to support only those that the foundation likes. The club, itself, if the money isn't available, does the picking and choosing among the many projects that it may have that, "We consider the projects we want to support." We don't do the picking and choosing. So whatever is said in that regard I think is wrong and insupportable, at least in my experience, which has been a considerable time on the board.

Wilmsen: How did that process work?

Torre: Well, some time after I went off the board in the early eighties, there was a reorganization of the relationship between the club and the foundation. And one of the things that came out of that reorganization was that the foundation stopped undertaking the activity of fund raising and contracted that activity to the club. Now the reason for that was there has never been all of the money the club would like to have to support all of the projects it would like to launch. That has been frustrating to the club. There never has been--even when there was only just the club alone--all the money it wanted, which was why it almost went bankrupt. The funds flowing into the foundation when it was doing its own fund raising, and today, now that the club is doing this fund raising for it, come in two forms: unrestricted funds into the general funds, and funds that are restricted for specific types of projects. Then, when the foundation was doing its own fund raising, some members of the club took the view that the restricted funds were deliberately being sought, so as to further the policies that the foundation wanted to further; and they were thus frustrating the club by not finding unrestricted funds, general funds.

That I don't think was true then and I don't think it's true now. Now the complaint is that too much money comes into the foundation that would otherwise come to the club and enable the club to carry on lobbying and political activities that the foundation cannot carry out, even though the club is doing the fund raising.

The money that goes into the foundation--the major, important money coming into the foundation still is restricted. That is because donors of large gifts have their own views as to what they want to further. It's not because the fund raiser--whether it's being done by the foundation or by the club--is trying to collect money for the policies it wishes to sponsor.

But this is a source of friction between the club and the foundation. It caused *such* friction in the seventies and early eighties, it resulted in a whole reorganization of the relationship between the two organizations.

Wilmsen: That was when the block grants were started, wasn't it?

Torre: The block grants were started in the seventies before then. It was before then. At the beginning a request for each grant was put up separately. Each request for a grant came separately, was discussed separately. Under Nick Clinch they organized presenting an annual block grant--it wasn't annual at that time, it was quarterly, now it's annual--in which the club had its program laid out in the block and we would, to the extent we

raised the money, authorize it if the block was compatible with our objects.

It was always compatible by the time it got to the board because that's the job of staff. If the club has something in the block grant that the staff thinks is not compatible with the activities of the foundation, they will discuss it and work it out. The two staffs will work it out.

Wilmsen: Did it happen very often that the block grant proposal or the proposed amount of the block grant was higher than the foundation felt they could afford?

Torre: Frequently. Frequently higher.

Wilmsen: That one time you got the release of the Frontera \$100,000 to meet the block grant. How did you deal with it other times?

Torre: Other times we didn't. Sometimes we never met the full amount.

Wilmsen: So then you would have to send it back to the club to cut? They had to pick and choose which ones they were going to cut?

Torre: Yes. They decided, we didn't.

Discord over Fund Raising between the Club and the Foundation ##

Wilmsen: Earlier you were talking about a letter complaining to Ted Snyder about breaching the sanctity of an executive session.

Torre: The tension between the club and foundation was very acute in the late seventies and early eighties when Ted Snyder was president of the club, as the result of the shortage of funds to support the block grant. When Ted Snyder was president of the Sierra Club, he was also a member of the board of trustees of the Sierra Club Foundation. The president of the club automatically becomes a trustee. And in the late seventies, the club was being very critical of Nicholas Clinch who was then executive director of the Sierra Club Foundation. And we held an executive session of the trustees in which Nicholas's performance as executive director was discussed. Ted and some others, perhaps, aired criticism that they had of Nick. But generally, the consensus of the trustees at that executive session was to support Nick. But I was directed as president of the foundation to have a talk with him and let him know what the reservations and criticisms were. Ted wrote a letter to his board, in great detail, detailing

everything that had been said at the executive session and generally denigrating Nick Clinch.

Wilmsen: He wrote the letter to whom?

Torre: His board of directors. The Sierra Club board of directors. So he basically violated the rules of an executive session. He could have reported that there was an executive session that reviewed Nick's performance, and had a summary of what had been decided. But instead he went into the details of what had been discussed and *primarily* reported the negative details which undermined Nick with his staff. And it was very disturbing.

A letter I wrote to Ted Snyder was written some time afterwards as a result of the meeting of the executive committee of the Sierra Club Foundation. It was a very difficult matter to deal with because--I thought it was a difficult matter to deal with--because I wanted to immediately write to Ted and protest his behavior. But I was very fearful that this would open a public dispute over Nick and we would--instead of supporting our executive director--we would undermine him seriously. The executive committee was outraged with Ted and directed me to tell him off. And that's what the letter is.

Wilmsen: What were the reservations that people had about Nicholas Clinch?

Torre: Well, at that time, the major reservation was he wasn't producing enough money. At that time, the Sierra Club Foundation was in its infancy in fund raising and Nick was seeking to establish records and procedures for annual fund raising. At that time the foundation raised its own money. It did not hire the club to do it. And the club always wanted more money for its charitable work--publications, etcetera--than we had to give it. And so they were criticizing Nick for not having produced funds on the scale that they wanted, while at the same time he had inherited an organization that had no organized fund raising department. It had no records, no procedures in place and he was in the process--he'd been at it for about five years--of trying to hire fund raisers about the country and establish procedures for keeping records. This was in the early days of computers. Most records had to still be kept by hand and not electronically as they would be kept today. And it was a big job. It was a big undertaking. And ultimately the records that he built up, and the procedures he kept were utilized and useful for fund raising by the club. But it was essentially they wanted more money.

[Also the condition of the national economy in the seventies and early eighties created problems in the managing of money. Members of the club's board, including Ted Snyder, wanted

foundation money to be placed in liquid investments, so as to be readily available for spending and to produce the most income, as was then the case, to be diverted to general purposes even when the income was earned by a restricted fund. The management of its funds is an important responsibility of the foundation. I felt very strongly that neither the trustees nor the club's board were qualified money managers. At best, we could select and hire a qualified money manager. I knew, as the result of my attendance at trustee meetings of waterfront fringe benefit trusts, when managers of funds exceeding \$100 million made regular reports on the condition of the economy and how to manage funds prudently, that the course of action that was being pressed upon the foundation was improper. This, of course, produced tension.]¹

The Role of the Foundation

Wilmsen: What was the major role of the foundation board, then?

Torre: The major role of the foundation was to be sure that they did not engage in activities that jeopardized its charitable status, that is, that the projects that they were engaged in were truly educational, charitable projects, environmental projects; reviewing the projects and being sure that money that had been restricted to special environmental projects were used for those projects and not for other projects. That was and is the major role of the foundation.

The major role of the foundation was to raise money. Today, it still is a major role but it is done indirectly by contracting with the club and then cooperating with the fund raisers hired by the club, to participate with them in seeking to meet people and organizations that will make large grants.

Today, contrary to what it was in the seventies, really very large grants are coming from private foundations. The Sierra Club Foundation is a public foundation: basically funds come from many sources. The private foundation is usually a family foundation. And it is the private foundations that are the source of what are considered major grants: the half a million dollars or several million dollar grants. This is where money comes from primarily. There are still some individuals who make

¹Segment in square brackets was inserted by Mr. Torre during the editing process.

such gifts but it has happened over the years that the very rich individuals have given their money away to a foundation and then over the years the foundation makes grants. The private foundation has to give all of its income away every year, basically. That's a broad generalization but that's the difference between a public foundation and a private foundation, one of the differences.

The big grants come from private foundations: meeting with them, discussing with them what they're interested in, whether we have compatible projects. The fund raisers do most of that, the trustees become involved from time to time.

There is the effort abroad at the moment to get trustees more involved in that. There is a clear view that it should be a primary responsibility of the trustees to participate in fund raising. But the club does not want to forego the control of fund raising. It is because of the past history. The club was wrong in the past, but it was resolved by contracting the responsibility to the club, so that it would not be a source of friction.

The Source of Enduring Friction

Wilmsen: Okay. But it sounds like maybe it hasn't eliminated all of the friction?

Torre: The friction will never be resolved in my judgment because the club's board of directors reflects to some extent, or to a large extent, the will of the members, which is usually the most active volunteer activist members in the club. And they have vastly different interests, as you can tell from various resolutions that are sometimes put up in elections in trying to decide environmental policies. There's not a unanimity of view on how to proceed in saving the environment. And there are, therefore, projects that are dear to different hearts. And competition within the club for funds and facilities to serve those differences is very great. And the person whose interests do not get served to the extent they want them to, look for people and causes that frustrated them.

And it's not surprising that the absence of adequate funds is a major cause of frustration. When the activity involves non-lobbying activities and the funds were not available, the Sierra Club Foundation would be the focus of criticism. And there's no doubt of the fact that there's a very vulnerable area as to

whether an activity is educational or lobbying that there can be great disagreement over.

Wilmsen: On the board of trustees?

Torre: Well, the club may wish to undertake some activities that the foundation considers outside the scope of what it ought to be engaged in. In other words, the club may wish to take activities that are basically lobbying or political activities that the foundation will not support and cannot support.

Wilmsen: Can you give some examples?

Torre: Well, on the political side, the foundation must not have any contact with a political activity. And a political activity would be one in which you try to evaluate the political position --the environmental positions--of political candidates.

We cannot support that in any way whatsoever. A 501(c)(4) organization can have political activities as long as they tell both sides of the story. They cannot be partisan, they have to have an educational political function, but the foundation cannot even be educational on political matters. So you have the question, "Is this project designed to affect a political election?" If it is designed to affect a political election being conducted, as such we must not and will not have any support for it even though if it were being conducted at another time, another way, another place, it would be simply an educational project.

Now lobbying: they may want to run a grassroots ad. And we just can't afford to run it because we've already engaged in activities that have exhausted what we can do legislatively--what they've said we can do legislatively. So we have to look at the activity to be sure that we're not being asked to support something that is outside our range.

Wilmsen: What are some examples of political or lobbying activities that the club asked the foundation to fund?

Torre: Well, [pause] the club could go on a fund raising campaign to raise money for political activities or legislative activities and during that campaign indicate that if the money is given to the Sierra Club Foundation, it's tax deductible (if it's given to the club it isn't) without making adequately clear in the campaign that the emphasis as to why they needed the money that has been placed on the political or the lobbying activities of the club are outside the range of what the foundation can do. In other words they could associate the foundation in a fund raising

campaign that is designed to raise money for political and lobbying activities, so that the people giving the money to the foundation could be misled into thinking they would be supporting political or lobbying activities when, if we received the money, we could not do that.

This is a very difficult area in fund raising--to be sure that they do not make representations to donors that are incompatible with what we can and will do. Even though the funds received are in apparently a general form.

Wilmsen: About how often do you think that there have been those kinds of campaigns?

Torre: Not at all [laugh] because we will veto them if they are proposed.

Wilmsen: I mean, how often have they been proposed?

Torre: I have no idea how often they have been proposed or whether they have been proposed but it is something that *could* happen. I think our staff will stamp it out before it's allowed to. I mean this would be very serious.

Wilmsen: I see. But, what I was asking for was things that actually did happen.

Torre: Actually did happen? The reason I'm hesitating is that I have not served on the grants committee and I don't have any memory of any specific incident in which the club was going to do something that the grants committee stamped out because of the risks involved. I know that there have been instances of it because it's been talked about at board meetings. And I know that the staffs have friction between them and this is the source of the friction, but I can't tell you specific instances or count them.

It is understandable that an activity can be designed simply for educational purposes by the persons designing the activity that might be viewed by somebody else as carrying with it vulnerability under the circumstances of when that education is being carried on. And the person that has something at stake, who is the vulnerable one, will be quite censorious about doing it. And that's what creates the friction between the two staffs. And it will always be there.

This is true not just of us. There are many 501(c)(4) organizations that receive money from affiliates that are 501(c)(3) organizations. And it's a continuous struggle between them.

Important Accomplishments of the Foundation

Wilmsen: That might be a good place to stop. Let me ask one more question. We've talked about the--well, I don't know if the word negative is right--but some of the kind of down sides of things that had happened while you served on the board. Can you talk a little bit about some of the things that happened that you were really excited about, that you felt were good things the club was involved in, and it was good for the foundation, and kind of win-win-type situations?

Torre: Oh, I think that the foundation has given support to some of the fine books the club has brought out during the early years. And I would say most of it was on maintaining the publication program of the club.

I think that the field work that was done on classifying wilderness areas was very important, particularly in connection with the areas that were set aside in Alaska. A tremendous amount of work was done in identifying the special areas in Alaska when the federal government ceded authority over public lands to the state and the Eskimo Tribes, the corporations, and what they retained and on what terms they retained it. There was a lot of field work done at that time. People were photographing, inventorying the natural resources; the foundation put up money for that. They raised money and generally money came in. I think that was very variable. But wilderness studies were also done in the lower 48 states.

I was involved at the foundation in the latter days of the setting up of the Redwood National Park, and the foundation helped to bring out one of the exhibit format books on that project. And they did some of the forest studies for what were to be the boundaries of the park, what was necessary. They didn't do it; they financed the research that was underway on that subject.

In the last four years that I have been on the foundation, there have been enormous media projects undertaken by the Sierra Club that are financed in large part by funds raised through the foundation, on dealing with pollution problems in the northeast, the water clean-up problems. Those I think are very valuable. That's about it.

Wilmsen: Okay. Shall we stop there for today?

Torre: Yes. You got enough?

More on the Frontera del Norte Fund

[Interview 6: April 8, 1998] ##

Wilmsen: We were just talking a little more about the Frontera del Norte Fund and I had a couple of follow-up questions from last time. Well, you already mentioned the board's concerns about purchasing land and turning it over to a third party and having it used for grazing and I was wondering--thinking about what we talked about the last time and the time before--about the board's position on grazing, how it felt about possibly using land for that purpose?

Torre: The board never had an extended discussion and, at best, there may have been off-hand remarks from one or two trustees on the overall project of acquiring land to be used for grazing. However, given the history of the then trustees--at the time this came up, Charles Huestis and I were the only two trustees at that time who had not been a president of the Sierra Club. And Charles Huestis had been a member of the Sierra Club board. I had not been a member of the board, but certainly I would have shared the views of the men on the board. And while it was not discussed, I know that one of the great issues that the Sierra Club has been pushing for a long time is to avoid misuse of land by grazing herds.

Forestry practices, the private industry that stripped the forest, the mining practices of the miners and the grazing practices of the cattlemen of all sorts have historically been the major bones of contention between the Sierra Club and industry. These are the battles of the longest standing that it's been having with the abuse of the environment. And they would never--they never would have allowed funds under their management to be used to acquire land that would be, while the land was under their management, misused for grazing. Nor would they turn such land that they had acquired over to another party who would have the opportunity of misusing it.

Had the project gone forward, had the land been acquired, the next step before the authorization of how that land was to be used would have required a presentation of how the grazing was going to be conducted that would meet the standards of men concerned about misuse of land for grazing purposes. It would have to meet standards that would prove that misuse wouldn't happen. And we never reached that point of discussion.

So what I have said is that the statement that María Varela made in connection with the New Mexico lawsuit, that the money had been given to the foundation with the understanding that it

was to be passed to an organization under her management for the use of grazing sheep, was just preposterous. The foundation would never have passed it for such a use until they had absolute confidence that they were passing it to somebody that is going to be grazing according to standards that they had. And having once acquired the land, whether they would have even considered passing it to anybody and losing control over the policing of that land is a question that never came up.

So do you want me to go on about my surmise?

Wilmsen: With what we were talking about before, I turned the tape on?

Torre: Yes.

Wilmsen: Yes, if you can do it briefly. [laugh]

Torre: I had always thought, as I said earlier, that María Varela was making claims that were preposterous, had no support at all. And I have had--I've never met the woman--but as a result of that, I've had some contempt for her as a person.

I was thinking about what possibly could have occurred and that is that she may have been, in her associations with Harvey and Brant, the source for the idea of the project that they wanted Frontera to take over. And knowing that they got their ideas from her, she then made the next jump, that the money had to be raised for her organization, which of course is not true at all. If you give somebody an idea, it doesn't mean that they have to raise money for your organization. Yet she may have been egocentric enough to firmly believe that, and therefore be able to testify to a fact that would have been preposterous if presented to the foundation.

Wilmsen: Okay, I had a couple of follow-up questions, actually. You talked a little bit about owning property in New Mexico, or I had asked you about the Frontera del Norte being listed in the foundation's annual reports as an office of the foundation in New Mexico and how that put you under the jurisdiction of the state of New Mexico.

Torre: It did.

Wilmsen: Did that have a bearing on these later lawsuits with Graham and Ganados?

Torre: No. It may have had a bearing on the Ganados lawsuit, as to why they could get jurisdiction over us in New Mexico. The gifts that were received in California--personal property--are not

sufficient to establish that you're doing business in the state where the donor lives. But certainly opening an office, having asserted the presence of an office in a jurisdiction, would have been enough of a basis to establish the jurisdiction in the state of New Mexico and not limit jurisdiction over the foundation to the state of California.

However, the attorney general of the state of California has annual examinations connected with his responsibilities to supervise the conduct of nonprofit organizations organized under California laws whose home offices are there. And such examinations have been going on regularly. During the period of these gifts to the Frontera del Norte Fund, specifically the Graham gift, reviews of foundation activities were conducted by the attorney general of the state of California, and the attorney general of the state of California found that nothing improper had ever been done by the foundation. So it was a preposterous act of the attorney general of the state of New Mexico--which at best was a state where secondary activities of the foundation were being carried out--to ignore the judgment of the attorney general of another state as well as to ignore the decisions of the state court and a federal court in the other state regarding the lawsuit that is the underlying basis for any of the claims of the New Mexico litigation.

- Wilmsen: Well, is it possible that he violated some law in doing that, or is it just a question of legal ethics?
- Torre: I can't answer that question. That's a technical legal question. Having once been a lawyer, I would rather not guess at it because it is a question where he may have, but I don't want to charge him with having violated a law. But certainly in administering the law, some respect should have been given to the decisions of two courts in another jurisdiction that rejected the claims that were the basis of the suit brought in New Mexico. I believe sound administration of the law would have required that. And these decisions were further fortified by the judgment and conclusions reached by another attorney general's office.
- Wilmsen: What was his basis for keeping the case in the New Mexico court? My understanding was that he wanted to keep the case in the jurisdiction of New Mexico.
- Torre: She [María Varela] brought the lawsuit. Ganados brought the lawsuit. They [the attorney general's office] joined in to support it. That action prevented its removal to a federal court, which would have occurred had he not joined in. It also gave a dignity to the lawsuit that it would not otherwise have had. But the claims that she had made were clearly founded upon

the same matters that had been the subject of the lawsuit by Graham in the California superior court which was dismissed on demur and in the California federal court in which a summary judgment had been entered against Graham. I don't think res adjudicata would have applied, but estoppel would have applied--could have and should have applied--to stop further litigation. Also, the mere fact of statutes of limitation, and estoppel by laches made it a preposterous lawsuit in my judgment.¹

Wilmsen: Okay, another follow-up question on Frontera, and then we'll move on to your service on the board of trustees. You mentioned a couple of times that Ray Graham owned some property in Albuquerque right next to property the Sierra Club Foundation owned.

Torre: Or at least adjacent to it. I don't know how close it is. There was a disagreement that had developed between Graham and the foundation concerning that property because he hoped to acquire it, or at least, to have the foundation manage it in ways that in both instances they didn't agree on, and there was certainly a disagreement over it.

Wilmsen: Okay, and did that have a relationship to the lawsuit?

Torre: I think it was asserted to have a relationship to the lawsuit. I'm not certain about that. I think so.

More on the Reorganization Committee and Brower's Resignation

Wilmsen: Okay. Let's move on to the foundation. We've talked about your work on the reorganization committee back in the late 1960s about the time that David Brower left.

¹Res adjudicata is a doctrine of law that prevents relitigating a case that has already been decided by another court in the jurisdiction in which the case is brought or another jurisdiction if the decisions of the first court are binding on the second court. Equitable estoppel is a doctrine that forecloses relitigating issues or facts that have been decided in an earlier case, even though the second case may rest on additional and different issues. Statutes of limitation prevent beginning lawsuits after the lapse of a statutorily fixed time. Laches is a judicial doctrine that bars cases that are brought after the elapse of the time that is considered "long" by the court, even though there may not be a legislative bar in place.

Torre: It was before he left, actually. No, it did continue after he had left when Mike McCloskey was hired. It was still meeting. Basically the reorganization committee was trying to find a way in which the board of directors could get a more sure and secure grasp on the management of the economics of the club while still allowing David Brower to remain as the primary spokesman for the activities and projects, and to continue to do the editing work he was doing on what was then the exhibit format series, and to be a source of inspiration to the board but allowing the board to have ultimate control. Essentially, the problem that had developed was that David had taken the club over and was using its resources in a fashion that the board could not condone.

Wilmsen: And obviously the committee did not succeed in keeping David on, because then he left.

Torre: The committee did not succeed in coming up with a reorganization that would have solved the problem. My understanding is that ultimately the board insisted upon an expense account statement that was long overdue and threatened or actually in fact suspended David's salary until the statement was filed. And David resigned because of the pressure that was placed upon him.

I was not on the board, and that was not within the work of the committee, so I'm not certain, but that's what the story was that I had heard and I believe was true. }

Wilmsen: So after Mike McCloskey took over as executive director, did the committee succeed in getting more control for the board?

Torre: No, the committee terminated its operations. The last committee meeting would have been a couple of weeks before McCloskey was hired. There was no reason for the activity of the committee any longer. My understanding is that the Sierra Club was in very serious financial condition, and Michael McCloskey who had been the employee under Brower in charge of conservation projects, was a highly responsible and careful manager of the assets of the club. Restoring financial viability to the club was a major project of the board while it carried on the activities of the club. It did more or less manage to do that.

The club, as you may know from newspaper accounts, always has financial problems. They are of a very different sort now than during the days that I was talking about when the committee was formed. The club is much larger, its operations are far, far more extensive, and therefore it has a much larger staff than it had previously to carry out those projects. Then, circumstances will reduce the inflow of money to the club, and it has a staff and overhead that it can no longer maintain, but at the same time

it doesn't like the idea of firing people and downsizing operations and people. It takes a while to make the decisions that are sometimes required when such downsizing is necessary. This can lead to financial problems, which I understand the club has. I'm not at all close to the club's operations, so by and large what I know is what you read in newspapers and hear by gossip. And I don't really know what the present sources are, but I've been told that it is that the staff gets large and the money dries up and they have to cut back and it's a very hard thing to do. And failing to cut back creates debt.

Wilmsen: Yes. It does for anybody.

Selection Criteria for Foundation Trustees

Wilmsen: We talked a little about how you became a member of the board of the Sierra Club Foundation because of your expertise in tax exempt law. But I'm curious about how the process usually worked, how people become members of the board of trustees of the Sierra Club Foundation.

Torre: The trustees have a committee that searches out new trustees. And the people who are selected, by and large, have been persons who have, through a variety of ways--their activities in the Sierra Club, or in other environmental groups, through their gifts to the foundation--clearly established an interest in the kind of projects the foundation is undertaking, and who bring to the foundation knowledge useful to the board.

For instance, we try to keep on the foundation board somebody who--at least one or two people--are highly experienced in the management of money: bankers or investment counselors who are able to assist the trustees in responsible management of the funds, the endowments and trust funds under their management. There's around twelve million dollars involved, and how it's invested requires some expertise, and so the board of trustees has tried to always keep on the board environmentally motivated persons who are knowledgeable and who have wide experience in investment and management of funds.

Because of the legal questions, I understand that they have tried to keep on the board personnel that are active lawyers that are, if not directly involved in tax matters, are quite capable of coping with them; but at any rate, who are accustomed to the managing of fiduciary funds, and handling the kind of business questions that would come up. Accounting skills are required.

These are the collateral attributes of trustees that the committee considers when it is looking and making proposals. And of course they're very interested in men and women who are effective fund raisers.

A Change in Lobbying Regulations in the 1980s

- Wilmsen: When you were on the board, you were involved in the tax reform act of 1969, is that correct?
- Torre: Tax reform of '69? I'm trying to think of what would have occurred in that act. That doesn't sound right. The reform act that mattered, I think you're talking about is the one that dealt with the words, "substantial lobbying activity". That came in later. I was not on the board. That was in the eighties when that came in.
- Wilmsen: Oh, that was in the eighties.
- Torre: Yes. Have I got my timing right? Let's see, I went on to the board at the end of '60 and I went off the board at the beginning of the eighties, and shortly after I went off the board, I think the code was amended to allow 501(c)(3) organizations to engage in certain lobbying activities measured by their income. It's a percentage of their income, and it differs depending upon whether it's grassroots lobbying or lobbying.
- Wilmsen: What's the difference between grassroots lobbying and lobbying?
- Torre: Grassroots lobbying is going out to the public at large and telling them to write to their congressman and do X, Y, and Z. Other lobbying is going directly to the congressman asking him to enact or prevent the enactment of certain legislation. The grassroots is trying to raise a public tidal wave. But less of that can be done by 501(c)(3) organizations than other lobbying. What the change was that instead of limiting 501(c)(3) organizations to not doing substantial lobbying, they defined it. They adopted certain rules that enabled the foundation to elect to lobby. If it elected to do so, it had to stay within the confines set by the legislation. I think the "substantial" limitation is still there for organizations that don't elect to lobby, but I, frankly, am not sure of that.
- Wilmsen: Okay, [laugh] so you weren't really directly involved in that issue?

Torre: No, I was not involved in that change. I became aware of it afterwards.

Drawing Lots to Become President of the Foundation

Wilmsen: I see. Now you became president of the foundation in 1979?

Torre: 1979, that's right.

Wilmsen: How did that come about?

Torre: Sometime in the seventies the foundation adopted an amendment to its bylaws whereby--

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Torre: --instead of having a lifetime appointment, the term of trustees was limited to three years and you could only have two consecutive terms, and then you had to go off the board. You could come back on the board after a year of being off the board.

This required the drawing of lots by the then trustees, all of whom had been appointed basically for life, as to who was going to go off the board and when. In the drawing of lots it happened that I stayed on longer than any of the other trustees. It wasn't that I stayed on longer, Charles Huestis I think was to stay on after I did, but he was in North Carolina and at that time having a local president of the board was necessary.

That is not necessary now because the board does move around its meetings and doesn't do everything locally as it was then doing. But it happened just by chance that the really experienced people like Will Siri and Dr. Wayburn, Paul Brooks, were to terminate before I was to terminate. And so I was the last of the old guard, and I became president as a result. As the new trustees came on, they leaned on the experienced old guard. So I had two terms as president.

Wilmsen: What was the reason for changing the structure of the foundation organization?

Torre: The Sierra Club had recently changed its rules, also. But the real reason I think was (I think this has affected a lot of charitable organizations) a sense that people shouldn't be allowed to grow old and unuseful by having lifetime appointments. You should have new blood coming in. In effect, you could be on

the board for six years. And I think most of the trustees do have two consecutive terms. The reason they have an interruption is that if somebody has proved they are not carrying their weight or is not in tune with the other colleagues, you don't ask him back. Diplomatically, the person isn't asked back and there's no offence given.

But I think the rule that was adopted is a fairly common rule among charitable organizations, now, or at least large charitable organizations. There may still be some very small organizations without this rule; private foundations undoubtedly have different rules. This is a matter where the law doesn't require any specific rule, but this is current practice.

Wilmsen: Was that a new innovation when the Sierra Club and the Sierra Club Foundation adopted this rule?

Torre: I think when the Sierra Club and the foundation made the changes, they had begun maybe a decade before, but they were gathering momentum and had become pretty representative of public organizations. I'm not sure how many--how many years is the regent of the university selected for? Is it ten years before they have to go off?

Wilmsen: I'm not sure.

Torre: The need of having fresh blood come into these positions is being recognized continuously. People live too long. Nature used to clear the board, [laughter] but you can't rely upon nature to do it anymore.

Wilmsen: Well, that's kind of the focus on youth in our society. But that's another matter. [laugh]

Torre: Now, I would say that on the foundation board I would guess the average age to be very late fifties into the sixties. I'm going to be seventy-nine this year, so I can hardly say that youth is a standard.

One Exception to Only Denying Funding for Tax Reasons

Wilmsen: Yes. In reading through our oral histories in The Bancroft Library, I get the impression that there were differences of opinion, and it kind of seemed to run along generational lines: you had kind of a younger cohort in the Sierra Club who had somewhat different ideas about how the club ought to be run or

maybe about the conservation projects that they ought to be involved in than the people on the foundation board, the trustees. Did that play into that? Did that have any bearing on this kind of creation of new rules?

Torre: I, personally, don't think so. My own experience on the board of the foundation was that if we had the money to support and adopt as a foundation project a project that the board of the directors of the Sierra Club had adopted, we supported it.

We have turned down projects that we have been concerned about that we did not think that we could legally support and adopt as our own projects. There's no question we have done that, and will continue to do it. It is our legal responsibility. But I don't think the turndown has been because the underlying policy that the club was pursuing was being rejected.

The only issue that I can really remember a policy matter ever coming up, did not involve the club; it involved Greenpeace. This was back in the seventies. Greenpeace was going to picket in the Arctic waters an activity of the navy that had something to do with nuclear energy.

Wilmsen: Oh, that was the testing of nuclear weapons under Amchitka Island, wasn't it?

Torre: Yes. And Greenpeace wanted to sail a boat into the areas of the testing so it could not be carried out. (I congratulate you on your knowledge. I only had the vaguest memory of it, and I was sitting on the board.)

At that time, from time to time the foundation was asked to submit to accepting restricted funds for projects of not only the Sierra Club, but other organizations. That is no longer commonplace. It may still occur, but it isn't commonplace. It was commonplace in the seventies.

Wilmsen: You mean it was commonplace in the seventies to establish restricted funds?

Torre: No, no, to accept restricted funds for projects that had been set in motion by an organization such as Greenpeace, as compared to the Sierra Club.

I don't think we are now accepting funds for other organizations. Well, we did recently; we accepted some funds for a project which we adopted as our own project that had to do with the Monterey Aquarium. So we still do. But in the seventies it

was commonplace, that there were a number of organizations who did not have 501(c)(3) status who could raise funds for environmental projects that we were pleased to support and make our own project.

And this was one project that was being presented to us: would we accept the restricted funds? And there was great concern because the project was challenging the federal government. There was great concern as to whether it was compatible with our 501(c)(3) status. And it was my view that it certainly was compatible, that there is nothing in that project that had anything to do with lobbying or political activity. It had something to do with defense activity, but there was nothing in the 501(c)(3) law that prevented us--

Wilmsen: Was that because they weren't challenging any specific legislation?

Torre: That's correct. There was no legislation. It was a naval decision. They were challenging the damage being done to the environment by the navy.

They very well could have challenged the damage being done to the California shoreline by the military establishment at Fort Ord which was dumping a tremendous amount of sewage into Monterey Bay. In fact, when there was an outbreak of spinal meningitis, there were some people who thought it had to do with the misuse of waste materials at Fort Ord, and that this was not only damaging the environment but was killing people. We never did support a project to protest the latter, but had we done so, we would have been at most complaining about how the executive department was damaging the environment. And there is nothing wrong with a charitable organization challenging the executive department, but it certainly is not going to make you popular with the executive department. There were a number of trustees on the board of the foundation at the time this issue came up who were concerned about producing anger in the federal government towards the organization.

It was in the early days of the organization. I think Richard Leonard was still president of the organization. But at any rate, Leonard did bring in an outside advisor on tax issues and ultimately we did not participate in that project. I always felt that the advice we got and that the underlying decision was being made not because of the tax risks, but just disagreeing with the policy of the Greenpeace project, and not wanting to be involved in that project.

Now that is the only instance that I can really remember and think of where we did turn down becoming involved in an environmental project for tax reasons, for lobbying. It was turned down basically on the premise that we were risking lobbying, when the reality was--in my judgment and in the judgment of a number of other trustees, a couple of whom were lawyers--that we were turning it down because we disagreed with the policy, which was never really openly debated and considered. So that's the only instance, and anyone who is saying that we turned down projects because of lobbying and political activity attached to the projects when we really disagreed with the project, I think in the fifteen years I've been associated with the foundation, that is not true.

Soliciting Funds, and Allocating the Budget to Sierra Club and Other Projects

Wilmsen: Okay. Now, you've talked a little bit about how frequently the budget wasn't sufficient to cover all the projects that the Sierra Club wanted.

Torre: Seldom. [laugh] It seldom is.

Wilmsen: And you said that it was then up to the Sierra Club staff to pick and choose which ones would either be cut out of the budget or would receive less funding. But were there ever any projects that you thought were particularly important that the Sierra Club staff then cut--that you personally felt that way?

Torre: No, that is just something that I never concerned myself with. I've never felt it was our business.

You have to realize, when the projects are presented, there will be X number of dollars requested for publications, and X number of dollars being requested for library problems, and for environmental maintenance (cleaning up trails in the Sierra or beaches), conservation studies, and the details (I'm only giving summaries) have to be broken down as to what's actually going to be done on these things and why it's going to cost \$400,000 or \$300,000 or a million dollars.

And when it's approved, generally there is big debate as to how much detail there has to be when approval is given. One way or other the detail has to be there, either when it is approved, or when the money has been remitted to the club; so that we have been satisfied that the funds are being used appropriately.

Now, the only monies that might be shifted around--I mean, where the decision of which project is going to get it--is on the general funds. If we have restricted money for publication, then that goes into the publications. But there may not be enough restricted money for the publications so how much of the general funds are going to go into the publication, instead of going into a conservation project? Now that really ultimately, becomes the decision of the Sierra Club. Because if there isn't going to be enough money, they decide, "Well, we won't have these publications if we want to do this over here," or if they decide that there isn't enough in terms of the general funds, "We will drop that conservation project because we don't want to drop these books," or, "We've committed ourselves sufficiently that we have to go forward and pay the bills on those books." That is an administrative problem that the club, itself, has to answer.

Does that explain why I don't really have an opinion? I can have an opinion about it, but it will be an uninformed opinion.

Wilmsen: Yes, that was exactly what I was asking. That clarified that point.

So, talking more about the kind of nuts and bolts of how the funding worked, my understanding is that most of the money that the foundation raised then went into Sierra Club projects, but that then there were other projects of other environmental groups. You've mentioned Greenpeace.

Torre: In the seventies there were a number. Very small amounts of general funds raised went into these groups. We also raised restricted funds for the projects of some of those groups. Today I don't think it's very common. But I do remember--it's a year ago, I think--we did accept restricted funds for a project that the aquarium in Monterey had underway.

You see, all of the projects have to become the foundation's projects that we're using the foundation money on. They're implemented by using the Sierra Club to carry the project out. The project may have been conceived by the Sierra Club. It's presented to the foundation; the foundation has to decide whether this is an environmental project consistent with the foundation's organizational requirements, and the club may be the person to implement it. Today that is I think almost exclusively the case, except for that one that I can remember. But there may be some other very small projects that the decisions were made on by the executive director and the president acting together that get recorded but they are not a standout in my mind.

Have I answered your question? I don't know whether I have or not.

Wilmsen: Yes, I think so, but I want to ask a few more along those lines.

Torre: Well, go back, what are you reaching for?

Wilmsen: Well, I'm just trying to understand how that process worked of funding projects of other environmental groups. Did the other environmental groups come to the Sierra Club Foundation?

Torre: Well, let me explain. You see, the Sierra Club has a national board and the major activities of the Sierra Club that one thinks of are those undertaken by the national board and implemented by the staff. However, there are local Sierra Club chapters all over the country and the local chapters have undertakings-- lawsuits that they're bringing, or cleanup jobs, publications, educational programs that they're raising--and they raise money for those programs that will come into the hands of the foundation. The foundation will have earmarked restricted funds for a local chapter. Now, you can consider that those local projects, even though they're being carried on by a Sierra Club chapter, it's as if they were a separate organization from the national. The national is not undertaking it. And of course the national's board and staff are continuously concerned and hope that the chapters will raise money for the undertakings of the national board which is what we think of as the Sierra Club.

There is, within the Sierra Club, some conflict over how those local funds are to be used because, understandably, people living in XYZ community are very concerned about the damage that's happening in their backyard. And they may want to bring a lawsuit and have to raise the money to bring that lawsuit, and they're not going to worry about the damage that's occurring in Alaska, if something isn't being done. They may worry about it, but they don't have the same immediate concern, so there can be conflict on those projects. But unless we are informed and shown how the local project is incompatible with the national club's program, we will accept restricted funds for that local program and support it.

Wilmsen: Is that becoming less common now, or more common for a local chapter?

Torre: Well, it's very common. The national board at the moment has programs underway where they are seeking more control over the local activities. The local activities are going to go on there's no question about that; it's how and what degree of supervision, though there may be a lot of question about that.

They're not going to end because the power and strength of the Sierra Club comes from its local chapters, ultimately. It's the ability of the local chapter, the local organizations, to respond to the cry for help that comes from the national board and the national staff--the central staff of the club--that makes the club an effective organization. That's why they're an effective lobbyist.

Wilmsen: Can you think of some examples of instances where a local chapter of the Sierra Club wanted to engage in a project that the board considered incompatible with the overall goals of the Sierra Club?

Torre: I don't know of any. In the time I served on the foundation board, I never was informed that we should not accept money for any project that was incompatible. I am sure that had occurred, but it had never reached the point where the money was likely to be offered to us. The local chapter would have withdrawn the project before it developed to that point. So I don't know of any, but I would be amazed if there hadn't been some instances where a local chapter wanted to pursue something that the board or staff of the club felt was inappropriate, or the timing was wrong, and could cause damage to other programs. I mean, it would be surprising if that hadn't occurred, but it never reached the point where it affected the foundation's relationship with the local chapter or the club in general.

Wilmsen: I see. Were there ever any instances where you received a project to review and sent it back and said, "Well, you need to modify this to bring it into compliance?"

Torre: Oh, yes, many an instance.

Wilmsen: Can you give some examples of that?

Torre: Not really, [laughter] but there have been. I would rather not talk about them.

Wilmsen: Okay. Then getting back to my question about other environmental groups, not the Sierra Club: did the foundation actively solicit applications for other environmental groups?

Torre: Fund raisers for the foundation did not go out and solicit funds for, let's say, the Point Reyes Bird Observatory. A foundation fund raiser might be talking to somebody who was interested in birds and was willing to make the gift to the foundation, but they wanted the gift to be used for some bird activities. Well, the fund raiser might say, "Well, these [are] compatible: there's the Audubon Society that does such and such running a ranch up by

Bolinas, and there is the Point Reyes Bird Observatory projects that we'd be happy to support, and we'd be glad to accept funds to support their project." That, I am sure had occurred in the seventies. Whether it's occurring today, I don't know. They probably earmark it for bird projects that Sierra Club might formulate and develop, and Sierra Club might then delegate its funds for some environmental project that is the primary, if not sole, concern of another environmental organization.

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Torre: All organizations have two things in common. They want to raise large funds and they also want the funds to be used on their projects as much as possible. But they do help related organizations. For example, the Wilderness Society may help the Sierra Club if the Wilderness Society does not have a project on the boards at that moment, but there is one at the Sierra Club that works to the ends that the Wilderness Society is committed to, and vice versa. There is some interplay. Not as much, in my opinion, as there ought to be, but there is some.

Wilmsen: Why do you think there isn't as much interplay?

Torre: Because each organization likes the credit. They're joined together in the larger project, but they want the credit of succeeding. And there are enough demands upon them to succeed in the use of their funds and their personnel that they do not work as closely together as perhaps they ought to. But they certainly do work together; they certainly do lobby for the same things to the extent they can participate in lobbying.

I don't know whether the Audubon Society, for example, or the Izaak Walton League have a 501(c)(4) organization or whether they're just 501(c)(3) organizations. Obviously if they're just 501(c)(3) organizations their lobbying is going to be more limited than the lobbying that the Sierra Club can engage in. And they may do their limited lobbying through supporting the Sierra Club in order to get to the ends that they hope to get to. They all are concerned about various aspects of the environment. And truly are; it's not just for personal credit. That is their ultimate desire.

That doesn't make sense, that sentence. [laughter]

Wilmsen: Getting back to the example you cited of somebody who might be interested in birds, why would they give money to the Sierra Club Foundation and restrict it to be used for projects of, say for example, the Point Reyes Bird Observatory, rather than giving it directly to the Point Reyes Bird Observatory?

Torre: They might not know anything about the Point Reyes Bird Observatory. They may be interested in doing census studies on birds or protecting birds from the cats that are getting too numerous but they don't know what other organizations are so engaged. They may have been approached only by a Sierra Club fund raiser; they may have only had environmental contact with the Sierra Club. And vice versa: there are people who have only had contact with the Audubon Society and do not realize that the Sierra Club may have projects that are as bird-oriented as the Audubon Society.

Wilmsen: Oh, I see. So they might just say, "Well, I like birds, and I want to give money to bird projects."

Torre: [laugh] That's right.

Wilmsen: And then the foundation has people on board, or the Sierra Club, who know about these different projects of the Point Reyes Bird Observatory or the Audubon, and then *they* say, "Okay, these are bird projects, so we'll use this money to support--"

Torre: Or, "Do you have any of your own?" For instance, an easier one would probably be the Izaak Walton League which is very interested in preserving fish in the streams and in the ocean. And obviously the Sierra Club has a number of projects that are concerned with avoiding pollution being poured into streams and into the ocean which is reducing the fish population, or with opposing the building of dams which are changing the environment for the run of fish. The Izaak Walton League may have great concern about the same project, but it may not be very active in the area of the country where that is happening. It may not have an operational root in that area, but the Sierra Club does, and so I can imagine that they might make funds available to the Sierra Club in that area, and vice versa; the Sierra Club might end up supporting a project of theirs. But the fact is that very little of that does occur, but it could occur.

So does that clarify?

Wilmsen: Yes, it does.

Restricted Funds, General Funds, and the Foundation's Fiduciary Responsibility

Wilmsen: Getting back to some of the friction between the Sierra Club board and the foundation board of trustees: in your opinion, did

any of those kinds of conflicts or controversies, whatever you want to call them, have a bearing on conservation?

Torre: I don't think so. I really don't think so. Personally, I think that the conflicts are personality conflicts. From my observation, the charges that are leveled against the foundation by club personnel are not warranted. I don't know that the foundation levels any charges against the club other than if it thinks it's engaging in political or lobbying activity, it won't support it.

But when the conflict became very volatile in the seventies, the club was afraid that the foundation was trying to take over its job by raising money and was going to bypass it; that's what they were really charging the foundation with. It was an unfair charge in my opinion.

I think that the problem that existed was within the club itself. Its board of directors and its members have different environmental projects that they wish to pursue, and they don't always succeed in having theirs given the first priority. And if the money that is being raised ends up being raised and restricted for a project that hasn't been given the first priority by the board, or if somebody on the board has a project that they feel doesn't get enough support in terms of funds, they look for somebody to blame. And they were blaming the foundation, charging that the foundation was raising money for the projects it believed in.

I don't think that was true and in fact, I know it wasn't true. We took money that was for environmental projects that we could support and we hoped to get it through general funds. But I can assure you that people giving large funds give them to restricted projects. There's a certain irony in all this. Donors of small gifts frequently have no concern about itemizing their charitable gifts or other expenses for tax purposes. They take the standard deduction, particularly under the current tax laws because there have been changes to the code to encourage people not to itemize in order to simplify the administration of the tax laws. That was less true in the seventies than it is today. But at any rate, donors of small gifts frequently did not itemize their gifts. They could have made the gift directly to the Sierra Club, and certainly if you're not going to itemize a gift and you're interested in lobbying, you should make the gift to the lobbying organization instead of to an organization that's going to use it for non-lobbying purposes. That, I think, is clear. The people making small gifts generally are interested in the organization that the gift is being made to rather than any specific problem that is being handled by that organization.

Somebody making a small gift isn't going to want to earmark that small gift for a particular lawsuit because it becomes insignificant for the lawsuit, and therefore the gifts do come into the general funds.

But the big gifts--and by big gifts, today, I'm talking about gifts that are in the hundreds of thousands, tens and up--are most of the time going to be earmarked. I would say a gift under \$1000 today is less likely to be earmarked, certainly under \$100 it's not going to be earmarked. At \$1000 you begin to move into an area where you'd find people who have specific concerns. At \$10,000 they clearly have a specific project in mind. And at \$100,000 there's no doubt that they will. It's going to come in in restricted funds.

Now, the major donors and the activities that the Sierra Club Foundation engages in with major donors does mean that we're going to raise more restricted money, perhaps, than general funds. Even though we try to get as much general funds as possible, it's not as easy.

So when disputes arise when the restricted funds come in, we're charged with raising restricted funds. I don't know that we are charged with this; nobody has told me this to my face. I can imagine that they say it behind our back. They say we raise restricted funds for the projects we believe in and not general funds because then they might go to projects we care less for. It isn't true; we try to raise general funds, but we're not going to turn down restricted funds if it's a project we wish to support and believe in.

Wilmsen: Then with the restricted funds, the club doesn't necessarily get involved in the administration of the projects?

Torre: Well, the project usually is implemented by the club. I mean, the restricted funds may come in for, let's say, the Sierra Nevada Ecological restricted fund (there is one). How that fund is dispersed has to be for specific projects that further the ecology of the Sierra Nevada. There are a hundred different kinds of very small expenditures made that serve the ecology of the Sierra Nevada and will come out of that fund. And those projects may be formulated and implemented and carried out by the Sierra Club.

Wilmsen: I see. Does the Sierra Club staff then develop a separate budget for those restricted funds, or is it all part of their general budget?

- Torre: No. When they're developing their budget, they're aware of what restricted funds we have. And they undoubtedly--I don't participate in this part--they undoubtedly try to formulate projects that they can call upon those restricted funds to implement. That is, they're kept informed about what we have, and it then depends upon their imagination and understanding of what is intended by that restriction.
- Wilmsen: Do they present separate budgets to the foundation, or is it just one of the--
- Torre: It's part of the big budget; it's part of the annual.

But our problem, you see--and this is a very important responsibility of the board of trustees and the staff of the Sierra Club Foundation--is if we have a restricted fund, we have to be sure that the project for which those funds are used are consistent with the restrictions, and not just have a surface connection. It has to satisfy what interests the donor hoped to serve when the funds subject to the restriction were given to us. And that is a fiduciary responsibility that we must carry out. That's over and above--it has nothing to do with lobbying or political activities; it has to do with the contract understanding that we have. And having been engaged in the Graham lawsuit in which the donor says we violated that understanding, we are very sensitive to that issue.

- Wilmsen: Does it happen very frequently that you encounter proposals of the club to use restricted funds that don't meet those restrictions?
- Torre: I think the grants committee has had some--I don't serve on the grants committee of the foundation--but I think there have been instances when proposals have been made that, even before it got to the grants committee, our staff has said, "Oh, we have reservations." But I think those are worked out. I am sure that there are instances of that; it'd be almost incredible if it hadn't occurred.

As hard as the club would work in formulating its projects, in asking for use of our restricted funds, they couldn't help humanly making mistakes. And our staff would be failing in doing its policing if it didn't find some when they are made. And our grants committee, before it even gets to the full board, has a responsibility to make sure that the staff is being careful enough. And this is the work of the organization. And I'm sure that there have been [laugh] occasions when they haven't agreed, but I think they work them out.

That isn't where the antagonism develops, I don't think. Human error can occur, but I don't think that's the issue. The major issue has been over lobbying complaints--that this is really a lobbying activity--and our withholding the funds for a project so tainted, or indicating that we're not going to support such a project, so that the club's staff has to redesign the project.

Wilmsen: People would disagree that the project constitutes lobbying?

Torre: People disagree as to what lobbying is, that's correct, and whether it's grassroots or not. Since there's regular restraint in restriction and supervision of grassroots lobbying, it's something we are extremely conscious of; we have elected to engage in lobbying and we're very conscious of the restraints under which we must exercise our lobbying activities.

You're *not* subject to restraints if you're an organization that can engage in lobbying which a 501(c)(4) is. The kind of restraints that we are concerned with, they have no concern with. So it's an add-on for them, it's a problem. Furthermore, we must not engage in *any* political activities, that's forbidden to 501(c)(3) organizations. Whether a lobbying activity may be seen as a political activity, is a question that we have to examine.

And I'm sure that there's been disagreements between our two staffs on that issue because we must be extremely careful not to support an activity that has political connotations, whereas the Sierra Club can carry on some political educational activities. It cannot support specific campaigns, it can only carry on political education of the public at large. But we cannot even engage in that. That is something that we must not engage in and we must not touch it.

Wilmsen: Okay, now under the law, in the language it says you can't use a *substantial* amount of your resources towards lobbying and then it's further divided to grassroots.

Torre: I think that's still in the code. Under the code today, a 501(c)(3) organization can elect to engage in lobbying activities. If you've elected to engage in lobbying activities, you're not governed by the provision limiting your organization to insubstantial activities, you're governed by the percentage of your annual income that is so used.

Wilmsen: And is there a definite cut-off in the percentage?

Torre: Yes. It's measured by income. Essentially, in my judgment--this is a personal judgment--when a 501(c)(3) organization engages in

lobbying, I think that the percentages that Congress has intended that you can use was designed to eliminate the uncertainties involved in measuring what is "substantial". It is a recognition that charitable organizations will be engaging in some lobbying. And this is to control the amount of such activity. It's a very small percentage of their total budget. I don't know off-hand what the percentages are, but it is a decreasing percentage as your expenditures increase. It's a larger percentage of a million-dollar expenditure and it's a smaller percentage of a ten-million-dollar; of course the amount that's been spent has gone up because although the percentage goes down the gross goes up. But it is an effort to keep the amount as an insubstantial part of 501(c)(3) operation. It is, however, to be measured objectively rather than an argument of what is substantial or not substantial.

Wilmsen: The question I'm getting at is is there wiggle room? For example, for the Sierra Club Foundation is there some wiggle room there to say, "Well, we could allow X amount of dollars to go towards lobbying, or maybe not quite that much, or maybe a little more"? Is there some subjectivity involved there, or is it a definite cut off?

Torre: I'm not on top of the law on this, but I think that you're at risk based upon how many years you have gone over, so to that extent you could say there's wiggle room. But you have some financial costs rather than status risks. The real area concerns whether it is grassroots lobbying or not. Very much less can be put into grassroots lobbying. And one of the serious things is if you have spent money inadvertently on lobbying, it'll be allocated automatically to grassroots, if you have not had control to assure that it wasn't so used. That is the danger area.

Wilmsen: Is that where the disagreements between the club and the foundation arise?

Torre: There have been disagreements on that, yes, where we refuse to support a particular program because it involved what we consider grassroots lobbying and we did not wish to be involved in grassroots lobbying.

Wilmsen: I see. Okay. Is there anything else along the lobbying lines you want to add? I think I'm satisfied. [laughter]

Torre: I have to be general in this conversation, because I know that there have been instances but I don't want to discuss the instances because I don't remember them with sufficient accuracy and detail that I should discuss them. If I had to testify about

them, I would have to inform myself on the specific instances they're asking me to testify about because I don't have a memory that I would rely upon. And this is a technical matter that's very important to the life of the foundation. I can say this: the board today and earlier boards are profoundly concerned to stay within the law on that issue. And they won't flirt with it. They will not push the envelope as far as they can go, they don't even want to open it.

Wilmsen: Maybe that's a good place to stop for today, since you have to leave in seven minutes?

Torre: [laughter] Okay.

The National Advisory Council: A Fund Raising Tool

[Interview 7: April 20, 1998] ##

Wilmsen: You were saying that the national advisory board was formed by the foundation.

Torre: The national advisory board was formed by the foundation, I would say sometime in the mid-seventies. What brought it into being were a couple of things. I cannot remember the name of the man, but he was a member of the *New York Times* board, he was married to one of the publisher's daughters; you may know his name. He was a nice guy, but I just didn't have any personal relationships with him, and I don't remember his name. And there was an older man who was retired and living in the Santa Fe area. Both of them were anxious to become involved in the environmental movement and were making substantial gifts--particularly the retired man living in the Santa Fe area was making substantial gifts--to the foundation.

Wilmsen: That wasn't Harvey Mudd?

Torre: No, no, this was a much older man. He was a retired man and I should remember his name but I don't.

Both of these people did suggest, because of their activities--whether they suggested it or their activities suggested it--that it would be useful to provide some status and connections for potential and major donors to the foundation, to give them some recognition. And the national advisory board was created.

And essentially, from the point of view of the trustees, it was to be a fund-raising board, to assist in the fund raising. And it was an acknowledgement of substantial gifts that were being made. From the point of view of the members of the [laugh] national advisory council, they wanted to have their opinions on policy questions taken into account, but the policy questions they wanted to talk about primarily were not how to raise funds, but how to spend the funds.

And as I have said earlier, by that time, whatever the relationship between the club and the foundation had been in earlier days, by that time I had never seen any conflict in policy because policy was being set by the Sierra Club; the foundation did not try to impose its own version of policy on the club. So now we had a collection of people who would like to [laugh] impose policy upon the foundation, and thus indirectly upon the club.

Well, we listened to them. And of course their views of policy were so general it's very easy to continue to hope that they would give funds and we acknowledged their presence. Now, then it happened, as retirements from the Sierra Club Foundation board occurred, many of the names of the former trustees were just added to the national advisory council. And thus the council grew. And that's how my name, for one, was ultimately added to the national advisory council.

Wilmsen: That was when you left the foundation?

Torre: That's right. In '81 or '82. I don't know whether it was '81 or the beginning of '82; I get a little confused on dates.

The advisory council has grown substantially in importance to the foundation because the foundation has developed more sophisticated fund raising programs and the advisory council has been employed to assist the trustees and advise the trustees upon policies, programs that would result in increasing the funds being raised. So today, the national advisory council does have access to the foundation board on substantial matters affecting the foundation, but not on the policy of how the money is to be spent because, as I've continued to say, that policy is by and large, as far as I have observed, fixed by the Sierra Club. I don't think there has been any effort to impose policy issues upon the club.

In fact, the only policy discussion I've ever heard on the foundation has been by some of the trustees who feel very deeply on the population issue and particularly on the immigration issue and have wanted to limit immigration into the country in order to

control population as well as encouraging population controls worldwide. Several trustees feel quite passionate on that subject and have talked about it and have wished that the Sierra Club would do more in that regard. Of course, right now, you know there is a great debate going on in the Sierra Club on immigration the results of which will be announced in a couple of weeks. But the members of the foundation board who feel passionate on the subject have not been leaders in that, or the hidden moving forces in that debate; they did not use their resources or position on the foundation board to try to push this. They expressed what they cared about but they didn't try to withhold money until the Sierra Club jumped through their hoop or anything like that.

More on Restricted Funds and the Funding of Projects

Wilmsen: Right. But aside from the Frontera del Norte Fund, has the foundation or the club ever started other special projects?

Torre: Yes, there have been. Harvey Mudd's brother, Tom Mudd, following in his brother's generous steps, created a much smaller earmarked fund called the Heartline Fund that was supposed to take care of environmental questions combining Indian and environmental matters--at least, these were the projects that were supposed to be supported. That was in the seventies. It was a fairly active fund within the more limited resources that Tom Mudd was putting up.

I gather the Heartline Fund became inactive pretty much sometime during the eighties, I guess. And there is a sum of money--a relatively small sum of money--still in that restricted fund. And I gather that Tom Mudd has lost his interest in environmental matters involving Indians, but has other environmental concerns and is trying to see if the restrictions that had been imposed can be worked out in a way that the fund can be used for those other environmental matters. I gather that it was under discussion with the staff. What the details of that discussion were, I have no idea. And it's a very small sum of money.

There are, as you undoubtedly know, numerous, numerous, many, many restricted funds within the foundation. A friend of mine created a restricted fund which was named after me. My friend wanted to honor me, and it was something I really did not want to see happen, but it is restricted for inner city environmental uses. The Sierra Club has an inner city program,

so basically the fund is a restricted fund that the Sierra Club inner city program can draw from. It's almost exhausted now, I think. And there are a lot of such restricted funds.

But all of the restricted funds the foundation has accepted in recent years--this was not true in the seventies, because well, the Frontera Fund did not coincide directly with the Sierra Club program. But the fact of the matter is, the trustees were not okaying any Frontera projects that did not complement or supplement the Sierra Club Southwest programs. They of course placed their emphasis, perhaps, a little differently than the Sierra Club would have placed it, itself, although there were occasions when the trustees requested Harvey to use Frontera funds for specific Sierra Club projects and programs that the trustees wanted to foster that had emanated from the Sierra Club and not from Frontera. And Harvey always acquiesced, or agreed to those requests because he was quite in tune with the projects that were underway.

But other restricted funds that we now have received in recent years, such as the inner city fund that was set up--the one that I'm talking about in my name--none of them have been set up unless there were prior Sierra Club projects and programs underway that such restricted funds would help finance.

Wilmsen: The Sierra Club project already had to be in place?

Torre: Yes, they're in place before the restricted fund is.

Wilmsen: I see. Did the trustees then go out and approach large donors saying things like, "We have this project, and we'd like to set up a restricted fund"?

Torre: The trustees try to raise general funds, primarily. And the desire is to increase the intake (these are the trustees of the foundation). We would prefer to receive and increase the amounts of general funds so that there is greater leeway to what projects are to be supported as circumstances develop that require changes of emphasis.

The fact of the matter, though, is that major donors--and it's hard to describe what a major donor is. Certainly I would say that over \$10,000 in a single gift is a major donor. Personally I feel that if people reach \$1000, they ought to be looked at as major donors. They're likely to have the same desires as the people who are quoted as major donors, and that is they have their own projects in mind. The people who have the greatest amounts of discretionary funds to give as individuals usually have strong feelings and strong ideas as to what those

discretionary amounts are to be used for. Certainly when you're dealing with foundations and corporations, they have fixed projects in mind and their gifts normally are very big gifts and they would fall under the category of major donors.

A lot of money flows in for specific programs and projects. But before acceptance by the foundation, if it is a narrow, newly defined restriction, it isn't accepted until we are satisfied that the Sierra Club has such a project underway, in mind, on the books, being planned. And then we have to see the details of it, to see whether it is a project we are able to and want to support. Normally, when I say "want to" there's no question in terms of the policy, but is it free of political activity, totally? And is it hopefully free of lobbying activity, but if there is any lobbying activity, is it substantially limited in amount to fall within the guidelines the foundation has agreed to?

Wilmsen: Have there been cases where a major donor wants to establish a restricted fund and then the Sierra Club makes a project to go with that restricted fund?

Torre: I think so. But that is not developed through us. It's developed through the major donor. If the fund's large enough-- if it's a half a million dollars, for example--the Sierra Club is anxious to get a project going as long as it's within the purview of what they believe in.

There have been, I think, occasions when people have suggested some very, very large sums of money for, quotes, environmental projects that the Sierra Club wouldn't have touched with a ten-foot pole because they didn't see them as being desirable.

An Undesirable Project, and Dirty Money

Wilmsen: Can you give some examples of what they found undesirable?

Torre: I can't think of any specific ones because I'm not close enough with the club, itself, but I'm sure there have been. Many years ago, we had a terrific row on the Sierra Club Foundation board because when the Alaska pipeline was being built there was a great question about caribou crossings of the pipeline. The area where the pipeline was being built crossed trails that the caribou migrated across and one of the big oil companies in L.A. --I'm not quite sure which company, but it was a major oil company that was also involved in building the pipeline--was

willing to put up quite a substantial sum of money (I think it was in the hundreds of thousands of dollars at the time, or at least the tens of thousands) to have a field study, an objective field study, conducted. And they wanted it to be conducted by an independent entity. They didn't want to do it; they didn't want it to be tainted and charged with the study having been made to justify the pipeline going where it was going. Their position was that what the environmentalists were fussing about on the pipeline, and holding up construction, was not a valid position.

And so we had a huge debate in the Sierra Club Foundation councils at that time as to whether or not that gift could be accepted. George Marshall, particularly, who was then on the board--a very passionate man in these matters--felt that the oil company, which he saw as a social villain, would develop a halo over its head by having given such a sum of money for such a study. No matter how valuable and necessary the study was, he did not want to accept tainted money for the study.

And of course that is another issue that was debated in the seventies, at any rate. The Sierra Club was very fussy about some of the money we were receiving because it was tainted: it was corporate money. And almost any corporate money at that time was considered dirty money because there were few corporations that had healthy environmental policies. Even though the money was being received and being used for projects of the Sierra Club, it was dirty money. And they considered it a bad thing to use dirty money for their projects. Indeed, they didn't even want funds to be invested on the market in corporations. It really even came down to whether they could even invest in municipal bonds because there was hardly any group activity that wasn't environmentally unsound. That's a position that the foundation did not accept and caused some tension in the seventies between the club and the foundation.

I, personally, don't believe in tainted money. I believe in what the money is being used for. And I don't think the oil company was gaining any prestige on the market or among its shareholders by having made this gift for the study. Well, ultimately, the money was accepted and the study was made. And I think it proved inconclusive.

There were adjustments made in the pipeline in the areas where the caribou migrated so that the migrations could be carried on, but I understand that there has been substantial disruption to the normal life of the caribou. They're still there, fortunately, but their lives have been interfered with. The pipeline has caused significant changes in the tundra and in the life of the wildlife in the area, which is not surprising.

X THE SIERRA CLUB FOUNDATION IN THE 1990S

More Large Donors, and More Education on Environmental Issues

- Wilmsen: Yes, now, you mentioned in one of the former interviews, I think you did, I want to make sure I understood you correctly, that there's a trend now for large donors to establish restricted funds, more so than before.
- Torre: The very large gifts usually come with some restriction that they want to support a public education program on clean water, let's say, or clean air, or a program to study the ecology of the Sierra Nevada--the fund is restricted for ecological Sierra Nevada projects (that is one of the very large restricted funds).
- Wilmsen: But do you think there's more of a tendency for that now than there was previously?
- Torre: No. I think that major donors always wanted to restrict their gifts, but there are more major donors now. The fund raising and the annual amounts raised by the foundation are in the millions now when in the seventies they were in the hundreds of thousands, at best.
- Wilmsen: Why are there more major donors now?
- Torre: I think there's more skill, more knowledge on fund raising. There are more private foundations around that have to give their income away every year. More very rich people have set up, as part of their estate plans, private foundations. And the private foundation must dispense its income and so there's a source of more money.

In the seventies, actually, the Ford Foundation, the Rockefeller Foundation, the Carnegie Foundation are the ones that I can remember that we were sending fund raisers to try to raise

money from. I don't remember any major donors except Harvey Mudd's private foundation. [laugh] The Frontera Fund seemed very, very large to us. [laugh] And today it would be nothing. It would be a small gift of a major donor. A major gift, but a small one.

Wilmsen: I see. So now with more major donors establishing more restricted funds, what kind of effect does that have on conservation, if any?

Torre: I think the restricted funds that they're being established for are useful funds. I think that the more money that's poured into studies, communication, to create a more informed public and a public that considers what is being done to the environment and their own behavior in terms of consumption becomes affected by it. Certainly as they gain more knowledge they may personally become more politically concerned. Or if they're running businesses they may manage the businesses more effectively.

I think there is a much wider public knowledge today as to the risks for the continuity of a healthy planet. Certainly, it is a fact that the warming of the planet due to consumption of fossil fuels and the ozone holes is widely known today. All that knowledge did not exist in the sixties and seventies and the concern that goes with that. I mean obviously there is a tremendous amount of public debate being carried on now.

I think that all of the environmental organizations have had an effect through the programs that they have run on acid rain in the northeast, the fouling of water supplies with pesticides, industrial waste, the mere fact that the Great Lakes were practically cesspools and no longer are (they're far from returned to their normal state, but they're being cleaned up gradually). While there may be a lot of public regulation producing it, a lot of it is simply the knowledge that the public has developed. And people in all of their activities think about what they're doing.

What I'm trying to make clear is that obviously the more that a public learns about the damage to the environment it is living in and must live in, it will affect their political attitudes and actions. But I think much more importantly, it affects how they live and how they manage their own properties and how they manage the businesses that they are part of. And I think they see their own responsibilities.

It's a very slow process. It doesn't immediately change, but I do think that the educational programs that have been fostered by the expenditure of very large sums of money on

educational projects through the media, through books, lectures--all of these, as part of the programs--are very valuable. I think it's just scratched the surface, though. I think there's a need for a lot more development. But it's invaluable.

Wilmsen: Do you see Carl Pope [current executive director of the Sierra Club] taking the club in any new direction--back towards more education or towards more lobbying? Or, do you think that he's continuing what the club has been doing all along?

Torre: I think Carl has pushed some very important educational programs. There's no question about that. And he has--whether the possibility of those programs originated in his imagination or they originated in the imagination of some donors who had lots of money to spend, who brought them to him and they grabbed hold of the idea to develop them--has served a function, a very important function.

Now, at the same time, I think Carl Pope does enjoy political activity, legislative activity. And I think that he lives in the moment rather than in the long view and that phase of his programming we cannot support and do not support. It's caused some tension between the foundation and Carl because the line between community education for the long view and for an immediate legislative or political view is not an easy line to always define. And we have to be extremely careful that we do not cross that line, so we are prone to be critical in examining programs being offered to us to be sure that they stay within the area we can support. I daresay Carl--I don't know this because I never have talked to Carl about it, but from what I can hear through hearsay of our staff reporting back on problems--I daresay Carl thinks we are being more circumspect than is necessary and that was really the source of the tension. It isn't that we disagree with the policy of education. We do support all of the Sierra Club's educational, truly educational, conservation programs, but it's when they come with more emphasis for the immediate short term gain of a particular bill that's before Congress or some state legislature, or with political education, to the extent that the club can engage in political education, it becomes a problem.

We can't touch political education in any form, in any form whatsoever. And we must be sure that the educational programs we are supporting are not being mounted for any kind of political education. And we have to be extremely careful about the amount of lobbying education we can give, too. We have a very limited amount. And actually, in my judgment--and I suppose I'm a conservative--

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Torre: --we shouldn't be giving anything directly to lobbying because the risk of an educational program we're supporting having some lobbying aspects to it could use up as much money and energy we can legitimately give consistent with our status as a 501(c)(3) organization. The line being such a difficult line to identify, we could just slip over the line, and we ought to have a reserve to protect ourselves if we do slip over the line. And if we use that reserve up and then slip over the line, you can be in real trouble and that's what we have to avoid doing, in my judgment.

General Trends in the Environmental Movement

Wilmsen: Thinking more generally of the environmental movement as a whole, what general trend do you see the environmental movement going in from now into the future?

Torre: When I first became involved, there's no question that the environmental movement was primarily concerned with preservation of the unique and special areas of the world, primarily North America at that time. In other words, having more areas committed to wilderness so that they would not be developed and having national parks created, national forests created. That was the primary environmental activity. Consistent with that, there was a lot of effort being spent to avoid having dams built or correcting the consequences of the damage done to the natural environment by the development of huge projects like the Boulder Dam, Glen Canyon Dam.

Today, I think that there is far less interest and concern in the environmental movement on the setting aside of unique areas. That certainly continues--don't misunderstand me--it's certainly a very important part of the environmental activity. It certainly engages volunteers on a regional basis, on a local basis, on special parks in their area that they want to establish or shorelands they want protected or whatnot. I think the environmental movement overall, though, today, is deeply concerned with the much larger questions of what we are doing to the water, the air, and the atmosphere; with the long term consequences of overpopulating some areas, if not the entire planet; with the use of pesticides, chemistry--Rachel Carson's interests are grabbing hold and being implemented by environmentalists and I think that is in cleaning up the dirt we've created through our technology and our science. Seeking to restore the planet as well as to set aside what has not been

damaged is the major part of the environmental movement today. And it certainly is a huge undertaking.

It's being conducted on an international basis. Despite the fact that the United States has failed on some of the international conferences to give its support to programs that I believe, and most environmentalists believe, should have been supported, I think the United States is still providing world leadership in the environmental movement. It has got some blind spots, such as on the population issue because we have a religious faction in the country that does not want to go into family planning and does not want to support it. And this does interfere with many of the programs that we might foster. And they're not just contraceptive programs: they're programs on the status of women and the education of women, which is perhaps the most important family planning program being supported. We Americans shy away from them.

Wilmsen: Does that religious control affect the kinds of funds that are available?

Torre: The national policies: what our state department will foster and can foster; what aid can flow to environmental programs abroad--from the United States, from the World Bank, or from anything that the United States is a contributor to. So the amounts that can flow from private United States funds are not affected by those groups, but the much larger program and I would say most importantly, the leadership that could emanate from our state department more aggressively and more effectively is controlled by such groups. Rather, it isn't controlled by such groups--there is some leadership being offered--but it is limited by such groups.

I've overstated it, but I think that generally the United States has played a very important role in dealing with worldwide environmental programs. I think that the leadership has helped to quicken interest in countries throughout the world, particularly in Europe, in environmental matters that did not formerly exist, although the English were watching birds very carefully without an Audubon Society telling them to do so. There has been a long-term natural interest in many European countries, don't misunderstand what I'm saying.

Wilmsen: Right, I understand.

Torre: I think that those interests were personal rather than organizational, rather than national. And now I think the nations have taken them up with concern. For example, just the tension that existed--I don't know whether it still exists, but

did exist in the sixties and seventies--between England and the Continent over the smoke, the coal smoke, the fossil fuel smoke that was emanating from English industry and being blown to the east, and the damage that was being done. There was a tremendous amount of political tension between England and the Continent on that issue. I don't know whether it's been eliminated or curtailed. Certainly the amount of fossil fuel that's being burnt in England has been reduced so that in itself would have helped to curtail the problem.

Wilmsen: How do you see environmental organizations dealing with the pollution issue now?

Torre: Well, I think a lot of it is still through the media, through books and entertainment and making people aware of how threatened their lives are by certain activities that are going on. For instance, today, when you get a proxy--your annual proxy from every major corporation that I see proxies from--and I see them from a lot of different organizations, the number of them that have environmental issues being presented by shareholders, usually being opposed by the board of directors because the board of directors will tell you, well, they're taking care of that already and how they're taking care of it is substantial. It is very clear that every major industry has to have an environmental division to deal with government regulation and to deal with the shareholders and the public at large.

Now there's a lot more that has to be done in that regard, and I think will be done. I think as environmental organizations carry on vigorous and meaningful and truly informative, reliable educational campaigns, there'll be more and more men and women who will be in senior and quasi-senior on-their-way-up positions in industries as well as in government who will be more concerned about how the company they're serving is behaving. I think that what this knowledge is is how they can produce without fouling the universe. But I think the environmental organizations are significantly important in encouraging such attitudes.

Major law schools today have ecological reviews. When I was in law school we had the law review which covered everything. We didn't have an ecological review. Now I think that exists because of environmental organizational activities that aroused the interest of young people. And institutions, in order to educate and fulfill those interests, permitted the formation of these organizations inside the university.

Wilmsen: Do you see the environmental justice movement having any kind of effect on mainstream environmentalism now?

Torre: Well, yes, I think so. I think that this is why it's moved from preserving national parks and wilderness areas to the kind of educational programs that deal with the deterioration or the healing of deterioration in the natural world. I think that is a difference. I think it was much more specific, more focussed, more limited previously than today. The word "environmental" has come to embrace many, many different things, whereas before it used to be, "Let's get a new national park and let's take care of the national park when we get it." That's still a part of the environmental movement but it is not the controlling issue as it once was.

And it does create problems within all environmental organizations because there are many, many volunteers who join organizations because they are concerned about the preservation of specific places. And that's what they want the organization to be mostly concerned with and not the larger, generalized, abstract issues, what the long view that I've been discussing involves.

And there's a lot to be said for it. For example, today our national forests are being rapidly depleted. And the need to develop forestry practices that are economically sound and allow natural forests to restore themselves instead of what clear cutting does is a very crucial matter, I believe. It's a crucial educational matter and it's a crucial matter of preserving specific places. It's an issue where the two have come together and I think we're doing very little about it. I think it's one of the most serious parts of the damaging of the planet that is underway that we are responsible for, particularly in the west.

In my lifetime what has happened to the forests of Oregon and Washington as well as California--California's forests in the northern Sierra at any rate had been damaged by the gold rush--is incredible. When I first traveled to Washington, and Oregon, and British Columbia, the forest lands that I observed were extraordinary. The redwood forests of California when I was first growing up were extraordinary. And the redwood forest has been almost eliminated. It has not been eliminated, but it has been greatly reduced. Compared to what I thought of as the redwood forest when I was eighteen years old and what it is today, the redwood park is representative of what used to extend from Ukiah up over the Oregon border. Now it extends from an area north of Eureka--very narrow area north of Eureka--to the Oregon border and a little bit over. But that was once a natural phenomenon that covered the whole northern portion of California, at least the western part of California.

And when you go to Washington today, it's just simply amazing, you know, what has happened in the areas all around Seattle and Portland from when I first went there in the fifties. And the same thing's happening in British Columbia. And it is a result, I think, of very bad forestry practices.

Wilmsen: Why do you think it is that we're not developing better forestry practices?

Torre: Well I think there are--

Wilmsen: When you said, "We're not doing enough about it," did you mean environmental groups are not doing enough about it?

Torre: No, I really meant our governments, our people, our industry.

I think there are some lumber companies that have a very long view and do want to protect their forest lands and have them restored. Such a company is Weyerhaeuser, which has done a tremendous amount of forest agriculture. Unfortunately, they approach it from a point of view of replanting and then replanting what is going to sell. They don't approach the protection of their land to log in a fashion that will allow the forest to naturally replenish itself so that you have the natural forest. And there is a forest community that if the undergrowth and the trees can maintain a natural balance, it will be ultimately a healthier source of lumber, and certainly a more beautiful source of lumber. There's some grave question as to whether the reforestation with the single growth, when we did it through our single planting, whether we have observed the needs of the trees we're singly planting, for what undergrowth they get--whether we even know scientifically, whether we have learned enough.

And then there are a lot of companies that are just interested in the short term view. And they're not going to make the investment that is necessary to replant even. So they want to strip and take. And the consequences, the ultimate consequences, not only in the loss of lumber, but in the loss of streams, land, topsoil, water, decent water, fish, shorelines is quite extraordinary in my judgment. I am not a naturalist as you [laugh] are able to hear, I'm simply quoting what I read. And I'm very reluctant--I really shouldn't talk so much about environmental matters because I am very reluctant to talk about something as I've been talking that I don't really know a thing about.

The Environmental Movement and People of Color

- Wilmsen: Okay. So getting back to the environmental justice movement: in 1990, the Southwest Organizing Project sent a letter to the ten biggest environmental organizations: the Sierra Club, the Audubon Society, Wilderness Society, and several others.
- Torre: I don't know about that.
- Wilmsen: Oh, you don't?
- Torre: You tell me about it; [laugh] you're from Tucson.
- Wilmsen: They sent a letter criticizing those organizations for not having enough people of color serving within their organizations and also for not representing the environmental interests of people of color.
- Torre: Who sent this?
- Wilmsen: The Southwest Organizing Project.
- Torre: And when did they send it?
- Wilmsen: 1990.
- Torre: Well, I think in 1990 there were people of color on the Sierra Club board. There certainly is today. The inner city programs that the Sierra Club was fostering were in place by then. If they sent the letter in 1970, there might have been some merit to it. I don't believe there's any merit to it today.

Now, if you're going to talk about it in terms of the percentage of black people, Asians, or the Central Americans, Hispanic people, American Indians that are serving in environmental organizations--the percentages that exist in this country that are serving on boards, and the people doing volunteer work in these organizations--obviously the percentages are far below what the percentages in this country are. There's a very good reason for that: it takes time, it takes time and to some extent money to participate in volunteer organizations. And sadly, the colored people: black people, even the Asians, and certainly the Central Americans and the Hispanic people and American Indians as a group are at the lower levels of our economic status. They don't have the time or the energy to develop as volunteers. Also it takes some education and unfortunately many of them do not have the average education available to them.

The Asians do, and I think there are more Asians involved in the environmental movement. Certainly on our staff at the Sierra Club we've had a number of Asians. In the last six years two of the staff members who had senior posts on financial matters were Chinese: Eugene and Mei-mei Wong, who had very important roles for the foundation, were Chinese--American-Chinese, not immigrants, born in this country--who were trained in accounting and investment matters and were hired by us.

We have hired several people from India that have been in important positions on the board. And I'm sure the Sierra Club, itself--I don't know what the make-up of the Sierra Club staff is. I know on the board of directors there were two colored people. I don't know whether there's ever been any Asians or Hispanics. I just don't think that that is a fair criticism.

Wilmsen: What about the criticism that the major environmental organizations haven't addressed the environmental concerns of people of color?

Torre: I don't think that's true. I think that the inner city program is addressing them. And that covers all of the poor people of color. And certainly, as I pointed out, we had a Heartline Fund that worried about the Indians. And the Frontera del Norte Fund which we had was concerned with the Hispanic problems and the Indian problems of the Southwest as they impacted from the environmental point of view, not from the employment point of view, necessarily, but an economic point of view, a housing point of view, from how the environment was serving their needs.

Wilmsen: What do you mean by that?

Torre: Well, I suppose Harvey Mudd's project, which he never did get off the ground, would have been one of them: how land could be preserved while it was being used economically for them; how the land could be used to provide recreation and protection to get children out of an inner city environment.

Wilmsen: Now, despite that track record that you've just talked about, there seems to be a trend that major environmental organizations and grassroots environmental organizations of color have a lot of difficulty getting along. And one example is again northern New Mexico where there's been so much bad blood in recent years between Hispanic loggers and representatives of environmental groups, including the Sierra Club and the Audubon Society.

Torre: I daresay, because in my experience, the most damage has been done by small operations in logging, mining, and farming because they don't have the reserves that are required to observe the

disciplines that do not abuse the land. They live in the very, very short term. They have to get out of it their livelihoods as best they can. And usually that does involve practices that create a tremendous amount of damage. They don't have the time, if they're loggers, to clean up the mess they leave behind. They don't have the equipment, the sophisticated equipment available, to be able to go into areas and build roads with a minimum of damage. The poor people simply don't have it. And the groups that you're referring to in the Southwest, by and large, are poor people. And when they go into logging they will have practices that will cause damage that will arouse the opposition of people who do not want that damage to occur.

And they [the environmental organizations] don't want it to occur, not for their own advantage, but to the advantage of the public at large. Once the damage has occurred, there will be no logs to take care of in the future, the forest will have been destroyed. People who live with a long term view will frequently be in conflict with people who by necessity live in the short term. Does that address your question?

Wilmsen: Yes it does.

Torre: I don't think it proves that they have no concern for those people, though. They may have greater concern for the impoverished people and know that it's going to be a long time before they get out of poverty, whereas the persons who have the short term view and the energy to implement it are really concerned about themselves, rather than the people. And they [those people who care only for themselves, and not for their communities] get a livelihood, a specific livelihood out of it, and can make it out of being poor, and can get away from their people.

What was always surprising to me is the hostility that exists--not surprising, disappointing--in the Southwest between the Indians and the Hispanic communities. The hostility that exists between them goes way back, and it's been fed by many practices and historic moments that haven't been forgotten. And the tension between the poor people of different groups living in the cities is very sad and hurts both of them. And that's unfortunate. Correcting the conditions that create poverty is a way of eliminating those tensions, I think. You don't eliminate poverty overnight.

Wilmsen: Do you think environmental groups like the Sierra Club could do more?

Torre: Yes, I do.

Wilmsen: What kinds of things?

Torre: To my mind--I'm not an environmentalist, as I've said; I help environmentalists; my belief is that they are doing very good work--but to my mind, as I've said continuously, the greatest problem confronting America today is the refurbishing of the cities. The rebuilding and the cleaning up of the cities and making them more attractive, healthier, more liveable, safer places is as important an environmental job as we have. And it does mean dealing with poverty.

Reflections on Contributions to Important Sierra Club Projects ##

Wilmsen: I'd like to talk a little bit more about the things that you've done with the Sierra Club Foundation that you feel positive about, which I asked you about some time ago, and one of the things you mentioned was working on the Redwood National Park?

Torre: No, I didn't work on it. The park was underway--well, I guess not, I guess it had not been voted on yet--but the Redwood Park Project of the Sierra Club that Ed Wayburn was heading at that time had been launched before I went on to the Sierra Club Foundation board. And in fact, one of the early fringe benefits was a reprint of a small book on the projected Redwood Park. But it was voted on in the next several years.

I never worked personally on any environmental project. What I did was to review the proposed projects that were coming before the Sierra Club Foundation; some of them were on the Redwood Park. And again, I was reviewing them for the legality, whether they were consistent with the limitations that the foundation had to operate under and which the board felt very, very keen to observe because in the wake of the Sierra Club losing its exemption, retaining the foundation's exemption was an uppermost concern and so every project that was presented was questioned immediately. And I assisted, I think, in reviewing a number of the projects that furthered, certainly, the effort to get a national park when the matter was pending before Congress. It was a sensitive matter and I gave views on it. I think I may have made a contribution in that regard.

I certainly had similar considerations on the Alaska Project when the statehood of Alaska resulted in federal lands being redistributed: what lands were to be set aside, what lands were to go to native corporations and what lands were to go to the State of Alaska. I didn't have anything to do with the selection

of the lands or thinking about it, but projects that were coming up for study--there were a number of field studies that were being conducted, that were underway, and people were seeking funds for--and I certainly did review those, and I think my opinions were worth something. At least they spent a lot of money on those projects, or what was for them a lot of money at that time.

What else have I done for the Sierra Club Foundation? Really, if I've made any contribution to the environmental movement it's the support I have given to environmentalists like Ed Wayburn and Will Siri and the leaders of the Sierra Club on the projects that they were observing, as to what was legally acceptable, whether it was consistent with the funds we had received and whether those funds were being used for purposes that a 501(c)(3) organization could support.

Wilmsen: And which of those projects do you feel were the most successful?

Torre: Well, certainly the Redwood Park. I think the Redwood Park has been a great success. I have been surprised by the little observation I've had, how the park service has begun replanting and seems to be doing a significant job in restoring what was wasted area.

I think that the Alaska Project has been a very valuable project. It's still going on. It's an enormous undertaking; lands that have been set aside and keeping them safely set aside.

Locally, I would have [laugh] liked to have been associated with the Golden Gate National Recreation Area and the Point Reyes National Seashore, which are both immediately local projects that have served to enhance life in this area. I had nothing to do with them. And they were carried on and achieved by an ad hoc organization I wasn't giving legal opinions to.

Wilmsen: Did you serve on boards of any other foundation?

Torre: No.

Wilmsen: What do you consider the most important environmental issues that the Sierra Club worked on during your tenure as a trustee of the foundation?

Torre: The Wilderness Issue: the study of what areas of the country should be so classified. And the single largest area was in Alaska. It was the most well-organized study. But there were numerous, numerous--I can't tell you how many field studies--people going out taking pictures, studying areas, finding the

areas that were really truly still wilderness areas that could be so classified under the Wilderness Act. That was a major operation of the Sierra Club, and I think many other environmental organizations in the seventies, which was the period I was most engaged in these activities.

And I think that to the extent that many of these projects were coming out of restricted funds and you've got to determine whether the specific project fit into the restricted fund you had (and to some extent, some of them did involve potential legislative matters), I made a contribution to that, but a small one. That was, to my mind, what the major activity was of the environmental organizations of the time. And at that time Rachel Carson's book, *Silent Spring*, was recently out, and the consequences were beginning to be understood; the issues that she raised in that book were beginning to be understood. That was, I think, an extremely important quickening of public awareness. A very valuable book; very polemical, [laugh] but a valuable book.

Leaving the Foundation Board and Retirement from Lillick

Wilmsen: What prompted you to leave the board when you did?

Torre: Well, I had to. The new bylaws stated that you're supposed to be on for three years. And I had been on twelve years, and actually had been on so long because we had drawn lots. We didn't all go off at once, it was a gradual phasing out of the old board. And I went on to the new one, so I had spent time enough that I had to go! [laugh] There was no choice. But I think twelve years was quite enough.

Wilmsen: But you could have come back, couldn't you, after a year?

Torre: Yes, I could have. Some of the men on the board, some of the members of the board--when I say men, I mean men and women--wanted me to come back, but I didn't for a variety of reasons. One, I did feel twelve years is a long time to be on a board--a volunteer board--and I don't think it should be a career. I think you can continue to be interested in what the organization is doing and be supportive of it without necessarily seeking to play a leadership role in it. That was one reason. The other reason was that in those twelve years I had become a focal point of some of the tension between the two organizations. And as a lawyer you have enough tension, it's not something you seek when you are doing volunteer work and I just didn't want any more.

Wilmsen: Yes. How had you become kind of a focal point of tension?

Torre: Well, because of the office that I had, since I was giving volunteer legal advice on matters relating to the Sierra Club projects, some members of the club felt I wasn't giving their projects the support that they should have because, as I stated earlier today, I don't believe in tainted money. And at that time there were a number of people on the Sierra Club board who had some views on that subject that I couldn't support. And personally, I just didn't get along with some of them.

Wilmsen: Yes, okay. Did your retirement from the Sierra Club Foundation board coincide with your retirement from the Lillick firm?

Torre: Oh, no! No, no, no--or did it? [laugh] No it didn't. I went off in '81. When did I retire? [pause] I guess I did retire from the Lillick firm the year after I went off the board. It doesn't seem possible. I did retire in '82; I wasn't sixty-three, yet, when I retired. I was between my sixty-second and sixty-third year. But it seems almost incredible because my last ten years in the Lillick office I was under a lot of professional demands there. Certainly during the last eight years I had become deeply involved in managing the labor department of the Lillick firm, and also the tax department, and was a counsel representing the waterfront employers and one of two counsels representing all of the ILWU fringe benefit programs, the trustees of those programs. And these were the years when ERISA was being implemented and it required a tremendous amount of adjustment, so that my years on the foundation board were apparently coinciding with very demanding years in my professional life, so that may well have helped color my views [laugh] as to whether I wanted to go back to work as a volunteer.

Wilmsen: I see.

Torre: The reasons for retirement from each organization are unrelated. The Lillick firm had in place at the time I retired a fixed policy that had been there for I guess, about thirty-five, forty years of compulsory retirement at the partnership level at sixty-five. And that had been observed by my predecessors. And I was going on sixty-three when I retired. And I had formed the view I didn't want to be kicked out, I was going to voluntarily leave before I was sixty-five. Occasions developed in the firm and it seemed an appropriate time to go so I did.

Also, I had family problems. My mother lived to 103 or 102 and she was then in her nineties and had suffered a debilitating illness, and there were more responsibilities I had for her. And

there were other family members that I had responsibilities for, so my volunteer and professional life dried up.

Wilmsen: I see. Then you stayed away from the foundation board for thirteen years.

Torre: Yes, about that. I went back on the board four years ago.

Returning to the Board: New Tensions and New Concerns

Wilmsen: What prompted you to come back after all those years?

Torre: Well, I suppose a desire to rejoin the world instead of living in my private world. The board had changed; the relationships between the club and the foundation had changed. Some of the tension that, as I say, had focussed upon me was now gone. And I think I felt a need for intellectual stimulation.

My first years out of the Lillick firm I was still very active as a lawyer: I was a consulting lawyer to the firm for clients I had serviced when I had been an active member of the firm. And then I had a lot of work to do for family members and friends in helping them set up their estate plans and organize tax matters. It is now four years ago I decided to become an inactive member of the bar so I wouldn't have to go on doing that. I cannot practice law anymore. I'm not an active lawyer; I don't have the credentials. I'm an inactive member of the bar. And I do have the view that with professional work--medical, legal, architectural--if you're not doing them on a regular basis, you get off the cutting edge of the profession: you lose the knowledge and you're unaware of the current developments. You begin to be a dangerous professional, and you should stop it. And I have. But I felt a need, I think, for intellectual stimulation. And when I was asked to come back on the board, I accepted. Also, before I came back on the board I think I had been subpoenaed for a deposition in the Graham litigation. So I was indirectly getting reinvolved, and so when I was asked to come back on the board, I thought, "Well, I might as well do that if I'm going to go on in this lawsuit," because at that time it seemed to go on forever.

Wilmsen: So during those thirteen years, in-between serving on the board, did you support the Sierra Club in any way, or the foundation?

Torre: No. I saw a lot of the people. As I said, I know Dr. Ed Wayburn. We know his family quite well, so I saw them regularly.

And I did know of work that they were doing. I had a partner, Don Harris, and Fred Fisher who were the founders with Phil Berry of the Sierra Club Legal Defense Fund, so I knew what their activities were and heard about them. But it was conversational and social. Maybe they asked for my opinion, and I certainly always have opinions to give [laughter] as you have noticed, but nothing of any significance or of any importance. But because I knew the people, I knew the work they were doing and the challenges that they had that they were facing.

And I did keep my membership in the Sierra Club and I got their publications, and many of them I would read. And I would read the *New York Times*, on the environmental matters. I remained very generally, very generally informed with the subject but not in any knowledgeable way.

Wilmsen: I see. Were you involved in any other environmental groups during that time?

Torre: No. We'd always make various very, very small gifts to, say, Save San Francisco Bay and the Green Belt Alliance. We're not a major donor to any organization, but there are a number of minor gifts we've made to local organizations engaged in environmental matters like the Green Belt Alliance, the Golden Gate Recreation Association and Save San Francisco Bay. Those are the three. Oh, the Point Reyes Bird Observatory. Ed Wayburn's daughter, Laurie Wayburn--a very talented, knowledgeable, dedicated young woman--came to be the executive director of Point Reyes Bird Observatory and we fell into giving minor support to it. That was because of the director, perhaps, more than the birds. She's no longer director and our support has waned.

Wilmsen: And you mentioned that the relations between the club and foundation had changed when you came back. How were they different?

Torre: Well, one of the differences was that the foundation now hired the Sierra Club to do its fund raising. One of the issues that existed between the foundation and the Sierra Club during the first twelve years I was on the foundation board was that the Sierra Club--members of the Sierra Club board and staff, but primarily the board--asserted that the foundation was only raising money for the projects that the foundation was interested in and not the work of the club. I don't believe that is true. I'm certain it was not true in those years. But it was a source of tension between the two organizations. And one of the ways in which that was ultimately dealt with was that the foundation agreed that it would do its fund raising through the Sierra Club: it would pay the Sierra Club to do fund raising for it, so that

it could not be charged with misdirecting funds. So that issue had been laid to rest.

However, a new issue had developed and that is that although we hired the club as a fund raiser to raise money--I mean, our staff also participates and our trustees participate, particularly at the major donor level, but there are numerous fund raising activities that the club is carrying on for us--because of our insistence that the funds that have been given to us not be diverted to political and to legislative activities we cannot support, the club feels that too much money is being raised for conservation. Too much of what they call "soft money" (meaning the money that the donors if they're individuals can deduct from their income tax return) is being raised. And the hard money, which cannot be deducted (which would be the money given to the Sierra Club and thus be able to support legislative programs and political activities) is too limited. The club feels that too much is going into the educational field and that we're not allowing enough of that money to be used for education that may be suspect. And so there is tremendous tension on whether we're raising money that *could* be given for political purposes because the donors don't want or don't use a tax deduction, so they could give it to the club directly. So there is tension that did not exist formerly over that issue today, even though the basic fund raising is being done by the Sierra Club staff.

The reason for that is so much money goes into restricted funds. The major donors, as I said earlier, have their own projects that they wish to carry out. And when the project is presented to the fund raisers, who then present it to us, before we will accept the funds or allow the acceptance of the funds, we want assurances that the projects are not going to be used for activities that the foundation as a 501(c)(3) organization cannot support. That has produced tension.

Wilmsen: You mentioned that even though the foundation pays the Sierra Club to do fund raising, the foundation trustees still participate. How do they participate?

Torre: They meet with major donors, they have functions that attract major donors. For instance, it's been in recent years a fairly common practice to have a conference with the advisory council in Washington D.C. in the spring of each year and bring before that conference distinguished people. The major donors are quite happy to attend meetings and hear them speak, but basically, although the purpose of the conference is education, we hope through the education to stir up desires among major donors to make substantial gifts.

Now a lot of the organization of those meetings and conferences is done by the staff that we have hired. But a lot of trustees and our own staff attend, and our advisory council attends and it, I would say, is an important fund-raising activity as well as an educational activity in which the foundation trustees participate. Also if the Sierra Club fund raisers ask a particular trustee or several trustees to please attend a dinner or a meeting (because particular people will be there that they think are compatible in personalities and interests), the trustees attend and try to answer questions. That is an activity I have not participated in. I am not a fund raiser. I don't have the personality for it.

Wilmsen: Were there new conservation concerns between the old board that you served on previously and the new board when you came back?

Torre: Well, as I said, the only concern I've heard outspoken passion on has been the population concern. That concern was just beginning to have the attention of environmentalists in general when I first went off the board, so I would say that that is a new concern that had not been present previously. The educational projects that are being supported, I think, have changed from specific significant natural areas to the environment as a whole: to the air, to the water--the longer views rather than the shorter views. That has been a change. Otherwise, the main thing has been to give support to the Sierra Club's projects.

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Wilmsen: This is related to what we were talking about before about the environmental justice movement. Was there any noticeable change due to the influence of the environmental justice movement?

Torre: You mean the social groups that are involved? Yes, very significant change. In 1970 there was no inner city program in the club and there is today. Actually, that was one thing that happened when I was off the board, in the thirteen years I was off the board. It was in that period that a friend of mine wanted to set up a gift in my name in the foundation to deal with inner city problems. That activity by the Sierra Club had been established in those thirteen years. I didn't have anything to do with establishing that, it was already established. I had tried to establish it when I was on the board but it was not favorably viewed.

Wilmsen: Oh. Why not?

Torre: Well, as Richard Leonard at that time said, "We have no expertise on such matters. Those were social matters and it's for other

organizations to deal with. Our expertise is upon the natural world." And what he really meant were botany, zoology, forest and animals. And human beings were a different animal.

Wilmsen: So the club now has that expertise?

Torre: Apparently. I think so, yes.

The Meaning of "Protecting Nature"

Wilmsen: Okay. Actually, I just have a few more kind of general questions. I was curious about what the term "protecting the environment" means to you.

Torre: [laugh] Well, it does not mean--I'll [laugh] answer the question by saying it does not mean never changing it and never using it. I do believe that people will build gardens and often they will build parks. The finest park in the area is the Golden Gate Park, and that is an absolute shaping of the environment. It was a sand dune. They were sand dunes from the whole stretch of the park to the ocean and it's been completely designed and planted. Unfortunately, it's not being maintained at the very present moment, adequately. But if you see protecting the environment as not changing anything, Golden Gate Park should be ripped out. And I don't believe that.

In one sense, that is what is happening along our coastline. A lot of stuff is being ripped out: iceplant is being torn out of the sandbanks in the Monterey Bay area; there are moves on to eliminate absolutely all eucalyptus trees in the national seashore area. While I think controlling eucalyptus trees is imperative, because I think they can do a lot of damage, I don't think ripping them all out is desirable. I don't think returning grizzly bears to the area would be desirable, which would be protecting the environment.

What I'm trying to say is I do think that human beings have a right, like other animals, to live in the environments in which they find themselves. But I think it is important in protecting the environment--and to protect it for human beings--that their use of it be consistent with what keeps the beauty and the natural resources that attracted them there, that they can live with, intact. I think using it up so that their children and grandchildren will not find it an attractive place to live is something to be avoided. But I do think the adaptations that are

necessary to make it an acceptable environment for the human animal are consistent with protecting the environment.

In this day, one of the main questions I suppose of the future is should we have eliminated the anopheles mosquito? We will probably discover that the anopheles mosquito, which is the carrier of malaria--of which there have been a lot of movements to eliminate--we will probably find out some day in the future that we should have kept the anopheles mosquito instead of eliminating the anopheles mosquito because they did some significant valuable thing to the environment that we need. As of this moment, they don't. But we don't know that and so we wish to eliminate them. And this is always a very difficult question when you take steps to make the environment congenial for the human animal. You may do something in the short term that does make it congenial, but because you're not adequately informed, you have in the long term damaged the environment that you're to live in. And that is the risk of any change.

But change carefully undertaken, I think, is possible and you're still protecting the environment. And I think trying to keep the resources of the land that have made this an unusual, beautiful place to live is something that should be done. Have I answered your question?

On Conflicts of Interest

Wilmsen: Yes. Now, throughout your involvement with the Sierra Club Foundation did you ever feel that you had a conflict of interest between, say, some firm that you were representing through your legal career and environmental--

Torre: I never did. I never have had conflict. But we did have conflict on one occasion, though I wasn't personally involved in it. Fred Fisher was involved in it. There was an oil spill in the Richmond area and the Coast Guard was conducting a study of it. And he [Fred Fisher] appeared before it, I think, through the Sierra Club, but it may have been through the Sierra Club Legal Defense Fund, and conducted himself in a way that some underwriters that we represent in London, who were major underwriters of the maritime industry, were stunned to find that the Lillick office, which had represented them for a half century or more, was now appearing in a capacity that would have been placing burdens upon a fund that they had established for the maritime industry to deal with these issues. And while they didn't terminate their representation--their use of services of

the Lillick office--they were bemused by the news that reached them. And it happened that one of our very senior partners was in London at the time and he became the butt of their needling, their British needling, which is quite different than American needling. And he came home feeling that this was a pretty dumb thing for us to be doing. We, Fisher and Harris, went on representing the Sierra Club Legal Defense Fund, or being involved with it, and we continued to represent the maritime industry and the insurance underwriters. But that was the only instance that I knew of with a conflict. I, personally, wasn't involved.

Wilmsen: I'm kind of curious--I guess this follows from what you said about some people in the Sierra Club not wanting to accept what they called "dirty money"--because if you read the history of the creation of national parks or even environmental organizations in this country, a lot of the movers and shakers involved have gotten their money through activities like mining, or oil, or whatever.

Torre: Rockefeller Foundation is dirty money.

Wilmsen: And Steven Mather of the National Park Service.

Torre: Well, this is why I don't believe in the subject of "dirty money." I suppose if it's obtained through drug dealing and bootlegging, I don't know what I would believe, but even then, I do believe that the people who acquired the funds should not be deified, but using their money does not necessarily deify them. And the sources of discretionary funds available for private activities will always be what many people think of as dirty money. It's, I think, a very naive and uninformed issue.

Wilmsen: I think I'm just about done. Is there any question that I've failed to ask?

Torre: Oh, I don't think so--[laughter]--that's not something you should ask, though.

Wilmsen: Is there any subject you'd like to return to?

Torre: Oh, what I should say is that, I have noted recently, that when I've been described--I guess it's in the foundation's annual statement, they describe in about four typewritten lines the background of the various people--of course, being an attorney, they have emphasized my interest in supporting the theater and the ballet and the opera and the symphony in the local areas. So if there is any conflict that I have had it has not been professional, it has been with the other charitable activities

that engaged my interest. And I'm merely saying that because that's the way they publish it. The support we give--as I have said earlier, we are not major donors to anything, but we do care a lot about the homeless, the San Francisco Symphony and Opera, and A.C.T., Berkeley Rep, ballet--

Wilmsen: But how would contributing to those activities constitute a conflict of interest?

Torre: Well, I daresay that there are people in the foundation [laugh] the foundation board who would like to see us curtail the funds we give to those activities and give them to the foundation.

Accolades to James L. Adams

Wilmsen: Oh, I see. [laughter] Actually, I do have a question from early on in your oral history when we were talking about the Pacific Maritime Association and your work on the tax issues there. And you mentioned at one point that Mr. Adams in your firm--

Torre: James L. Adams.

Wilmsen: --had gained the trust of the ILWU?

Torre: Yes.

Wilmsen: But I was wondering how he had managed that?

Torre: During World War II, he was deputy counsel to the War Shipping Administration in Washington, in charge of the labor matters that the War Shipping Administration had to confront, which were different labor matters than the private industry had to confront.

There were problems that developed and because his very large, humane, sophisticated point of view, a knowledge of the law and his dedication as a patriot--all were in balance, he handled those problems as they arose, as I understand it--I wasn't there, I was in the air force; I wasn't a lawyer--but as I understand it, his handling of them was with a generosity, skill, knowledge and balance that organizations like the ILWU were not accustomed to finding in industry representatives.

He had up until then been in L.A. representing the maritime and other industries in L.A., which was a smaller community than San Francisco. In fact, he was quite happy after the war to give

up his L.A. base and come to San Francisco. At the time L.A. was taking over from San Francisco as a community.

That was unusual for a man of his standing and I think that was a beginning of a rapprochement--a relationship--between him and Harry Bridges and other members, such as Howard Bodine of the ILWU. So when the "New Look" came in following the '46 strike--the long protracted strike (I think it was '46, it might have been '47), I think it was a three or four month strike in which the waterfront was tied up, and it looked as if the waterfront was going to be returning to the practices that had characterized it in the thirties, in being tied up every year, every year and a half, two years with dire results for the shipping industry because shipping from the Orient went through the Panama Canal to the Gulf or through the Suez Canal to the East Coast--that was when the owners of the shipping industry decided that they were going to conduct their affairs differently on a straight economic basis with the unions. Whereas there had been an ideological warfare that had been going on all during that period between the left and the right, the industry being identified as the last Bourbons and the ILWU and other maritime unions being identified as communists or Fellow Travelers, the shipping industry decided as a result of that strike that they were through with ideology. They were going to bargain and make the best bargains they could, but they recognized they had to deal with the unions: they had to live within the confines of the National Labor Relations Act. And that was a huge change and a change in the leadership. It became characterized by the phrase, "the New Look."

The law firm that had represented the industry in San Francisco--basically, on the Pacific Coast--from 1932 at least, maybe earlier, was replaced. And Adams, because of his reputation that he had developed and his own personality, was selected as the general counsel. And I was hired. [laughter]

He was a very fine man. He was a very fine man. Let my history pay accolades to James L. Adams. He's one of the people I worked with and whom I respected as I was working for him, and I remembered with a lot of affection.

Wilmsen: Okay, well, I think that's a good place to stop.

Torre: Okay.

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CERTIFIED FOR PUBLICATION
 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
 FIRST APPELLATE DISTRICT
 DIVISION FOUR

COPY**FILED**
Court of Appeal - First App. Dist

JUN 10 1999

RON D. BARROW, CLERK
By _____ DEPUTY

SIERRA CLUB FOUNDATION,

Plaintiff and Respondent,

v.

RAY A. GRAHAM III,

Defendant and Appellant.

A078387, A080685

(San Francisco County
Super. Ct. No. 965223)

This case has a hint of the “stranger than fiction” flavor: Foundation sues former, substantial donor for malicious prosecution based on the donor’s fruitless federal suit against the foundation for fraud, breach of contract and other causes. Donor urges attorneys general from two states to get involved. One declines but the other launches an accounting action against the foundation in which a purported beneficiary of the donor’s gift intervenes; this action settles.

This appeal—from a judgment for compensatory and punitive damages in favor of the foundation—probes all aspects of the malicious prosecution tort, as well as the constitutionality of punitive damages. It poses the interesting question of where to focus inquiry into whether the underlying action terminated favorably to the foundation—on the federal judgment, or the subsequent settlement in the accounting and related intervention action? We conclude the federal judgment is the proper focus, find the donor’s other arguments to be without merit and affirm the judgment but reverse an order for sanctions.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *The Mudd Deed of Gift; Frontera; Land Project*

Established in 1960, respondent Sierra Club Foundation (Foundation) is a California nonprofit corporation, organized as a charitable organization under the Internal Revenue Code. Operating as a separate entity from the Sierra Club, the Foundation's mission is to administer and disburse donated funds for broad charitable and environmental purposes.

In 1970, environmental activist Harvey Mudd executed an agreement with the Foundation called "Deed of Gift (Restricted)" which created the Frontera Del Norte Fund (Frontera) for purposes of financing conservation projects primarily located in New Mexico. The deed of gift called for Mudd to establish a committee to propose conservation projects for funding to the Foundation's board of trustees. He initially donated \$130,067 to Frontera, with \$100,000 treated as an endowment and the remainder passed to the granting fund to be disbursed for projects.¹

At that time, Frontera was primarily focusing its activities on air pollution. Mudd was also interested in purchasing a large tract of high mountain land for multiple uses. The idea for this "Land Project" was to identify land with some unique environmental qualities, save it from the developers and use it for a variety of activities including recreation for "barrio" children; scientific research in partnership with one or more universities; and limited livestock grazing if grazing could be accomplished conscientiously. In connection with the land project, discussions were held with La Cooperativa Agricola del Pueblo de Tierra Amarillo (La Cooperativa) about grazing opportunities for their membership. In July 1970 Mudd looked at some properties, but Frontera did not have enough money to proceed with a purchase.

¹ Through 1983 Mudd donated a total of \$273,513 to the Foundation, most for Frontera. Between 1970 and 1993 Frontera raised and disbursed over \$1.3 million for various projects, including an air and water quality study, a health co-op, and wilderness protection projects.

B. Graham's Donation; Status of Land Project

Through their involvement in New Mexico Citizens for Clean Air and Water, appellant Ray A. Graham III and his wife met Mudd around this time. Graham had a reputation as a conscientious developer. Mudd spoke with Graham about all of Frontera's activities, including the land project, and showed him a "topo" map and some photographs.

Graham later expressed an interest in donating to Frontera. He sought assurance that his donation would be tax deductible. On November 11, 1970, Graham transferred stock to the Foundation as a gift, for use by Frontera. Neither Mudd nor anyone else represented that Graham's donation would be used for any particular purpose or for any particular beneficiary. Until 1990, Graham never inquired about the status of his donation.

Graham indicated to Mudd that he was making his donation to the project portion rather than the endowment portion of Frontera. Thus it was held in the "granting fund, generally," which was the source of support for Frontera's conservation projects. For accounting purposes of the Foundation, Graham's donation was specifically allocated to the land purchase account and the Frontera committee recommended that it be used for the land project.

The donation was pooled and invested along with other Foundation funds. The interest was used by the Foundation in lieu of an administrative fee, per agreement with Mudd. Thus, no interest accrued to the granting fund. Graham did not ask that interest accrue to his donation, and never discussed the issue.

Throughout the 1970's, Frontera continued to investigate properties for the land project. Brant Calkin, a member of the Frontera committee, looked into more than 57 parcels for the land project. The 2,000-acre "High Mountain Ranch" was a parcel with some potential. With a \$200,000 price tag and Graham's gift, Frontera had half the money in the granting fund to purchase it. There was uncertainty about the location of the water source, but by the time a survey was underway, the sellers took the property off

the market. Other properties were examined, but all were problematic for one reason or another: price; title; access, etc. The board of trustees of the Foundation twice gave Mudd authority to bid on property, but its members generally were chary about the Foundation becoming a landowner and managing property.

In 1979 the Foundation asked Frontera if it would release Graham's donation for the general purposes of the Foundation, including support for the Sierra Club. In return, the Foundation proposed to transfer to Frontera \$150,000 from a recent bequest restricted to use for land preservation. In January 1980 Graham released the Frontera condition in writing, stating that his contribution could be used "for the general support of the Sierra Club." Calkin told Graham that the Frontera Committee would continue to try to find property for the land project, and it did continue looking.

The Foundation did not replace Graham's donation with the bequest until 1989.

C. Oxbow Incident

In 1975 the Foundation acquired by gift a 9.825-acre sweetwater cattail marsh on the western edge of Albuquerque called the "Oxbow" marsh. Pursuant to the terms of the gift, the Foundation was to preserve the property in its natural state. Coincidentally, the Oxbow marsh was contiguous to the southern boundary of a large tract of land which Graham purchased in 1968. Graham had the property masterplanned for commercial and residential development. In 1990 the assessed value for tax purposes was \$87,500 per acre.

Graham had his property surveyed in 1989. The survey revealed a 1.884-acre boundary overlap with the Oxbow marsh. Graham demanded that the Foundation deed the overlap area to him. His plan was to then deed the area to the City of Albuquerque to resolve a dispute over his development plan. After the parties met with a local title company, the Foundation retained a real estate attorney to render an independent title opinion. That opinion indicated that the Foundation had superior title to the overlap area.

The Foundation decided it could not just deed the overlap area to Graham. Calkin notified Graham of the Foundation's decision as well as the results of the boundary

opinion. Graham became very angry, asked about the disposition of his gift and was informed that the Foundation had not yet purchased any land. He threatened to make trouble about that. Graham then complained to the Sierra Club (not the Foundation) and his senator about the overlap area and the status of his donation. He asked the Sierra Club director for a report on the contribution, its balance and previous uses. The Foundation director responded that the balance had been augmented to \$150,000, but interest did not accrue.

By March 1990 Graham's attorneys advised the Foundation that Graham's "two outstanding disputes with the Foundation should be considered together and jointly resolved" Graham began taking the position that all parties concerned intended his 1970 donation for a specific beneficiary—Ganados del Valle (Ganados). Ganados did not come into existence until January 1984—some 14 years later—although it was founded by some of the same people who started La Cooperativa.

Throughout 1990 the Foundation tried to settle both disputes. In July 1990, attorneys for the Foundation proposed (1) transferring the \$270,000 land fund² to a suitable donee for use by Ganados; and (2) conveying the Oxbow tract to the City of Albuquerque for its open space program in a transaction whereby Graham would get credit for the overlap area. Graham rejected the first proposal but wanted to separately accept the second and settle the Oxbow incident. Ultimately the Foundation was unwilling to proceed with the Oxbow conveyance "in view of the California litigation" (see below).

² The history of this fund is confusing. The \$150,000 bequest that the Foundation authorized to backfill Graham's contribution following his release accrued interest and appreciated to \$268,515 by 1985. At that time, the Foundation made an interest-free loan of those funds to a land conservation organization that was repaid in 1989. As of September 1990 the fund had grown to \$296,437.

D. The Federal and New Mexico Litigation

1. Procedural Background

On December 18, 1990, Graham filed suit against the Foundation and Calkin in the United States District Court, Northern District of California (case No. C 90 3595 CAL), praying for individual as well as representative relief on behalf of Ganados. He alleged breach of fiduciary duty, fraud, breach of contract and enforcement of trust, and called for an accounting and declaratory relief.

The following July Graham sought leave to amend the complaint in order to add the attorneys general of New Mexico and California as parties. The court directed that the amended complaint be served on them. The California Attorney General declined to participate but the New Mexico Attorney General indicated he intended to file a parallel civil action in New Mexico rather than intervene. In October 1991 the court stayed the federal action pending that filing.

In December 1991 the Foundation filed a petition pursuant to Probate Code section 17200 for purposes of resolving certain charitable trust issues raised in Graham's complaint. The court granted summary judgment in the Foundation's favor on the ground that the gift did not constitute a trust.

The New Mexico Attorney General filed an action for accounting and other relief in June 1992. The chief attorney on the matter was Fred Nathan, who, just a few months earlier, had been an associate of the firm that represented Graham. Six months later Ganados intervened and filed a complaint in intervention.

In November 1992 the federal district court lifted the stay; dismissed Graham's "representative" claims as well as individual claims that sought to enforce a charitable trust, all for lack of standing; and granted Graham leave to file a first amended complaint. Thereafter the New Mexico Attorney General and Graham's attorney urged him to exit from the litigation and let the New Mexico Attorney General pursue the case on Ganados's behalf. Ganados's attorney similarly felt that since the objective of the

litigation was to “get justice for Ganados,” then it should proceed in New Mexico with the New Mexico lawsuit.

Graham opted instead to “stay in.” In July 1993 he filed a second amended complaint alleging fraud, negligent misrepresentation, breach of contract and breach of covenant of good faith and fair dealing and seeking compensatory and punitive damages for himself alone.³

Three months later the federal court granted summary judgment in the Foundation’s favor, finding: (1) Graham could not prove essential aspects of his fraud and negligent misrepresentation claims; and (2) Graham had no contract claims because he never entered into a contract with the Foundation; rather, he made a gift which transfers no consideration. Graham noticed an appeal but later withdrew it.

The Foundation settled the New Mexico action two years later, in September 1995. It paid Ganados \$900,000 (\$500,000 unrestricted, \$400,000 for grazing land in New Mexico) and agreed to follow certain management practices with respect to the Frontera fund.⁴ There were releases of liability on the part of the State of New Mexico, Ganados and the Foundation, but the agreement explicitly did not extend to or for the benefit of Graham. The settlement agreement further provided that the Foundation entered the agreement to minimize the cost of continued litigation, not because it was liable. Indeed, it expressly denied liability.

2. *Media Strategy*

Shortly before Graham instigated the suit, he told Mudd he was very angry at Calkin and felt he had not been respected or shown sufficient consideration, given his

³ By then Graham’s complaint was dismissed as against defendant Calkin.

⁴ Among other things, the accounting firm engaged by the New Mexico Attorney General found that the Foundation failed to: (1) segregate Frontera fund assets as required by the Mudd deed of gift; (2) accrue annual income on Graham’s gift, which would have yielded approximately \$843,000 between 1970 and 1988; and (3) report Graham’s donation to the IRS.

significant contribution to the Foundation. Graham was mad about the Oxbow incident and thought he was entitled to have Frontera surrender the overlap area to him.

Graham admitted he filed the suit to keep pressure on the Foundation. From the beginning, publicity was important to Graham. Part of Graham's game plan was for his attorney, Robert Bouchier, to draft a "fact intensive" amended complaint in July 1991 that would "allow the media to understand the issues" The extent to which the media should become involved was a major question, Bouchier asking rhetorically, in an October 1991 memorandum: "How should we attempt to manipulate the media to our advantage?"

That fall Bouchier also met with the officer in charge of the Foundation's special fund-raising campaign marking the 100th anniversary of the Sierra Club. Around the same time, Maria Varela of Ganados wrote to an associate in which she discussed the underlying lawsuit and communications she was having with Graham which included the following: "Graham is adamant that this will go to [trial] before November or he will call the media. SC is preparing for its 100th [centennial] anniversary and a large fundraising push before and during the holidays and would rather see this limp along until after Christmas. If Graham pushes the media button in October if there has been no indication [of] settlement, we will prepare our own media strategy."

The media button was pushed and articles about the lawsuit began appearing in newspapers and magazines around the country as early as October 1991. Quoting from the complaint, these articles bore such headlines as: "Sierra Club Misused \$100,000 Donation, Suit Says."

As further detailed in Bouchier's correspondence to Graham in March 1993, the strategy was to "provide factual support for a 'story' which could be researched and used by any interested observers." Bouchier continued: "[T]here are various ways to allow media participation without risking potential liability for instigating the dissemination of false and harmful information. It is Ganados' constituents who have the story with the greater media interest. The entire story can easily be pieced together from court filings

and prior articles. . . . Ganados and their constituents are unlikely to be sued successfully for telling their story to the media, even if they actively promote media coverage. Our game plan is simply to let Ganados engage the interest of the media; we then can respond to the media's inquiries with our opinions rather than factual assertions." (Original underscore.)

Graham responded that the "only way" to "the end of the morass is to do something with high profile. Something which brings in the press and lets the generals know they aren't going to escape this one." In June 1993 Bouchier noted that the most difficult aspect of publicity/media relations was to keep the story "'hot,'" and that the fraud allegations created the best opportunity for favorable publicity.

The negative publicity raised questions in the minds of potential donors and adversely affected the Foundation's ability to raise funds.

E. Malicious Prosecution Action

The Foundation launched its malicious prosecution suit against Graham in November 1994.⁵ To prevail, the Foundation had to prove that the prior action, commenced by or at the defendant's direction, (1) terminated favorably as to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.)

Certain admissions⁶ of Graham were brought out at trial, including that at the time of making his donation: (1) he understood that the Frontera committee would determine how to use the funds; (2) no one said that La Cooperativa would be the sole beneficiary and he did not condition his gift on La Cooperativa being the user of any land that was acquired; and (3) he did not condition the donation on acquiring grazing land in Northern New Mexico, or even on a land purchase in Northern New Mexico. Further, Graham

⁵ The complaint named Calkin as a plaintiff, but the action was later dismissed as to him. Graham's attorney and his firm were later added as defendants, but they settled.

⁶ Per examination under Evidence Code section 776, Graham acknowledged that he made these various admissions under oath in the underlying case.

admitted that prior to making his donation, he never saw the Mudd deed of gift, he asked for no information about it, and the manner in which his and other donated funds would be held or invested was not discussed nor was he told his donation would earn interest. Additionally, he relied on Mudd and Calkin to control his gift, not any particular Frontera committee.

The court determined as a matter of law that the summary judgment entered on Graham's second amended complaint in the federal action constituted a favorable termination for the Foundation. After receipt of the special verdict as well as other evidence offered by Graham solely for the court's consideration, the court determined Graham did not have probable cause to assert, maintain or prosecute the breach of contract, breach of the implied covenant, fraud or negligent misrepresentation claims.

The jury found that Graham acted with malice in commencing and maintaining the underlying action and set the Foundation's compensatory damages at \$672,638.07. In the second phase of the trial, the jury assessed punitive damages against Graham in the amount of \$2,017,914.21. The parties further stipulated that Graham would pay a portion of the attorney fees and costs incurred by the Foundation in defending Calkin in the underlying action, fixed at \$137,895.60. Judgment was entered accordingly.

II. DISCUSSION

Graham reminds us that malicious prosecution has been dubbed a disfavored tort because of its potential chilling effect on the willingness of the ordinary citizen to pursue resolution of disputes in court. (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 872 (*Sheldon Appel*)). However, it is equally true that "[t]his convenient phrase should not be employed to defeat a legitimate cause of action. . . . '[W]e should not be led so astray by the notion of a "disfavored" action as to defeat the established rights of the plaintiff by indirection; for example, by inventing new limitations on the substantive right, which are without support in principle or authority'" (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 53, quoting *Jaffe v. Stone* (1941) 18 Cal.2d 146, 159 (*Jaffe*)).

Recognizing the delicate balance that must be struck between these two sentiments, we conclude in this case that the Foundation had a legitimate cause of action and properly proved it. Therefore we reject Graham's premise on appeal that the Foundation failed to properly establish the essential elements of the tort of malicious prosecution: favorable termination, absence of probable cause, and malice.

A. Favorable Termination

The element of favorable termination is for the court to decide; thus, our review is *de novo*. (See *Pattiz v. Minye* (1998) 61 Cal.App.4th 822, 826-827.) It calls for a termination reflecting on the merits of the action and the plaintiff's innocence of the misconduct alleged. (*Lackner v. LaCroix* (1979) 25 Cal.3d 747, 750-751; *Pattiz v. Minye, supra*, 61 Cal.App.4th at pp. 826-827.) When the proceeding terminates other than on the merits, the court must examine the reasons for termination to see if the disposition reflects the opinion of the court or the prosecuting party that the action would not succeed. If resolution of the underlying action leaves a residue of doubt about the plaintiff's innocence or liability, it is not a favorable termination sufficient to support a cause of action for malicious prosecution. (*Id.* at p. 827.)

Favorable termination can occur short of a trial on the merits, but it must bear on the merits. Thus a plaintiff does not establish favorable termination merely by showing that he or she *prevailed* in an underlying action. (*Lackner v. LaCroix, supra*, 25 Cal.3d at pp. 750-751.)

1. Summary Judgment in the Federal Action was a Favorable Termination

The Foundation prevailed on the merits in the underlying federal action. The summary judgment entered in that action reflects on the Foundation's innocence of the alleged fraud and negligent misrepresentation claims, as established by the following findings rendered by the district court: Graham's fraud and negligent misrepresentation claims were grounded in three misrepresentations: that his gift (1) would be used for purchasing a specific piece of land in New Mexico; (2) was all that was needed to complete the purchase of land; and (3) would be held, invested, accounted for and

administered as part of the Frontera fund governed by Mudd's deed of gift. While there was a genuine factual issue as to whether the Foundation made the first representation, Graham did not produce any evidence to support the contention that at the time he made the gift the Foundation did not intend to purchase land. Thus, there could be no fraudulent inducement. As to the second alleged misrepresentation, there was no proof that such representation was made. Further, as to representations concerning the administration of his gift, Graham relied on three letters to establish his understanding of what the Foundation promised regarding use of his money, and there were no misrepresentations in any of them. Finally, the Foundation placed Graham's gift in the Frontera fund and initially treated it as a restricted fund. Moreover, Graham did not produce any material evidence that the Foundation promised that his donation would be handled in accordance with the Mudd deed of gift, or that he relied on any particular composition of the Frontera committee to safeguard his donation.

The disposition, on the merits, also reflected the court's decision that Graham could not succeed on claims for breach of contract and breach of the covenant of good faith and fair dealing. In particular, the court found that Graham produced no evidence that he entered into a contract with the Foundation. Rather, he made a gift, for which there is no consideration. Thus, there could be no liability on the part of the Foundation to Graham for contract-related causes of action.⁷

⁷ Graham makes much of the fact that the federal ruling on the contract theory of recovery left open recovery on a gift theory, which the New Mexico Attorney General pursued. He calls summary judgment on the contract claims "procedural circumstances" which do not reflect on the merits of Graham's case. Without question the judgment does reflect on the merits of Graham's individual contract case. Graham had no such case and had the option of dropping his federal action once the New Mexico Attorney General stepped into action. He refused to do so.

Interestingly, Graham faults the Foundation for vigorously opposing his attempt to stay the federal action pending outcome of the New Mexico case. But the stay proceedings occurred during the limbo period of late 1991 to February 1992 in which the

Graham tries to use the dismissal of Graham's representative claims as a wedge to dismantle the integrity of the favorable termination ruling. We do not quarrel with his contention that a dismissal or other disposition based on lack of standing is not a favorable termination because it does not shed light on the merits. However, the termination we are concerned with is the summary judgment on Graham's second amended complaint—which was rendered on the merits, and which followed dismissal of Graham's representative claims due to lack of standing.

2. *The New Mexico Action is Not Part of the Favorable Termination Calculus*

The crux of Graham's argument is that the New Mexico action, rather than the underlying action, is dispositive of the favorable termination question. He begins by reminding us that a dismissal following a settlement is not a favorable termination because it reflects ambiguously on the merits, leaving unresolved the issue of the defendant's innocence. (*Pender v. Radin* (1994) 23 Cal.App.4th 1807, 1814.) Again, we agree with this general proposition, but not with the stretch Graham urges us to embrace. His notion is that “[s]o long as the settlement bears on the underlying dispute and the rights at issue, it is determinative of the favorable termination question”—regardless of whether the plaintiff participated in or was a party to the settlement, and whether or not the settlement was made “within the strict confines of the underlying lawsuit.”⁸

Next, Graham asserts two related premises: First, under the rationale of *Jaffe*, *supra*, 18 Cal.2d 146, the New Mexico action “marks the final termination of Graham's

New Mexico Attorney General presumably was deciding what to do. He did not file an action until June 1992.

⁸ *Oprian v. Goldrich, Kest & Associates* (1990) 220 Cal.App.3d 337 is the principle authority cited for this particular proposition. It is inapt. There the malicious prosecution defendants settled their specific performance action with the successor in interest to the malicious prosecution plaintiff. Their remaining action for breach of contract was voluntarily dismissed following reversal of judgment for the malicious prosecution plaintiff on his cross-complaint for fraud. Unlike the instant case, neither disposition was on the merits.

claims, and that termination was not favorable. Second, his “primary right” to enforce the 1970 gift for its intended beneficiaries and purpose was incorporated into both the federal and the New Mexico actions, and the latter settlement fails to establish the Foundation’s innocence of the claims asserted in pursuing that right.

Jaffe clarified that to support an action for malicious prosecution, the prior proceeding “must be ‘finally terminated,’” but it need not be incapable of revival or constitute a bar to further prosecution for the same offense. (*Jaffe, supra*, 18 Cal.2d at p. 152.) The termination in *Jaffe* was the dismissal of a criminal charge for lack of evidence. (*Id.* at p. 150.) In such a case the dismissal indicates the innocence of the accused “‘unless it appears that further proceedings growing out of the same misconduct on [the defendant’s] part have been instituted.’” (*Id.* at p. 156.) The Restatement Second of Torts, section 660, subdivision (d) is to the same effect: “A termination of criminal proceedings in favor of the accused other than by acquittal is not a sufficient termination to meet the requirements of a cause of action for malicious prosecution if [¶] . . . [¶] (d) new proceedings for the same offense have been properly instituted and have not been terminated in favor of the accused.”

Graham urges that the rule of *Jaffe* and section 660, subdivision (d) of the Restatement Second of Torts apply regardless of whether the underlying action is civil or criminal. First, no case has applied this specific rule to a prior civil proceeding.

Second, the difference between criminal and civil proceedings is patent. When a criminal case is dismissed after a preliminary hearing for lack of evidence, jeopardy does not attach and if further evidence is forthcoming, the criminal defendant can be recharged. The closest analogy in the civil setting would be a judgment of dismissal on demurrer, which would not operate as a bar where the demurrer was sustained for technical or formal as opposed to substantive defects. But that is not our situation. Here we have a final judgment following determination of a motion for summary judgment. That judgment is on the merits and ordinarily, the doctrine of *res judicata* would preclude

subsequent prosecution of a new suit concerning the same alleged wrong.⁹ However, if subsequent proceedings are not foreclosed by principles of *res judicata*, the analysis shifts to defining the nature of the underlying prior action—is it an independent, separate adversarial action, involving the expense and trauma of preparing a response, and having a procedural life of its own? If it is, it will support a later tort claim for malicious prosecution; if instead it is a subsidiary or purely defensive proceeding, it will not. (See *Camarena v. Sequoia Ins. Co.* (1987) 190 Cal.App.3d 1089, 1094-1095 [insurer's action for declaratory relief—although related to plaintiff's pending personal injury suit—was sufficiently adversarial and independent to support plaintiff's action against insurer for malicious prosecution]; see also *Merlet v. Rizzo* (1998) 64 Cal.App.4th 53, 59-60, 62-63.)

Armed with the victory of the federal judgment and its reflection on the Foundation's innocence, the Foundation was free to pursue its malicious prosecution action without regard to the outcome of the New Mexico action. The two proceedings were separate and had separate procedural lives. The plaintiffs were different, as were the courts and the relief sought. The underlying action was adversarial, causing expense and injury to the Foundation. It was not ancillary by any measure to the New Mexico action, nor was it dependent on the outcome of that proceeding. Because the two actions were separate and independent, and because the federal judgment was truly final, the New Mexico settlement does not cast a shadow of ambiguity on the federal judgment in terms of the Foundation's innocence in that action.

Graham also argues that where the underlying action seeks to remedy one primary right—which he purports to be the case here—one must look to the judgment as a whole in deciding whether termination is favorable, rather than parsing the disposition of each separate theory of recovery. (See *Freidberg v. Cox* (1987) 197 Cal.App.3d 381, 386-

⁹ The Foundation raised the defense of *res judicata*/collateral estoppel in the New Mexico action, but settled before any decision was rendered as to whether the judgment in the federal action bound the New Mexico Attorney General or Ganados.

389.) According to Graham, from the inception he sought to enforce only one primary right—that his 1970 gift be used to benefit Ganados—and that right was enforced by the proper parties through settlement of the New Mexico action.

Our Supreme Court in *Crowley* has pointed out that it does not follow from *Friedberg*'s primary right theory that a ruling striking two out of three theories of liability is not at least a “partial favorable termination” for purposes of malicious prosecution. (*Crowley v. Katleman, supra*, 8 Cal.4th at p. 686.) “Whether such a termination is sufficient to support a malicious prosecution action is, again, a question of policy under the substantive law of that tort.” (*Ibid.*)

Stated somewhat differently, the malicious prosecution plaintiff need not demonstrate that the entire underlying proceeding was utterly groundless. Groundless charges coupled maliciously and without probable cause with well-founded causes are no less injurious for the coupling. (*Singleton v. Perry* (1955) 45 Cal.2d 489, 497-498.) Thus, a malicious prosecution plaintiff is not precluded from establishing favorable termination where severable claims are adjudicated in his or her favor. (*Paramount General Hospital Co. v. Jay* (1989) 213 Cal.App.3d 360, 369-370.) Graham's individual claims were severable from the claims which the New Mexico Attorney General and Ganados pursued. Indeed, he could not pursue those claims and his attempt to pursue them in a representative capacity failed for lack of standing.

Under *Crowley*, *Singleton* and *Paramount*, Graham's individual claims—adjudicated in the Foundation's favor—were severable, and that adjudication supports the favorable termination requirement.

B. Probable Cause

The probable cause element plays an essential role in cutting to the heart or purpose of the tort of malicious prosecution—protection of the individual's interest in freedom from unreasonable and unjustified litigation. This element requires the trial court to make an objective call as to the “reasonableness” of the defendant's conduct; that is, to determine whether, on the facts known to defendant, institution of the prior action

was legally tenable. If the prior action was objectively reasonable, the malicious prosecution claim will fail. (*Sheldon Appel, supra*, 47 Cal.3d at pp. 878-879.)

As well, absence of probable cause can be shown by proof that the initiator commenced the prior action knowing that his or her claims were false. (*Bertero v. National General Corp., supra*, 13 Cal.3d at p. 50.) Reconciling *Bertero* with the “objective” test for probable cause, the court in *Sheldon Appel* highlights the distinction between a defendant’s subjective belief in the legal tenability of a claim, as opposed to his or her disbelief in its factual predicates. (*Sheldon Appel, supra*, 47 Cal.3d at p. 880.) Probable cause does not depend on the defendant’s subjective evaluation of the legal merits of the prior action. But if defendant *knows* that the facts he or she is asserting are not true, then defendant’s knowledge of facts which would justify initiating suit is zero, and probable cause is nonexistent. “A litigant will lack probable cause for his action either if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him.” (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 164-165.)

The question of probable cause is one of law, but if there is a dispute concerning the defendant’s knowledge of facts on which his or her claim is based, the jury must resolve that threshold question. It is then for the court to decide whether the state of defendant’s knowledge constitutes an absence of probable cause. (*Sheldon Appel, supra*, 47 Cal.3d at pp. 879-881; *Axline v. Saint John’s Hospital & Health Center* (1998) 63 Cal.App.4th 907, 917.)

Based on the jury’s answer to interrogatories,¹⁰ the court ruled that Graham did not have probable cause to initiate or maintain the underlying action because he did not have

¹⁰ The jury found that, during the entire course of the underlying action, Graham did not have a good faith belief in 16 out of 17 essential allegations, as follows: (1) and (2): that he was induced to make his gift based on the representation that it would be used solely to acquire grazing land in Northern New Mexico for the use of La Cooperativa, and he made the gift for that purpose; (3) and (4): that he was induced to make his gift on the

a good faith belief in the truth of its essential factual allegations. Additionally, the court concluded that Graham did not possess facts or information sufficient to render legally tenable the assertion or maintenance of any of his claims for relief.

Graham does not dispute that the jury findings are supported by substantial evidence. They are, as the facts recited in part I certify. However he does make the remarkable statement that the special interrogatories provided "no guidance" to the court in its probable cause analysis. He lists several reasons: they do not get at his belief in the essential facts of his claims; they suffer from a compound, prolix structure; and some are irrelevant to the probable cause question.

First, Graham did not object to these interrogatories or propose any of his own. In fact, he agreed to the form and content of the special verdict. More to the point, the special interrogatories do frame the factual predicates of Graham's claims for relief in the underlying action, correlating very specifically with the various paragraphs and subparagraphs of the complaint.

representation that it would only be dealt with and disposed of pursuant to the Mudd deed of gift, and he made the gift on that basis; (5) and (6): that Graham was induced to make a gift to Frontera based on the representation that the funds would be invested and would accrue interest separately for the benefit of the fund, and he made the gift on that basis; (7) that the January 1980 release of the condition of his donation was temporary; (8) that he continued to inquire into the status of his donation from January 1980 to December 1990; (9) that the Foundation's officers appropriated his funds for their own use and benefit; (10) that he was told his gift was all that was needed to complete the purchase of High Mountain Ranch; (11), (12) and (13) that there were misrepresentations in three letters sent or copied to Graham in the fall of 1970; (14) that in making his gift, Graham relied on the representation that the Frontera committee was composed of three members; (15) that Graham entered into a contract with the Foundation for the Foundation to use his gift solely to acquire grazing land in Northern New Mexico for the use and benefit of La Cooperativa; and (16) at the time the Foundation accepted the gift, it did not intend to use the gift for the benefit of the fund.

The jury did find that Graham had a good faith belief that his gift was to be kept segregated from the general funds of the Foundation until 1980.

Graham further argues that probable cause was established as a matter of law by four “undisputed” facts: (1) he gave \$100,000 to the Foundation in 1970; (2) the donation was for the purpose of purchasing land in New Mexico; (3) Graham designated the gift for use by Frontera; and (4) by 1990 the Foundation had not purchased any such land with the donation. It was not.

First, fact number two was in dispute and rejected by the jury.¹¹

Second, these facts do not aid establishment of any of the key allegations comprising the Foundation’s misconduct, as detailed in Graham’s complaint.

Third, as explained above, the jury found, on substantial evidence, that Graham did not believe those allegations to be true. That being the case, there was no factual predicate on which to hang a finding of probable cause.

Graham further argues that certain other “undisputed” facts supported the claims he asserted in the underlying lawsuit and gave rise to a reasonable suspicion that the Foundation did not intend to purchase land in New Mexico at the time Graham made the donation, as follows: (1) the board of trustees of the Foundation was opposed to the

¹¹ Graham’s donation letter merely states that his gift was designated for use of the Frontera fund. While Mudd did testify that he discussed the land project with Graham and Graham expressed interest in it, Mudd was clear that he never represented that Graham’s gift would only be used to buy land in Northern New Mexico. Graham admitted no one told him his gift would be used for this purpose.

Graham also points to prior testimony of Colburn Wilbur, financial secretary for the Foundation, to the effect that (1) if Graham made a donation, the money would be used for acquiring land in New Mexico; and (2) he remembered Graham’s donation was to be used to purchase land and he considered that to be a restriction of the gift. Wilbur made it clear in the instant trial that purchase of land was *one of the options*, that he never talked with Graham about Graham’s expectations and to his knowledge Graham never specified that his donation had to be used for buying land and for no other purpose. Further, his recollection about an intent to purchase land was in connection with conversations with “the Frontera del Norte people”—*after* the gift was made—that the donation was “more likely” to be used for that purpose.

Wilbur also stated in the present trial that he did not consider Graham’s gift restricted to the purchase of land, but it was restricted to the Frontera fund.

purchase of land; (2) the Foundation provided Graham with inconsistent accountings regarding his gift; (3) the Foundation failed to accrue interest on his gift; (4) the Foundation failed to disclose the donation on its 1970 tax returns;¹² (5) Mudd proposed to establish a retirement fund for Calkin using Frontera funds;¹³ and (6) the transaction involving the bequest was not disclosed to Graham or implemented as required by the board of trustees of the Foundation.

To begin with, some members of the Board were opposed to the purchase of land, but that does not translate into a blanket policy against land purchase. Indeed, the board gave Frontera authority to make offers on land. And in any event, this does not bear on what promises, if any, were made to Graham. Likewise the interest, tax, accounting and retirement fund issues do not speak to what happened in 1970 when the gift was made or the other essential allegations in the underlying action. With respect to the 1980 bequest and Graham's release, the jury found, from all the evidence, that the release was not, as Graham asserted, temporary. Graham claims the release was obtained under false pretenses because Calkin told him that they would "continue" the land project anyway, while Mudd testified that it was clear at that time that the land project "probably" "was not going to be able to be accomplished." However, he further indicated that Calkin—in effect true to his word—continued to look at land. Moreover, although the bequest was not transferred to the Frontera fund until 1989, it was earmarked for that fund in 1980 and ultimately used to revive it.

¹² While the donation was not separately itemized for the 1970 filing, apparently it was included in the amount of total donations reported for that year.

¹³ Graham presented evidence on this matter solely to the court, for consideration on the issues of probable cause and unclean hands. In 1987 Mudd approached the Foundation to explore the idea of using funds from Frontera to make some type of individual award to Calkin. The idea would be to retain Calkin in a consulting role or "[p]rofessor emeritus kind of status" as his career in the environmental movement wound down. Nothing came of this proposal.

Finally, Graham contends that the New Mexico pleadings support a finding of probable cause. The judge and jury were apprised of that action by way of testimony as well as exhibits. That the Foundation settled the action does not boost Graham's claim of probable cause. In the settlement agreement the Foundation expressly denied liability with respect to all allegations.

C. Malice

The malice element of the malicious prosecution tort goes to the defendant's subjective intent in initiating the prior action. (*Sheldon Appel, supra*, 47 Cal.3d at p. 874; *Axline v. Saint John's Hospital & Health Center, supra*, 63 Cal.App.4th at p. 917.) It is not limited to actual hostility or ill will toward the plaintiff. Rather, malice is present when proceedings are instituted primarily for an improper purpose. Suits with the hallmark of an improper purpose are those in which: “. . . (1) the person initiating them does not believe that his claim may be held valid; (2) the proceedings are begun primarily because of hostility or ill will; (3) the proceedings are initiated solely for the purpose of depriving the person against whom they are initiated of a beneficial use of his property; (4) the proceedings are initiated for the purpose of forcing a settlement which has no relation to the merits of the claim.” (*Albertson v. Raboff* (1956) 46 Cal.2d 375, 383.)

The Foundation wove together a theory of malice that incorporated a number of threads: Graham's anger about the Oxbow boundary overlap and his threat to make trouble over his donation; his efforts to bring others—such as a New Mexico senator—into the fray; the adverse media campaign which relied on false fraud accusations to discredit the Foundation and interfere with its fund-raising campaign; and Graham's rejection of the “exit” strategy (dismissing the case and walking away once the New Mexico action was underway). The jury returned a special interrogatory finding that Graham acted with malice in commencing and maintaining the underlying action.

Graham does not complain on appeal that the finding of malice lacks substantial evidence. Rather, he urges that the court abused its discretion in excluding evidence concerning the actual settlement of the New Mexico action. Without knowledge of the

outcome of that action, he argues the jury was given the misimpression that the New Mexico proceeding was devoid of merit simply because it was part of Graham's strategy to discredit the Foundation. Graham points to the following selection from the Foundation's closing argument: "[T]he New Mexico Attorney General's action was engineered by Ray Graham. It was engineered for the very purpose that he is using it here today, to try to show that his lawsuit in the underlying case had some credibility, but since it was engineered by him, I don't think it shows that."

The trial court excluded evidence of the actual settlement, which occurred *after* termination of the underlying action, on grounds that it was not relevant to Graham's state of mind in initiating or continuing that action. That ruling was correct. What occurred in the New Mexico proceeding after September 1993 was irrelevant to the issue of Graham's state of mind for purposes of the malicious prosecution action.

Moreover, there was no misimpression. The Foundation had every right to argue that Graham engineered the New Mexico Attorney General's action given that an associate with the law firm representing Graham joined the Attorney General's office and was assigned to work on the matter. But having argued that, the Foundation went on to *distinguish* Graham's action from the Attorney General's action by tying the malice to Graham's claims of fraud and misrepresentation, as contrasted with the Attorney General's suit for accounting, and further explaining: "So the fact that the New Mexico Attorney General sued for an accounting doesn't tell you that Graham was not malicious when he sued the Foundation for fraud and misrepresentation and misappropriation of funds. [¶] Now, there is another reason . . . why the New Mexico Attorney General's action doesn't lend credibility to Graham's claim that he wasn't malicious. That is because the New Mexico Attorney General, unlike Graham, did not . . . get involved in a media campaign to discredit the Sierra Club Foundation."

D. Punitive Damages

Exemplary damages are available in tort actions "for the sake of example and by way of punishing the defendant" (Civ. Code, § 3294, subd. (a)) upon proof "by clear and

convincing evidence that the defendant has been guilty of oppression, fraud or malice” (*Ibid.*)

Instructing the jury for phase I of deliberations, the court cautioned that “the definition of the word ‘malice’ for purposes of malicious prosecution is different from the definition of the word ‘malice’ as used for punitive damage purposes. [¶] Each definition of ‘malice’ should be used only for the purpose for which its use is defined by the court. This means that you should not use the definition of ‘malice’ as it was defined for malicious prosecution purposes in determining any issue on the question of punitive damages or vice versa.”

At the close of these deliberations the jury found, by clear and convincing evidence, that Graham acted with malice. Moving to phase II, the parties stipulated that Graham’s net worth was \$90 million. The court then advised the jury that it must determine whether to “award punitive damages against defendant Graham for the sake of example and by way of punishment . . . , and if so, the amount thereof is left to your sound discretion, exercised without passion or prejudice.” The court further instructed that if the jury decided to assess punitive damages, it should consider the following factors in setting the amount: (1) the reprehensibility of defendant’s conduct; (2) the amount of punitive damages that will have a deterrent effect on defendant in light of defendant’s financial condition; and (3) that punitive damages must be reasonably related to the injury, harm or damages actually suffered by plaintiff.

Graham levels multiple attacks on the punitive damages award. First, he argues that the jury instructions were “peculiar” and “problematic” because dual malice findings were required to establish the tort and then award punitive damages. He speculates that because the jury was called upon to make two determinations of malice during phase I of deliberations under different evidentiary standards and definitions, it is “likely” the jury made but one determination. In effect, he proposes that the jury disregarded the proper definition and higher evidentiary standard required to impose punitive damages. He complains that the jury should have received guidance on how and why malice for

purposes of punitive damages differs from malice for purposes of imposing liability for malicious prosecution.

Our review of the instructions and proceedings demonstrates the speculative quality of Graham's concern. The instructions were proper and clear. The two definitions speak for themselves and the court alerted the jury that the two definitions were distinct, and for different purposes. There is no indication, through juror questions or otherwise, that the jury was confused. The court polled the jurors after each phase of deliberation and not one expressed any doubt or hesitation. We will not presume on appeal that the jury ignored proper instructions on damages. (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 953.)

Graham persists, arguing that merely providing jury instructions is not enough. "Adequate guidance," including guidance on the unusual nature and purposes of punitive damages, is also required, in order to survive a due process challenge. We have no quarrel with the proposition that "general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus." (*Pacific Mutual Life Insurance Co. v. Haslip* (1990) 499 U.S. 1, 18 (*Haslip*)). But what, in law, is the difference between instruction and guidance? Certainly the high court in *Haslip* does not split that hair; nor will we. The court here delivered instructions which guided the jury during deliberations on punitive damages. Those instructions correctly informed the jury of the nature and purpose of punitive damages.

In addition, we fail to see the harm in delivering the nature and purpose instruction during phase II, after the jury rendered its finding of malice for purposes of punitive damages. The misconduct necessary to impose punitive damages—whether it be malice, oppression or fraud—serves as a gatekeeper for punitive damages deliberations. If defendant's conduct is not sufficiently egregious, defendant can avoid the parade of evidence of his or her financial condition. But if the conduct is sufficiently egregious, that is not enough to trigger punitive damages. The sanction must serve a purpose of

deterrence and punishment and if it would not, for whatever reason, there will be no award. This sequencing of instructions and deliberations is appropriate.

Moreover, we are not impressed with Graham's suggestion that when a jury must make two findings of malice, the court should also tell the jury that the punitive damages finding will entail a second phase of deliberation. Graham speculates that with this structure, the jury would "appreciate the context of its deliberations and the higher standard required to prove malice for punitive damages." Again, this argument assumes that the jury fails to properly appreciate and attend to instructions. Given this assumption—which we reject—an adverse result is just as possible. One could just as easily assume that with a second round of decision-making before it, the jury might gloss over evidentiary nuances and abdicate heightened scrutiny, figuring it could always withdraw the punitive damages trump card during phase II.

Finally, Graham faults California's punitive damages review procedures.

In *Haslip*, the United States Supreme Court put its lens to Alabama's punitive damages system. Upholding that system, the court noted with approval that in Alabama (1) the court instructs the jury on the nature and purpose of punitive damages and explains that their imposition is not compulsory; (2) the trial court scrutinizes punitive awards on a posttrial challenge to excessiveness of damages according to a number of factors, noting on the record the reasons for upholding or interfering with the verdict; and (3) the state Supreme Court measures the punitive damages verdict against established standards to guard against excessiveness. (*Haslip, supra*, 499 U.S. at pp. 19-22.)

Our Supreme Court recently weighed in on the punitive damages debate, holding that a plaintiff must prove a defendant's wealth before punitive damages can be imposed. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 123.) However, it declined to take the further step of deciding whether California's standards for reviewing punitive damage awards passes constitutional scrutiny after *Haslip*. (*Id.* at pp. 118-119, fn. 9.)

In California, the trial court, sitting as an independent trier of fact, reviews punitive damages awards on a motion for new trial. A new trial may not be granted on the ground

of excessive damages “unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision.” (Code Civ. Proc., § 657.)

Appellate review calls for setting aside such an award only when it appears excessive as a matter of law, “or where the recovery is so grossly disproportionate as to raise a presumption that it is the result of passion or prejudice.” (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 927-928 (*Neal*), internal quotation marks omitted.) The *Haslip* court expressed some concern with state schemes operating under a similar standard of review. (*Haslip, supra*, 499 U.S. at p. 21, fn. 10.) By way of contrast, it was comfortable that Alabama’s review scheme ensures that a jury’s award does not exceed an amount that will accomplish society’s twin goals of punishment and deterrence. (*Id.* at p. 21.)

The court in *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220 (*Las Palmas*) took up the challenge of deciding whether the California scheme survives *Haslip*, concluding that our posttrial and appellate standards of review are padded with sufficient safeguards to ensure a constitutional result. On a motion for new trial, the trial court can disbelieve witnesses, reweigh evidence and draw reasonable inferences that are contrary to those drawn by the jury.¹⁴ On appeal the reviewing court will intervene if the verdict is so palpably excessive as to raise the presumption of passion and prejudice. (*Las Palmas*, 235 Cal.App.3d at p. 1258.) Moreover, working with that standard we apply the same criteria as the jury, examining the reprehensibility of defendant’s misconduct, the proportionality between punitive and compensatory

¹⁴ As the court in *Las Palmas* pointed out, unlike Alabama, California law does not require the trial court to state on the record why it leaves an award intact, although it must explain any interference with the award. (*Las Palmas, supra*, 235 Cal.App.3d at p. 1258, fn. 8.) A statement of reasons is not constitutionally required for an intact award. (*TXO Production Corp. v. Alliance Resources Corp.* (1993) 509 U.S. 443, 464-465 (*TXO*); *Stevens v. Owens-Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1657.)

damages, and the relationship between punitive damages and defendant's net worth. (*Neal, supra*, 21 Cal.3d at p. 928; see *Adams v. Murakami, supra*, 54 Cal.3d at pp. 110-111; *Las Palmas, supra*, 235 Cal.App.3d at p. 1258.) Finally, because the purpose of punitive damages is to deter future misconduct by the defendant, "the key question before the reviewing court is whether the amount of damages 'exceeds the level necessary to properly punish and deter.'" (*Adams v. Murakami, supra*, at p. 110, quoting *Neal, supra*, 21 Cal.3d at p. 928.) And this question must be answered in light of the relevant facts. (*Adams v. Murakami, supra*, at p. 110.)

Graham rejects the *Las Palmas* reasoning as deficient in light of the high court's subsequent decision in *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559 (*BMW*). The issue there was whether a \$2 million punitive damages award, added to a \$4,000 compensatory award, was grossly excessive, and in particular whether the defendant—an out-of-state distributor—had fair notice of the conduct that would subject him to punishment as well as the severity of the penalty that a state can impose. The court identified three guideposts indicative of adequate notice: degree of reprehensibility; ratio of punitive damages to harm/potential harm inflicted on plaintiff; and comparison of punitive damages award to other sanctions for comparable misconduct. (*Id.* at pp. 565, 574-575.)

The first two guideposts find exact matches in California's scheme which requires us to look at the defendant's conduct and the amount of compensatory damages.¹⁵ The third factor can assist a reviewing court in figuring out whether the punitive damages

¹⁵ The high court in *TXO* and *BMW* has refined the disparity analysis to take into account the *potential* loss to plaintiffs, as where a scheme worthy of punitive damages does not fully succeed. In such cases, the proper ratio would be the ratio of punitive damages to the potential harm to plaintiff. (*BMW, supra*, 517 U.S. at pp. 581-583; *TXO, supra*, 509 U.S. at p. 460.) This twist helps the plaintiff, not the defendant, and thus does not raise the constitutional ante.

award approaches the point of equilibrium that satisfies but does not exceed the amount necessary to properly punish and deter.

The *BMW* guidelines are just that—they are guidelines which, if not exactly replicated in a state scheme, do not spell constitutional doom. In a proper case, our inquiry into whether there is equilibrium between the penalty and its deterrent and punitive effects would take into account the comparative sanctions question. As our Supreme Court has stated, this inquiry is to be made in light of the relevant facts. There is, of course, nothing in California's procedures which would preclude a defendant from developing facts on comparative sanctions which, in turn, would inform appellate review. However, in this case Graham has not alluded to any comparable civil or criminal penalties for deterring malicious prosecution of a civil lawsuit, nor are we aware of any. While court sanctions are available in many jurisdictions against frivolous claims and delaying tactics (e.g., Code Civ. Proc.,¹⁶ § 128.7), such sanctions are meted out on a pleading-by-pleading and motion-by-motion basis. By their nature they do not address the grander scale of harm inflicted from a lawsuit seen to judgment.

Under either *BMW* or *Neal*, the award was not excessive. The reprehensibility of Graham's conduct can be seen in his own disbelief in the underlying charges; his media strategy to extract settlement on his terms while bringing negative attention to the Foundation during its centennial fund-raising campaign; and his vendetta over the Oxbow incident. Proportionality is not a problem—the punitive damages award was three times the compensatory award, not a penny more. (See *Haslip*, *supra*, 499 U.S. at pp. 23-24 [upholding award with greater than four-to-one ratio].) We are not aware of any comparable civil or criminal penalties that could be levied to deter malicious prosecution. Finally the award was more than 2 percent of Graham's net worth, far less than the 10 percent cap generally recognized by our courts. (See *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1166.)

¹⁶ All further statutory references are to the Code of Civil Procedure.

III. THE SANCTIONS ORDER AGAINST GRAHAM MUST BE REVERSED

By separate appeal which, on our own motion, we consolidate with the underlying appeal from the judgment, Graham attacks a \$6,693 sanctions award levied against him and his counsel. Although the Foundation had sought sanctions pursuant to section 128.5 in connection with Graham's *third* motion for summary judgment, the court in fact awarded sanctions under section 128.7. The Foundation had submitted a proposed order denying Graham's third motion for summary judgment and awarding sanctions under section 128.5. The order was signed, but the paragraph on section 128.5 sanctions was specifically crossed out. The court also entered its own order denying Graham's summary judgment motion and granting sanctions under section 128.7.

Without treating the merits of the award, we conclude the court lacked authority to award sanctions under section 128.7. That statute provides: "This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in such a matter." (§ 128.7, subd. (i).) The applicability of section 128.7 is determined by the filing date of the original complaint. (*Murphy v. Yale Materials Handling Corp.* (1997) 54 Cal.App.4th 619, 623-624.) Here, the Foundation filed its complaint in November 1994.

The Foundation argues nonetheless that because they sought sanctions under section 128.5—which applies to proceedings initiated on or before December 31, 1994—we should reverse the sanctions order with directions to the trial court to reconsider its order pursuant to the criteria of that section. This we will not do. The Foundation did not seek reconsideration of the erroneous sanctions ruling at the time, nor did it file a cross-appeal. The only issue legitimately before us is the validity of the sanctions order under section 128.7, which is reversed for being in excess of the court's authority to enter.

We affirm the judgment (A080685) and reverse the sanctions order (A078387).

Reardon, J.

Reardon, J.

We concur:

Poché, Acting P.J.

Sepulveda, J.

A078387, A080685

Trial Court: San Francisco Superior Court

Trial Judges: Hon. John E. Munter
Hon. David A. Garcia

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Epilogue to the Graham Lawsuit

On September 23, 1999, the justices of the California Supreme Court voted unanimously not to review lower court rulings on the Sierra Club Foundation versus Graham lawsuit (Sierra Club Foundation v. Graham, S080697). This left intact the Court of Appeal's ruling and the \$2.7 million judgment in favor of the foundation. In October of 1999 Ray Graham's lawyers notified the Sierra Club Foundation that Graham would not pursue any further appeals of the judgment.

August 1999

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Carl Wilmsen

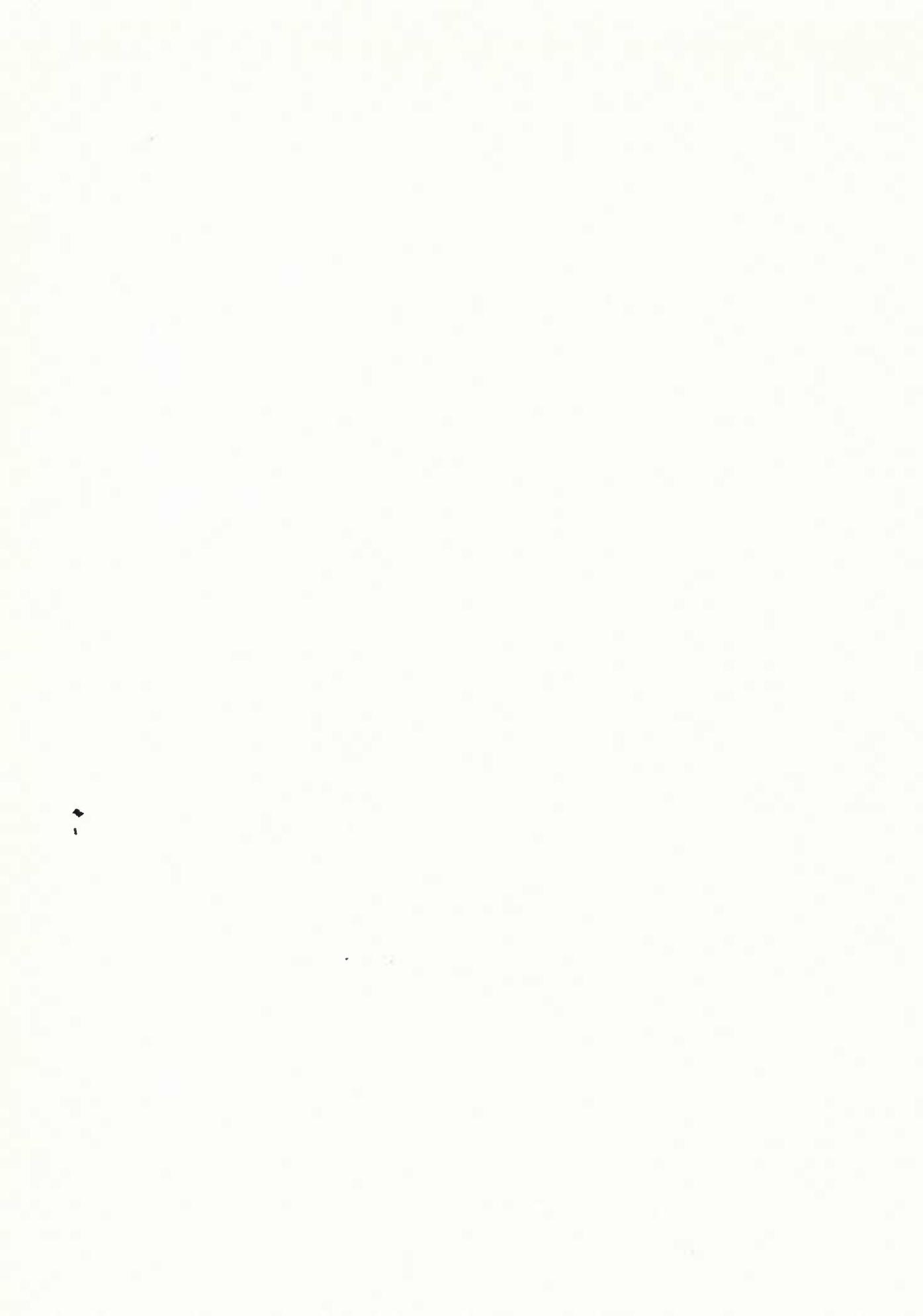
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Ph.D., 1997, Clark University, Worcester, Massachusetts, Geography with emphasis on natural resources, forest ecology and management, and geographic information systems. Dissertation title: Fighting for the Forest: Sustainability and Social Justice in Vallecitos, New Mexico, based on field work in Vallecitos.

Instructor, University of New Mexico, 1995-1997. Consultant in sustainable agriculture and rural community development to New Mexico State University, 1992-present.

Interviewer/Editor, Regional Oral History Office, in the field of natural resources and the environment, 1997-present.



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