

California State Archives
State Government Oral History Program

Oral History Interview

with

HON. FRED W. MARLER, JR.

California State Senator, 1966 - 1974

November 3 and 18, 1987
Sacramento, California

By Carole Hicke
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

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PREFACE

On September 25, 1985, Governor George Deukmejian signed into law A.B. 2104 (Chapter 965 of the Statutes of 1985). This legislation established, under the administration of the California State Archives, a State Government Oral History Program "to provide through the use of oral history a continuing documentation of state policy development as reflected in California's legislative and executive history."

The following interview is one of a series of oral histories undertaken for inclusion in the state program. These interviews offer insights into the actual workings of both the legislative and executive processes and policy mechanisms. They also offer an increased understanding of the men and women who create legislation and implement state policy. Further, they provide an overview of issue development in California state government and of how both the legislative and executive branches of government deal with issues and problems facing the state.

Interviewees are chosen primarily on the basis of their contributions to and influence on the policy process of the state of California. They include members of the legislative and executive branches of the state government as well as legislative staff, advocates, members of the media, and other people who played significant roles in specific issue areas of major and continuing importance to California.

By authorizing the California State Archives to work cooperatively with oral history units at California colleges and universities to conduct interviews, this program is structured to take advantage of the resources and expertise in oral history available through California's several institutionally based programs.

Participating as cooperating institutions in the State Government Oral History Program are:

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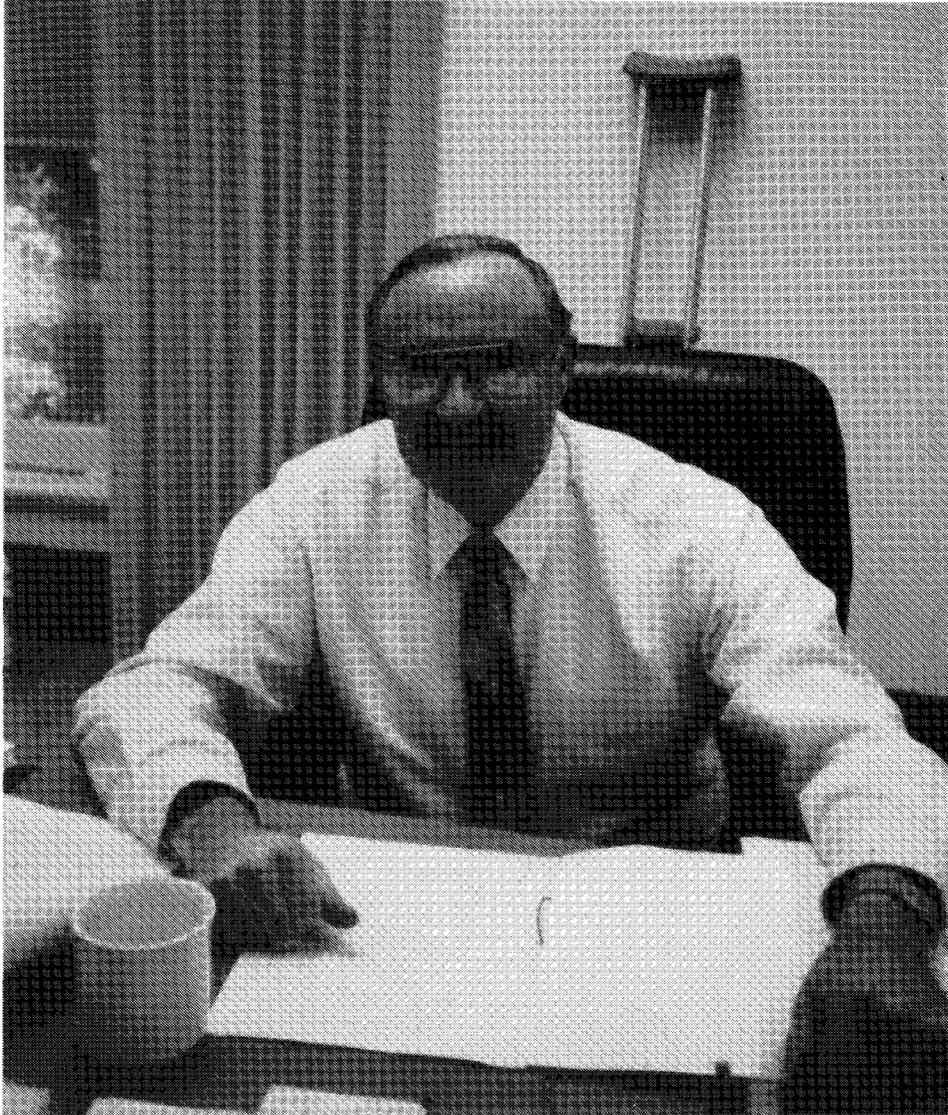
Oral History Program
University of California, Los Angeles

The establishment of the California State Archives State Government Oral History Program marks one of the most significant commitments made by any state toward the preservation and documentation of its governmental history. It supplements the often fragmentary historical written record by adding an organized primary source, enriching the historical information available on given topics and allowing for more thorough historical analysis. As such, the program, through the preservation and publication of interviews such as the one which follows, will be of lasting value to current and future generations of scholars, citizens, and leaders.

John F. Burns
State Archivist

July 27, 1988

This interview is printed on acid-free paper.



FRED W. MARLER, JR.
1987

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INTERVIEW HISTORY

Justice Fred W. Marler, Jr., was interviewed as part of the State Government Oral History Program. The interviews took place on November 3 and 18, 1987, in the justice's chambers at the Third Appellate District Court of Appeal in Sacramento. Marler had only recently been appointed, and he was in the process of moving books into bookshelves and arranging his files.

An outline of topics was sent to Marler before the interview, along with copies of speeches he had made and relevant articles from the California Journal and newspapers.

Marler reflected thoughtfully on the topics of discussion and recorded his observations and recollections of people he had known in the senate.

A lightly edited transcript of the interviews was sent to Justice Marler for review, and he returned it in two weeks with only a minimum number of corrections. No information was received about the interviewee's papers.

Carole Hicke
Editor/Interviewer
Regional Oral History Office

February 1987
The Bancroft Library
University of California
Berkeley, California

BIOGRAPHICAL SUMMARY

Fred W. Marler, Jr., was born April 6, 1932, in Auburn, California. After moving several times within California, he went through high school in Chico, California and graduated cum laude from the University of California. After a stint in the air force, he went back to law school, graduating from Boalt Hall in 1959. He married Irene Carlson, and they have two sons and a grandson.

Marler practiced law in Redding for a few years, and in 1965 in a special election, he was elected to the senate, the first Republican elected from the 5th District in thirty years. (In 1966 he was reelected from the now-reapportioned 2nd District.) There he chaired the Agriculture and Water Resources Committee, and also served on the Education, Fish and Game, Governmental Efficiency, Transportation, Finance, and Judiciary committees.

During his time in the senate, Marler was actively concerned with land and forest management issues, and was frequently involved in budget procedures. He was the Republican floor leader for the last four years of his term. He was a coauthor of the bill which put Proposition 4 on the ballot in 1972, resulting in changes in the legislative procedures.

In 1974 Marler was appointed to the superior court in Sacramento, where he remained for thirteen years. In 1987, he was appointed to the Third Appellate District Court of Appeal, coincidentally succeeding Ed Regan, whom he had succeeded as senator from the 5th District. He is a member of Elks, Rotary, and Foreign and American Legion.

I BACKGROUND

[Session 1, November 3, 1987]

[Begin Tape 1, Side A]

Family and Childhood

HICKE: I wonder if we could just start this morning, Justice Marler, with a little bit of background: when you were born and something about your family, your upbringing.

MARLER: All right. I was born April 6, 1932, in Auburn, California. At that time, my father was employed by the Union Oil Company. He was what they called the agent, or resident manager, of what they called the "bulk plant" in the town. He would supply major customers and also most of the service stations that had Union oil. He was also subject to transfer quite often because of that. Even though I was born in Auburn, I think I was about three or four months old when my folks moved from there for a while to the little town of East Niclaus in southern Sutter County. We were only there a few months, and we went from there to Roseville. And after a few months--and I was about two years old then--we moved to Redding; he was transferred there. I stayed in Redding and finished most of elementary school there, up through the middle of my eighth grade, when my father once more was transferred to Chico, where I finished the eighth grade and I went through high school.

In the meantime my father had left the Union Oil Company and had a couple or three other jobs. He owned a service

station for a while and he was a salesman for several things. Then he bought a small business, a liquor store in Redding, just before I graduated from high school. So they went back to Redding and I stayed. I wanted to finish high school there, since I had gone there for three years. So I graduated from high school in Chico in 1950. I was the class valedictorian. In high school, I played a little basketball and did a little track. Then after I left, I did get a scholarship to the university, so that fall 1950 I entered the University of California in Berkeley.

Education; Student Activities; Air Force Service

MARLER: In the meantime, I'd kind of decided what I wanted to do. When I was in the eighth grade and a freshman in high school, they gave us a battery of preference and aptitude tests. Up to that time, my mother kind of had her heart set on me becoming a dentist. It was always assumed I was going to go to college, even though no member of my family had ever gone to college before.

HICKE: Your parents were very interested in . . .

MARLER: Oh, they were determined I was going to go to college. My mother did finish high school. My father actually only had about two years of high school. His father, my grandfather, died in the flu epidemic of 1918, and he had to quit school and support his mother, three sisters, and a brother, when he was about seventeen years old; so he didn't get a chance to finish school.

HICKE: And clearly always regretted it.

MARLER: Always regretted it. But I very much admired my father. He was a very bright man and, with a lack of education, did very well in life; and I always wondered what he would have done had he had the benefits of going to college. But it was always assumed I was going to go.

After I took these aptitude tests, I came out--believe it or not--highest in social work and law. Maybe they are similar; I don't know. But I decided I wasn't terribly interested in becoming a social worker; I just didn't like the idea at the time. Not that I had the slightest idea of what they did. But the law sounded much more interesting to me, and so, starting about my freshman year in high school, I said, "Well, I think I'll become a lawyer." So I started taking courses in high school and college looking forward to that particular time.

I guess you want everything on it. I don't want to always sound like I'm bringing up the good things, but I got pretty good grades in high school. In fact, in grammar school. I was always a bright student, a self-starter, and just wanted to achieve. I graduated from high school with one "B," and that was only in a quarter grade that I got. I was always upset with that teacher for giving me that "B." But I got one "B," all the rest "A's."

HICKE: That spoiled the purity, you know, all those "A's."

MARLER: Then I entered college.

HICKE: Were you on the student body council or did you do anything of a political nature?

MARLER: Oh, I ran. I never won an office in high school. I was a club president of several clubs. I was a club president of what they called the Junior Classical League, a Latin club. I was also the president of the C.S.F., California Scholarship Federation; I was a life member of that. But I ran for sophomore president, and I ran for junior president, and I ran for student-body president, and came out second best every time. I got all of my losing out of my system before I got out of high school.

Then I went away to Cal, at Berkeley, and in a pre-law course. . . . I was actually a speech major there, with a minor in history.

HICKE: Were you on the debating team?

MARLER: No. I never did much in extracurricular activities there. I didn't run for any class offices or student-body offices. I joined a fraternity and I was kind of active in my fraternity. I was vice chairman of a couple of committees and things in the student body, but nothing very major. I did graduate in 1954 from Cal, cum laude—with honors—in Speech at that time. Missed Phi Beta Kappa by about three-tenths of a grade point, but that's the way it goes. Because I had a marvelous time in college, probably socialized a little too much. And, before I graduated, I put in an application to go to law school, also in Berkeley, Boalt Hall, and was accepted. However, in the meantime, Uncle Sam had other plans for me, and so I was commissioned in the ROTC [Reserve Officers Training Corps], in the air force. When I graduated, I went into the air force on active duty in October of 1954 then.

HICKE: So you were in the ROTC during college?

MARLER: Yes.

HICKE: And then you were commissioned on graduation?

MARLER: Yes, I was.

HICKE: And that was the Korean War?

MARLER: That was after the Korean War. The Korean War actually started the summer before I entered college. Of course, everybody had to go into ROTC; it was mandatory at that time at Cal for your first two years. It was Army ROTC for your first two years that I was in, and then the air force opened their ROTC and I transferred over in my junior year. I frankly thought about, at that time, as a lot of people were doing, deferring my college career and enlisting, being somewhat gung ho for going over and putting that war to an end. But I was prevailed upon

by the air force to stay and finish. They said they had invested in me and wanted me to stay and get my commission and then go. Well, the Korean War ended just before I was commissioned, so there wasn't a war on. But I did go on active duty for two years, though it wasn't terribly exciting. I spent my whole tour of duty at March Air Force Base, southern California.

HICKE: "Join the air force and see the world."

MARLER: Yes. I didn't get a chance to see much of the world. I wanted to fly and be a pilot, but I couldn't pass the flight physical because of my eyes. That plagued me a little bit, because I wanted to fly in the worst way.

HICKE: March is nice, though. We were stationed there for a little while. My husband was in the air force.

MARLER: Is that right? Well, I enjoyed March. I was actually in the air base group there for six or eight months. I first got there and the commanding general of the Fifth Air Division said, "Look at that. We've got a brand-new second lieutenant." That was kind of an oddity, because out of 1,200 officers on the base, there were only four second lieutenants. [Laughter] I was one.

He had a pet project he wanted me to take over, so he said, "I want you to establish a base-level leadership school." So my job was to set up the curriculum for a two-week course where all the airmen from airman first class through master sergeant could go to this school, accomplish all of their yearly training requirements, and get some leadership courses, etc. So I had to establish my curriculum, train my instructors, and I had about 300 airmen going through every two weeks. It was quite a deal for a brand-new second lieutenant. I had two classroom buildings, four barracks, and a headquarters, and a day room, and a supply building. I had

nine people working for me. But it wasn't very satisfying. I didn't really enjoy that part of it too much.

Then I was called from there and transferred to headquarters, Fifteenth Air Force, which is on March Air Force Base. I spent the rest of my time on active duty in the Office of Safety there in a variety of duties: developing flight safety programs for the fifteen bases that were in Fifteenth, and did some inspection work on the stations, and kept statistical studies, etc., there in the office. And I was there until about September of 1956. Saved up all of my vacation time so I could get an early out and come back and go to law school, because that was deferred. So I then entered law school in September of 1956.

Marriage and Law Practice; Early Political Activities

MARLER: In the meantime, I acquired a wife. I got married in June of '55 to my wife, Irene Carlson, from Butte County. I never met her until after I was out of college; I didn't know her when I was in high school. So we got married then. We're still married now, having been married over thirty-two years now. She was a schoolteacher, and so she taught school and I went to law school, and got out of law school in 1959. From there I went back to Redding, where I practiced law with a fellow that I'd met for a couple of years. That didn't work out and we dissolved the partnership in about '62, I believe it was. No, it was after that. It was '65 or '66 we dissolved our partnership. I was a partner the whole time I was there, before I went in the senate. It was a small law office, and we did general practice, general law.

HICKE: You did everything?

MARLER: Just about. We specialized in whatever walked in the door at that time. We were starting from scratch, and it was kind of a

skinny living there for a while until we built the practice up a little bit. I did a little teaching. I taught real estate law in the evening courses at the junior college up there. Oh, got interested a little bit in politics up there. It was at the very local level, on the county central committee. But not very active at all in politics. The first thing I really did was when George Murphy ran for the [United States] Senate in 1964; I was his county co-chairman up there and helped him get some speaking engagements and put out materials and all that. That was kind of my start.

HICKE: You enjoyed it?

MARLER: Yes, I enjoyed it. I met a lot of very nice people.

II ELECTION TO SENATE: 1966

The 1965 Campaign; Ed Regan

MARLER: Now the next thing I knew, here it came up in '64, at the end of the year. Now during that year, the state senator in that area was [Edwin J.] Ed Regan, who had been, I think, some sixteen years in the senate, representing the old Fifth Senate District, which was Shasta and Trinity counties; this was before reapportionment. He lived in Weaverville. I'd met him a couple of times, briefly; I didn't know him very well. Interestingly enough, just about that time, my sister, who lived in Weaverville and was a legal secretary, started to work for Ed Regan in his law office up there. So she knew him first before I really knew him. I didn't know him too well.

He was reelected in '64 and took his seat once more. And then after his election in about January or early February of 1965, he announced that he was retiring and accepting an appointment on the court of appeals here, for the third appellate district. And the governor then called a special

election, as he's required to by law--that was Governor [Edmund G.] Pat Brown [Sr.] in '65--to fill that particular seat. I'd never considered running for political office, and I had a committee of people call upon me and ask me to run.

HICKE: A Republican committee?

MARLER: Yes. I never asked how many people they called on before they got to me who said no. [Laughter] I don't have any knowledge on that. But it was a rather heady thing for a young, thirty-two-year-old lawyer in Shasta County to be called on and asked to run for the state senate. It's kind of interesting: in 1964, one of the main issues that was before the legislature was what they called the Rumford Act.¹ This was an act carried by Byron Rumford, assemblyman from Alameda County, of Oakland, and it had to do with discrimination in housing. There was also a proposition on the ballot then, the following year, concerning. . . . Excuse me, I've got to remember now, because we're going back. About the same time it [the Rumford Act] came up, there was a proposition that qualified for the ballot, the initiative process, to, in effect, repeal it.

The Rumford Act stated that it was against the law for anyone to discriminate on the basis of race, creed, or color in housing sales or rentals or anything in that area. Some of the real estate people felt very strongly, and so they sponsored and got qualified an initiative to, in essence, repeal it. I was asked by several of the groups up there--I think the Republican [County] Central Committee, and I was asked by the Republican ladies groups, and I was asked by--oh, I can't remember; there were four or five people--if I would

1. A.B. 1240--Rumford. 1963, Cal. Stats. ch 1853, p. 3823, Sec. 2.

come and speak about the initiative and just tell them what it did. It was rather a complex piece of legislation. So I did. Afterwards people came up, and half of them thought I was in favor of it and half of them thought I was opposed to it. I wasn't really giving an opinion, just an explanation of it. Apparently some of them were rather impressed with the presentation that I made on the law. And I think that's what really turned some people on, frankly, to come and ask me to run. So they did.

I discussed it with my wife. There were all kinds of things to consider. First of all, I had to consider that I probably had absolutely no chance of winning, because that was a district up there at that time that the registration was 68 percent Democratic, 32 percent Republican. I was a Republican. The last Republican elected in that district for any office had been, I think, in 1936, and that was Senator John McCall; and he was there for two or three years, and he was killed in an automobile accident. I can't remember when he was actually killed; it was in the late thirties. At that time, then, the seat reverted back and was a Democratic seat through the time that I ran. So the first consideration was, well, it's a dead-bang loser. Do I still want to take the time to run? I figured I couldn't really afford the time away from the law office. A lot of people wanted me to. I rather agonized over this.

Kind of interesting. The thing that made me decide to run was that I, like a lot of others, had been very critical of government, what they were doing in Sacramento and Washington, always griping about what they were doing. And it suddenly occurred to me, how could I legitimately ever gripe about what they were doing in Sacramento if I had a chance to run and didn't even take that chance to run?

HICKE: A lot of people don't seem to have that occur to them.

- MARLER: So I said, "Well, by golly, maybe I won't ever have another chance. Why not? At least I'll have a shot at it."
- HICKE: Did you know who your opponent was going to be?
- MARLER: Oh, yes.
- HICKE: Jack Halpin?
- MARLER: Jack Halpin. I'd known Jack for some time. Very fine lawyer, very bright guy, who had come to Redding, practiced law there, had been active in Democratic politics locally, was of quite liberal Democratic persuasion, in my opinion. And I think generally he was thought to be quite liberal. Had been a superior court judge for a period of time in Shasta County. Had then left that job and taken a position in the Brown administration as chief deputy director of the Department of Finance here, then was there for a few months. And when that special election was called, he, as rather the "anointed one" of the Democratic administration and Democratic party, came back up there to run, looking like a dead-bang winner. So, yes, I knew him.
- There were also some other people that ran. There was a fellow who ran in the Democratic primary in the special election. In the special election, you have a primary, then the top Democrat and the top Republican run-off thirty days later. So there were actually two Republicans and two Democrats in that first election. There was a fellow named—I can't remember his first name—Stubblefield; he was a professor at the college up there. I knew him well, a nice fellow, who had previously run against Ed Regan, hadn't done very well. He filed.
- HICKE: He was a Democrat?
- MARLER: Republican. And he'd run against Ed Regan. Then Jack Halpin filed. Then there was a fellow named Colby Smith, who was a local car dealer in Redding, the Oldsmobile dealer. Well thought of, well liked. His store was right next to my dad's;

he was a good friend of my father's. Nice guy. I always liked Colby very much.

He decided to run too, mainly because he was kind of a conservative Democrat. So he decided he'd run against Jack Halpin, because he didn't like Jack Halpin. Most of the whole campaign was, who between the two of them was going to win the primary and thus automatically, almost, become the senator from up there.

Well, come the election and the primary, and I ran third out of the four candidates. Jack Halpin missed by less than 1 percentage point of winning the whole thing in the primary; he got 49 percent of the vote; Colby Smith got about 30 percent of the vote. And I got about 20 percent of the vote. Stubblefield got a very small amount. But here in that primary I only got about 20 percent of the vote; yet in the run-off--I had to run off against Jack Halpin, because he got the most Democratic votes—I got the most Republican votes.

HICKE: What kind of campaigning were you doing?

MARLER: Very inept [Laughter], not knowing how to do it. We were able, by the way, from all statewide sources and county sources and everything else, to raise a grand total of \$17,000 for that campaign. Not very much now, but that's what we had then.

In the primary campaign, we ran it ourselves as best we could. Then after the primary—which primarily consisted of all four candidates going to every group there was and speaking there in a group in a debate-type forum--the state central committee then became quite interested in that election, because they saw maybe there was a glimmer of a chance of winning it. And that was kind of an important seat, because that particular seat determined whether or not the Democrats had a two-thirds majority in the state senate. They already had it in the assembly, and if they had a two-thirds in the state senate, then they could pretty well pass any

legislation they wanted and ignore the Republicans entirely. So they were very interested in that seat, as were the Democrats.

HICKE: Was Senator [Richard] Dolwig helpful? Or do you recall anybody on the state central Republican committee who was particularly helpful?

MARLER: Not really any elected officials at first. The state central committee sent some staff up there to help me in the election. They sent about four or five people up. I'm trying to think. A fellow named [Richard] Dick Colby came up there. John. . . . Oh, I can't remember his last name and I know it so well. He for years has been now the lobbyist representing San Diego County in Sacramento. He's here now. Witzel, John Witzel, came up; he kind of led the contingency.

It was rather interesting. There was a young man that had been working for the state central committee for a few months and had helped in a couple of other elections whom they sent to Redding to help; and he was pretty inexperienced, but we sent him over to Trinity County and he did some work over there where there was a small amount, and he enjoyed that very much. A young fellow named [Michael] Mike Deaver. [Laughter] He's had some problems of late. Mike Deaver went up there. He, at that time, made about \$500 a month. He was single, in his twenties, working for the state central committee.

But they rather organized things better, helped me with some TV work that we did up there and with certain mailers, and helped kind of organize a campaign the way it has to be organized. On the day of the election, by the way, they organized what were then called "victory squads," the whole theory being: get out the Republican vote, because Republicans traditionally everywhere vote heavier than Democratic voters do; and Democrats are more prone to cross lines and vote for a Republican than Republicans are prone to vote for a Democrat.

So, figuring that if you can maximize the Republican turnout, this would aid in the election.

They had busloads of people coming from Sacramento up there that actually walked the neighborhoods with lists of the Republican voters to get them out to vote. There were several Republican legislators that came up and walked precincts at that time to aid in the cause. And it was a heavy turnout for a special election; it kind of captured a lot of attention up there.

What do you know? Surprise, surprise, I won. Out of 25,000 votes cast, which is pretty heavy for Shasta and Trinity counties, I think I won by about six or seven hundred votes; it was pretty close.

HICKE: Was it still a surprise? I mean, you had no inkling, really, that . . .

MARLER: It was still a surprise. It was a surprise to Jack Halpin, too. He had his victory party all organized and going by about five in the afternoon. It was a surprise. The first election returns that came in, I was ahead. Well, it was the absentee votes; you figure they'll always come out better for a Republican. But then the next things that came in, I was ahead, and I stayed ahead all night, just barely. And it was finally over and I won. I was quite surprised, I have to admit.

HICKE: There was an article in the newspaper talking about your victory celebration, which you must have had to organize at the last minute?

MARLER: Well, we had a victory. . . . It was a celebration. All the people, including the victory squads, wanted to get together and meet me and have a celebration that. . . . Every candidate has a victory celebration all organized ahead of time. It may turn out to be a victory, or it may turn out to be something less than a victory, but all the people were there, and they

were all delighted because it came out that way: as a win. So, a couple of days later, I drove down here to Sacramento to see what it was all about and get sworn in on my senate seat.

HICKE: Before we start in on the senate, could we digress a moment? I know that you followed Ed Regan as well on the appellate court here. Is that a coincidence?

MARLER: I think so. It just happened to be that way. Ed Regan was, of course, sixteen years the state senator from up there. He decided that he had had enough legislative time and wanted to become a judge; so Pat Brown appointed him to the court of appeal. It just so happens that when Ed retired this year, it happened to have been the first opening on the court of appeal here in Sacramento for about five or six years, the first opening since Governor [George] Deukmejian was put in office. It so happened that he appointed me to the first opening. It was just fortuitous; it just happened.

HICKE: I wonder, do you recall anything about Mr. Regan's work in the senate for . . .

MARLER: For quite a while he was the chairman of the Senate Judiciary Committee; that was kind of his area of expertise. He was considered as one of the leaders of the senate here for quite a period of years. He also made no bones about the fact that in that election for his successor, he favored me in that election. He didn't actively come out and campaign for me, which is kind of tough for a sitting Democratic state senator to do, or somebody who has been. But he let it be known, with no ifs, ands, or buts, that he favored me in that election.

HICKE: Why is that?

MARLER: He didn't like Jack Halpin. Jack Halpin, as bright a guy as he was, was quite abrasive in the short period of time that he was the chief deputy director of Finance. He did some things that some of the old-timers in the senate and the assembly didn't like; so the other senior members of the senate—like

Randolph Collier from Siskiyou County told me that he sure hoped that I would win that election. He made no bones about the fact that he didn't like him.

Senate Partisanship

MARLER: You've got to remember, the senate was not a partisan body at that time. It delighted in describing itself as a nonpartisan men's club, the most exclusive one in the state, and that's what it was. Nobody really paid much attention internally there to the breakdown of Democrat and Republican. Of more concern was the split north and south, and the split liberal/conservative; though partisanship to some degree arose, but not at all like it is today. So here I had two prominent northern California senators that indicated their support, and the main assembly person from up there, [Assemblywoman] Pauline Davis, indicated, too, that she would not be unhappy if I was elected. So that was just kind of the way it came out. None of them actively came up and campaigned. They may have made private phone calls. They never publicly endorsed in the newspaper or made a speech; it wasn't that type of a thing. Other than the fact, I guess, they just kind of sat back and hoped that I was going to win.

HICKE: Since you talked about partisanship, maybe we can explore that a little bit further. What happened to change this feeling over the years?

MARLER: Reapportionment was the main thing that occurred. When I was first in the senate, it was considered bad form and unethical for a party to have a party caucus per se. Once in a while on certain little things involving internal organization, the Republicans would meet, or the Democrats would meet; but that was frowned upon. When there was senate business to take care of, we had a Committee of the Whole, and we met and talked it over. We did not have caucuses on legislative positions or any

partisan positions. At that time, we had the leader of the senate, who usually was elected almost unanimously by both parties.

The Republicans did have someone loosely called the minority leader of the senate. He had no staff, no official functions. But once in a while, if the newspapers wanted to talk to somebody that was called a Republican leader, he was it. And that's about as close as we had to a Republican leader. When I first went into the senate, it was [John F.] Jack McCarthy, who was a Republican senator from Marin County. And then after that, for about the last six or eight months prior to reapportionment, it was [Donald L.] Don Grunsky, from Watsonville.

Then we had the reapportionment election in 1966. I was elected under the old constitutional plan that said that the membership of the state senate should be composed of districts that should be no smaller than one full county nor larger than three counties. So you had, for example, Los Angeles, with, at that time, about five or six million people represented by one state senator, and then maybe you had Alpine, Mono, and Inyo counties, with a total of about 10,000 people, with one state senator. The district that we had up north that I was first elected in, the fifth district, of Shasta and Trinity counties, had a total of about 30,000 people, I think, in both counties together. And the types of people you got then from those rural districts were people . . .

[End Tape 1, Side A]

[Begin Tape 1, Side B]

HICKE: You were just saying the type of people that were elected . . .

MARLER: . . . were usually people who had been community leaders. They had been mayors and city councilmen and county supervisors. They were people who had lived a long time in a community, were well known, and successes in the community, and they were kind of rewarded by sending them to the legislature. They were, by and large, more conservative types, knowledgeable, well known in their particular areas. I was kind of the exception, somebody my age, without ever having run for any office before, being elected to the state senate. I was rather an anomaly, I think, at the time.

So those were the kinds of people you had coming to Sacramento--a group, by the way, that I very much admired; it was a very able group of dedicated people when I was there, I figured, and they had some fine legislators with fine minds and great knowledge. A lot of them had been there a long time, really knew state government, the programs, and how things worked. So that was the kind of body when I came down, based upon the old apportionment.

Then the U.S. Supreme Court in 1965 stated that that was unconstitutional and we had to go to the one man, one vote system. This was very traumatic. Finally a plan was adopted by the legislature and implemented in 1966, and this had a lot of incumbents running against each other. The particular district, then, that I ran in, which was then called the Second Senate District, had about eight and one-half counties, and they were the portions of about, I think, five or six senate districts. Some of the people retired and went on the bench; some just retired. But I ended up having to run against a Republican incumbent senator, Stanley Pittman from Butte County, in the primary; and then I had to run against an incumbent Democratic senator, Virgil O'Sullivan, who lived in Williams, in the general election. And it was hard fought.

I might say, in both of those elections, I raised all the money I could, and I think I spent a total of about \$70,000, which I thought was a horribly large amount to spend on an election. That was for both the contested primary and a contested general. The reason I spent that much money is, that's all I could raise. [Laughter] People just weren't that eager to put money in.

HICKE: This was probably a year or something right after you had run in the special election.

MARLER: Right. As far as where it came from, I really don't remember. There was some of it that came from statewide sources and from people in Sacramento. We never asked anybody. If they were interested in contributing, they contributed. Now, within the local district, we asked people, sure. I had my campaign chairman. And there may have been people asking on my behalf in Sacramento that I wasn't even aware of. I was out busy campaigning, and so other people were taking care of the financial situations. There was never anybody who called on me and asked for anything in return for support. Somehow or other the money was raised. But we did have a lot of little fund raisers. At that time, if you had a fund raiser and somebody gave you \$50, that was a large contribution; so it took an awful lot of people to raise \$70,000 in that campaign.

After the election, we had a different looking senate, of course. We had a lot of new members. I can't even tell you right now the number. Twenty-five or twenty-eight out of the forty were new members, better than half. And there were fourteen assemblymen that had run for senate seats and won and came across from both parties, Republicans and Democrats. That's when, for example, George Deukmejian came across from the assembly. The assemblymen, by and large, were a much more partisan group. They were used to a partisanship on the assembly side; it had been very partisan for years. And this,

then, was kind of the first inkling of the partisanship being pushed into the senate; and it came in 1967, when all these new people took office.

By such a large influx of new people, a lot of the old traditions of the senate were kind of lost. It just wasn't the same, though it radically changed even more so after that. Each election thereafter, the senate became more and more partisan. First thing you know, we were electing party leaders, and having caucuses, and all sorts of things, and we were pretty much equally as partisan as the assembly. In fact, the last three or four years I was there, I was the Republican leader in the senate. Not as partisan as it is now. We didn't fight each other just for the sake of fighting each other; it appears to me it's the situation now, sometimes. But we did try to organize for our legislative programs, and a lot of the impetus then toward organization and a little bit of party discipline--if we had any on the Republican side--was in the fact that we had a Republican governor during that period of time.

With reapportionment came Governor Ronald Reagan, who came in, and we learned very quickly that by kind of keeping the Republicans together in both houses and consistent with the governor's office, we could maximize our influence. But the Democrats, even though they had close to a two-thirds majority in each house, could pass any bill they wanted and put it on the governor's desk; but if he vetoed it, they would need Republican votes to override. So they still had to deal with the Republicans, but the only reason that they would have to deal with us would be if we could keep a pretty much united front, and that kind of maximized the influence of the Republican party in the legislature. So that was somewhat of an impetus toward partisanship also during these years.

The 1966 Senate; Seniority and Committees

HICKE: Getting back to 1966, was there something of a chaotic situation there, with all these new senators?

MARLER: There were some new things, yes. Under the traditions and rules of the senate, committee chairmanships were given on a seniority basis, as were the memberships on committees given on a seniority basis. This meant at any given time, even though you may have a majority of Democrats in the house, you may have a majority of the committee chairmen as Republicans, with a couple of exceptions. There were two or three committees that that majority party always chaired—that was understood—such as the Senate Finance Committee, the Revenue and Taxation Committee, Governmental Efficiency. I can't remember if there were any others, but at least those three not only had a chairman who was from the majority party, but a majority of the members came from the majority party. But the rest of the committees and the rest of the chairmen were pretty well chosen by seniority, and that was a pretty strong concept.

Well, we got a whole group of new people coming in from the assembly, where they did not have this seniority, and they immediately said, "Let's throw out the seniority system; or at least let's count the time we had in the assembly toward our seniority in the senate." And this created a bit of a problem for a while. But the new members did become members of the senate very quickly, and that died out, and the tradition did remain for a substantial period of time. The seniority system was fairly well intact even when I left in 1974, but within the guidelines then that the committee chairmen and the majority of the membership on each committee were from the majority party; and within the majority party seniorityship

was the deciding factor, pretty much, as far as the membership on those committees.

I'm a little inaccurate. I said all the committee chairmen at that time were Democrats. That's not true. Just still the majority, because up till about 1970, I think, I was a committee chairman of the Senate Ag[Agriculture] Committee. I can't remember exactly when I left. I believe that when I became the minority floor leader, I gave that up, because that was counted as the equivalent of a committee chairmanship, and it was just too much of a workload to do both. I think we still did, then, come to think about it, when I left, have committee chairmen who were Republicans and some committees that may have had a majority.

HICKE: So the committees were organized in '66 along these seniority lines.

MARLER: They were at that time. But there was a gradual change in the atmosphere of the senate as it became more and more partisan, and the concept of a nonpartisan approach was diminished. It was still there even when I left, but to a much lesser level than it was.

For example, up until the time I left, it was pretty much the tradition in the senate that a member of the senate did not go into somebody else's senate district and make a speech until you cleared it with him and he said it was OK. For the first time in '66, where we had incumbents running against incumbents, we did see some campaigning by incumbents against another incumbent of the senate. But that was rare, and in '68 and '70 it was a very rare thing, and it was still considered bad form to go into someone else's district and campaign against the incumbent, even if he was a member of another party. Now, of course, it's the way of life. But that was one of the traditions of the senate that was very slow in changing.

HICKE: What were your first assignments in the senate?

MARLER: As a new member of the senate with absolutely no seniority whatsoever, I believe that I was made the vice chairman of the Senate Labor Committee, which was a small committee of only five people and, at that time, not considered a major committee. I was also put on Water Committee, Fish and Game, Agriculture, and I can't remember the other one. Maybe Education.

HICKE: By '69, you were on Education and Transportation.

MARLER: Oh, I was on Transportation. That was, in fact, the only major assignment that was considered a major committee then, in my first year in the senate, was Transportation. I had five committees I sat on. In 1966, we had a lot of new people come in, and I suddenly went from fortieth in seniority to about fifteenth in seniority, fourteenth or fifteenth, I believe. Instant seniority, you can call reapportionment.

Could we rest just a minute?

HICKE: Sure.

[Interruption]

More on Marriage and Family

HICKE: One of the things that we didn't get the complete story on was your family. You told me that you got married.

MARLER: And who I got married to. Well, along thereafter came some children, as frequently is the case. The year I graduated from law school I had my first son, Eric Scott Marler, who's now twenty-eight and has provided me with a grandson in the last two years. I have a grandson named Stephen Marler. Eric was born in Redding, after I got out of school and while I was waiting for the bar results. He was born in November of 1959.

Then about two and a half years later came along my youngest son, Aaron Mitchell Marler. Actually, if he was going

to be a girl, he would also have been named Erin Michelle, spelled E-R-I-N; but it turned out to be another son, so he's still Aaron, with A-A-R-O-N Mitchell Marler. He's now twenty-five years old. He's married; his wife's name is Penny. They both live here in Sacramento. My oldest son works for Hoig's Marina; youngest son is a supervisor for Imotech. Well, it's not Imotech anymore; it's a co-generation plant, a power plant that manufactures steam and electricity, affiliated with the California Almond Growers Association, but now owned by the Almond Growers Association; they just bought it. He's a shift supervisor there.

Maybe as far as my background a little further. . . . I didn't say much about my parents or where they came from. I don't know if that's of any interest. Both of my parents were born in Idaho, my father in a little town called Lewisville, Idaho, near Rigby; my mother, in Preston, Idaho. They were both born in strong Mormon communities and grew up in the Latter-day Saints church.

My mother's family moved to California first, about 1912 or 1914, I believe, and my father's family at a later time. They moved about 1915, I think. Both moved into the little town of Gridley, up in Butte County, which had a very strong Mormon population there. They, of course, met, and they were married when they lived in Gridley, my father at that time working for the Union Oil Company in Gridley and later being transferred a couple of places. I have an older sister who's five years older—I'm now fifty-five, and she's now sixty—Peggy Jean Marler; her last name is now Sanborn. She lives in Redding, has three children and eight grandchildren now.

On my mother's side of the family, both of my grandparents were of English extraction. My grandfather was born in England, and my grandmother's parents were both born in England and came across. On my father's side, his great-

grandfather was actually from the southern states and was a plantation owner and a slave owner in about the 1840s or so in Alabama, was converted to the Mormon church, and left to move to Utah, and on the way died. But his wife and three or four children went on and lived in northern Utah and in southern Idaho. I don't know as much about his side of the family. The name Marler I do know is an English name. And my grandmother's maiden name was Brian, so that traces back to a kind of an Irish background there. That was on my father's side.

So that's kind of the extraction I got. I come from a long line of farmers. As I said, as far as I know, I'm the first member of my family—at least in several generations—to go to college and graduate, let alone a four-year college, and let alone go into a profession. I had the strong support of my parents in that. They just always assumed, and I was always led to believe—there was no doubt, no question about it—I was going to go to school. My sister too. She went two years to college and decided to get married and quit school and start a family, so she didn't finish. Which is too bad, because she's a very, very brilliant gal, a very fine mind.

HICKE: Your parents certainly were an important influence to make sure that you and your sister both got to college.

MARLER: Oh, no question about that. Very strong family group, very close. My father died in 1976. My mother's still living, lives in Redding. We're still very close. We were always a close family group.

HICKE: And you're lucky to have your children around somewhat in the local area, too.

MARLER: We feel very fortunate. I'm going to be a grandfather for the second time next February, and I'm looking forward to that.

HICKE: Congratulations.

III COMMITTEES

Changes in Committee System; Randolph Collier

- HICKE: Then back to the senate, and you were just starting to tell me about some of the committees you were on. You told me the ones you were on in '65, and then in '66, things changed, and you became senior.
- MARLER: Yes, and there were some changes in the committee system about that time that were very interesting changes in the way of reform, which I supported. Until reapportionment, maybe even a year or two thereafter, any vote on a bill in committee was just by oral vote, and no record was kept of that vote. It was up to the chairman to make the call. He'd say, "All in favor, say aye, opposed, no, the bill is out." "All in favor, opposed, no, the bill stays in committee." There was no way to challenge his reading of the vote; there was no record of votes in committee. This was, of course, rather a flaw, I felt, in our process, and it had been traditional that way; and that was one of the ways that the senate operated. In fact, if a committee chairman didn't like a piece of legislation, there's no way to even really force him to take it up in committee. He could just put it in his pocket and it would never see the light of day. This was then changed . . .
- HICKE: Everybody accepted this up until . . .
- MARLER: No, they didn't really accept it. It was the way it was and the majority accepted it. I can't say that as a brand-new senator in 1965 I went in with the idea I was going to revolutionize the process. There was no chance that was going to occur, and the best way to be effective in that group was to join the club or you were an outsider, put it that way. But that was changed, and I thought it was an important change. First of all, a man had a right to have his bill heard.

Secondly, there must be a roll call vote of the membership of the committee recorded in the minutes of the committee. And it took a majority of the membership of a committee to pass a bill out. That was very, very important. That was a revolutionary change at that time in the senate.

HICKE: Are you going to tell me how that came about?

MARLER: I can't really remember who really pushed that and how it came about, other than there was a group of us—I wasn't the leader of the particular group—who agreed it should be the case, and it gradually then became a part of the rules of the senate. I can't remember when that was amended in. It's one thing that I just don't remember. But it became that way.

HICKE: Apparently there was not a great debate about the whole thing.

MARLER: When it finally occurred—it was inevitable it was going to occur—it went in very smoothly. But it did kind of make a change as far as certain legislation and the power of certain legislators. I guess I might as well name names. There was no question about it. The Senate Transportation Committee was the private domain of Senator Randolph Collier for many years. Nothing happened in the area of the building of freeways unless he approved, or bridges, or whatever came within the purview of the Division of Highways or the Department of Public Works, that had to do with highways. If he liked a bill, it went out; if he didn't like a bill, it never had enough votes and it stayed in committee. He had enough power that if he wanted something done, he could go to the department and say, "I want this done." And he controlled their budget; he controlled single-handedly all of their projects. So what he said, went; put it that way.

Anyway, it was rather a benevolent type of thing, because a great highway system developed statewide under that paternalistic type of very, very powerful man. But then when it changed, then his power kind of changed also. He then left

that committee, and in his last few years was chairman of the Senate Finance Committee, also an extremely important position, probably the single most important committee in the senate.

HICKE: Just to go back to Transportation. Do you have some sense of where his power came from or how he got it?

MARLER: He got it through the rules and traditions of the senate itself. He was a senior member of the senate. When I was there, he had been there already. . . . Let's see, he was elected in 1938 to the senate, so he had been there some twenty-seven years when I arrived in 1965. He was the senior member of the senate, second in seniority next to Hugh Burns. Hugh Burns, who was the president pro tem, had been there slightly longer. But he, because of his seniority, had his pick of whichever committee he wanted to be the chairman of. He was also a member, at that time, of the majority party. But he was always a member of the majority party. When it was the Republicans who were the majority party, he was a Republican. Then when the Republicans lost power in 1958, I believe, he re-registered Democratic, so he was still with the majority party.

As the chairman of that committee, he could put in legislation himself and assure that it got out of that house, at least out of that committee. He then had enough friends and enough power on the floor to get it off the floor of the senate, and through arrangements, I guess, somehow or other, in the other house, he could almost always get it passed over there, with the arrangements that he had. So he could pass almost any legislation, and he had an absolute veto power over any legislation that pertained to the Division of Highways.

HICKE: Because of his chairmanship?

MARLER: Of that one committee. If he didn't like it, it wouldn't get out of the senate committee to even get to the floor of

senate. So that gave him enough power under the rules that he could pretty well dictate to the Division of Highways. Now he also, as a member of the Senate Finance Committee at that time, I believe, was the chairman of the subcommittee in the senate concerned with transportation matters and the budget of that particular department, though I might be in error on that. I'm not actually certain whether at that time Senate Finance did have subcommittees that broke down. I think we did. And I believe he was the chairman of that subcommittee, though I'm not absolutely certain. But in any event, this gave him the power. . . . And this was not just his power. There were chairman of other committees that had the same power. The chairman of the senate committee on finance was an extremely important and powerful man in the senate.

Governmental Efficiency Committee; Committee Consultants

MARLER: Another very, very important committee at that time that I sat upon—it was very controversial—was the Governmental Efficiency Committee. Now Governmental Efficiency was a catchall. There were certain bills involving gambling, offshore oil, half a dozen little things that went to that committee. It was also the committee to which very, very controversial bills would be sent. It was rather the philosophy of the senate that they would put people who appeared to be very safe in their districts as far as election, who could afford to make tough decisions and take the risk for tough decisions, put them on that particular committee of very controversial legislation that sometimes would pass, sometimes would fail.

It was also the graveyard of kooky bills. You would get a lot of bills that some local legislator would feel he had to put in for his district but even he didn't really want passed.

And to ensure that they would get killed, they would go to that particular committee and they would get killed.

It was a very controversial committee because of the way it functioned at that time. The night before the committee hearing on that particular committee on bills, the committee would meet and have dinner together, and we would go over all the bills and decide what we were going to do. Now this is before we even had a hearing on it.

We had some excellent committee consultants who were very, very knowledgeable. A bill would come up and we'd discuss it at dinner, and the consultant would say, "Here's this bill put in by so-and-so. It appears to do this. However, the real agenda of this bill is that it's aimed at this particular thing over here, and here's the real party who's for it, who's against it, and here's why." And at that time the committee would discuss this, whether we thought that was good or bad, and decide what we were going to do.

HICKE: Were these consultants lobbyists?

MARLER: No, no. These were employees of the senate. They were the committee consultants that worked for the committee. Some of them are still around over here that are working as lobbyists now, but were very bright and knew what was going on. In fact, I always considered that committee, the Governmental Efficiency Committee, as probably the best informed committee in the senate.

Now, it wasn't quite as bad as it sounds. It didn't make the committee hearing useless, because we would then have a committee hearing. People would bring up all of their people they wanted to testify, and we'd listen. And if any member of the senate heard something new or decided he wanted to change his vote, he could signal the chairman and change his vote. But it was very rare that we learned anything new that we didn't already know from the meeting the night before.

HICKE: It worked well.

MARLER: Yes. And we probably knew more about those bills than maybe sometimes the author even knew about what it really did and the effect that it would have on the budget, the effect on other programs, etc. Even though it was a committee of questionable democratic process, the results were pretty good from it. It was a committee that did pretty good work.

HICKE: Do any examples of such bills or hearings come to mind? I know it was a long time ago.

MARLER: I can't remember any in particular right now. The main thing that committee did was kill legislation rather than pass it. There were some important things that would come out that were programs adopted by it, but the main thing it did was, it was a committee that killed bad bills. And it killed a lot of them.

HICKE: It sounds like it was interesting, too.

MARLER: And I can remember time after time of an assemblyman that would come up to me after coming before that committee and fervently arguing the merits of his bill. The bill would go down, and he'd come up and say, "Thank you very much for killing that bill. I had to put it in for my district, but it was a lousy bill. I'm sure glad you guys killed it."

Education Committee; Judiciary; Legislative Intent

HICKE: How about Education? Was that a . . .

MARLER: I might say, at one time I had a very heavy workload of committees. There were some committees, of course, that had more bills and worked longer and harder than others. At one time, while I was not only the minority floor leader of the senate, I sat on Finance, Governmental Efficiency, Education, Judiciary, and Agriculture. I always stayed on the Agriculture Committee, because that was extremely important to the district I represented. It was an agricultural district, and I

wanted to be there where I could represent them in the committees. But the other four were four of the five major committees, and the number of bills we heard and the amount of hours we spent in committee were considerable.

Now, you mentioned the Education Committee. The Education Committee in those years was an extremely good committee. It had a fine chairman, Senator [Albert S.] Al Rodda of Sacramento. Very knowledgeable in the field, a man I respect very highly. They had good committee consultants who took what were very complex bills. . . . You never saw a bill as complex as an education bill, especially if you were talking education finance. It was a very complex area.

HICKE: Why is that?

MARLER: It's the law itself and the education code, as far as the way local school districts are reimbursed from the state on their average daily attendance, and all the various programs we had. And the tenure laws involving teachers are very complex. The law applicable to education is just a complex area, and so the legislation amending it or adding to it was also very complex. It was a good committee, with people on it who were, I thought, smart, who worked hard, did their homework. It was a committee that gave good results.

The Senate Judiciary Committee was also the same. During that period of time we had several chairmen; but the main one we had during that period of time was Don Grunsky, who's no longer in the senate, of course. Lives down in Watsonville. A man with as large a capacity for work as I've ever seen. Not only was he the chairman of a committee that had a complex and heavy workload—and he was right on top of all of it—but he maintained a full law practice on the side, in Watsonville. So he was a very, very hard working, very able man, whom I highly respected. That was a good committee that had good lawyers on it, representing various viewpoints. Of course, I was on the

committee. And at that time the committee on judiciary had only lawyers on it, because the bills that came up mainly had to do with legal procedure, and trial procedure, and those types of things that were . . .

[End Tape 1, Side B]

[Begin Tape 2, Side A]

HICKE: Those kinds of things that were technical and needed.

MARLER: The expertise of a legal education. They had people like Clark Bradley from San Jose who read the bills. I don't know where he found the time, because—I'll have to be honest—many times you did not take a seventy-five-page bill and go through every line of it. You'd go through the analysis of it, you'd look at the analysis by the Legislative Counsel, the analysis by your committee, and the various other sources so that you knew what it did; but you didn't read every line. You just didn't always have that time. Except Clark Bradley did. He was our nit-picker, and he would come up with things. He would say, "This is a mistake. It won't work right," and was responsible for a lot of corrections.

I was a bit of a nit-picker myself. I tried to read the bills whenever possible all the way through, and I read 90 percent of them all the way through, and understood them, understood every little point that's in the bill. But we had other people. Like, George Moscone was on the committee; Nicholas Petris, who's still in the senate; [Robert J.] Bob Lagomarsino, who's now a congressman from down south. I'm trying to think of some others; I don't want to leave anybody out, but there were some other people who were fine lawyers and really contributed to the committee, and it was a good committee.

This brings up an interesting point—maybe I can bring it up at this time here—that has to do with our job now in the courts: divining legislative intent. Very often when we get litigation involving statutes, we'll have to construe it. And the issue then is, what did the legislature mean when they passed it? Well, it's not too difficult, usually, to divine the main policies and intents of legislation. But sometimes when you get down into a little sentence here that says you may do this, is this going to be construed as mandatory or permissive? And how is it to be construed with another little sentence down here? What's the legislative intent? The answer is, there is no legislative intent.

You can get a complex piece of legislation in mind. Then a person would go to the Legislative Counsel and say, "Draw me a bill that accomplishes this." The Legislative Counsel would then put it in statutory form, go back to the author, who would say, "Oh, yes, this is what I want and this is fine." It goes to committee. And very often the committees, then, would look at the policy of the bill and determine whether they wanted to do this particular thing. On the floor of the senate and the assembly, policy was what was argued. And you may not even get down to a little point of what this little sentence means. That doesn't have anything to do with the policy. What it really meant is, that's the way the lawyer in the Legislative Counsel's office decided to put it together. And the legislature may never have really looked at that or debated it, and the majority of the members of the legislature may not have even considered that. So there is no legislative intent many times because of the difficulty for many people in reading every sentence of every bill.

HICKE: So as a judge you don't have to go and look at what went into the debate or the policy discussions?

- MARLER: There are, of course, by law, only certain things that we can consider to divine legislative intent, other than the language itself. But you look at the language itself and its interrelationship with the rest of the language in a particular statute, and even its relationship with other statutes, and say, "You can see why this says this because of this section over here, and this is what the legislature must have meant." What we're really saying: "This is what the person who drafted the bill must have meant."
- HICKE: What else can you look at besides the language of the bill?
- MARLER: We can look at statements that are put into the legislative record itself. Many times the author of a bill will write a letter that will be published in the senate or the assembly journal saying, "This is what I intend by this bill." Sometimes when you have revisions of the code, the code commissioners will put in code commissioners' notes as to what they intend by a bill. We can look at that. In the past, courts have also many times looked at just statements of the authors of bills saying, "This is what I intended by the bill." Which is a little less useful, because all that really tells you is the intent of one person. But it's rather assumed that if the author of a bill gets up in front of a committee and says, "This is what I intend," and they vote for the bill, that the committee might very well be adopting the intention of the legislator himself who puts in the bill.
- HICKE: Do legislators, then, put forth these statements with the expectation that a court may someday be interested in determining the intent?
- MARLER: Yes. Very often that's the case. Now, there's probably not over one out of twenty-five pieces of legislation that will have such a letter in the journal. But if the issue sometimes has come up in committee: "Well, what's this mean?" and the author says, "This is what I intend it to mean," it's not at

all uncommon for a member of the committee to say, "To ensure that this is what it will mean, can I have your assurance that you will put a letter in the journal to that effect?"

"Absolutely." So if he represents that's what the bill means, and somebody wants to make sure of it, they'll get a promise from him that he'll put a letter in the journal, and he does. That's the way, then, the court can later determine what he meant.

HICKE: The advantage of that over changing the actual wording of the bill is that it's more informal or [Inaudible]?

MARLER: He can put it in one way and say, "This is what it means." And you can look at it and say, "Well, there's a possibility that it may be interpreted in some other fashion," and he'll say, "No, no. I want to make sure this is what it means." Let's say, for example, he puts in there that so and so shall do something. In the law, sometimes the word "shall" is construed as permissive, sometimes it's construed as mandatory; and the committee member may say, "Look, I want to make sure when it says 'shall' here that this is what they're going to do and it's mandatory." He says, "I'll put a letter in the journal saying that my intention and the intention of the legislature is that 'shall' shall be 'mandatory' here, not 'permissive.'"

HICKE: Oh, good. That's very helpful. Thank you for that explanation.

MARLER: Where are we now?

Fish and Game; Representing Your Constituency; Water Project

HICKE: Well, we've gotten into some of your committee work. Fish and Game was another one that you were on in 1969.

MARLER: It was. In fact, that was the first committee that I was the chair of. I chaired Fish and Game, and I was in it in 1969. I think I was the chairman at that particular time. I only had four years' seniority in the house, so I was one of the younger, in time, committee chairman. In fact, at that time I

was the second youngest member of the senate. I was the youngest member when I was elected at thirty-two. But then, in '67, one other person came in that was younger than I was, John Harmer, Senator Harmer from down south; he was about a year younger than I was when he came in.

HICKE: Just in passing, did you feel that: the fact that you were the youngest? Or did anybody make you feel that you were the youngest?

MARLER: Oh, I was constantly kidded about being the youngest, yes. In fact, when I took my senate seat, they provided me a beanie to wear that I had to wear as the freshman member of the senate. They informed me that this was a tradition in the senate that the newest member always had to wear this beanie. I think I wore it one day or something. But they neglected to tell me that that was a brand-new tradition they had just made up that day. [Laughter] Still got that beanie someplace.

HICKE: Who did this, do you recall?

MARLER: I think it was Jack McCarthy. He was kind of a joker on occasion, and I think that was his idea.

HICKE: You were talking about the chairmanship of the Fish and Game Committee.

MARLER: Yes. A committee very important to the district I represented. I mean, statewide, the people in L. A. [Los Angeles] may not care much about it, or in downtown San Francisco, but up where I come from, where the hunters and the fishermen are very numerous, the policies and everything of that particular committee are very, very important to them. So it was one of great interest to my area.

And it was one that I felt very comfortable in. I hunt and I fish. You kind of get the feeling that "I'm a hunter and I'm a fisherman, and I live up there in northern California; and I know enough other hunters and fishermen that I know what the hunters and fishermen want and how they feel on things.

Therefore, I can really represent them, because my attitude is the same attitude they have." Which is also rather the attitude I had the whole time in my district. I felt very comfortable with the district I represented.

I felt I was a typical person, regardless of party, from the area in which I lived. I came from a middle-class background of people who immigrated to California and were hardworking, middle-class farmers and small business people, and my attitude toward life and what I wanted for my state and my family and my children was so typical of what everybody else wanted for their family and their state and their children that I felt almost always confident in saying, "This is my judgment on my bill as far as a vote, and I feel very confident that's also the feeling of the majority of the people I represent."

HICKE: An interesting question to me is always whether you vote by your own judgment or whether you vote by what you think your constituents want.

MARLER: Happily, it is usually the same answer. And if you get a representative in an area whose personal judgment substantially on numerous occasions differs from that of his area, he probably won't be around very long. Now you can rationalize this. And this is, by the way, the classic dilemma of the legislator: how do you approach it? In your own judgment, or are you a mouthpiece for your people? And it kind of varies. Usually your own judgment, because you feel you probably know more about it after hearing all sides of it, and you've studied it, and you're probably a little better apprised of what's going on in the legislation than your people are that you represent. And you always rationalize and say, "If they knew as much about it as I did, they'd be for it, too. Or against it, too. If they really understood and knew as much. Therefore, I am doing what they want, or would

want if they knew about it." It's a very rare instance when there's a piece of legislation that comes up that has enough publicity and everything that you know or have any idea that the majority of people in your district are even aware of it, frankly.

And I don't really know what the answer would be; every legislator has to answer that for himself. If, for example, you have an issue, and for some reason you know how the majority of people in your area feel, and it is one of such basic consequence and basic provisions—say it that way—that they know as much about it as you do—it's just strictly a policy issue that you don't have to be educated on—and you feel differently, legislators will go different ways. Some of them will say, "Hey, I've been elected to represent those people, and if that's what they want, I am duty bound to vote their way." Other people will say, "Wait a minute. I differ, and I am going to go the other way because they're entitled to my judgment and I will stand account. And at the end of my term, if they don't like what I did, then next time they can get somebody else." There are strong arguments for each position, and I cannot tell you which is the proper one.

HICKE: I have read of cases where a legislator will support a bill and then change his vote because of grass roots uprisings, so to speak, in his district.

MARLER: I guess so. I've never had that. I have had in the past. I can't remember specifics now, but I know it happened that I'd have an initial reaction on a bill and then learn more about it, and then change my position. Or something even more common: you support a bill and then it gets amended to the point you can't support it anymore; or you're opposed to it, and then you get them to amend it, and then you support it. That kind of switching back and forth, of course, is quite common.

HICKE: Meanwhile, back at the Fish and Game. Were there any outstanding policy decisions that you made or that the committee made while you were on it that affected your constituents?

MARLER: Not any really major ones. It was mostly just overseeing the departments and making sure you were making little adjustments here and there to make things work better. We had constant debates concerning taking certain creatures, whether they were fish or fowl or animals, taking them from the game list and putting them on the protected list, such as the mountain lion. And there were constant issues involving other animals. The coyote was always high on the list.

I can remember one humorous thing that happened, where my sense of humor got me in a bit of trouble on a committee vote one day. There's a lady that's been around the capitol and still is, that's very interested in animals of all kinds, very nice lady. But I'm sure, in her devotion to animals and fish, she would like to protect everything and make hunting totally illegal and fishing illegal, and that's just the way she feels. She convinced a member of the assembly to put in a bill once to change the gray squirrel from a game animal to the protected list. It didn't have anything to do with the number of gray squirrels. There are lots of gray squirrels; they're not endangered. The number of gray squirrels in any given area here is pretty well determined by the mast crop, which is the acorn crop, as to whether there are lots of them or not so many of them. As the mast crop goes up, the number of squirrels goes up; if that goes down, the number of squirrels goes down. There are a lot more of them that are taken by predators than by hunters. It's a traditional game animal. People for centuries have been hunting squirrels. I didn't see any reason for the traditional reasons of being endangered or something like that, of putting it on the protected list. Her

feelings were—and I respect them—it was a cute little animal and she didn't see why anybody would want to shoot one. A lot of people feel that way.

But in any event, one day here came the bill over to our committee; it passed the assembly. In fact, the bill was introduced by a very good friend of mine—I never could understand why—then Assemblyman Ray Johnson, later Senator Ray Johnson. Very close friend of mine, whom I highly respect, but he put the bill in. Here it came up in committee. My committee was composed also of people who hunted and fished, and it was a bill where we just didn't see any need for it and merit for it. And the Department of Fish and Game was opposed to it, and the Fish and Game Commission was opposed to it. There were just not the traditional reasons for us to change it.

So the bill went down in committee, and this lady was just feeling very badly about that. And here's where I got in trouble. She came up after the committee one day and asked me after that committee hearing, "Senator Marler, what do you have against gray squirrels?" My answer was, "Nothing. I think they're delicious," which was not the answer she liked, and I don't think that she liked me one whit from then on till the day I left. [Laughter]

We had also bills in front of that committee that had to do with diversion of waters. We had bills attempting to make sure that when dams were built, adequate provision was made for the lost spawning areas of salmon and trout. We had bills to try to improve spawning beds. We had lots of bills, and I can't tell you any specific ones.

At the same time, I was also a member of the Wildlife Conservation Board, which had a small budget every year and went out up and down the state and built small projects, usually an access to fishing, a little pier on the ocean to

fish from, a fishing access on the river, some little parking lot, a way to get into a trail to some nice spot, that type of thing. Probably got more bang for the buck than any appropriations I knew of. That was a very satisfying type of thing to be on. We'd meet and we'd vote on. . . . I don't think we ever spent over half a million dollars a year; that was the budget. But we'd get eight or ten projects out of that that probably did more good for the people with that than a lot of the big projects that we went through at that time.

HICKE: Were you, then, involved in any of the water project bills?

MARLER: That was pretty well done by the time I got there. The California Water Project had been adopted by the legislature. Oroville Dam had been built. The aquaduct was well along in its construction; it had been financed. There were some peripheral areas that they're still fighting about, in the Delta there, in the Peripheral Canal, and how much you're going to protect the Delta, and the perennial fight between the people of southern California, who want the water, and San Francisco and the other towns down there for water quality. They can't reconcile their interests. They are irreconcilable. They conflict, and they still conflict, and they're still there.

Interestingly enough, in my first election in 1965, they were still talking about some other possible reservoirs up north for storage of water, for conservation of water. There are still some possibilities on that, and here it is twenty-two years later. My opponent didn't understand, I don't think, the importance of water to the north. There had been an old saying up in northern California that "whiskey is for drinking and water is for fightin' over." And that has been the history of water in northern California for many, many years, and a great fear on the part of the north that the water will be

taken by the south, because they've got the voting rights. This was one of the big issues in reapportionment.

When they'd start asking my opponent's feeling on water, he'd say, "The great water glass battle is done. It's no longer an issue; nothing's there. Let's go on to the next question." Well, people still felt strongly over it, and they at least wanted somebody to say, "There's nothing up right now, but I sure realize the interests of this area up here on water and I'll protect us all I can on the water." That was one of the mistakes he made, because water is of great, great interest to the north, and still is.

HICKE: You've been talking nonstop here for an hour and a half. Do you want to go on a little bit longer, or do you want to call it a day?

MARLER: I'm fine, unless you want to rest.

HICKE: No, I'm OK. But I want to know when you're running out of voice here.

MARLER: I tell you, let's take a slight break if we can here.

[Interruption]

IV PEOPLE AND ISSUES

Milk Pooling Issue

HICKE: One of the issues that I know you were at least slightly involved with was the milk pooling issue. Can you tell us a little bit about that?

MARLER: I was involved with it probably for two reasons. Number one, I had an awful lot of dairy people up in my district that were very, very interested in this. And secondly, I was the chairman of the Senate Agriculture Committee, before whom the bill came. It was a very, very complex bill and complex concept, by which they took the total milk usage in the state

and divided it up amongst producers. Then when a producer sold his herd, he could also sell his share of the utilization of the state. It also had a procedure for pricing that kind of changed the Milk Stabilization Act that had pricing provisions in that, too. But it was a big battle between the independent what they call "market milk producers". . . . And this is the fluid milk that they sell to people. Market milk is the milk you buy in the market for consumption. That's the highest quality of milk; it's all Grade A milk. Then you had Grade B dairies that produced milk that was made into cheese, made into dried milk and other products other than market milk. You had Grade A and Grade B dairies.

When you took milk pooling and divided up the Grade A, that was the cream—pardon the pun—of the market, where most of the money was, because the price per hundred pounds of butterfat of market milk—Grade A milk as opposed to Grade B—was much higher. And it tended to freeze people in and out of the market, because they took all the current utilization and assigned it to various producers. Somebody could not then come out of school or out of college or someplace and buy a herd and go into the Grade A milk business, because he wouldn't have a piece of the utilization to sell. He'd have to buy that from somebody else. And it got to the point where your share of the milk pool was as valuable as the cows or the market or the farm you had or anything else.

But it was a very controversial bill. Some screamed it was anti-free enterprise. You'd get some very complex issues as far as how you create a stable milk supply that doesn't go up and down drastically, and with the price going up and down drastically, and it gets to be very complex. That was one that was rather an issue, that when it came up on the floor of the senate, I'll bet you I had a dozen people come up to me and say, "Hey, Fred, is this a good bill or a bad bill?" Because

they could listen to the argument and still not tell; they could hear what it did and they still didn't have any idea.

HICKE: How did this bill arise? Had there been this controversy ongoing?

MARLER: Yes. It primarily came up by. . . . I can't remember the name of the association, but it was the statewide association of Grade A milk producers. It was designed to stabilize their situation for them. And it was a competitive thing, also. It was one of those things that there was good news and bad news about the bill. Obviously, it was anticompetitive to say, "This freezes the people that are in the market, and nobody else can get in unless they buy a piece of the action." On the other hand, when you look at what happened in other states—and even this state, sometimes—as far as not only the volume of milk available but also the utilization of milk and the prices that occur, it makes it very difficult.

The problem is, you can't turn a cow on and turn a cow off. You've got a cow, and that cow's going to produce milk whether it can be sold or not. But you have the milk utilization in the state that goes up and down with when the kids are in school. When the kids are in school, the milk utilization goes up drastically; when kids are not in school, it does not.

HICKE: Because the schools buy the milk.

MARLER: Yes. And that makes it a big thing. Also, competitive factors from out-of-state milk coming in. It's a very complex situation where, on the one hand, you want to make it a free enterprise market; on the other hand, you want to make sure you've got something that gets an adequate supply at all times of milk to the people who want and need milk for a reasonable price. It was a very, very complex issue.

Every once in a while you get one like that that had to do with a specific commodity or a specific area that was one

where probably a very small number of members of the legislature understood it. But there were people who kind of got the reputation of being experts in certain fields. I was the chairman of the Ag Committee, and for some reason or other, I got to be the resident expert in milk in the senate during the period of time I was there. So that was a very interesting bill.

HICKE: How did it resolve itself?

MARLER: The bill passed, and it's been in effect now for probably twenty years. Not that long; ten to fifteen years. And as far as I know, it is successfully working and accomplishing what it was intended to do. Not like some other bills I carried.

Proposition 4

MARLER: I mentioned to you earlier, and maybe I should again, the constitutional amendment of Proposition 4 that was put on the ballot.

HICKE: That's a big one that we want to get all the details on that you've got.

MARLER: That was in 1972. This is the one I mentioned to you called the "4M Bill." I don't know if anybody ever called it that except me, but it was coauthored by the speaker of the assembly and the Republican leader of the assembly. The speaker was Bob Moretti; Bob Monagan was the Republican leader of the senate. And by the president pro tem of the senate, who was the Democratic leader of the senate, who was Senator [James] Jim Mills from San Diego, and myself, Fred Marler, who was the Republican leader at that particular time.

What we had in mind was trying to avoid the peaks and valleys of legislative activity on bills, and to eliminate that last big rush of hundreds of bills where nobody knows what's happening, and to give the legislature a chance to be a more deliberative body; look at important legislation and have

time to do so; take it up at measured periods of time, so that it would work better. That was our idea.

HICKE: Spot bills and that kind of thing?

MARLER: It was supposed to eliminate those. I can't tell you all the provisions of it right now, but it did set the legislature up Instead of a single-year session, where you'd have to put bills in in January and have them done and out of there a few months later or else start all over again the next year, we wanted a two-year session, where bills that didn't pass could be held over for the second year. We felt that if somebody knew this, he could take up his bill the next year, he might not be faced with this drastic sine die adjournment date, so that he'd have to put the bill out with tremendous pressures.

Pressures, by the way, that I saw when I first got in the senate, where, on the last night of the senate—and you'd probably have been in session maybe twenty hours a day for three days—you'd be hearing all the last bills before the mandatory sine die adjournment set forth in the constitution. They would have bills come up. They were coming across so fast from the assembly and out of conference committees and out of senate committees that we'd have to vote on, that they would have a blackboard up front. They wouldn't even have the bill on the desk, or maybe they'd pass it out but it wouldn't be on file; and the file would be a blackboard. They would put up ten numbers and vote on bills in blocks of ten, without any explanation or debate on the floor.

Now that was obviously horrible, terrible. And it was hoped that rather than have that type of a situation, if an author knew that his bill could be held over and he could finish it up after the first of the year, we could eliminate that; we could look at bills and know what we were doing. So this proposition said that there were certain guideposts of

dates along the line. For a bill introduced in the first year, there was a certain date by which it had to be out of the policy committee in the house of origin, another date by which it had to be out of the fiscal committee, if it had to go to the fiscal committee; another date by which it had to be voted on and out of the house of origin; another date by which it had to come up before the policy committee in the other house, the fiscal committee in the other house, the floor of the other house, and returned. Or if it went to a conference committee, out of that. And if you missed any one of those, it had to be flopped over until the next year and finish the process then. It hasn't worked at all like anybody intended it to work.

It hasn't stopped a thing. What it means is that the heavyweight bills now instead of going to the end of the first year, go to the end of the second year. And it means that the legislature is very, very free to waive the rules, to give consent to violate these particular provisions, and so it's frankly created more of a problem than we had as far as logjams at the end of the second year. It was a noble effort, rather like the banning of the drinking of alcohol, a noble effort that didn't work too well.

HICKE: How did the idea originate?

MARLER: Of the two-year session?

HICKE: Yes.

MARLER: I can't remember where it came from. I know for several years we talked about it, debated it, thought whether it would work or wouldn't work. People in the legislature were more or less happy with it. People who on a regular basis had bills that they had to follow—the lobbyists—were opposed to it, because they felt then that they'd have to watch bills for two years instead of one, and that you couldn't kill a bill the first year because it would be brought up again the second year.

They turned out to be correct that that did work that way. But we finally, after all of this, got together, and on a marvelous bipartisan effort here to try to improve the workings of the legislature, got it passed and on the ballot. We all joined in the arguments on the ballot, and it passed. The great experiment.

HICKE: How did it happen to be the four of you?

MARLER: Well, we just wanted to prove and be able to demonstrate this was a bipartisan effort by the leadership of the legislature to improve the process. It just went through like greased lightning, as I recall, and on the ballot, passed overwhelmingly.

HICKE: Was this a fairly unique way to sponsor a bill, this bipartisan approach of the leadership?

[End Tape 2, Side A]

[Begin Tape 2, Side B]

HICKE: You were just saying you had quite a bit of that?

MARLER: Bipartisan support on legislation is not uncommon at all. You'll have a primary author, and if it's a good bill, he wants to prove this, and he proves this by getting a substantial number of authors from both sides of the aisle, both Republicans and Democrats. You'll look at a bill, you say, "This must be a good bill. Look at that. Or at least it must be a noncontroversial bill partisan-wise, because it's got ten Democrats and ten Republicans." Then you also look at who the Republicans and who the Democrats are, because some people are more influential than others. You get certain names on there. And it would be pretty hard, overall, to argue with how influential it is on a nonpartisan bill to point at the partisan leadership as the prime authors of it from both sides. So it's not uncommon.

People: Hugh Burns, George Miller, Stephen Teale, Joe Rattigan, Gene McAteer

MARLER: Maybe now we could talk about some of the people in the legislature. We mentioned that when we were off the record a minute ago. Just kind of reminisce about some of the people who were there when I arrived.

The president pro tem of the senate who, by the rules, is the real leader of the senate and specifically the leader of the majority party, was Senator Hugh Burns from Fresno. Senator Burns, at that time, I believe, had been in the senate since about 1936, and had had a term or two in the assembly before that. I'm not exactly sure, but it was in the thirties when he came; he had a lot of seniority. A very amiable man, a very strong man, who, through very quiet methods, pretty well guided the legislation in the house of origin, and was elected overwhelmingly by bipartisan votes all the time I was there. There were a couple of periods of time when he was still there that there were other presidents pro tem, toward the end, when Senator [Howard] Way was the president pro tem; and Jack Schrade was for a short period of time also.

HICKE: Maybe you can tell me a little bit about that later. I have an article on that.

MARLER: Yes. That was a rather strange situation at that particular time. Anyway, some of the other ones there. Senator George Miller from the [San Francisco] Bay area, one of the giants of the legislature; a very bright man, very articulate. One of the best debaters on the floor. I can still remember his famous debate when he was talking about a bill sponsored by the speaker of the assembly, Jesse Unruh, and he took it on the senate floor.

George Miller had a very deep voice, [demonstrates] rather like this when he talked, and debated loudly with this

gravel voice. I can still see him on this bill. I can't even remember what the bill was now. Speaker Unruh was in the back of the senate chambers when Senator Miller was taking on his bill and taking on the speaker, about here he was, "strutting back and forth in his power in the back of our chamber," and suggesting it would be proper for him to go back and "befoul his own nest." I can remember that. And he kept referring to him as "Jesse Marvin Unroo." On and on he went about that, and killed the bill.

What had happened was that George Miller before then had a bill in the area of education. I think it was in the area of some more money for special education and special education programs that I think he did pass at a later time. It was a very, very important bill to him. He really wanted it. And he got it over to the other side, and Unruh said, "No, we're going to do all this through another method," and killed the bill on the assembly side, infuriating George Miller. Then here came the speaker's whole legislative program in a conference committee report on the last night of the senate. He enjoyed doing that for a period of time, when it would suddenly come out of the conference committee with very little debate, and there it would be. That's what this was here. He had his whole program, but some things he wanted, too. And Miller got even. He killed that whole thing dead as a doornail right there on the senate floor.

Other people who were big in the senate at that time Stephen Teale, after whom the Teale Computer Center is named. Steve Teale is still alive. I haven't seen him in a long time. A big man, probably 6' 2", 6' 3", 225, 230 pounds, with a blond crew cut. A doctor, an osteopath, who, when they amalgamated the osteopaths with the M.D.'s, got the M.D. degree. A very hardworking, bright guy, one of the real leaders of the senate for many, many years. Was chairman of

Senate Finance for a long period time; he had a good grasp on government. Almost single-handedly, when nobody knew much about computers or even thought about it, brought the state government into the computer twentieth century ahead of many other areas by funding the Teale Computer Center, where many of the departments of the executive branch of government do all their work, and we were there ahead of time. And he was responsible for that; that's why they named it after him. Very influential in the legislature.

HICKE: Is there anything else about him that you recall?

MARLER: Well, from a personal basis. Just before I got to the senate in 1965, his wife and a couple of his children had been killed in an automobile accident. It almost wiped his family out. I think he had one daughter left, which was very debilitating. And he was really down for a while. He then, a year or two or three later, remarried a very young lady, very bright lady, who had a Ph.D., started a second family. His children were grown before. And he's now had two or three or four more children. Lives up in the foothills. Retired very happily. But he was also well respected.

He was also our resident doctor on the floor for every little thing we had go wrong with us. You get a headache, you feel bad, you go up and say, "Steve, I've got this crummy feeling here. What can you do for me?" "Well, come on; I'll see what I can do." He always called me "Freddie." "What's the matter, Freddie?" In fact, most of the leadership did. George Miller and Hugh Burns always called me "Freddie," for some reason. Maybe because I was younger than the rest of them at that particular time.

Then there was [Joseph] Joe Rattigan, senator from Santa Rosa. Staunch Catholic gentleman, who always referred to his wife as "Betty Gubich"; that was her maiden name. "Ah, yes," he would say, "I'm going home this weekend and see Betty

Gubich." [Laughter] I don't know; it's not important, but I remember that. Also very articulate. He was probably the golden-tongued orator of the senate at that particular time. Very knowledgeable, very smart. Quite liberal. Who just recently resigned from the First District Court of Appeal, where he has been sitting since 1967. When reapportionment came up, he left the senate at that time and was appointed by Governor [Edmund G.] Brown [Sr.] to the First District Court of Appeal, and after serving—it was a distinguished career—over the period of time twenty years, he's now retired. I haven't seen Joe in quite a while.

HICKE: Any particular issues that he was interested in?

MARLER: He was very interested in social issues. Right off hand, now, real quickly, I can't remember any particular bill. I remember him speaking, as I said, with great articulation on many bills.

HICKE: Persuasive?

MARLER: Persuasively, and primarily in the area of public assistance or expanding welfare programs for the disadvantaged, etc., that he was very active in.

Let's see. Another man at that time was [J. Eugene] Gene McAteer from San Francisco. I think at the time he died he was chairman of the Senate G.E. [Governmental Efficiency] Committee. Again, a man with a big, booming voice and very forceful personality, one of the movers and shakers of the senate. He succeeded Luther Gibson as chairman of G. E. Committee, I think. Dick Dolwig was also chairman along that time of that committee. I can't remember who succeeded who.

Luther Gibson, a small man who spoke very rapidly. Editor of a newspaper, from Richmond. Very well liked by all the membership, and a man who contributed much over the years when he was there.

There were several others. Don Grunsky, there a long time. I've mentioned him before. A distinguished attorney. I have fond memories of these people. I could speak of a lot of others who were there when I was, and came while I was there and are still there. But primarily I talk about some of the people who came in the thirties and the forties, and who, I felt, contributed much to the senate. They were part of the Old Guard, no question about that. They were people who firmly believed in the nonpartisan nature of that body and in the strength of the senate, and sometimes thought that the main purpose of the senate was to protect the state from the assembly, and used to say so constantly. [Laughter]

HICKE: Is there anything more that you can recall about Senator McAteer, things that he was particularly influential on?

MARLER: My recollections are that he was primarily interested in the issues that faced San Francisco. At the time that he died, he was getting ready to leave the senate and run for mayor of San Francisco. Everybody figured he had that in the bag and would have been the next mayor. There's something about San Francisco and the representatives from San Francisco that the highest thing in life that can happen to a San Franciscan is to become mayor of San Francisco.

HICKE: Art Agnos is running for it today.

MARLER: And they would leave other offices at any time to become mayor of San Francisco. They just felt really highly about that. Gene McAteer was going to do it. George Moscone did leave. Art Agnos is leaving the assembly now to run for that. I guess he didn't have to leave the assembly to do it, but he's a legislator looking at that particular job as his goal. I can't remember the specific issues he was in. He was quite interested at all times in the preservation of the delta and the water quality of the [San Francisco] Bay. I remember that. And I can remember him as being a big man with a forceful

personality and a booming voice, a real extrovert. The epitome of an Irish-Catholic mayor of San Francisco.

Old Guard Leadership; Third House

- HICKE: Can you give some assessment of the Old Guard leadership as opposed to the now-partisan leadership? Did things go better then, or more smoothly?
- MARLER: Well, it depends. There have been a lot of improvements in procedures. And the Old Guard, of course, in those days, was maligned because they ran the show with kind of an iron hand, and with somewhat less than democratic procedures. I mentioned the committee votes and how that worked. There's also no question but that they were a group of maybe six or seven members of the senate, primarily from the majority party—the Democrats at that time—who made lots of deals and carried lots of things through. And some of them were quite close to, I guess you could say, the "special interests." There were always charges of corruption. If there was corruption, I think it was more in the nature of friendships than it was in any money changing hands.

You had some members of the Third House, as it's been rather cynically called for years, that were quite close friends of members of the senate. They had all been there for twenty years together. Their children had grown up, and they had mingled socially, and their wives were friends. They were just very close. And those people would always have an ear of the senator, and if he respected them, he could expect, if he doesn't reach too far, to do some good. And they were close that way.

I never saw any evidence any time I was there—other than hearing rumors—that there was anything worse than that, as far as corruption. Not that I'm saying it wasn't there. In fact, I'd be rather wide-eyed and unrealistic to say that

there wasn't corruption. I'm sure there was. But it wasn't widespread. There were a very few members of each house that you could really say were corrupt. Even those from the Old Guard, their motives. They may have been doing things in an undemocratic fashion by their roll calls, but they were doing it because they thought it was right and they were getting "right" results. Their motives were good in what they were trying to do. And I have difficulty seeing that the quality of legislation coming out today is any better than the quality of the legislation we had in those days. I'm talking twenty years ago, and maybe even a little bit before then.

At that time, it was kind of strange. Yes, the Third House was very active, and there was a lot of contact between the Third House, so to speak, and the legislature. And a lot of it was good. They were a prime source of information. If we had a bill, for example, that affected real estate brokers, it was rather helpful to know that here was a guy who was representing the real estate brokers, and here was their position on this particular bill: "The real estate brokers like this or don't like it because. . . ." It's a shorthand approach to informing the committee. It would have been very difficult for me to say, "Gee, this bill affects only real estate brokers, and I don't know enough about that. I guess I'd better write a letter to every real estate broker in my district and ask them what they think of it." They were an educational influence, put it that way.

And the good ones, and the ones who were the most effective, were the reliable ones. If they told you something, you could rely on that being the truth. The good ones, you could go to them and say, "Wait a minute, now, you've got this bill up here. I notice you're pushing it, right?" "Yes, I am." "How does that affect my district?" And I've had them tell me this on more than one occasion: "You should vote no on it.

It's not good for your district. It's good for the metropolitan areas, but not for your area, because" this, this, and this. They would do that. I mean, they'd try to help you out. Of course, they were of varying efficiency. But some of them were very knowledgeable, worked hard, made sure that on a bill, you got all of the information very honestly put, without a question that they were supporting or opposing it, but still telling you what it did so that you could rely on it.

We're running out of time. Do you want to break this off at some time and try again?

HICKE: Yes. Are you about finished with the Third House?

MARLER: You want me to just finish that?

HICKE: Yes.

MARLER: OK. Let's go on and finish that. Going back to the Third every day of the week, there was some luncheon that you could go to that was put on by lobbyists. And I say economically very welcome, because when I first went in the senate, our salary was \$500 a month. I can remember my take-home pay was \$382 a month. The first two years I was in, I practiced law as much as I could. I couldn't quite practice enough to make up the lost income, and during that period of time, I used up all my savings. My wife had been a schoolteacher. She withdrew all of her retirement funds, and we used that. And if the salary hadn't increased to \$16,000 a year, effective in 1967, I would have had to have quit. I was too young. I had two little children I was raising, and there was no way that I could survive on \$382 a month, unless I wanted to supplement my income in ways I refused to do, put it that way.

But anyway, to help save money, there was a luncheon you could go to every day of the week. That was a regular thing. Monday there was a luncheon in the Senator Hotel, put on by the railroad association. They always had a very nice

luncheon. They had a bar. You could have a drink, have a nice luncheon, say hello to the other members. It was kind of understood—or at least the practice—that no lobbying took place in those luncheons. They would be there and say hello to you, the people sponsoring the lunch, and you'd thank them for the lunch. You'd sit down and have lunch with the other members. In fact, it was a delightful place to meet the members of the assembly and the senate to do some business, about the only time you could catch them sometimes. And I accomplished more business on my legislation with other members, probably, at those luncheons than any other time.

Let's see. Then Tuesday there was one called "Clam and Choral." I don't know how it got started that way, but that was a luncheon, and I can't remember who that was put on by. Wednesday was a very famous one called "Moose Milk." No, that was Thursday. Now I'm forgetting which days; it's been too long ago. They had one called "Moose Milk," which is, by the way, a name loosely given to milk with a shot of whiskey in it; that's called "Moose Milk." I don't know why they called it that, but it started that way. It was put on by a group of lobbyists, probably ten or fifteen of them. I don't remember all of them, nor who they represented. They would be there and say hello, then you'd sit down. That was always given in the top floor of the El Mirador Hotel. Very fancy luncheon, magnificent hors d'oeuvres and luncheon; it was always very, very nice and very pleasant to go and have lunch.

Everybody can shake their head now and say what a terrible thing that was; look at how corrupt we were. Nobody thought that anybody was getting any kind of advantage by this. All the legislators went, the people who voted for you, the people who voted against you. If anything, maybe what a lobbyist got for that was, you knew he was putting this on, and if he wanted to talk to you, you talked to him. But it was

never even implied that somehow or other this gave him a leg up on legislation. It was just a nice thing to do that kind of improved the process, because it made the legislators happier to be there.

I don't know. Obviously, I'm being a little bit naive on that, because they thought they were getting something for it or they wouldn't have done it. But nobody really worried about it. I guess, in retrospect, you could say, "What a terrible thing," but I don't know of any members of the senate that didn't go or any members of the assembly that didn't go. It was just one of the niceties that was available at that particular time.

Somehow or other, when Proposition 9 passed in the early seventies, it was going to clear everything up by saying that they had to report all of this, and you couldn't spend over so much on a legislator. And somehow or other, that was to really clean things up. Well, I look at what's going on right now, and I don't think that it's done much as far as cleaning anything up. It means that you don't go out to lunch as much anymore, and it's not quite as pleasant to be a legislator, and it makes it more difficult to get a hold of the other members of the legislature to talk over business at lunch.

HICKE: Was this sort of derived from the congressional idea. . . . I mean, in Congress it was not done this way, I gather.

MARLER: I don't know where it came from. It had been there for years and years. The legislature, back, say, in the thirties and forties, did have some great problems from [Arthur H.] Artie Samish. What you had in those days is you had Artie Samish, who would rent all of the rooms on a floor or two of the Senator Hotel. And at that time, a legislator made \$100 a month. There were people who came up that literally slept in their cars, because they couldn't afford a hotel room while we were in session.

HICKE: You mean legislators?

MARLER: Legislators. I'm sorry if I misspoke myself.

HICKE: No, you just said "people."

MARLER: Legislators who came here who couldn't afford a hotel room, and during the time of the session would sleep in their cars. And then Artie Samish would say, "Hey, come on. That's ridiculous. I've got this room." And they would gratefully go into the room.

And then he became influential. I don't know if he was ever really as influential as he claimed when he said he owned the legislature and that that was his private domain. Maybe so. I know he was quite influential. He was gone long before I got there, and all I heard were stories about him, and I heard varying stories. But there was no question that that was a great impetus right then that the legislature better clean up its act.

They at that time still did not have any laws reporting—when I first got there—your campaign contributions and who you got them from. That came a couple or three years later. Or who was buying you lunch. But now they still have the lunches, and the campaign contribution thing has gotten so far out of hand and so far different that it doesn't even look like the same body. And I might say, as an ex-senator, that I don't think that I could be in that body right now. I don't think that I could do the sorts of things with the constant pressures to raise campaign funds that they do now over there and still do the job.

HICKE: Thank you very much. This is wonderful. But I think we better put the rest of it off for another day here.

[End Tape 2, Side B]

[Session 2, November 18, 1987]

[Begin Tape 3, Side A]

The 1970 Pro Tem Changes: Burns, Way, Schrade, Mills

HICKE: I wonder if we can just start this morning with your telling me about what happened in 1970 and '71--maybe it started in '69--when Hugh Burns resigned the president pro tem, and Howard Way. . . .

MARLER: This occurred about the first time in many years where the Republicans had a significant strength in the state senate, as far as numbers. When I first was elected, I think I was the fourteenth Republican out of forty members, and it gradually picked up until the time where we actually, for one year, had an equal split in the senate of twenty to twenty, with a Republican lieutenant governor with the right to make the casting vote in the event of a tie.

Prior to the time when Senator Way became the president pro tem of the senate, of course, Hugh Burns had held that position for many years, and it was held during a period of a great lack of interest in partisanship in the senate. And, more or less, when we divided up in the senate, we divided up, maybe, conservative-liberal, north-south, rural-urban. There were lots of ways we could divide up on various pieces of legislation that came up, and various issues. But very seldom was it on a partisan basis. Once in a while that happened, but it was fairly rare.

Senator Burns was never known to be a flaming liberal. He was considered a pretty conservative type, and thus held a lot of support from the Republicans in the house. Now this was specifically when there was a very weighty seniority system, if you want to call it that; a lot of weight was given to seniority in the house, as far as committee assignments. So there was no need to have a partisan leader at the top.

At the same time, the functions that are the really important ones on the assembly side to give the speaker his power were not in the president pro tem. The speaker of the assembly not only appoints all the committee chairmen personally, but he assigns the bills to committees. That's a very potent weapon as far as determining the outcome of legislation. On the senate side, this was done by the Rules Committee, a five-member committee, and was never really used at that time—it wasn't even thought of—as a method of determining the outcome of a bill. Usually. There were a couple of instances where this would be done, but it wouldn't be on a partisan basis. There was no question but that certain types of bills would be sent to certain committees, by the nature of the bill.

There was also one committee at that time, called the G.E. Committee, Governmental Efficiency Committee, which was kind of a misnomer. It was kind of a catchall committee that got bills that had to do with horse racing and liquor bills and a lot of local bills that had to do with special legislation for a city or a county, or special legislation that had to do with areas. And also, it was kind of a catchall for very controversial legislation.

HICKE: You talked about that a little bit.

MARLER: I think we got into that last time. So that was probably the one area where there was some control in legislation by the

Rules Committee. But getting back on track again, the president pro tem was not that powerful, per se, as an individual. There was a group of the senior senators who, because of their seniority, were quite powerful, that were the chairmen of very important committees. But it wasn't because of their party affiliation.

Now, about this time, though, there was a great battle going on concerning seniority. Right after reapportionment, the newly elected senators who had been assemblymen wanted to get away from the system. Some people saw it also as a reform measure. They looked at some of the senior members of the senate that held a lot of these important positions and weren't satisfied with the job they were doing. They thought there was too much influence from special interests, too much influence from specific lobbyists. And there was no question that there was a lot of influence by, say, half a dozen lobbyists, not so much because they were making big campaign contributions or that there was any real thought that they were paying money to people. But it was a much more subtle type of problem, in that they were very, very close friends over maybe a period of twenty years. And their families had been friends.

And so the people who had been there a long time as lobbyists were close friends with the people who had the power in the senate. And a lot of them thought this was a little bit too much of an influence by those people and wanted to shake it up. And I couldn't really disagree with that, either. Though at that time I was also—even though I was pretty young and not too long in the senate—fairly high up in seniority because of all the new people who had come over in reapportionment.

But still, I was very sympathetic to this, and was a good friend of Howard Way, and a firm, idealistic believer in the

purity of government. And so I agreed when they were talking about doing things to see if we couldn't change some things around there for the better, such as requiring roll-call votes in committees, requiring that bills actually be given a hearing, had a full hearing if they were requested by their authors, and kind of opening up and putting a little bit of the light of day, so to speak, in what was happening in the senate.

So when Howard Way ran for president pro tem, I supported him, and he was elected. It was at that time, though, unknown as to what he would do as president pro tem. We knew there were a few things that we wanted to do that have been mentioned, such as open roll-call votes, etc., but nothing really was mentioned—that I recall—concerning the reduction of the number of committees or changing around committee chairmen and all of that.

Howard Way then proceeded with this coalition that he'd put together to accomplish some things that he really didn't talk over with people. I didn't know that these things were going to happen that he suddenly came out with himself and the Rules Committee and just suddenly announced.

HICKE: He just proceeded on his own.

MARLER: Proceeded on his own, but through the Rules Committee. He did not usurp power. I mean, he didn't do it wrong. But all at once suddenly there were big changes, and a lot of us blinked our eyes. One of the first things that happened was, without even talking to me, without mentioning anything, he removed me as the chairman of the senate Ag Committee, which was a very important thing to me, and a very important thing for my district. I came from an agricultural district. One of the things that, very frankly, from a political viewpoint, gave me my strength in my district was the fact that I had acquired seniority, I was the chairman of a committee very important to

the district, I was a member of committees very important to the district; and this offset the partisan problem in my district, where it was overwhelmingly Democratic and I was a Republican. And suddenly, without mentioning anything, I was removed as chairman of that committee.

I went to him and said, "Why did you do that?" He said, "Well, we reduced the number of committees down from twenty some odd to about fifteen." I asked him why he did that. "Well, we had too many committees. We just didn't need all those committees." I said, "Are we going to save any money?" "Well, I don't know. We just had too many committees. We probably will save some money, and we just didn't need those committees."

HICKE: So he cut off the committee altogether?

MARLER: He didn't cut off the committee, he cut off committee chairmanships, and thus there were fewer chairmen; and reallocated things around. He ended up with the senior member of the senate, Hugh Burns, then, who was no longer pro tem, and he thought, "We ought to give him something. We'll give him Agriculture," even though he didn't want it. So he removed me.

But he looked at me in disbelief. I can remember this right now. "But Fred," he said, "I put you on the Senate Finance Committee, and everybody knows that being a member of the Senate Finance Committee is as important as being a chairman of a minor committee like Ag." I said, "How can you figure, first of all, that Ag is a minor committee, when you're from Tulare, a grape grower, and you come from that type of a district? And, secondly, maybe in some ways it's important to be on the Senate Finance Committee, but the people back home don't know it. This is a pretty big change. I'm getting headlines in the papers up there: 'Marler Removed as Committee Chairman.' This does not bode well. Also, the

party is terribly angry, where suddenly you have removed Republican members as chairmen of committees—not me, but there were others—and replaced them with Democrats. We know maybe that's not too important, but the Republican party people, all of them in my district, are furious at what's happened. What happened is, we worked hard, got you elected pro tem, and now suddenly, in the senate, as far as committee chairmanships and positions and all of that, it looks like we're worse off than we were before."

HICKE: Do you have any sense of why he did all this?

MARLER: Howard is a very good friend of mine, a brilliant guy, but I think he was a little bit politically naive at that particular time, thought what he was doing was good, and just disregarded or didn't see the possible political implications that might come up.

Now, at this same time Jack Schrade from San Diego showed an interest then in becoming pro tem, because there were quite a few people that were kind of upset about what had happened, Republicans and Democrats alike, at this thing. Also, what we saw was a coalition that had put Senator Way in there that was a very fragile coalition. It was a coalition that was put together solely for certain procedural changes in the senate, and when you looked at the makeup of the coalition, it was composed of moderate and conservative Republicans and the real liberal wing of the Democratic party, which meant the leadership was there for procedural matters, but they probably could never get together as far as a majority coalition on any substantive legislation. And the first time you had a big battle on some substantive legislation that did happen to resolve itself into a conservative-liberal type of dichotomy, the thing would fall apart and you'd have another pro tem in there. That didn't look good. So there were several reasons that came up.

Frankly, when Jack Schrade then came up, as you're aware, I supported him. It wasn't really for my personal situation, because Howard Way said, "Fred, I didn't realize that you felt that way, and I'll certainly put you right back on as chairman of Agriculture." Jack Schrade said, "Fred, if you'll support me, I'll put you back on as chairman of Agriculture." Hugh Burns said, "I don't care about being chairman of Agriculture, Fred. You can have it." So the personal issue had been resolved. But it didn't resolve what I saw as the larger issue, which was the appearance that the leadership of the senate had abandoned the Republican party, and secondly, that there was a coalition in there that was so fragile that it couldn't be counted on to run the show for any length of time. I figured we needed something more stable. And the supporters of Schrade versus Way, in the second one, though it was a mixture once more of Republicans and Democrats, was more a consistent philosophical type of split.

HICKE: This is the support for Schrade?

MARLER: Yes. You had more of a conservative support for him from both the Democrats and the Republicans. So then we split up again in that particular fashion and went back to running the show pretty much as it was before.

But some of the reforms held over, and they were good ones, as far as opening the operation of the senate to the daylight. That was done. But what it did do was reinstate the seniority system, which was such a valuable system in a lot of ways. It had its flaws, but it also had the benefits of ensuring the bipartisanship of the house, that the majority party did not have all the committee chairmanships, and didn't run the whole show, and was not able to just disregard the minority party.

HICKE: Am I correct in assuming that seniority was not the only way of assigning committees? Obviously, you had Agriculture because it was a familiar subject to you.

MARLER: Yes. Seniority was not the sole test. I was, at that time, out of the forty members, about fifteenth or sixteenth in seniority, because we'd had about twenty new members come in the house in reapportionment, and that gave me a big step up. I was senior to all of them. No, they also put you on according to your interests. If you were from an agricultural area, you would tend to get on those types of committees that handled the legislation that was of interest to those types of areas.

And, also, there was a certain amount of partisanship. When you got to several of the committees, the important ones, the majority party did have the chair of about four of the important committees and always did. Finance Committee was one. I [Inaudible] say G.E. was, always. Usually Education was. And even if the chair happened to be from the minority party, the majority of the membership of the committee came from the majority party. The main one this occurred in was the Senate Finance Committee, which was the single, of course, most important committee.

But there is a story of what happened in that. It wasn't a personality type thing. It didn't even end up being something that I changed my support for personal gain, because that had already been resolved. It's just that I was very concerned that he was moving too fast, going too far, and, in the name of reform, doing things that were not in the interest of my constituency or the Republican party, and more specifically, was not a type of arrangement that could reasonably be expected to last because of the nature of the coalition that supported it.

HICKE: So the coalition that supported Schrade, then, was mostly conservatives.

MARLER: From both parties.

HICKE: From both parties. And then Schrade didn't stay in that position very long, either. James Mills . . .

MARLER: Jim Mills from San Diego, yes, then came in. I frankly can't remember the reasoning behind all of that, other than the fact that here you got to the point where you had a fairly substantial Democratic majority in the house, and there were strong pressures on them as the majority party to elect a president pro tem. So, even though Schrade, then, was there for a while, as soon as the membership of the house changed so that we were no longer the majority party, they managed to put together their coalition—a strong one, being a coalition of all the Democrats in the house, which is probably the most stable kind you can get—and they elected Senator Mills.

He was also fairly liberal. He was also a person that had come over from the assembly. When I say fairly liberal, it depends on the kind of issues you looked at. He was also pretty friendly, as I recall, someone who could live with the seniority system, was not somebody who was going to be a great reformer, was a person who believed in a hands-off policy as far as running the house. And it's kind of interesting, that's the way the house is supposed to operate. The leadership of the house is not supposed to dictate. Everybody is supposed to be an independent and able to vote his conscience. The rules don't anticipate that one person would inflict his will upon others.

But it seems like, lately, always in the press, the people who misuse the system are those who are held up as the shining examples of leadership and who are admired because of their strength, through the misuse of the system. When he, in later years, lost his job as president pro tem, it was because

he did not take as strong a partisan stance as some of the members of the Democratic party in the house wanted; so they elected somebody who would: Senator [David] Roberti. And that was only because Senator Mills believed that legislation should be assigned to the committee where it belongs, that people, then, should have their bills heard, that they should be decided on their merits, and people should vote their consciences; and that he should not, either as an individual, or through his party, or through the Rules Committee, try to manipulate the house in somewhat less than an idealistically democratic form of government.

HICKE: That's a little discouraging, to hear that somebody with those views can't maintain his leadership.

MARLER: Well, if you look at the history of the legislature, look at right now who are in positions of leadership. They are not people who necessarily have a laissez-faire attitude toward legislation and how things work. They are constantly looking to consolidate and increase their power, and they do it by . . . oh, many ways. We've seen the speaker, for example. To get a bill out of committee, he'll run and change the committee membership to get a bill out. Rather manipulative. And that is the type of thing that seems to work, and the type of people that are admired, because they misuse the system. That's a personal viewpoint there.

HICKE: During the period you were in the senate, what kind of leadership did the president pro tem exert?

MARLER: Pretty much a hands-off policy. It was through a strong seniority system of . . . I'm trying to remember. I could never remember, for example, Hugh Burns calling me up and saying, "Gee, we've got a bill coming up, and I'm sure interested in it, and I think it would be to all our benefit to pass it." I can't remember him ever taking that type of an approach, or any member of the senate doing it. When I was

there, back in those terrible days of seniority and prior to all these great reforms, the house worked as a bipartisan unit, and worked pretty well, pretty well, with people voting their conscience. And I was always able to do so with no one ever punishing me and threatening to take away a committee post, or taking me out of my office and setting me up with a desk in a restroom, or any types of things that now happen when it seems like the leadership want to punish somebody.

V MORE ISSUES

Tax Revision; Negotiations; Ronald Reagan; Proposition 1

HICKE: Going back to my list here. I have tax revision programs. Do you recall anything about that?

MARLER: Yes. For years when I was there, we were aware that the method of supporting local government through property tax was a bad way to do it. The property tax had no relationship to ability to pay; it had no relationship to the creation of wealth; it was just an anachronism that was sitting there and happened to be the way it had always been done. Maybe a hundred years before, it was the symbol of wealth, but it sure changed over the years. And the people were crying for property tax relief, and everybody was trying to figure out how to do it.

In those days, what we were looking for was something not as draconian as some looked at Proposition 13, as far as holding down the property tax, but rather was a substitute of some state money for local money that conditioned upon the reduction of the property tax. You'd have certain monies got from the state. So what we were really talking about was a tax shift. We were talking a way to get money from a different source to replace the property tax, and this was what the general area of tax reform was looking at.

Now, here we ran into some great differences in philosophy between conservative and liberal members; this made it very difficult. And this was also mainly coming to a head when we had become more partisan in the senate after reapportionment, in the latter part of the sixties and early seventies. And it basically came down to a battle that the conservatives and Republicans wished to replace this money by an increase in the sales tax—increase the sales tax to raise "x" number of dollars, and then give it out to local government on the condition they lower property taxes by "x" number of dollars. And the Democrats wanted to do it by increasing the income tax in the higher brackets.

HICKE: So the first one's regressive.

MARLER: They claimed that the increase in the sales tax is regressive, and that "increasing the property in the upper brackets of the income tax is progressive," in the senses, of course, that one is more broadly based and one has a fewer number of people. I won't go right now into all the arguments pro and con in this. I will say that most of the people that I heard testify and talked to looked at the sales tax as neither progressive nor regressive but a neutral tax, neutral in the sense that people who made more money spent more money and had a higher tax that went up to a certain extent. People who didn't have as much money spent less, didn't pay as much tax; and not only that, but paid a smaller percentage, because they spent a higher percentage of their income on non-taxable items.

HICKE: Food.

MARLER: Food and drugs and rent and all the things that aren't taxable. So it was looked at as a broadly based tax that was neither progressive nor regressive. And our existing tax structure then and now, in this income tax, was very steeply progressive, and many people felt it couldn't get much more steeply progressive when you had probably 60 or 70 percent of

the total income tax being paid by the upper 10 percent of the people who were earning money in the state. But this was the big battle, and the lines were drawn.

HICKE: Which position did you support?

MARLER: I felt, and I also saw by surveys of the public, that they would much, much rather have a sales tax increase than an income tax. And they would rather pay it in little dribbles in sales tax through the year. They felt they could control it more. They felt that the income taxes they were paying now were too high, and the overwhelming support of the people was for support of this through a sales tax rather than income tax, and I was supporting that position. Now, Governor [Ronald] Reagan, at that time, also supported that position.

Or we were looking to see if we could get a mix, maybe increase certain areas of the income tax and the sales tax. That was, to the liberal side, somewhat interesting, but they were still strongly opposed to the sales tax. They wanted to look at more in the area of "sin" taxes, also: liquor, tobacco, horse racing, etc., to see what they could pick up there. Without getting into the merits of the situation, we debated these matters, tried to reach a consensus, and had great difficulties.

And at one time—this was in the early seventies, and this was about the time when I believe I was the Republican leader of the senate—we put together a situation where we would see if we could all sit around a table until we agreed. We were invited by the governor to come downstairs to his office, and we had representatives from both parties, from both houses. We had the speaker of the assembly, at that time Mr. [Bob] Moretti; we had Bob Monagan, who was the Republican floor leader of the assembly; we had Jim Mills, who was the president pro tem of the senate. I don't think we had a Democratic or a majority floor leader at that time. That was a

later thing. Anyway, he was there. I can remember Senator [George] Moscone was there as, I believe, the caucus chairman for the Democrats. And I was there from the senate, and I believe John Harmer, who at that time was the caucus chairman, Senator Harmer from Glendale.

We may have had two or three other people. In fact, I know we did. For example, we had Senator [George] Deukmejian, now Governor Deukmejian, there, because he was considered one of our resident tax experts. He had been a long time in tax matters in both houses. I frankly can't remember who some of the other ones from the assembly were that were there, but I'm sure there were some. In any event, we sat and started discussing. The discussion would get heated at times, and we spent several days from the morning to three in the afternoon talking about these particular matters.

HICKE: Did you say Governor Reagan was actually in this . . .

MARLER: He was present. He was sitting at the table with us. He had his director of finance and some of his resource people from the administration. We had staff members from our Revenue and Taxation Committee in the senate, both the consultants from the Republican side and the Democratic side, to give us information. We had a lot of resource people. I think we had Alan Post's office there, also. In fact, Alan may have been there himself, I'm not sure. The legislative analyst's office.

HICKE: What sort of comments did Governor Reagan make, or what was his participation?

MARLER: His position was, look, we've got to do something about this; let's see what we can do. It kind of ended up with the main participants being—in talking back and forth, called the main protagonists—the governor and Bob Moretti from the assembly, with the rest of us listening, chiming in, and talking.

We finally, then, got to the point where we had a tentative agreement, we thought, between the governor and the

speaker. We'd worked something out; we had a package; we were getting quite optimistic. And all at once, we found out from the Democratic senate members, Jim Mills and George Moscone—they announced, "Of course, we don't have the power to agree. We were just authorized by the Democrats to come down and talk, and bring back any proposals if we wanted." We had been going almost two weeks with the understanding that the people who had been sent down were empowered by those they represented to enter into binding agreements that would be binding on the rest of them, so they could negotiate; and we suddenly found out that they had been sitting there talking, but had no power and couldn't agree to anything, and the whole thing fell apart.

Everybody looked at them in disbelief. We couldn't believe that was the case, and said, "Well, forget it," and everybody went home. And that was the end of an agreement at that particular time. It was because the Democratic members of the senate did not have any power to negotiate. In fact, all their power was, they said, was they could take proposals back and see if they could get an agreement. And everybody was terribly surprised when they found that out. That attempt then fell apart.

I think it was thereafter, then, that the governor's office—and I might say, with the help of newly appointed Supreme Court Justice [Anthony] Tony Kennedy—drafted what went on the ballot as Proposition 1, trying to get that passed, then, by the people, by the initiative process, since it couldn't be passed by the legislature. And, of course, it

didn't make it. It was a big battle on the ballot at that time, Prop. 1.¹

HICKE: And then the net result was?

MARLER: The net result was, once more the legislature showed itself to be powerless to do anything significant in property taxes. We did do a few things, actually, that were fairly significant. We did pass some bills, finally, where we gave some tax relief, where you get a certain exemption on the property taxes up to a certain amount. That involved, then, the state reimbursing the counties. We did that when we had a surplus, so we didn't have to raise taxes to do it. But it was a smaller amount than the public wanted, and it wasn't as much as we wanted to do; but we could not reach an agreement as to how we were going to fund a major tax shift. And Jarvis-Gann then came along, in Prop. 13.²

HICKE: What was Governor Reagan's reaction when this all fell apart?

MARLER: He was pretty angry about the whole thing, and pretty mad that his time had been wasted and all of our time had been wasted, thinking we were negotiating and then finding out that the people who came down didn't have the power to.

HICKE: Understandably.

MARLER: I suddenly remembered another member that was down there this whole time, too, who was a senior Republican, Senator Bob Lagomarsino, who's now a congressman from Ventura County, has been for several years. He was there. And I think Don Grunsky

1. Special Election, November 1973. Tax Reduction and Limitation Initiative.

2. Proposition 13 was passed in June 1978. It is called the Property Tax Limitation Initiative. Officially cited as California: Constitution, Article XIII A.

might have been there also, from the Republican side, Senator Grunsky from Watsonville. I remember we had a big table, and we probably had fifteen people sitting around the table, fifteen or twenty people, in this week to two weeks that we were trying to hammer this out.

HICKE: Did you tell me what year this was, '71 or . . .

MARLER: I can't recall. It was around in the early seventies; I can't remember the exact year. In fact, I can't even remember then if I . . .

[End Tape 3, Side A]

[Begin Tape 3, Side B]

HICKE: There were four or five years. . . .

MARLER: . . . years in a row when I was the Republican member from the senate on the conference committee for the budget, which is a very important job. And it may have been that I was there because of that, or it may have been I was there because I was the Republican floor leader. I really don't remember which it was.

HICKE: Well, those are two major subjects I want to get into. Would this be a good time?

MARLER: Sure, go ahead.

Conference Committees: the Budget

HICKE: Let's go for the conference committees. I know you were on at least two, 1972 and '74 on the budget.

MARLER: I was on it every year for three or four or five years. What they tried to do is, on the conference committee you had six people. You had three from each house. And from each house you would have two members of the majority party and one member of the minority party, who would then try to reach an agreement

between the two houses to put together the final budget that would be presented on the floor.

Usually from the senate side you had the president pro tem and the chairman of the Senate Finance Committee; and on the assembly side you would have the speaker or his representative. It usually wouldn't be the president pro tem himself; it would be his representative, somebody he'd want on there. And then the speaker or his representative, and then the chairman of the Ways and Means Committee from the assembly, plus one member from the Republican party, the minority party at that time, who was usually chosen by the Rules Committee with the consent of the caucus. I mean, it was kind of understood this was their representative.

I did it for several years. I can't remember how I first got involved in it. I had been a member of the Senate Finance Committee for quite a while, and a fairly vocal member. Maybe that's why I got on it. But I was on it for several years.

This was where the budget was really drawn, and all kinds of things were done on that particular committee. There were some very interesting things toward the end that happened. One is that for years the tradition was that that was a committee that was not open to the public or the press. The conference committee met in secret. There was a certain time when members of the houses could come in and ask for special changes or augmentations to the budget for their special projects—their pork barrel projects—or their little matters of interest that they had. Other than that, no one was there except the members of the house. We'd have certain staff people that would be available to us, one from the Senate Finance and one from Ways and Means; and the legislative analyst's staff was there, Alan Post's office. And they would put together a budget. We'd have hearings lasting over three or four days, usually, going early

in the morning to late at night, and hammering the thing together.

HICKE: What you were trying to do was to rationalize the two bills passed by the house and the senate, or the two budget. . . .

MARLER: The whole thing, of course, is that, before this time, the senate would pass a budget and the assembly would pass a budget, and they would not mesh; there would be some differences. Each house would then not accept the budget from the other house. This would throw it, then, into a free conference committee, and at that time, then, you would try to get through the differences and take care of the differences. Actually, it was always known that there were going to be differences in there, and there were a lot of things left till the end of the budget that everybody expected to be hammered out in the conference committee.

HICKE: They just left it up to you?

MARLER: Well, they built in a difference between the two houses on purpose, so that it would be before the conference committee.

HICKE: Why is that?

MARLER: Because there were always late negotiations to be done with the governor to put things in, to see if he would leave them, reach agreements there that you hadn't been able to reach. There were always items that were passed, and you didn't know until the very end whether there was going to be enough money to fund all of these things, what there was going to be there. There were things that couldn't be resolved until that time, so they were being left until the end.

It was a very important committee. As I said, up until 1972 or 1973, it was always closed. Then there was one time when it was closed. . . . I'm thinking wrong. We finally did pass a rule change that said that the conference committee was open to the public and to the press, thinking that would change things.

Some of us were kind of concerned, because it appeared to us that certain members of the conference committee and the leadership were able to use their positions in the membership of the committee to load up the bill with a lot of pork for their particular areas. A lot of times, it was matters that hadn't even been considered by the legislature as a whole or by the committees on either side, and were brand-new things that just got stuck in there at the last minute; and they would have the votes to do it. All it took was two votes from the senate side and two votes from the assembly side, and so the minority member could just sit and nothing would happen.

Even after they opened it to the public and everybody said what a marvelous thing this was. . . . The press had really pressed for this; they really wanted to find out what was going on. And we found out after we opened it to the public, the press came in and stayed for a day or so, then left. It was too boring for them. They didn't like to sit there listening to hour after hour of the various dull drudgery of pulling together all these things, and the numbers here, and the things there. It just wasn't really sexy enough for them, or exciting enough.

But while this was going on, there was an attempt that I, myself, particularly, got upset about, of loading up the bill with special projects. And it did happen when the chairman of the Senate Finance Committee was Senator Collier, and there were an awful lot of special things for, at that time, the new speaker of the assembly, Willie Brown. He had a whole bunch of things for San Francisco, which I think were a whole bunch of things for the north coast that were put in.

It wasn't really the issue that these were bad things, but they were items that were just the special little pets, and it meant that these people got special preference in the spending of money. It wasn't divided up among all the members,

who always had their little pet projects in their districts they liked to get done. And there were, by and large, many, many quite expensive projects that hadn't even been given any committee hearings; they were just there. And I voted no in committee on long lists of these things. The press wasn't paying any attention. They didn't even pick it up. I don't even think they were there.

But then on the floor of the senate, I was going to take the budget on and ask for nonconcurrency in the conference committee report, something that had not been done for many years. I was all prepared to do it, to take it on on the floor. I talked to a couple of members on the floor, and they were aware of what was happening, and they said, "Let us do it." These were some Democrats, and they said, "We can much more effectively attack somebody in our own party than you can, because it would look like just a partisan situation. If you did it, then everybody would feel constrained to protect our party, and you wouldn't be as effective." I said, "That's true."

HICKE: That was pretty magnanimous of them.

MARLER: Well, these were people who felt as strongly about the issue as I did. I mean, that it was wrong, what was happening; this wasn't the way it was supposed to work. We were loading up the budget with things that hadn't been heard, and there were special little items. There were lots of little items in the budget for the personal philosophy of these particular members, and the speaker of the assembly was getting all kinds of things in that he wanted that hadn't been heard, hadn't been decided.

And so, as I recall, there were primarily two people who took this on. One was Senator [Anthony C.] Tony Beilenson of Beverly Hills, a good friend of mine, and from the opposite spectrum. I always considered myself pretty conservative, and

he was one of the most liberal members of the house. But we saw eye to eye on a lot of things as far as how the house should work. He took it on. And so did Senator Holmdahl, I believe, too, John Holmdahl from Alameda County, condemning this practice and asking for nonconcurrency. I can't remember if I publicly spoke upon it, but everybody knew how I felt. At least we had caucused on this matter in the Republican party, decided that we didn't like this procedure, and were going to vote against it. We voted nonconcurrency, which means, then, they had to appoint a new and different conference committee to start all over again on it, which was done. Pulled out all of that stuff, cleaned it up, and then it came back in acceptable form.

HICKE: None of the same people were on the new committee?

MARLER: You can't. When you appoint a new committee, you have to appoint different members, as I recall, under the rules at that time. It also kind of resulted, as I recall, in Senator Collier losing his chairmanship of the Senate Finance Committee because of that, and that was when Senator [Albert S.] Rodda, then, I believe, came in as chairman of Finance.

HICKE: Because it was seen that Senator Collier was not doing an effective job?

MARLER: It was just that this was a vote of no confidence when they wouldn't accept this conference committee report, and it just seemed that if they couldn't even adopt that, there was no way he could stay on as chairman of the committee, because that's how he got on the conference committee in the first place.

HICKE: This may be minor, but I saw in 1974 six staff members were deleted from Lieutenant Governor [Ed] Reinecke's office. I don't know if you recall that. It was probably a bit of a slap in the face to him?

- MARLER: I don't recall that. I have a vague recollection that, yes, they were unhappy. They used the budget many times as a tool and a weapon to reward those they liked and punish those they didn't like. I cannot specifically recall the details of that, but it would not be beyond the realm of possibility on that.
- HICKE: Did anything like that happen while. . . . You just said they did that from time to time.
- MARLER: If they didn't like an area, they would pull funds. A lot of times, this would be done on a temporary basis. The legislature, in a subcommittee of Finance, while hearing the budget, would tentatively pull something out of the budget to try to attract somebody's attention that something had to be done there. So they would pull it out, and that would attract their attention, and come around and say, "What did you do that for?" Then you would get down to some serious discussions. They would agree to certain things, and you would put the positions back in again, or the money back in.
- HICKE: Sort of a "shape up or it'll get shipped out"?
- MARLER: Oh, yes. They did that all the time.

Election as Republican Minority Floor Leader: 1970-74

- HICKE: You were elected Republican minority floor leader in '70, and you kept that position until 1974.
- MARLER: Till I left, yes.
- HICKE: How did that come about?
- MARLER: I'm trying to remember who the Republican leader before was. I think it was Senator Deukmejian, for a period of time. Grunsky was, I remember, way back. It seems strange I can't remember, but there was a long period of time when being the Republican leader wasn't very important. It was just somebody as a spokesman to the press once in a while, and that was about it.
- HICKE: That's good evidence of the lack of partisanship.

MARLER: Sure was. Then they did start to get a little more partisan. We got to the point where the Democrats started organizing their caucus and building up staff members there. We then said that, well, we would like to do the same, and so we kind of were forced to organize on the senate side, too. And we did then organize. We had a Republican leader and a caucus chairman.

When we first started out, they were both elective positions. The Republican members as a whole, and by a majority vote, would elect both the Republican leader of the senate. . . . In fact, we never even had a constant name. Sometimes it was "floor leader," sometimes it was "the Republican leader," sometimes "minority leader." We didn't even have a formal name for it. Republican leader of the senate, I guess, was close. And then the caucus chairman. They were about coequal positions, really. Technically, the Republican leader was supposed to be the leader, with the caucus chairman as a lesser position. But the way it worked out with staff positions, and the duties, the way we divided things up, the caucus chairman was every bit as important in what he did in the duties as was the floor leader, the Republican leader of the senate.

And at that time I can remember that Senator Harmer, later Lieutenant Governor Harmer, who then ran for lieutenant governor after being appointed to fill Reinecke's vacancy and didn't make it that time, wanted the job, and I had decided I wouldn't mind having the job. We both had people that were supporting us. But it wasn't a big battle. We kind of divided up; I think on the first ballot or two, it was almost split equally. Then Senator Harmer, as I recall, got up and said, "Fine. This is great. Let's all get behind and elect Fred, and then I'll be the caucus chairman. OK?" And we said, "Fine." There was no bloodletting, very calm, nice. We were always

good friends, worked together fine. So I had that particular function. Much different from now. I had hardly any duties whatsoever, as far as fund raising. In fact, there really weren't any.

There was during this period of time a group that was actually a group from industry called United for California, which was kind of a conservative business group in the state. I don't, frankly, even know who the members were who put the money in. All I know is that they had money, and they wanted to give to members of the senate. And so there were two people that they asked who would make recommendations to them as to who they should make contributions to. What they were interested in is people who were friendly toward business, and were not wild spenders, and were interested in keeping down the cost of government, etc.

They had one fellow who kind of was their chairman. I think maybe George Shellenberger was his name. I think he was an ex-assemblyman. And that's all we'd ever deal with. And I don't know where the rest of this money came from, but it was a fair amount of money. I can't remember what it was now. And they asked me if I would be the senate representative to make recommendations as far as who they should contribute to who would further what they were interested in, which was responsible government, keeping taxes down, and keeping a friendly business climate. That's just about what it was. And this was a bipartisan thing. So I was then to make recommendations to them of who I thought should be considered as friendly to their group. That was about as close as I ever came to raising any funds or doling out campaign funds, and it was never enough money that it was such that I could say to somebody, "Keep me in office or else I won't give you any more money." The issue never even came up or was never even thought of. That was about as close as we did.

MARLER: The main job I had as Republican leader was to kind of supervise a staff that divided certain consulting services for the members, and would help them write speeches, would give them information on bills. And if they wanted to know what would be a good response to this Democratic program, they would give them a Republican program—kind of that type of a thing. Though the caucus staff was doing about the same thing. The next thing I did is, I was kind of a direct liaison with the governor's office as far as between the Republican party in the senate and the administration, though John Harmer was involved in that, too. We had many long talks with the governor's office determining policy, if we had differences internally, working out our differences between the senate Republicans and the governor's office and the governor himself. Once in a while we'd have different viewpoints. Always cordial, but we sometimes had to hammer things out where we disagreed.

And then, at that time, we decided—the Republican party—that it was quite important that if the Democrats were going to be partisan, we had to be, to the sense of, on at least important legislation and positions that we could support that came from the governor's office to keep a united front. Because at that time, we were down to about fourteen, fifteen, or sixteen Republican members in the senate, which means we couldn't block any legislation. But if we knew and had a united front with the governor's office that if it did pass it would be vetoed, and the only way they could then get it would be by a two-thirds vote of the house, then we could make our votes count.

So, if we could keep a united front, we could go to the Democrats and say, "Look, you've got this bill. We don't like it. However, we would like to see if we couldn't have some input and maybe we could reach a compromise on it." And they

would look at the numbers and figure out how it worked, and say, "OK, let's see if we can work something out that not only can be passed, but can be signed, because we know we couldn't override a veto." So one of my jobs was not only to be the liaison with the governor's office, but to try to hold, on these issues—these are only a few issues—hold party ranks together so that we could keep people from falling off to the point where they could ignore us and the governor's office because they knew they could pass it and also override a veto.

HICKE: Are you saying that this increased partisan feeling is a response to an increased partisanship on the part of the Democrats, or a response to the fact the Democrats had the overpowering number of votes?

MARLER: Both. Not only did they have the overpowering number of votes, but they could vote them as a bloc on many items.

HICKE: And they were starting to unite there.

MARLER: They were starting to unite. I mean, if there was a situation where they weren't united and thus you still had to get a coalition of Republicans and Democrats to pass a bill, you wouldn't have had to do that. Maybe you would have anyway. I'm not faulting the Democrats. It just maybe evolved that way necessarily; I don't know. But it was just kind of the natural way, then, things fell into place.

HICKE: You talked a little bit about the caucuses. They were increasing in staff and activities?

MARLER: Yes.

HICKE: Can you trace that throughout your years? What were the caucuses doing when you first came?

MARLER: We didn't have a caucus. When I first came to the senate in 1965, there were no caucuses, there was no caucus staff, there were no Republican, Democratic employees. What we had was individual senators. Each senator had his own administrative assistant, and a secretary, and maybe one other. That was

about it. If the senate wanted to caucus, we would caucus as a whole, the senate as a whole, resolve into a committee of the whole with everybody. In fact, it was considered bad form for groups of Republicans to meet together, or Democrats to meet together as Democrats or Republicans, because we rather prided ourselves on our nonpartisanship and fought for a long time the "partisanization," if you want to call it that--great word--of the senate.

HICKE: Then when was the first Republican caucus formed?

MARLER: I can't remember. We had the caucus, but I don't think we had any caucus staff prior to the time when I was elected majority leader. We may have; I'm not sure. It evolved so slowly and gradually, it doesn't even stand out in my mind as a major event that came up just all at once.

HICKE: Not a big champagne party celebrating the birth of the Republican caucus.

MARLER: I'll tell you when it first started coming up that I remember: on one issue, and that was reapportionment. When we were meeting on the reapportionment issue, there was caucus staff then involved. I'm trying to remember. I don't think there was in 1966, when we were trying to put together a bill for implementation of the first "one man, one vote" election. As I recall, we had a staff that was only members that worked just for the committee on reapportionment, and it was kind of a bipartisan thing. That particular reapportionment was not partisan to the extent that subsequent ones were. In that particular one, there was going to be a loss of half the members of the senate. Everybody knew it, and everybody just kind of decided that it should be a kind of "protect whatever incumbents we can" type; and it actually worked out that there were only about two or three areas where incumbents had to run against each other.

But it wasn't designed as much on a partisan basis. Well, I shouldn't say that. It was, to a certain extent, because you ended up, I can recall, with two Republicans that were senior members having to run against each other down south, and that was Senator Sturgeon and Senator Grunsky. Vernon Sturgeon and Don Grunsky ran against each other in the primary, both senior Republicans. There had been other ways that this could have been done, but it was drawn in that fashion.

Also, in my district, which was a big district, you had several incumbents. There were three Republican incumbents and about two or three Democrats. It was a big area in there, too, where we had incumbents running against each other. But that still was kind of status quo, protect-the-members type of reapportionment rather than partisan advantage type.

Now in the reapportionment plan in 1970, for the first time, then, when we were looking at that after the '70 census, was when partisanship really came to the fore on reapportionment; and we did have partisan staff at that particular time. We then raised some money and had our own computers and our own methods of not only devising our own reapportionment, but methods to evaluate the plans from the other side from a partisan viewpoint. Because the committees at that time were partisan enough, so that the committee consultant to the reapportionment committee, that was a Democratic committee and that was a Democratic consultant. He was drawing plans from a partisan viewpoint of the Democrats, no question about it, though ostensibly he worked for the senate as a whole. He was under instructions to draw them in that fashion. But we were also allowed minority staff from the Rules Committee for our own purposes as our consultants on that issue. That became very partisan, no question about that.

I can remember that, at that time. . . . Let's see; I was kind of the liaison with the Rules Committee for those

purposes, and I think the Republican floor leader at that time. . . . They did have a floor leader at that time; it was Senator [Mervyn] Dymally. Or maybe caucus chairman. I guess he was caucus chairman. I guess Senator Moscone was the floor leader. They'd actually, then, had partisan designations, other than the pro tem. And I think that at that time I was the Republican leader; Senator Moscone was the Democratic leader; and the caucus chairman for the Republicans was John Harmer, and Mervyn Dymally for the Democrats.

That was, I think, as far as I can remember, the first time a very strong partisan caucus effort was raised in either party. At the later time, this evolved into caucus staff for evaluation of bills on a regular basis for all of the members. For example, when we would go down on the floor of the senate, we'd have not only the regular bills filed with the legislative analyst's analysis and all that, we would have a separate bill filed with the Republican analysis of it, which would not only tell you exactly what it did, but give further fiscal implications, tell you who supported and opposed the bill—give you some political information as well as just the factual information. And that came from a partisan staff and from the caucuses. The other side had it, too.

Use a Gun, Go to Prison Legislation

HICKE: Then there was the "use a gun, go to prison" legislation.

MARLER: That wasn't, probably, one of the major bills I had. I enjoyed talking about it, because it's kind of fun when you look at the circumstances. I was contacted by representatives from the attorney general's office who said that they would like to see if we couldn't put together some legislation to increase penalties for the use of firearms during crimes. They thought that would be a deterrent rent, that it would actually be a weapon that could be used not only to deter people from using

guns, but also, if somebody did use a gun, you could keep them out of circulation a little longer where they wouldn't hurt people. There was a high recidivism rate that we had.

So they came over with some proposals, and I had some proposals. We talked it over and finally drafted a bill that did raise penalties in certain areas where somebody did use a gun, and also made it mandatory that they would go to prison. In other words, what it did was, it would forbid the granting of probation to someone who used a gun in certain crimes, and in other crimes, forbid them granting probation unless you found that this was a very special type of circumstance here, where he'd have to elucidate on the record—the judge would—why he was giving probation if there was the use of a firearm. In any event, we got that done; it looked pretty good. This was in the days when people were getting quite interested in crime and law and order, and I had no trouble whatsoever in passing the bill through the Senate Judiciary Committee, through the Finance Committee, onto the floor, and away it went.

At that time, there was a committee in the assembly called the Criminal Justice Committee that was traditionally, for some reason or other, staffed by people of very liberal persuasion, and the members of the committee were those who also were of a liberal philosophy and concerned with the rights of people who were accused of a crime. We always accused them that they were more concerned about those than the victims, and that these were the, not soft hearted, but soft headed, liberals. We had all kinds of things we would talk to them about. They were disagreeing with us, in other words. [Laughter] Anyway, it was hard to get a bill out of that committee that increased penalties or in any way made it easier to send somebody to jail or jail for a longer time, that type of bill. It was the graveyard for those types of

bills. And for two years in a row I had this bill; I got it through the senate and lost it in the assembly committee by one vote. I just couldn't get it out of that committee, and it died.

Then, in the year after I left the senate in 1974, my position as the Republican leader of the senate was taken by Senator Deukmejian, an old, close friend of mine, and he also picked up this bill. And this time he got it passed. He got it out of the senate, through the assembly, and out of that committee. They changed the membership in the committee a little bit, and he was able to get it out. It passed on the floor and was signed. That was the "use a gun, go to prison" law that was quite prominent, I think, in his election as attorney general. I've often kidded the present governor about what would have happened if I had passed that bill, and maybe I could have been the attorney general and the governor instead of him. We've had some laughs over that. That's why I say I like to bring that up, just because it's fun.

HICKE: Do you know any effects of the bill? Did you ever follow that up?

MARLER: I don't think anybody has ever done a study of the result of it. It's very hard by a study to prove what crime does not take place, to prove the negative on that type of thing. It has been received well by the public, and has been utilized by the judges for several years. In fact, there's even a second generation of "use a gun, go to prison" laws that increase the penalty. Actually, I'm looking back. The bill that I had did not increase penalties. It just restricted the granting of probation. The later bills increasing the penalties for the use of a firearm are kind of, let's say, a second generation "use a gun, go to prison longer," if you want to call it that. It had the effect of filling up our prisons, I'll tell you that.

HICKE: That's a problem, too, isn't it?

MARLER: They have to build new ones, then, as long as it's what the public wants to do.

[End Tape 3, Side B]

[Begin Tape 4, Side A]

Bridges and Highways; Attempted Vote Influence

HICKE: I was just asking you if you can tell me any more about bridges and highways.

MARLER: Well, bridges and highways, of course, these are areas that you can kind of call local pork barrel projects. There was throughout the state a very good freeway system and state highway system. I might say, while criticizing a while ago Senator Collier, he was largely responsible for a coordinated, up-to-date, modern freeway system that was considered the model of the United States for many years. He did a great job on that. But after the system was set up, you had issues involving short pieces of highway, a bridge here, and another building of a highway here, that became local issues that the local legislators would then take up. Interestingly enough, we could, to a certain extent, put certain areas in the highway system, and these were always issues. But as far as the building of them, and as far as the building of bridges and so forth, those ordinarily had to go through the State Highway Commission, so we would appear before them a lot.

But these were always very important things, very important things for the development of portions of your district that, without a road in there or someplace, just couldn't grow. Or, if you put a road, maybe it grows in the wrong fashion. Maybe people didn't want one. You get an area that was growing so fast, suddenly you would have to build a new bridge; people couldn't get in and out of the area. Trying

to avoid what happens when you try to drive to and from San Francisco now during rush hours.

But I, like every legislator, did some of that. For example, in the city of Redding there was a need for a new bridge across the Sacramento River, and I was able to convince the Division of Highways that that was a good idea, and they made the recommendation to the State Highway Commission, and it was built. So I got that in. There was a piece of highway that they were going to delete from the system up in Shasta County, as being secondary.

HICKE: A proposed . . .

MARLER: No, there was already a highway there. Then when they built new Interstate 5—this was a portion of old Highway 99—they said that should be taken out of the state system; it's no longer needed and should be a local county road. Well, this was going to cost about \$75,000 a year for the county to maintain. They said, "We haven't got \$75,000 a year." It doesn't sound like much now. In those days, that was a lot of money up there for a county the size of Shasta. So I was able to prevail upon the Highway Commission and the legislature through a special bill to keep that in the system. Now that saved that much money every year for about the last twenty-five years, I guess, because it's still in the state highway system.

We ran into a little problem as far as a sign. A little community would come and say, "People don't know how to get to our town." The little town of Hamilton City, which lies between Orland and Chico, was in that fix. They said that the Division of Highways refused to put a sign out on Interstate 5 showing that Hamilton City was halfway over there, a little town of 400 or 500 people. They said, "When our friends come, we would like to be able to tell them, just turn off on the Hamilton City Road, or where it says Hamilton City. And our

town deserves to have its own sign." These sound like minor things, but these are big things in a little community.

HICKE: Well, if you're trying to find Hamilton City, it's a major point.

MARLER: Yes. And so I said, "I think you're right." I think it cost maybe \$1,000 to have a new sign built that said "Hamilton City turnoff" there. And I had to fight a little bit. They didn't want to do that. The Division of Highways said, "If we do that, every little town's going to want a sign." I said, "Maybe every little town should have a sign." But in any event, there's now a sign that says "Hamilton City" that we got.

There were items, as far as bridges between Marysville and Yuba City. There was a piece of road that I worked very hard on. It took fifteen years before it finally got in, an extension of a highway over in West Sacramento to go over the railroad tracks between Broderick and Bryte that was for so many years only capable of being traveled on one crossing on the railroad. That's in now. That got started when I was there. It took them that long to build it; it takes a long time sometimes. The improvement of Highway 70. These are matters that do take a substantial amount of a legislator's time, especially when you had a large, sprawling district like I did, with only two people representing it.

There were a lot of little local projects like this. I remember in Shasta County there was an area along the Sacramento River that people liked to go in and fish. It was completely native, a little dirt road going in there, unimproved. And it was a great place to fish for steelhead and salmon when the runs were on. For years people had been doing it. Then the city got hold of the property and shut it off; and the reason they shut it off was, they said, "Unless we fix it up, if we let people go on in there and they get hurt,

they'll sue us. We can't afford the liability exposure. So we're going to have to shut this off, because we can neither afford the liability, nor can we afford to put a paved road in and put in all the restroom facilities and everything else." I introduced and passed a bill that says that if a municipality allows people into an unimproved area that's completely native, there shall be no liability if someone gets hurt for a natural condition that exists. So then, with that, they were able to open it up and people could go in and fish.

Senator Ray Johnson, then Assemblyman Ray Johnson, and I were able to convince the state to turn over a tract of land just below the city of Oroville on the Feather River so that they could develop it into a city park and open access. They turned it over to them; they've now developed it. I can remember in about 1972 or '73 a big ceremony up there where they opened that up.

There was a little bill that I carried in conjunction with an assemblyman named Harvey Johnson, but I don't know if it's ever been used. It allowed the state, where you had big diamond intersections on freeways, to enter into an agreement with local communities for miniparks in those tracts of land in between. I don't know if they've ever done that, ever used that anyplace. I thought that would be of benefit. One community asked for it; there probably are some down south. These are some of the areas. . . . Now that's not purely bridges and highways, but it's kind of the general type of thing we're talking about like this.

HICKE: That's very interesting, sort of the nuts and bolts of what you were doing for your constituency.

MARLER: Interestingly enough, your duties as a legislator are kind of how you see them. You will find people that are very concerned with their statewide image, their press image, working for those things that are high visibility, etc., and don't have

time to take care of these little things in their district. Nor do they have time to go to committee hearings and hear bills; nor do they have time to go on the floor, except to vote on the big bills. I don't know if there are any there like that now, but when I was there, there were those who were looking forward to higher office and were always in the press.

In all the time I was the Republican floor leader of the senate, I was not worried about that. I was not looking at the senate as a career, nor was I looking at higher office, so I didn't do much of that. And I did devote a lot of my time to the nuts and bolts and representing my district. I would say that a good one-third of the time, one-quarter to one-third of your time as a legislator in a district like that is taking care of individual constituent problems, whether it's a municipality or whether it's an individual that gets somehow or other enmeshed in the bureaucracy and can't get out, and needs an influential phone call to get things moving. That's the type of thing you would get.

I can remember once, for example, there was a lady and a guy that were having difficulty getting a Cal vet [California Department of Veterans Affairs] loan to build a house.¹ This was up out of the Chico area. I can't remember what the problem was, but they had things all set up. It was just moving slowly and just couldn't get approved. I can't remember the details but that they had some money that they could do it with, and they had a family, and they thought they had it approved. It was being held up. They were getting kicked out of their house or something. In any event, they needed some

1. Loans made to California veterans.

help. So I called up Cal Vet and said to the manager up in that area, "Can you look at this and see if you can facilitate it? I'm not asking you to do anything other than pass it and just put it through the normal process and see what happens. Just don't let it die someplace, because they're hurting."

HICKE: Dig it out of your "in" box.

MARLER: That's right. And so I had the influence. They got the thing moving. And the reason I remember this one. . . . This is not an isolated thing; this happened many times. But they got it, got it out of where it was pigeonholed, got the loan approved, together with the insurance on it. And it was less than a week thereafter when the husband of the family was killed. But by that time they had the loan approved and had it moving along so that she could then take it over and build a house for herself and her children. I always remember that because if that had happened prior to the approval of this thing. . . . He was the veteran, and he would no longer have been eligible, and they would have suddenly lost their ability to have a house.

These were really little things, but very common. Somebody would call up and "I can't do this" or "I can't do that," and "They're hassling me on this," and I'd write letters, make phone calls, to try to help people on that kind of a project. I did have a fellow once call me up and wanted me to help him get a contractor's license. I said, "Well, to get a contractor's license, all you do is, you take the examination. If you pass the examination, you get your license. I don't understand." He said, "I don't want to take the examination. I don't think I can pass it." I said, "What do you want me to do?" He says, "Look, I know how these things work." I can remember this so clearly. He says, "How much will it cost me for you to get me the license without taking the exam?" And I was kind of shocked. I said, "Well, you can't do

that." He says, "Aw, come on, now. I know how these things work. What is it, \$1,000? Five grand? Whatever it is, I'll pay it and you just get me the license." I said, "No," and then hung up. The longer I got to thinking about it, the madder I got. I was so surprised by it that I didn't chew him out like I should have. [Laughter] That's the only time I've had that kind of help requested.

HICKE: [Laughter] Well, at least that's encouraging; you only had that once.

MARLER: Yes. It's kind of an interesting point. People think that at all times there are people waiting around to corrupt legislators and trying to offer them this and that, and there's all kind of double-dealing. Of course, I can only comment about when I was there. But I was there for ten years. Never once did I have any lobbyist or representative or somebody else come in and make an implication, even, that if I would vote a certain way, they would give me something, or that, because they had given me a contribution in the past, they expected a vote on a certain bill. There was never any connection like that, nor anybody—except this one guy—that ever tried to buy anything, with one exception.

There is one, but I won't go into it. Here it was the middle of my term; I wasn't up for election for two years. And there was a bill, a very controversial bill, that was coming up in front of a committee I sat on, and I suddenly got in the mail a campaign contribution from some people I had never even heard of in southern California that were members, they said, of an organization very interested in the bill. They didn't mention that they were interested in the bill. They didn't say that this was why I was getting the contribution or anything. But the bill was controversial, and I was having enough problems with it as it was, and it kind of angered me. I thought it was kind of blatant. They were attempting to

influence my vote, even though they weren't saying anything. I sent the checks back and said, "Cut it out. This is tough enough." But that's about as close to any connection between campaign contributions and votes that were ever there.

What I usually found was that people didn't give you a campaign contribution in hopes of getting your vote. When I was there, they looked at your voting record; and if they liked your voting record, they decided they wanted to keep you, so they would send you a campaign contribution. Kind of based on what had happened in the past, but nothing specific in the future, but just kind of relying upon, if that was the way you felt in the past, you would probably feel that way in the future. They were supporting your philosophy, in other words. I think it's changed now, unfortunately, from what I hear and what I read in the newspapers, but that's the way it was then. At least for me. I can't say if it was different for other people.

HICKE: Sounds as if you found helping your constituents quite rewarding, personally.

MARLER: I found the whole job rewarding. When I lost the senate after my term expired and there was no election—the reapportionment in 1974—I look back with good feelings at the time I was in the senate. I can look back with pride at some of the things I did, and satisfaction. And satisfaction that I did the best job I knew how for the people I did, and with no misgivings, nothing to hide, no bad feelings about it.

Welfare Program Revision; State Forest Practices Act; the Eighteen-year-old Vote

HICKE: What about revision of welfare programs?

MARLER: There were several of these that went through. I can't mention anything specifically. There were efforts to try to, somehow

or other, make the programs more useful, more responsive to the needs, and to, somehow or other, deter people from going on welfare that shouldn't be on, and to help those who were on to get off, to give some incentives along the line. There were several little bills, work incentive programs, that we tried to get through, bills where we wanted to at least find out who was drawing welfare, and the types of people. Sometimes you found a real clash between conservatives and liberals in that particular area.

For example, I remember one bill that was just asking for a study as far as the makeup of the population of AFDC [Aid to Families with Dependent Children] to find out how many people on AFDC were at that time illegitimate children. This is going back about twenty years, when people might have even cared about that. What we were interested in was whether or not the programs that we had were actually encouraging the birth of illegitimate children, which at that time was not looked at as a good thing. So we wanted to find out if they were on there, and if there was something we could do to stop encouraging it. This bill was killed, and how bad we were, and how uncaring and insensitive to attempt to want to identify those children and those women, and that type of bill was killed.

I don't know if I mentioned this before. I had one interesting circumstance where some of the legislation that we would pass. . . . In fact, I coauthored some with Senator Beilenson. This was an agreed upon package in the legislature between the governor's office and the Republicans and the Democrats. One item that had to do with was reduction by a certain amount of people on welfare—their grant on welfare—as their outside income increased. We wanted to build some items in there to give them an incentive to go to work, in that all of the money they make wouldn't be taken away from the welfare, but a percentage of it, to encourage them to then

reduce it. We passed that and got it put into law. And then when I was on the bench later on, in a quite important lawsuit, I had to declare a portion of that illegal, because it contravened federal law. So in the meantime, after we had passed the bill, some federal case law came out that said that you couldn't do what we wanted to do because it had been preempted by the Feds. And therefore I had to declare illegal something I had tried to pass before, which I thought was rather interesting.

HICKE: There's the Industry Advisory Committee to Agriculture? And the State Forest Practices Act.¹

MARLER: What was this Senate Industry Advisory. . . . I don't recall that. It was established before I got there. It was reactivated in '68. [Richard] Dick Johnson, I know. He represented what they called the Ag Council, which was a group of . . .

HICKE: Maybe that's what I've seen.

MARLER: It was a lobbying group, is what it was. It was an industry group put together to hire somebody to come and present their interests to the legislature. Mr. Johnson ran that for some time. They were very interested in the milk programs and several agricultural programs. I can't recall that. You said it was reactivated in '68?

HICKE: That's probably the one that you were just talking about.

MARLER: This is Senate Industry Advisory Committee. It sounds like something else, and maybe if I knew a little bit more. . . . It's just not jingling a bell. I just can't remember.

1. Several bills were introduced in 1972 amending the 1945 Forest Practices Act.

The next one, State Forest Practices Act, was always a very controversial area of law. It was established to. . . . And I'm trying to remember. I can't remember who the author was of that bill. I think it was an assemblyman from Sacramento here. But it was to put curbs on the practices of logging in the woods. If somebody wanted to cut, they had to make a plan and have it approved by the state forester to make sure it complied with good forest practices. And it was something that was kind of needed. I can remember when I was a younger man up in the northern part of the state that there were people in the industry who thought trees were good only for cutting, that streams were only good for dragging logs downstream through to get them down to the trucks, and that the way you cut a bunch of timber was, you went in and cut it like a lawn mower; you clear cut. And it wasn't anybody else's business how you did it. That didn't exactly comply with good forest practices, nor the legitimate needs of the public.

So the State Forest Practices Act regulated these matters, and at first it was kind of controversial. People are now willing to live with it; it's no problem. The only problem you get now is that. . . . Well, it did, put it this way, about the time I was leaving. In some types of areas and some types of trees you're cutting, the proper practice is to clear cut and maybe leave two or three seed trees per acre. Some trees, such as fir, if you make selective cuttings and leave separate trees in there, the rest of them will die, or not reproduce. They only grow well when they are close together. So what you do is, you clear cut, leave some seed trees, and then reseed. And they grow very, very fast. You can go back into an area that was clear cut under this type of a program and find, ten years later, it's just covered beautifully with about fifteen-foot tall trees, and in ten years, they're up to twenty-five feet. They reforest them quite rapidly.

You've got on here [referring to outline] the eighteen-year-old vote that came up 1970. It, of course, was a big issue.

HICKE: That was to reduce the voting age from twenty-one to eighteen.

MARLER: Yes. And there were probably two impetuses for that. Number one impetus was the Vietnam War, and it was an emotional issue of, if people are old enough to be drafted and go overseas and get killed, they should be old enough to vote. It was also, at that time, unfortunately—but it worked out a partisan matter. During the sixties you had to a large extent the radicalization of students in colleges and of young people, a lot of it because of the controversial nature of the Vietnam War. And a large body of people grew up anti to that and of a quite liberal persuasion. And there were many that thought there was a large, liberal, Democratic voting bloc that we should legitimize. And a lot of Republicans said, "No, because we think that they won't vote for us, they will vote for the other side; therefore, we should not." I'm trying to be very realistic, and this was some of the thinking at the time.

Unfortunately, nobody got down to the issues, as to regardless of whether someone fights, are the qualities that make a good soldier the same qualities that make for a good voter? Is there any reasonable reason to say why it's twenty-one? Maybe it should be at fourteen, maybe it should be at thirty. Why choose twenty-one? And if you're going to lower it, why only lower it to eighteen? Or, why clear down to eighteen? Unfortunately, none of the dialogue and debate on this went to the issues that I thought were the important ones. The issues had to do with "old enough to fight, old enough to vote." A matter of right, they're talking about. Or, "Let's get a bloc of voters here that will vote for us," or "Let's keep out a bloc of voters that will vote against us."

Interestingly enough, in retrospect, the voting patterns [of eighteen- to twenty-year olds] have probably been pretty close to the voting patterns of the public at large. And, in fact, in later years, you've got a more conservative electorate growing up in the younger ages than perhaps some of their parents that are now in the late thirties and forties. So it's a situation that happened, and it's now there. I also recognized at the time that a lot of people didn't want it to be a full adult situation. People were saying, "You should be an adult." For example, "If you're old enough to fight, you should be old enough to vote." "Great." "If you're old enough to fight and old enough to vote, maybe you're old enough to pay your own way through college, right?" "Wrong. We still must give special treatment to those young folks who want to go to college, because we can't expect them to be adults at eighteen, right?" "No." "Well, we should make them, then, fully liable for all their crimes, right?" "Wrong. At eighteen, they're not mature enough in all instances to be treated like adults. They should have the option of being treated like children for crimes." "So they should have all of the rights of adulthood, but not necessarily all of the responsibilities."

I agreed with the latter, that they should not have all the responsibilities, but also maybe not all of the rights. For example, there's no correlation between the eighteen-year-old vote and the right to drink at eighteen. We never got around to lowering that. And you'll find that those states who did lower the drinking age are now raising it back to twenty-one, because of the terribly large increase in accidents on the highways. It kind of shows that maybe an eighteen- or nineteen- or twenty-year-old isn't quite as responsible with alcohol. So it's kind of a mixed bag.

In any event, the bill did pass, and I had serious reservations. But when the vote finally came up and it was a rather overwhelming vote in the senate, I voted aye on the thing, but with some misgivings, I'll have to admit. I think I was more turned off by the lack of a meaningful discussion on the issue and the fact that it turned on irrelevancies whether it should have been passed or not at the time. At least I thought so.

Agricultural Burning; More on Ronald Reagan

MARLER: OK. We've talked about the floor leader, [reads] leadership, governor.

HICKE: Let me see. Let me ask you about one thing we were talking about last week off-tape, which was that as chairman of the Agriculture Committee, there was this problem of [agricultural] burning, and you arranged for burn days and no-burn days.

MARLER: There was a very strong push at that time to do two things. One was to shut down open-dump burning. This was a problem, not so much in the rural areas, where you had a lot of space, but in semirural or urban areas, where the practice then for the city dump was, you just set it on fire. That's how you got rid of your materials. Toxic smoke in the air, and people were griping all the time. It just wasn't aesthetic, and it smelled bad. And combined with this, also, was agricultural burning.

So there was kind of a push to at the same time eliminate open-dump burning and eliminate agricultural burning. You talked to people who lived in downtown Sacramento. "Well, we have to have agri burnings." They said, "We don't care. We don't like this smoke drifting over all the time from the rice fields in Yolo County, and stop it." "But then they can't raise rice." "We don't care." So that was a situation where, after checking with the university at Davis [University of

California, Davis], [we found] at that time there was no way to avoid agricultural burning, especially in the rice industry, which is a big industry up in my home district. If they couldn't burn the rice straw, and even some of the wheat straw, there was nothing else to do with it. If they plowed it under, it would not disintegrate properly. When you get some of that adobe soil and put straw in it, it makes bricks when it dries.

HICKE: Just like a brick plant mixture.

MARLER: Yes. And even if you pulp it and throw it in, there are certain bacteria that go in that can affect your soil. You couldn't plow it under. If you did plow it under, you would have to leave your—they told me—field lay fallow for three or four years, then you could use it again. Well, people couldn't afford to raise one crop every three or four years. We looked at all kinds of things: whether or not they could use it for cattle feed. That didn't work. Whether or not you could sell it to a plant and use it to burn and create electricity. Whether you could just haul it away someplace. There were no economic answers to it except burning it.

So we figured that, all right, if we face the possibility of having it totally outlawed, let's see if we can reach an accommodation here. And I might say, a lot of my rice farmers were very unhappy with me in this. They didn't understand that I was probably saving them. "Oh, we can't do all this." So I got the bill through that set up a procedure whereby they could only burn on certain days, when the atmosphere was such that it wouldn't drift over a town, and it would be up and carried away; and certain days would be declared a burn day, and they'd have to burn them those days. This was an inconvenience to them. I got a lot of letters: what am I doing to them? I'm supposed to be representing and I'm hurting them.

A lot of them just didn't quite understand. I mean, they aren't willing to give a little to save themselves.

And also, at the same time, I carried a bill in there that some of my cities weren't happy about. It shut down open-days burning. "It's inevitable," I said. "This is going to happen." And I phased it out over a period of two or three years, so they could at least have time to find other places and go to a cut-and-fill operation. But it was pretty significant legislation, and it did pass. And there was a little bit of grumbling at first, but I think it's worked out. So it was a pragmatic solution to a given problem at the time.

HICKE: Are you pressed for time?

MARLER: No, not really. Well, I've always got things to do, but that's all right. I'm going to get it finished and talk about what you want to talk about.

HICKE: One of the things that I wanted to talk about was, you said that you were liaison to the governor rather frequently. Can you give me some assessment of his leadership?

MARLER: When he first came to Sacramento, he was rather ignorant about how it worked. I don't mean that in a bad sense. He'd never been in government. He'd never been close to it. He didn't know how things worked. He came down with an attitude of, "I've got a mandate, and those 120 people upstairs are my enemy, trying to thwart me from doing what the people have mandated me to do." He made some mistakes at first in his ways of handling the legislature.

He had some good people surrounding him. He had some that looked good on paper who didn't turn out so good, and then he'd replace those. He had one good guy that aided him immeasurably in his relationship with the legislature, and that was ex-senator Vern Sturgeon, who was, in the Republican primary, defeated by Don Grunsky when they had to run against each other in reapportionment. Then Don Grunsky went ahead,

and I think he defeated Fred Farr and became the senator from the district, then, and was here for quite a few more years. But he [Sturgeon] went to work for the governor as his legislative secretary, legislative liaison, and he was an old pro. He'd been around the legislature a long time, was well respected, had a full set of brains, knew the process, knew the people, and gave great advice—almost always followed by the governor, but sometimes not. But the governor was a quick study. The governor . . .

[End Tape 4, Side A]

[Begin Tape 4, Side B]

MARLER: I found that, personally, it took a while to get to know the governor. He was, say, quite different from Pat Brown. Pat Brown, very nice guy, very friendly and open in a group, and you could sit down and just relate great, but he couldn't make a speech to a great, big group worth sour apples. You've got the governor, Governor Reagan—tremendous communicator with the public, but on a one-to-one basis was quite reserved. You had to know him a long time before he'd really open up. I think it was probably something that he got naturally, being in show biz for all the years, to kind of put a wall between you and the public for your survival, your own peace of mind and privacy.

He was always cordial, but you never really felt any warmth until you really got to know him. That took quite a while. For a long time, he was all business. When you would come down to see him, you would talk business. If he had a luncheon, you would go to it; you would talk business. And very intent. He didn't have much time for small talk. Later on, then, once you would finish your business, you could talk small talk. He did, on occasion, like to talk about his

friends. He liked to talk about things that had happened to him in the entertainment business, in the movies, and he'd warm up. It took several years, I think, to reach the point where I, at least, felt that we were talking as friends rather than on a pure, arm's length business proposition.

He was, I'll say, quite an emotional man. He'd feel strongly and be most intense about what he thought was right. A principled man. It was very, very difficult for him to compromise any sorts of principles. I guess people say you shouldn't compromise your principles. Well, it depends on how you look at politics. Some people look at politics as the search for the possible, and there are people right now, I guess primarily from the philosophical fringes of both parties—the reactionary and the radical—who will not compromise: "I may go down flags flying, but I'd rather do that than give an inch," and will not compromise to seek the possible.

Governor Reagan was like that at first. He saw this great mandate, saw that he believed strongly—and he really believed—in these principles what he wanted to do, and he found it very difficult. For example, one of the things that he took a strong position against was withholding in state income tax. He said his feet were in concrete, that he could never change on that. Some of us felt, well, maybe we weren't too happy about that, but there were some things to be gained by withholding, also, and it really wasn't that bad a bugaboo. Finally, as part of a package to get some things he wanted and the Democrats wanted to go to withholding, he did. I can remember him saying, "That sound you hear is the concrete cracking around my feet." So he learned to compromise, learned that it had to be.

And then over the years, there were quite a few compromises. He's compromised with Congress. He now, even though he is strongly principled, realizes that half a

principle is better than none, I guess. Using your principles, gaining half of what you can gain is better than gaining nothing and then going down with the ship at all times. So he became a very careful, but very accomplished, negotiator with the legislature. Emotional about it. I've heard him scream and yell when he believes strongly. Or used strong language when he believed strongly, in a meeting.

But, by and large, those were, I thought, very successful years from my viewpoint, as far as my relationship with him. It was a satisfying and satisfactory relationship. I was never a close friend, though some of his people around him were friends of mine. I went to law school with [Edwin] Ed Meese [III]. Yes, when I first got in Sacramento, he was working for the District Attorneys Association. His kids and my kids used to go to YMCA [Young Mens Christian Association] together, and we were pretty close friends. And in the very first campaign I worked on—I think I mentioned this before—there was a young man named Mike Deaver that helped in that campaign, and he was with the governor, of course. So I had people surrounding him that I could communicate with very easily, that were friends of mine.

VI OVERVIEW

Rewards and Disadvantages of Being a Senator

HICKE: OK. Just a couple of wrap-up questions. We talked just briefly about some of the rewards of being a state senator. Are there any others that you can mention? And then what are the disadvantages?

MARLER: As far as the reward, it's a fascinating job. It's where the action is, if you want to put it that way. You're right at the levels where policy is being made on a day-to-day basis. The state is being guided in which way it's going to go, and it's

just a terribly fascinating thing. It's very time consuming, between your legislative duties, which I enjoyed, and your political duties, which I didn't enjoy so much—running around, giving the speeches, and campaigning, and all of that. I always kind of liked it once I got there; you could talk to the people. But I never looked forward to going and giving a speech or doing the things you had to do to campaign. It was always just a necessary chore that had to be done.

But it wasn't at all uncommon to work all day in the legislature and then drive all over the district three nights a week. Then for years, every Friday night I'd drive home to my home in Redding with my two little boys, and a couple of pet birds, and a cat, and a dog, and my wife and I in the station wagon, away we'd go, up Friday night. And then I'd be in my office on Saturdays up there to meet with constituents. Maybe give a speech, or appear at something on Saturday night. Then back Sunday afternoon to start all over again. So it was very time consuming. And economically it was a disaster. There's just not enough money to live on in the thing, and it's very difficult if you weren't old enough to have been successful in your own business to the point where you had it all laid aside and didn't have to work for it. If you didn't have a lot of money and had to make it while you were going into the legislature, that was really tough.

It's very hard on a family. I would find it hard to recommend for somebody with little kids. The kids miss out on a lot. They were going around so much, my little boys didn't get a chance—they're now men—for Little League, for Boy Scouts, because they were one place on weekends, another place during the week. In the summertime they were one place, in the winter, someplace else. They went to schools; they went around. That's pretty tough on them. They gained a lot, too. Not many kids that have personally met two or three governors

and know a lot of congressmen and senators and have been right on the inside with the higher workings of government. They didn't appreciate it at the time; they were too little. But now they do. They got to do a lot of very fascinating things because of it, too.

If you don't have a good, solid marriage, you can have problems, because you're away an awful lot. Put it this way, there's a lot of temptation that one can succumb to. There's just about anything available that anyone would want, if you want to look for it or take advantage of it. That could be, and was, a problem for some.

But I wouldn't do it any differently. I've often thought now, "What if I hadn't gone into the senate and stayed in a law practice?" I was in the senate for ten years. I sure couldn't put aside anything during that ten-year period. I survived; I got along. I'm not griping. But I probably could have been making a little more money, maybe, if I had been in private practice. But, all in all, I'm very happy. Maybe I wouldn't have been a judge now, had I not gone through the senate. Probably a good chance I wouldn't have been. And I enjoy what I'm doing now.

HICKE: Well, tell me how that came about.

Appointment to the Bench: 1974

MARLER: Well, actually, about 1973 or so, I was looking for a way to leave the senate. Which, by the way, is a very difficult thing to do. Once you're in elective office, it's hard just to quit. There are too many people that work too hard to get you elected, and if you talk about leaving, they will put on all kinds of pressure, saying, "No, you can't leave. We need you. If you leave, they'll elect somebody else from the other party. You're the only guy who can get elected from this district. You have to stay." So it's very difficult to quit

with any grace from a legislative job. I was looking for it. I never looked at the senate as being a career. I never looked at it as a steppingstone to higher office. I did not want to be in higher office. I was a little too selfish. I wouldn't give up my privacy and my private life to do what you had to to be a constitutional officer. I didn't want to.

So, by 1973, I asked the governor if he would consider appointing me to the bench. That was before this whole reapportionment thing came up. That would be in lieu of running for office again in '74. And he said that of course he would consider it. I asked then to be appointed to the court of appeal, directly, and there were no openings. But there was a bill that did pass, creating two new positions. There were a lot of things that happened there that ended up in the fact that I did not get appointed to either one of those two positions.

However, then, the next year, here I found I was going to be reapportioned out, and he appointed me to the bench in Sacramento. Frankly, I probably could have been appointed to the bench in Redding, but I had some personal reasons at that time for wanting to stay in Sacramento. My wife's sister lived here, and her husband had just died. She had two little kids, and my wife was her only really close relative, and we felt it was quite important that we stay close during that period of time. So I asked if I could go on the Sacramento bench. And so, in September 1974, he appointed me to the Superior Court in Sacramento, where I stayed for thirteen years.

HICKE: And then you were appointed to the Third Appellate Court.

MARLER: Appointed to this court in August of this year, yes.

Conflict of Interest; Legislative Oversight

HICKE: OK. Well, I have two questions, but one pertaining to the senate, and that is, what do you see as problems that senators

and legislators have with conflict of interest, as increasing over the years?

MARLER: This comes as a result, I think, of technology, really, and that is that the art and science of getting someone elected to office just blossomed in the last twenty years. Where before you'd have a few posters you'd put up, and talk to influential people, make a few speeches, and maybe go on the radio and have your mug on TV in a couple of shots, now it is so sophisticated as far as specific issue identification and correspondence with certain groups in the constituency, and the use of TV, and the use of all these other techniques. And it's become a science. Give somebody enough money and they can elect almost anybody.

But now, in competition with each other, both sides are forced into technology, which is very, very expensive. And so, if the other guy is going to raise money and campaign that way, you better have as much or you're going to lose. So it's a syndrome that builds, that as one side gets more money, the other side has to have it, which means the other side has to have it, and it grows and grows. Which tends to produce an overwhelming preoccupation with the raising of campaign funds, under the theory that the most useless legislator there is is one that's not elected. And if you're going to do anything, you've got to get elected and stay in, that becomes the most important thing.

And you get some corollaries that come off of that, which is the fund raising and the competition back and forth, then, creates a necessity to respond to voting in a certain fashion to keep the money rolling in. You get competitions between the parties for these particular monies, and I believe it inevitable that, if not an expressed, there's an implied, strong conflict of interest that's a growing one that

something has to be done about. It's a cancer gnawing at the integrity of the legislative process that has to be cured.

HICKE: What can be done?

MARLER: We've got the initiative that's going to be on the ballot now. Ought to try that first. This has restrictions on fund raising, and what you can do with the money, and several things that are in that. I think it'll probably qualify, and, if it gets on the ballot, I think it'll probably pass. It may change things. But the only way you can really affect it--and this has pros and cons--is by affecting the amount of money you can raise and spend, and how you spend it. Get rid of the necessity, or even the ability, to raise this kind of money. One of the undesirable parts of that is, it almost always tends to lock in the incumbent, because a guy on the outside has to spend more money to knock off an incumbent, ordinarily, and this would operate to their benefit, or could. And you've got to see whether or not that's a desirable thing when weighed against the ill that you're trying to cure.

HICKE: One more question. I think you might have been in a good position to see an increasing emphasis on oversight responsibilities. Possibly this whole thing sort of got started in the seventies.

MARLER: I'm sorry. The what?

HICKE: Oversight responsibilities. In other words, sort of monitoring of legislation and the results.

MARLER: We saw that growing, and you see the need growing as the budget grows. As what government does increases, the necessity for oversight increases. Now, you can say, well, you can leave oversight to the executive branch of government. That fails to take into account the fact the legislature's a coequal branch of government and equally responsible for which way the state goes. It becomes a very difficult thing for an individual to do. It has to be done by staff.

Each year while I was there, as the budget grew and the function of budgets grew, it became more and more difficult for the legislature in the time allotted to put together a budget and know what was in it. It got too big. And the next step, of course, is the evaluation of the program, see if you want to fund it next year—the oversight, as you're saying—and watching it.

At that time, it was done primarily for the legislature by the Office of the Legislative Analyst. This was Alan Post's function, in his office. As the legislative process considered the budget each year, each item was evaluated in terms of, is this necessary? What has it done? Does it need to grow? And the primary people we would have testify on that would be people from the legislative analyst's office, who would, then, give us an evaluation of the program, what it's doing, how it's going, and as an oversight.

Now, this is the type of oversight that I have in mind that we need to do, but it can't be done personally. Each year that I was in the legislature, I had to redefine my duties. To keep doing the same thing was impossible. Each function I was doing would grow, so each year I'd have to cut back a little bit to stay within my time constraints and abilities and energies as to what I could do and what I had to delegate to staff. The next year that would grow again, I'd have to further delineate it down to what I could do. This means that, to a great extent, you're also doing this with oversight. You're delegating this to other people to do and then report back. The important thing is, the person you delegate it to has to be responsible only to you and not to the people that they're overseeing, of course.

But it's a difficult process, because it gets to the point it's so large and so big that even the reporting back process takes more time than you've got. And so you then start

hitting the highlights, and the difficulty is, you tend to rely more and more and more on staff, and they can save you or they can get you in trouble. They can be good, or they can be not so good. So you have to ensure you've got a very, very high-quality staff.

One of the good things in the legislature here is the Office of Legislative Analyst and the fact that it has grown on a nonpartisan—not even on a bipartisan but a nonpartisan basis—and both sides have insisted that it stay that way, and insisted it retain its independence. Almost like an ombudsman to the legislature, because of the necessity of having that form of reliable information for the oversight function that we have. If they ever lose that, and the majority party suddenly decides they're going to get one of their guys in and he's going to run as Legislative Analyst, you're going to lose the great benefit of it and the ability to have an effective oversight.

HICKE: I'd like to thank you very much for a most informative interview session.

MARLER: It's been interesting rethinking some of these things and reliving them, and reminiscing about it.

HICKE: Thank you.

[End of Session]