

California State Archives  
State Government Oral History Program

Oral History Interview

with

**HON. ALISTER McALISTER**

California State Assemblyman, 1970 - 1986

April 7, 28, and 29, 1988  
Sacramento, California

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

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None.

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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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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.

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## INTERVIEW HISTORY

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### Interview Time and Place

April 7, 1988: session of two hours

April 28, 1988: session of three hours

April 29, 1988: session of three hours

All sessions took place in Mr. McAlister's office in Sacramento.

### Editing

Hicke checked the verbatim manuscript of the interview against the original tape recordings, edited for punctuation, paragraphing, and spelling, and verified proper names. Insertions by the editor are bracketed. The interviewer also prepared the introductory materials.

Mr. McAlister reviewed the transcript and approved it with minor corrections.

### Papers

Mr. McAlister's legislative papers are at the California State Archives.

### Tapes and Interview Records

The original tape recordings of the interviews are in the university archives at the University of California at Berkeley along with the records relating to the interview. Master tapes are preserved at the California State Archives in Sacramento.

## BIOGRAPHICAL SUMMARY

Alister McAlister was born on November 10, 1929 in Highland, Illinois. He went to Greenville, Illinois High School, Greenville College, and the University of Illinois College of Law, receiving his LLB in 1957.

McAlister served in the United States Army from 1951 to 1953. He practiced law in San Jose, California from 1963 to 1970, and in Sacramento from 1987 to date. He taught law at Willamette University, 1960-1962.

A Democrat, he represented the 25th and 18th districts in the California State Assembly, where he served from 1971 to 1986. He also served on the East Side Union High School District Board of Trustees (San Jose), 1965-1970.

[Session 1, April 7, 1988]

[Begin Tape 1, Side A]

I. FAMILY BACKGROUND AND EDUCATION

Childhood in Illinois; Greenville College, Armed Services  
in Germany; U. of Illinois Law School

HICKE: I wonder if we could start this morning, Mr. McAlister, with your giving me a little bit of your background: when and where you were born and something about your education and youth.

MCALISTER: I was born November 10, 1929, in Highland, Illinois. It's in Madison County, in southern Illinois. But my home was Greenville, Illinois, in Bond County, also in southern Illinois, about fifty miles east of St. Louis. My entire youth was spent in Greenville. I attended school there. I graduated from Greenville College in Greenville, Illinois, which was a Protestant church-related school.

HICKE: Was this the Church of [Jesus Christ of] Latter-day Saints?

MCALISTER: No, no. This was a Free Methodist college, where I received my A.B. degree. I majored in history and educational psychology, and minored in speech. After serving two years in the armed forces and spending a year as a junior high school teacher, I went to law school and graduated from the University of Illinois Law School. I graduated from college in 1951 and law school in 1957.

HICKE: When were you in the service?

MCALISTER: Nineteen fifty-one to fifty-three.

HICKE: Were you in the Korean conflict?

MCALISTER: I did not serve in Korea. I served at that time. I served part of my time in the United States and part in the occupation forces in Germany.

HICKE: You were in the army?

MCALISTER: Yes.

HICKE: Where in Germany were you stationed?

MCALISTER: In Berchtesgaden.

HICKE: I asked that because I lived in Germany for quite a while, too. My husband's in the air force, and we were at Ramstein [Air Base], near Kaiserslautern. Kaiserslautern was the big army base. It's in the Rhine Palatinate. Berchtesgaden must have been a nice place to be.

MCALISTER: It was, and probably not at all typical of army of occupation activities. I think the only reason there were armed forces there is that it was one of the two so-called army recreation areas, the other one being Garmisch. I was in the military police at the time. They had military police to maintain order. There wasn't much disorder, but maybe there would have been if we hadn't been there. There was a platoon of military police in Berchtesgaden, and I was part of that. It was a very pleasant area; it was nice to travel through the Alps. I did go over to Garmisch once, which is just kind of more of the same kind of scenery. It's also quite near Salzburg, which is a charming place to visit, just across the border, in Austria. Of course, it's also at the foot of the mountain on which [Adolf] Hitler's Eagle's Nest was located, and I went up there once. The area had been basically untouched by the war, except for some damage in the area where Hitler's hideout had been located.

HICKE: How did you decide to get a law degree?

- MCALISTER: Well, coming back from Germany on the boat, I was sitting on the boat deck somewhere listening to music, and all of a sudden it just came to me: I was going to go to law school and I was going to go into politics, and that's what I was going to do. There was probably a little more to it than just this sudden inspiration. I had some people in my family who were lawyers, and there had been a good deal of interest in public life and politics in my family, too. But that just basically was a decision that came to me sitting there in the boat.
- HICKE: That's interesting. Obviously, it was a good time to consider your whole life after it had been interrupted.
- MCALISTER: Probably a good time to consider it, with most of your adult life ahead of you.
- HICKE: You said others in your family were in public life?
- MCALISTER: My grandfather was a lawyer. My aunt was a sometime lawyer. She didn't practice all of her life, although she did for, I think, over twenty years of her life. My father was a postmaster in our home town. It was a family that had an ongoing interest in legal and public affairs.
- HICKE: Did you have family discussions about politics?
- MCALISTER: Oh, yes. Many.
- HICKE: So you were really interested in that, at least peripherally, for a long time.
- MCALISTER: Yes, I was. It's something that probably grows on you, and being part of a family that's interested in those kinds of things, I think, tends to cultivate that interest if the interest is at all there. It probably needs some fertile soil in which the seeds have to grow. Everybody doesn't find it interesting, regardless of how much it's shoved down their throat. But if you like it, why, it's something that grows on you.

HICKE: I know from reading about you that you have a great sense of responsibility toward the public, and you did as a member of the legislature. Was that something you derived from your family, or can you tell me how you got that sense?

MCALISTER: I suppose that with any kind of sense of responsibility, one's family has a lot to do with it. Family, religion, culture, one's own introspection, and ultimately one's own sense of identity and obligation—all those things contribute to make a human being.

## II. EARLY PUBLIC LIFE

### President of Board of Trustees of East Side Union High School District, San Jose, 1965-71

HICKE: The first thing that I know that you did in actual public service was president of the board of trustees of the East Side Union High School District.

MCALISTER: Yes, that's the first elected office I held.

HICKE: And how did you decide to try for that?

MCALISTER: There are only a few things you can do in terms of running for office, and I was interested in running for office. We lived in East San Jose. Hadn't lived there very long, actually. Had lived there about, I guess, less than two years. But I was becoming active in the community and this school board election came along. The East Side High School District was and is one of the largest high school districts in the state. In fact, I don't, offhand, think of any high school district that's any larger than the East Side High School District. There are unified school districts that are larger, but if the East Side district were a unified district, it would be one of the larger districts in the state. But as a high school district, it

may be the largest in the state, certainly one of the largest.

So it was something of a challenge. At that time, it had six high schools; I think now it has twelve or thirteen, or the equivalent thereof. It has one so-called educational park, Independence High School, which is located in the Beryessa area of San Jose, which is the equivalent of three high schools in size and dimension and scope. So it may only have ten or eleven high schools, but it has the equivalent of twelve or thirteen--something like 20,000 to 22,000 high school students. It was a time of great growth, too, in East San Jose. It was also a time in which the state was generally seeing a growth in student enrollment. So it was an interesting thing to be part of. You had some real responsibility in helping to shape and guide a large school district in a formative stage of its development.

I also had a considerable education background. I guess, as of that time, I'd taught a total of five years in my life, from junior high through law school. So it was an interesting thing to do, and perhaps the only thing I could really do politically at the time, in terms of running for anything. It requires some sense of judgment to know what you can run for, and with a good chance of winning.

HICKE: Do you recall any special challenges? I don't know how long you served on this board.

MCALISTER: Five-and-a-half years. The challenges were several, I guess. One was the planning for growth, because, while the district was already of substantial size, it was going to grow to a size of approximately two-and-a-half times as large as it was when I was elected in 1965. I think they had about 7,000 or 8,000 students when I was first elected, and they eventually grew to over 20,000. And that growth

MCALISTER: was apparent; it was going to come. It was just a matter of time and filling in the vacant places on the map of East San Jose. So we had to plan for growth and we had to plan for all these schools and acquiring of sites and building of sites and planning of sites. Of course, there was a big expansion in the number of teachers. Of course, school board members don't hire the teachers; they leave that up to the administration. But you hire good administration, help to give them guidelines, and watch to see that, hopefully, they do a good job. So that was one big challenge.

Another challenge, I guess. . . . In the late sixties, it was a time of student unrest and, in fact, in parts of the country, riots and violence, in which students sometimes were a part. It wasn't just students. It was also a time of racial and ethnic unrest in our country. But a large high school district in a racially mixed area, of course, had the potential for getting all of this: the student unrest, the racial unrest, and so forth. And, I suppose, a touch of drug problems, too. I guess there are drug problems today that are worse than there were in the late sixties, but at times we thought we had drug problems.

But I think that the East Side. . . . It was a real challenge to cope with a large growing suburban district under those conditions, and I think we did quite well. The East Side, despite its polyglot, cosmopolitan nature, never had the kind of unrest, violence, student uprisings, ethnic uprisings that other parts of the country did. And we had a lot of the potential for it, but I guess we worked with people and tried to convince them that we were doing the right thing.

It certainly wasn't a ghetto, by any means. I mean, it was a growing, vibrant, dynamic area that extended from

a few areas that you might have considered in a slum area, and a few areas that were in the at least upper middle class, if not upper class, area in the foothills, and a host of areas like that are from lower middle class through middle class, which probably was typical of most of the district. So there was enough diversity and variety there that people felt good about themselves. But anyway, we managed to avoid at least the intensity of those kinds of divisive problems that a lot of the country had at that time.

#### The Winton Act and Collective Bargaining

MCALISTER: Formal collective bargaining was one thing we didn't have, I guess, that districts have developed since then, that I think we could have handled. . . . But who knows? This was somewhat before the time of the intensity of collective bargaining at school levels. We had collective bargaining, but it was more informal. In California, at that time, it was under what was known as the Winton Act. The Winton Act provided for meeting and conferring, which legally is less hard and fast than collective bargaining. But I was never convinced there was really all that much difference. But probably the big difference was twofold: when we actually passed a real, honest-to-goodness collective bargaining law in this state, it led to more formality in the collective bargaining process. Probably we also had greater perceived conflicts of interest between teacher organizations and the school boards from that time on. Whether that's the fault of the law or that's just something that was developing sociologically in terms of group and class conflict, I don't know.

But we had pretty good relations with our teachers, certainly, in those five-and-a-half years that I was on the

board. Since then, watching them at a little bit more of a distance, they've not done badly. But I think they have had some of the same tensions that some of the other districts have had.

HICKE: You're saying that the collective bargaining act actually more or less hardened people's positions?

MCALISTER: Certainly it would appear that the positions were hardened more after the collective bargaining act passed than was the case before. I don't know whether the act did it or whether the act simply reflected something that was going to come along. That's very hard to know. Law has some impact on things that wouldn't have otherwise happened. On the other hand, to some degree, law reflects underlying realities. How do you mix that and know which comes first?

So anyway, I guess our big challenges were growth, planning for growth, working with this cosmopolitan population—minorities and whites and everybody kind of mixed in together. I felt we did a pretty good job. We had a good administration, and it was a nice experience serving on the school board. It's political, in a way, but it's a nice kind of politics. At least at that time and place, it didn't have the viciousness and the intense divisiveness that politics at other levels so often has, and that even school board politics can have, where communities are bitterly divided or where teachers and the board are at each other's throats.

HICKE: Did you actually make preventive efforts to avoid the sort of student unrest that was going on, to keep the community solidly together?

MCALISTER: We were very well aware that there was student unrest throughout the country and we certainly did our best to stay ahead of it and on top of it. It was probably more of a consciousness and awareness and a spirit than any one

thing. But we were certainly aware of this and did our best to: one, be responsive to genuine needs; and two, to make it clear that we weren't going to put up with any nonsense, that if there was any violence or hint of it, we were going to crack down. Actually, it was more of a disciplinarian district than a lot of urban districts are. For instance, we never had an open campus. The San Jose Unified District, which was right next to us, always had an open campus. We never did. I don't think they do to this day; I hope not. Open campuses for high school students are an invitation to anarchy and cultural decay and should be resisted at all cost.

HICKE: Did you have the support of the parents? Did the schools have the support of the parents?

MCALISTER: Yes, they did. I mean, out of thousands of people, of course, there would be some exceptions. But by and large, I think we certainly did.

HICKE: And financial support?

MCALISTER: Yes, we had good financial support. That was back at a time when you could still have school bond elections, for instance. And we passed some big bond elections and got the two-thirds vote that we needed. I don't know whether that would happen again or not, but we did it at that time. Of course, the underlying sociological support for all that was strong at that place and time. I mean, here was a relatively young population with lots of kids and growing numbers of kids in the schools; so their interests were basically the schools' interests. Even in that area today, I mean, things have changed, because the population's older. There are a lot of kids in school, but per household there are fewer than there were in the late sixties and early seventies. And that makes a big difference.

The Democratic Central Committee 1966-1970

HICKE: Did anything happen between then and your election to the assembly in 1970 that we ought to talk about?

MCALISTER: Well, I practiced law and raised a family. I made one other political effort. Two, I guess you might say. One was probably a foregone conclusion: I became part of the [Santa Clara] Democratic County Central Committee. You run for that, and you're elected to it almost by luck, because nobody knows who's running for the central committee. But maybe I had a little bit of advantage because I was on the school board, had a catchy name, and so I got enough votes to be on the central committee. I got on it in 1965, was reelected in 1969. I got more votes than anybody else in '69, when I was reelected.

In '67, I ran for San Jose City Council and was very fortunate in not being successful. I've always been very happy that I was unsuccessful in that effort. It was a good, strong effort. I finished second in a field of fourteen. San Jose at that time had large council races. You ran an entire city, which is a big order. The city at that time was about 350,000 people, I guess; today it's over 600,000. I finished second in a field of fourteen. Then we had a runoff, and I lost by about 2,000 votes to the fellow who won. I've always been glad I lost.

HICKE: Why?

MCALISTER: City councils are horrible things to serve on, from what I can tell from looking at them from a distance. The only thing they do of any importance is their planning and development and zoning function. You can argue that's important; maybe it is. Over a long period of time, I suspect, about the same thing is going to happen regardless of who was there. Some people don't even believe in zoning;

that's another subject. I think their perceived importance is greater than their actual importance. I've never been unhappy that I lost that race. You also get involved in a lot of political cross fires that it's probably just as well not being involved in.

### III. STATE ASSEMBLY 1970-1986: COMMITTEE ASSIGNMENTS

#### Campaign for Election

HICKE: In 1970, you did run successfully and were elected to the state assembly. Why did you become interested in that?

MCALLISTER: Actually, I was always interested in running either for the state legislature or for congress. In my particular area, which was predominantly Democratic, in 1966 a Republican assemblyman was elected, defeating the then-incumbent assemblyman. Earl Crandall was the Republican assemblyman who won in 1966, defeating Democrat [William] Bill Stanton, who had served for four years. Stanton was elected in '62, and then Crandall came along in '66 and defeated him. He beat Stanton by 8,000 votes in '66. He hung on by the skin of his teeth in '68 by 2,200 over Mark Poche, and then I ran.

For a while I thought I would run for congress, because our congressman, Don Edwards, was talking about quitting. In fact, in 1970, he announced that he was going to quit. He eventually changed his mind, ran again; and he's still in congress, as a matter of fact, here eighteen years later. But apparently at that time in his life, he was ambivalent about continuing to serve. So I set out to run for congress, but after Edwards decided to run again, why, I eventually got out of the race. Everybody that was talking about running to succeed him got out of that race. And then I ran for the assembly and won in a primary in

which there were seven people running; I came in first by about 149 votes. There were three of us who were, more or less, the front runners. There was a recount. I still won by 149 votes, then defeated Crandall by about 8,000 votes.

Crandall was a nice man, actually. He would have been a reasonably effective legislator if he had had two things going for him that he didn't. If he'd had a better district from a Republican standpoint. . . . It was a Democratic district, and it was awkward for him to serve there as a Republican. And, two, he was thoroughly advanced in age at that time; he was about seventy. He was a vigorous man. He'd been superintendent of San Jose Unified School District. But it was a pretty big challenge, just winning election and reelection for him. So I was elected.

HICKE:

Can you tell me a little bit more about the campaign?

MCALISTER:

The primary was a kind of a low-key campaign in which I spent \$2,400, which bought me a bunch of little signs. That's about all that I did. I was fortunate—some would say lucky—to win under those circumstances. Although there was much less money spent in those days in politics than there is now, \$2,400 was still a very modest sum. There was about \$32,000 spent by everybody in that primary. I think my principal opponent claimed to have spent about \$10,500, the next guy after him, \$8,000. I didn't really have a lot of organization.

What I did have going for me were two or three things: I had probably better name recognition. Even though I only lived in the community five years, I had better name recognition than any of my opponents. And I did have this base, such as it was, of being on the East Side High School Board, and by that time I was chairman of the board. So I had a good voting base in East San Jose. Then the other vote was just kind of split among us, a variety of

different groups. So with about 26 percent of the vote, I guess, I won in that field of seven.

HICKE: Were there any specific issues?

MCALISTER: Let's see. It's difficult to advertise issues very much with \$2,400. To the extent that there were issues or perceived differences, I was not the party establishment candidate. If there was a party establishment candidate, everyone would have probably denied that they were it. But I was probably perceived as the more independent, more middle-of-the-road candidate. My other two principal opponents both had joint labor endorsement. Labor at that time didn't like me; they thought I was very conservative. But they couldn't decide which of the other two people they wanted to endorse, so they endorsed both of them, which is a fatal mistake if you don't want some third person; it opens the door for the third person to come in.

To the extent that there were any issues, I guess I was perceived as the more conservative of the candidates. But, as I say, it wasn't exactly a high-powered campaign. Nobody was on television; I don't think they were. I don't think even for \$10,500 at that time anybody bought television. Of course, if you have organized labor's help, you get some of those people out working for you, which some of the other candidates did; and they certainly bought more than I was able to buy with my \$2,400.

HICKE: Your position on the central committee—was that of any help to you?

MCALISTER: I don't know how many people even knew I was on the central committee. See, the central committee is not what you would call a high-powered political organization, which may not be realized by most people. But especially the Democratic party state and county central committees are organizations that are historically of very little importance. They're

MCALISTER: something that people, if they're interested in politics, may decide to run for and serve on for a while. Then they find out that it's meaningless and they become bored. Certainly at that time it had no money. They didn't give money to candidates; they didn't endorse candidates. They had monthly meetings and they talked about things they thought were important. But I can't tell you what they did that was of any importance.

The Republicans are a little more important. The Republicans, historically, have raised some money, have given their candidates some money. So I think they present a little different picture than the Democrats, although even there I don't think they would claim that it was a powerhouse.

The central committees' weakness may change with some of the recent court decisions that give to central committees the legal authority, if they wish to exercise it, to endorse candidates now in primary elections, which they didn't have before. The state law prohibited them from endorsing candidates in primaries, and now the court decisions say you may endorse candidates if you wish, including nonpartisan races and partisan. Everywhere from school board on up to president they can endorse if they want to, or judge or anything. Now they haven't yet proceeded to do that much, but they've just been given the authority.

But that will only have a modest effect, unless they're also prepared to raise money and really do something. Endorsements are nice, but they're of minimal effect unless you've got the money to advertise them or unless the people who make the endorsements have the money to help you advertise them. And then, that assumes that

people think they're important. We'll see. So I would say, no, the central committee was of no importance.

The school board probably was. If I hadn't been on the school board, I doubt if I'd been elected, because in a very close election, a very few votes can change that. I mean, a 149 vote margin out of about. . . . How many total votes were there? Something like around 30,000 votes total cast, and I guess I had a little under 8,000.

[End Tape 1, Side A]

[Begin Tape 1, Side B]

First Impressions as Assemblyman

HICKE: So when you first went to the assembly, what were your first impressions?

MCALISTER: When I first went to the assembly, they were in the process of "changing the guard." The Republicans had briefly held control of the legislature, both houses, by a one-seat margin in each house, as a result of the 1968 election. Then the Democrats took control back as a result of the 1970 election. In fact, one of the things that helped me in my general election was the fact that my district was one of about five or six that was considered kind of a swing district, so I did get some help from the Democratic party, especially Democratic legislators who wanted not to be in the minority anymore. They had a long taste of being in the majority and they liked it better, so they wanted to be in power again. So I received some help from them.

HICKE: Do you recall anybody specifically?

MCALISTER: [Assemblyman] Leo McCarthy was assigned to help me, and he did. Not only Leo McCarthy, but Leo McCarthy's then assistant, now mayor of San Francisco, Art Agnos.

HICKE: Did they give speeches, or what kind of help did they give?

MCALISTER: No, they didn't give speeches. Speeches wouldn't have done me any good because McCarthy wasn't much of a household name then and Art Agnos wasn't any household name. McCarthy was a nice man and a fine assemblyman who, I think, was only very modestly known outside of San Francisco. They helped me organize, helped me to raise money. They frequently had good ideas about where you could go to get good deals in buying, for instance, signs, and save yourself \$2,000, maybe. And they used their influence with the other Democrats to convince them that I was a potential winner and that I ought to get more support.

Then they helped me organize things. McCarthy is a good political organizer; so is Art Agnos. They had already had considerable experience in San Francisco. McCarthy had been a member of the board of supervisors in San Francisco before he was elected to the assembly. He had only been elected to the assembly in '68, so he was just at the end of his first term when he was helping me be elected to my first term. Agnos, of course, later on went on to be elected to the assembly himself some years later. So they were helpful to me.

As I say, this was a kind of a change of the guard. The Republicans had had this brief control. [Robert] Bob Monagan had been speaker in the assembly. But, of course, they had had control by a 41-39 margin. But the Democrats won enough seats to take control back by a 43-37 margin, and I was one of the 43. So we were electing a new speaker. At that time, the speaker became [Robert] Bob Moretti. So that was one thing that I was part of.

HICKE: Can you elaborate on that a little bit?

MCALISTER: Actually, it was kind of anticlimactic, because by the time I was sworn in--by the time all of us new folks were sworn

MCALISTER: in—Moretti had all the votes that he needed anyway. I mean, there wasn't a lot of competition. Moretti had pretty well preempted the competition by then, which didn't make Leo McCarthy very happy, I might say. Leo McCarthy was not a Moretti fan. It wasn't that he was trying to be speaker at that time. He planned to be eventually, but he wasn't planning to be right then. He wasn't fond of Moretti, but there wasn't much he could do about it at the time. I guess my role in all that was like all of the rest of us freshmen at the time; it was pretty minor because, as I say, Moretti pretty well had it sewed up, so it didn't really become an intense issue.

The first thing you do, of course, when you get to a legislative body, aside from getting an office and hiring your staff, you become concerned about your committee assignments. Everybody is asked to indicate their choice of committees. Actually, people frequently get a lot of what they ask for—not everything, and particularly not all at once. But I did pretty well my first term. I was appointed to the Education Committee, which was one that I asked for. And I was also appointed to the Judiciary Committee, which I believe I asked for. I was also appointed to the Labor Committee. I'm not sure whether I asked for that or not, but it proved to be a very interesting committee. Also the Constitutional Amendments Committee, which, as I recall, I did not ask for. But it was kind of an interesting little committee, too. I asked for the Finance and Insurance Committee, and ultimately I became its chairman, but I didn't even get to be a member my first term. So that's what I got on my first two terms, my first four years; those were my committees. And they kept me busy and they were very interesting assignments, all of them.

Education Committee 1970-74; Subcommittee on Curriculum

HICKE: Maybe we can look at them one at a time. The Education Committee—do you recall any specifics of that?

MCALISTER: Well, the collective bargaining issue, again, was a hotly debated issue in that period of time. Also, for a time, although it actually predates a little bit my arriving there, we still had a little bit of the echoes of some of the debates that were probably more typical of the late sixties, the decentralization of school districts. Would decentralization be a good idea? Would it be a good idea to decentralize Los Angeles Unified School District, for instance, have ten school districts or twenty instead of one? But somehow that issue never really seemed to do more than just kind of perk along almost beneath the surface.

HICKE: Who was in favor of that?

MCALISTER: At the time, particularly in the east, as I recall. . . . Probably, some minority groups favored it because they felt that they were submerged in large districts and that their interests were not being properly taken care of in the large district. They were of mixed minds on that, I would say, because some of them also would have been worried about whether they would have gotten their fair share of the resources if we started cutting up the large districts. At that time, the method of school finance was very different than it is now. It was largely dependent on the property wealth within each district, which is pretty close to passe now under our present school finance system, in which most of the money comes directly from the state. And there's substantial, maybe not perfect, but substantial equalization now. But at that time there certainly wasn't anything approaching equalization. So I think that was a

movement that was kind of interesting but never really got off the ground.

We spent a lot of time debating things that I don't think they've debated much since then. We had a subcommittee on curriculum, for some reason. Most people, I think, today would say, "What in the world did legislators think they were doing with a subcommittee on curriculum? What business of yours is it what's taught? I mean, you should supply the money and lay down the general policies, and let the teachers teach." Which I think I'd kind of be inclined to agree with. But we did. We had this Subcommittee on Curriculum, on which I served, and we had all kinds of interesting ideas about curriculum and what we ought to be encouraging them to teach, encouraging them not to teach.

HICKE: Can you think of any examples?

MCALISTER: It's been so many years now. It's been fourteen years since I left that subcommittee. Fortunately, there was very little legislation, as I can recall, of great importance that ever came out of that subcommittee, which is probably just as well. One of the things was the whole question of mandates. What should the state mandate be taught? The education code does have a variety of things that it does mandate. Especially at that time we used to have debates on how much more should we mandate. So that was one of the favorite topics for the subcommittee.

HICKE: Were there subjects that you said shouldn't be taught?

MCALISTER: It's more a question of what should be taught. I mean, there are so many groups that think that something should be taught that isn't taught, or that's taught some places but not taught other places. Nearly everybody and their uncle has some favorite idea about what they think should be taught and how it should be taught. And that was a

MCALISTER: period of time in which they would come to the legislature and ask us to mandate things. They've got a variety of mandates in the code, because who's there to resist it? Usually school administrators might resist it, because they want to retain their flexibility; but school administrators don't have all that much political punch. The teachers, sometimes, will be of mixed minds.

The big things, of course, that an education committee ought to be concerned about—and I have to say, for the most part, we were concerned about—are things like the relationships between the teachers and the administration, the structure and the organization of your education, school finance—the money that's going to go into it—and, perhaps, very broad questions of mandates. But we certainly shouldn't get into a lot of details on the mandates, although, unfortunately, we did sometimes.

As time went on, more and more we debated the various categorical programs. We'd give money for specific purposes, not just a lot of money for the school board to spend as they see fit. But we'd give certain monies for bilingual education, certain monies for special education. Special education is a terminology that can include nearly anything, but, I guess, it's largely come to mean, in most people's minds, education for folks that have special problems, like the mentally retarded or some who aren't mentally retarded, but people who have certain kinds of learning disabilities. Although special education can mean just about anything that's out of the ordinary by one definition. For example, special reading programs. [Speaker Jesse] Unruh had a special reading program, as I can recall, that he put on the books that, I guess, is still on the books.

MCALISTER:           Those special programs have certainly mushroomed starting in the sixties and accelerating in the seventies, in not only state, but, of course, federal. Then the federal government, about that time, was coming in with more monies. I guess about 4 percent of the education budget is financed by the federal government. But somewhat unevenly, because they do it almost entirely in categorical programs, and those categorical programs, of course, are not distributed equally among the districts. Probably they tend to go more into urban districts where they're highly impacted by a variety of urban type problems: poverty, large numbers of people who don't have a good command of the English language, large numbers of minorities and so forth. So we got into all that.

          And then, I'd say, well after I left the Education Committee—because I was on the Education Committee for four years—there began to be somewhat of a backlash to the categorical programs and a feeling that maybe they were taking away some responsibility from the local people who ought to decide themselves how they wanted to spend their money and what their priorities were. So they started to pass laws sunsetting some of these categorical programs. A few years ago, we passed a law that, I think, sunsetted almost every categorical program on the books. That, then, set in motion a political process in which, as the sunset date approached, the defenders of those programs came back and said, "Let's extend this. It's a good program; we don't want it to die." The normal response to that is that it will be extended. Usually they've got enough strength that it'll be extended.

          One exception to that, recently, that I noticed, though, was the bilingual law, which sunsetted and the governor [George Deukmejian] wouldn't sign the extension

bill. He vetoed the law that was eventually passed to extend it, saying—accurately—that by vetoing this law, it didn't mean that there wouldn't be any bilingual programs but that it would leave it up to the districts to decide how they were going to do it. And, in fact, they still get the money; they still get money in the budget. But he just wasn't going to lay down all these detailed guidelines that were in the state law. Frankly, I agreed with the governor. Sure, you need to do something about people who don't speak the English language well, but I don't know that the state has the one and only idea of how that's to be handled. But those remarks encompass a lot of time in which I didn't serve on the Education Committee. My early period was the time when these categoricals were beginning to mushroom.

HICKE:

I didn't live in California in the early seventies, and there was some impression, maybe journalistic writing or whatever, that schools in California taught, shall we say, self-fulfillment courses, like basket weaving and that sort of thing. Was that a subject for debate?

MCALISTER:

It was, from time to time. I think that was probably overdone. But perhaps a more accurate criticism would be that we didn't have, as a state, high enough standards or high enough expectations. I don't know how much basket weaving there was. That's, incidentally, been an accusation that's been brought against our community colleges. Community colleges tried to be all things to all people, which in a way they probably did. There probably were some basket weaving courses, although, again, I don't think it's a very big element in their program. They've had ceramics; they had a variety of things. You know, there are cultural things that appeal to people and that they want to do. How much should you divide, for instance, your money you're going to put into community colleges? How much of an

emphasis should there be on adult education vis a vis, say, the normal people who are coming up just through college? That's their time to go to college.

HICKE: Looking for skills for the work place.

MCALISTER: Yes. But community colleges have always kind of looked at least in two different directions: they've taken these kids out of high school, but then they have older adults who are coming back because they didn't get enough education or because they want to do something else. And what about the people who may not have in mind any definite degree but they just like to come back and do some education? They've been kind of divided in their attention and in their philosophy.

HICKE: But they've also served many parts of the community very well.

MCALISTER: They have; that's right. So the solution that we reached a few years ago. . . . I think we decided to make the adult education stuff at least pay for itself to a greater degree than it had been, but we didn't say they couldn't do it. I mean, they still have lots of adult education. We've never fully been able to decide what the proper relationship of the community colleges was to the rest of the educational system. We do have by far the biggest community college system in the country, one that's probably served. . . . I'm sure it's served more people in many respects, served them well, than any similar system anywhere in the world. Of course, there are many people who can't afford to go anywhere else or do anything else. And there are also people who are slow starters in high school and eventually mushroom. . . . Not mushroom. . . .

HICKE: They all of a sudden start to grow.

MCALISTER: They start to grow, and for many people, a good place to be is community college when they're doing that.

Judiciary Committee 1971-74, 1977, 1979-86

HICKE: Okay. How about Judiciary?

MCALISTER: Well, Judiciary is a combination of things. It's a lawyers' committee; at least it was at that time. It was all lawyers at that time. Now it has a majority of nonlawyers, but it's still a lawyers' committee in the sense that it deals with lawyer-type issues: the running of the courts; procedures in the courts; procedures in filing actions and in defending actions; laws of liability; products liability; automobile accidents. You name it, just all kinds of issues of that nature. Regulation of the bar association. Just about anything that affects court proceedings and court actions and the things that lawyers are especially interested in goes to the Judiciary Committee.

The senate has a Judiciary Committee, too, which has more jurisdiction. It includes criminal law. In the assembly, the Judiciary Committee only included civil law; we had a separate committee for the criminal law.

HICKE: You were on the civil.

MCALISTER: Yes, although I did serve for two years—considerably later than that—on the other committee, too. I forget what they called it at that time. Most of my time it was called the Criminal Justice Committee. It's gone through a metamorphosis of various names. But anyway, I was on the Judiciary Committee those first four years. In fact, I was on the Judiciary Committee most of my career. I was off it a year or two here and there, but I think I was on it most of my sixteen years. [Goes through papers] I've recorded somewhere here how many years I was on it.

HICKE: Yes, I have that, too.

MCALISTER: Eleven years. I was on it eleven of the sixteen years. Anybody who's a lawyer, I think, will find the Judiciary

Committee interesting. Not only that, there's a severe clash of interests there. The greatest clash of interests on the Judiciary Committee, of course, is between the Trial Lawyers Association, consisting of plaintiffs' lawyers who believe in very broad and liberal rules of liability so that their clients and they can win the largest possible judgment, on the one hand; and those on the other hand, who tend to represent defense interests more and who do not believe in very liberal laws of liability and who think that the laws of liability are too liberal already. Typically, those folks will be a variety of people: business groups, insurance companies, and so forth, and sometimes just plain citizens.

To a lawyer, those are fascinating issues. I suspect to the average citizen, those are issues that they could go to sleep on at night reading about. I mean, they're not things that people get up and cheer about. But they're very important. There's lots of money involved; there are intense political clashes. I found it quite interesting to serve on. After a while, of course, when the committees all reach the same results, you get a little tired of that. But, nonetheless, the issues are interesting.

Tort Law Reform Issues: A.B. 200; No-fault Insurance; MICRA

HICKE: Maybe we could talk about some of the legislation you carried along that line. I know you're interested in tort law and tort reform, and I read about the case, I think, which ended up with your carrying the bill A.B. 200. That was the Redding teenager who fell through the roof while he was burglarizing a school and sued for damages.

MCALISTER: Yes, and I got more publicity on that little bill than probably on almost any bill I ever carried. At least, it's been one of the two or three bills that I got more

publicity on. It didn't end up to be a terribly big bill, because the Judiciary Committee wouldn't let us pass it in a very strong form. I wanted to simply forbid a person who was trying to commit a felony, when they were injured, from being able to sue. They wouldn't let me go that far.

I started out wanting to prohibit people who were trespassers from being able to sue except under somewhat limited circumstances. I had a bill that actually passed the legislature that would have, I thought, made some sense out of the law, that Governor [Edmund G.] Brown [Jr.] vetoed. It would have still allowed an injured trespasser to sue, but only in rather limited circumstances; things like the attractive nuisance doctrine for minors, where the landlord has irresponsibly left dangerous equipment or dangerous substances on the property where the person couldn't be expected to know it was there. Things of that nature where, of course, you would want them to have a right to sue. But, absent one of those extenuating circumstances, they wouldn't have been able to. I actually somehow got that through the legislature; I'll never know how. But it became moot, because Governor Brown vetoed it. After that, I could never get it even out of committee again.

HICKE: Why did he veto it?

MCALISTER: He said that he basically liked our present law and that return to the common law, to an older version of the law, was something he thought we didn't need to do. I was trying to overturn a California Supreme Court decision.

HICKE: Rowland v. Christian?<sup>1</sup>

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1. 69 Cal 2d 108 (1968).

MCALISTER: That's right. I was trying to overturn that. I think that was decided in 1968, and he thought that Rowland v. Christian was a good case. Governor Brown was a fascinating figure. There was a time in his career when he was an advocate of reforming our tort system. But I have to say it was a very brief period in his career, and he eventually turned around and became a very good ally of the trial lawyers, who resisted almost all changes in the tort system. Governor Brown was not the only person who ever changed his mind on any subject, of course. I'm not critical of people just because they change their minds. Anyway, after that I was never able to get a really strong bill through, and my final bill was a much weaker form.

HICKE: There was a problem with whether it should be a person convicted of a felony or just accused?

MCALISTER: Yes. My recollection—and I haven't even looked at my bill since we passed it—but my recollection is it passed in a form that said that a person actually had to be convicted, and it couldn't be of a misdemeanor; it had to be a felony and had to be an actual conviction. I believe that's what it finally ended up. We took what we could get. That doesn't do much for you, because with people who suffer severe injuries, many times the prosecutor might well conclude, "Well, they've been punished enough." Maybe they have. I mean, why go out and rub their nose in the dirt if they've been severely injured, and prosecute them for a felony? Prosecutors have better things to do with their time than that. It is not the biggest issue in tort law, but it was one that pointed up the extremes to which California's tort law has gone. It was also one where I thought the trial lawyers were on very weak grounds, morally speaking.

HICKE: The American College of Trial Lawyers?

MCALISTER: In this state, it's called the California Trial Lawyers Association. In the United States at large, I guess, it's the American Trial Lawyers Association. I'm not sure about the "American College."

HICKE: There are two different ones.

MCALISTER: Yes, I think that's a different group. The one I'm familiar with is what you would call ATLA nationally and CTLA statewide. Over a period of time, I discovered that I would not be able to make real progress in fundamental tort reform, that the legislature was simply not motivated as I was, didn't understand the problem as I did, didn't have either my intellectual or political commitment to it, and I was wasting my time introducing far-sweeping, fundamental changes. Which I did try to do for a time. I had a big no-fault bill that I tried to get passed.

HICKE: No-fault insurance?

MCALISTER: Automobile no-fault, yes. And that did not make it. I could see that I just wasn't going anywhere on that. I tried other things. I had a big bill to reform the products liability system in the state that they wouldn't give the time of day. So I decided I would concentrate on smaller areas that I might be able to just kind of outflank the opposition on, where the merits were so strong that they might almost be ashamed to oppose me. So that's why I found this trespass issue. It was one that was kind of intellectually interesting. As I say, I started out with a fairly strong bill, the one Governor Brown vetoed, and then as time went by, we had to drop back to fallback positions. I was able to do that on that bill and, I think, one or two other things I was able to do that didn't involve enormous reforms but at least made the system a little better.

But I discovered that the legislature really wasn't interested in the subject. The only way they were going to

move was under the duress of some enormous crisis. The only time they ever passed any big tort reform legislation when I was there was in 1975, when they passed the medical malpractice law. It's called "MICRA," "Medical Injury Compensation Reform Act," and that made a number of changes in the law affecting medical malpractice that the doctors supported.

The only reason the legislature passed it is, at that time, we had a terrible crisis in our malpractice insurance system. Most insurance companies pulled out or increased their rates 300 or 400 percent, and the doctors nearly went crazy. They and their wives and their nurses and their friends spent a year lobbying the legislature, and when the doctors are united and 100 percent determined to accomplish something, they're a very powerful group. In this case, they proved more powerful than the trial lawyers. But they had to devote their undivided attention for a year to doing that, and they did; and they were somewhat successful.

But other than that, it takes some monumental, catastrophic thing that's just looming up and about to devour us whole before the legislature will do anything on tort reform, as well as a number of other things. But tort's a good example. So after a while, I decided I had better things to do than to just keep butting my head against a wall and began to adopt realistic goals.

HICKE: Were you involved in that MICRA?

MCALISTER: Oh, yes, I was very much involved in it. I was one of the co-authors of the final bill that we did pass. In fact, at that time I developed a pretty good relationship with some of the doctors who were interested in this. I know they appreciated some of my efforts. The doctors, in fact, have been one of the main groups that would favor more tort reform since then. What they did was for themselves, but

they realized that the overall system needed changing, and so they've kept up a considerable interest in this subject in the intervening thirteen years. To only very modest effect, of course.

[End Tape 1, Side B]

[Begin Tape 2, Side A]

HICKE: You were saying the doctors . . .

MCALISTER: They continued to be interested in tort reform. They, in fact, developed a big war chest that they were going to spend on an initiative some day for tort reform that, I think, they still have in the bank. It's now many millions of dollars; I think it's six or seven million dollars that's just been sitting there for years. They haven't been able to decide what to do with it. At least, that's my last word. So that was one of the areas of my intense interest. I hope I've served as a catalyst for some people's thinking, because I'm afraid beyond that the system has proven to be essentially intractable.

The political problems are severe. If the public at large doesn't want change, like in something like tort reform, or isn't aware and doesn't know enough about the problem to know what they want, then the legislators tend to listen to those special interests that do know what they want. Then you get a variety of special interests that want different things. It's easy enough for the legislature to temporize under those circumstances and say, "Well, you've all got an interest—doctors, trial lawyers, insurance companies, business, etc., defense lawyers, plaintiffs' lawyers, so we really won't do anything. We'll keep you happy by not doing anything. You can stir the pot if you want, but we're not going to do anything." I mean, that's

basically the response of the legislature to that and, I must say, most other really aggravating, terribly divisive issues where they can't really make up their mind on the merits and where they can't really make a political decision without making powerful groups mad. So therefore, they do nothing. It's a much broader principle than just tort liability.

Now, I didn't mean the legislature doesn't ever do anything responsibly. They do a lot of work in the course of a year; they do a lot of things of lesser controversy. They pass a budget that spends the many, many billions of dollars that we spend in this state every year and then provide for the ongoing function of state and local government and school districts. That's all fine and positive. There are a lot of good things that a legislative body does. But the really divisive issues, which can be very important issues at times, tend to fester unless and until there's a large enough force that says, "We've had enough of this. Do something."

HICKE: So a certain amount of inertia is what we're being governed on?

MCALISTER: Yes. And that's true, I would suppose, of every democratic legislative body in the world. It's certainly built into our system in California, very much so.

Reform through Initiatives, Legislation, and Court Interpretation

HICKE: But you also hinted that if the public at large takes a large enough interest, then they can have some impact.

MCALISTER: Well, sure. If they take enough of an interest, they can have an impact. Then it becomes a matter of conflict of the forces involved. There are two ways, of course, that the public can have an impact. They can have an impact by

complaining to their legislators that they've had enough of a certain thing and they want a change, and if that doesn't work, that they're going to elect new legislators and so forth. The other way they can go is the initiative route; they can sponsor initiatives.

There are a lot of critics of the initiative process who feel that it isn't very sophisticated, that it's managed and run by special interests, that it costs a lot of money, and that what's passed is poor legislation and the courts have to interpret it. All those criticisms are made, all valid, and all irrelevant. I mean, it's still good that we have it. I know those criticisms are true, but irrelevant. It's still good that we have it, because if we didn't have it, the legislature would be even more unresponsive and some things just wouldn't get done. So I think it's fine that we have this system. No doubt it could be better, but it gives people an opportunity to blow off a lot of steam. Once in a while they do something positive with it, and most of the bad initiatives are probably defeated. Anyway, it's up to the people, it seems to me.

HICKE:

Clearly, there's nothing efficient about a democracy.

MCALISTER:

No. It's not very efficient. One of the big problems with the initiative is also a big problem with much legislative-passed legislation—the ambiguity of legislation.

Initiatives frequently are ambiguous because they're drafted without the opportunity for legislative hearings to make input and to criticize what's happening and to amend the bill. That's true. But it's also true that the legislature itself often passes ambiguous legislation.

That, then, means that people don't know what the law means, and that a court has to decide what it means, a phenomenon that I don't particularly like. I don't particularly like judicial activism; I don't like it at

all. I don't think courts ought to be reaching out to remake our society. But sometimes they don't have any choice. If the legislative body gives them laws that are too vague and ambiguous, they get a case before them, perhaps many cases, and they have to decide the issue somehow. So there they are, and they've got to decide what we meant when we didn't mean anything or when we don't tell them what we mean.

One of the things I'm doing now is teaching a course in legislation at McGeorge Law School. One of the favorite topics in every legislation course is the frequent ambiguity of statutes and the difficulties that the legislatures have foisted on the courts in interpreting these ambiguous statutes. Some of it is due to incompetence. Some of it is due to the inability to anticipate what kinds of problems will arise in the future that might be governed by your statute. And some of it, a lot of it, is very calculated. It is absolutely deliberate. I mean, it's absolutely deliberate because they can't agree. So they'll pass a law knowing that they're going to pass on to the courts the responsibility to decide these excruciating questions.

HICKE: Gets them off the hook with their constituents?

MCALISTER: Gets them off the hook with everybody, and then they're semi-heroes. That's part of the process, too, I think, everywhere.

Other Reform Issues: Insurance Systems; the Death Penalty; Victims' Bill of Rights, 1982

HICKE: Are there any other tort reform issues that you'd like to touch on?

MCALISTER: There are so many, but a lot of them are really very boring to everybody except lawyers. I would say I have a great

vision of what could be done in this country with regard to our liability insurance and, in fact, to our whole insurance system. I think that the tort liability system is obsolete and bankrupt and works terribly and ought to be almost totally replaced by a system of no-fault insurance that's far broader than just automobile insurance. It ought to cover all injuries, probably from any cause. We ought to eliminate most—if not all, certainly most—of the tort lawsuits and the pain and suffering lawsuits. But we ought to make sure that everybody who's injured is taken care of, that most of their lost income is replaced, and that all of their medical bills are taken care of. This is the system that exists in the country of New Zealand, which has the greatest insurance liability type system in the world.

Then we need to reform and combine this with our workers' compensation laws and some of our other social insurance type laws. We need a more comprehensive view of people's needs. We have so compartmentalized our insurance and liability systems that it's so technical that no one can possibly understand it except a Philadelphia lawyer. And in many cases, the net result is not to anyone's benefit except the lawyers'. That's the basic direction which I would go. I have no hopes that that's going to happen tomorrow. I think it might happen over a period of twenty-five to fifty years, just by the inexorable pressures that modern society creates. But I don't think you're going to have any legislator successfully authoring legislation to do that soon.

HICKE: We have a lot to talk about in insurance. But before we leave Judiciary, what about the death penalty? Were you involved in that?

MCALISTER: I was involved in it. I was an advocate of reinstating the death penalty. I was an author, in fact, of one of the

major bills on this subject that did not become law, but the identical bill by then-Senator [George] Deukmejian became law, which I coauthored. I was the floor manager for his bill on the assembly floor back in, I guess, 1977, and it passed. There's been some change in that since then by an initiative which was put on the ballot.

Of course, since then it's largely been a judicial issue. The legislature has spoken, and the people spoke through the initiative process, too. It's been a question of what the courts would do and what attitude they would take toward the various constitutional challenges. Of course, it was also an issue that was, to a large degree, responsible for the downfall of three of the supreme court justices in California, although there were certainly other good reasons for their downfall, even better reasons, from a legal and scholarly standpoint. But it was doubtless the single, biggest political issue that brought them down.

HICKE:

Can you explain why you carried that bill?

MCALISTER:

Well, I thought, frankly, our criminal justice system generally, particularly at that time, was lacking in punch, lacking in strictness, lacking in predictability, and lacking in serving the interests of the victim and of the public. I thought that the death penalty, while I certainly wouldn't want it to be applied willy-nilly and to vast numbers of people, I think that there are many first-degree murderers for whom it's a very appropriate penalty from the standpoint of their having forfeited their right to coexist in a civilized society, from the standpoint of hopefully, at least, some deterrence, that it's an appropriate thing to do.

I also was unhappy with the court's attempt to preempt the issue. At that particular time in our history, and at some other times, too, our courts have, in essence, felt

MCALISTER: that they knew better than the people or the legislature and they were going to abolish it. I didn't like that. I thought they were very presumptuous. I mean, they, in effect, made the decision that the current standards of morality and culture were contrary to it and that all the best, highest, and noblest opinion was contrary to the death penalty. That was, in effect, the judicial viewpoint; it was a viewpoint that they didn't bother to consult most people on. I'm glad I was part of a movement that repudiated that attitude.

The death penalty, incidentally, is far from being the most important issue in criminal justice. It's a fairly modest issue in terms of its total impact on criminal justice, because there are very, very few people, of course, who are going to be executed. Even if you count all the murderers, they're just a small part of the criminal justice system. The greater problems of the criminal justice system involve the kinds of things that we dealt with with Proposition 8, the Victims' Bill of Rights, in June of 1982, in which I played some role. I was on the advisory committee of Proposition 8.<sup>1</sup>

Also, Proposition 8 took a lot of bills that I had authored and simply folded them into this one proposition. I wasn't alone in that. There were several of us in the legislature who for some years had been advocating a variety of laws to strengthen the criminal justice system and which had mostly been unsuccessful. So a number of

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1. Ballot Pamp. Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. June 8, 1982 (Art. I, Section 28 of Cal. Const.), Cal. Stats. p. A-186.

people got together and took these several approaches and put them all into Prop. 8.

The biggest thing that Prop. 8 did was to change the standard for admission of evidence. Before Prop. 8 we were governed not only by the federal rules on admission of evidence, but we were also governed by whatever rules the state supreme court wanted to impose on the admission of evidence. Prop. 8 says, "No. We're going to follow one set of rules, and the state court cannot have some independent state grounds for rejecting the admission of evidence. If the U.S. Supreme Court says it's inadmissible, then it's inadmissible, obviously, because they tell us what the U.S. Constitution means. But we're not going to have a separate constitutional doctrine running along parallel just making it that much harder for the prosecution."

HICKE: Was it separate and contrary?

MCALISTER: It's definitely contrary in many cases. It was what lawyers call the "independent state grounds doctrine." What they said, and what our high court was saying, was that "we'll interpret terms in our state constitution that are often identical or similar to those in the federal constitution—but we'll interpret them to mean something different, even contrary, to the U.S. Supreme Court's interpretation of the comparable language in the U.S. Constitution." It gets right down to, "Are you going to admit the evidence or are you not going to admit it in court?" And if you can't admit the evidence, you may have to let the person go free, may not even be able to prosecute them. That's what it comes down to. We never suggested that prosecutors shouldn't be subject to constitutional limitations. We were just unhappy with the extensions of all this by our court interpreting the state constitution.

There were other things, although related to that. For instance, the use of a prior conviction. Our court had, in effect, virtually ruled out the use of a prior conviction against a criminal defendant. We've got a statute that says that the evidence of prior conviction can be introduced to impeach the testimony of this person. They, in effect, ruled that out. They didn't say it was unconstitutional; they just developed a bunch of weasel-worded conditions and qualifications that made it very dangerous for a trial judge ever to let in evidence of a prior conviction.

HICKE: It was in the case law.

MCALISTER: It was in the case law, right. And so we overruled that. Prop. 8 overruled it and they had to grudgingly accept it. In People v. Castro,<sup>1</sup> they decided that's what we said and we meant what we said. They even interpreted it, not exactly the way we meant, but it was close enough. It was good enough.

Prop. 8 has been a marvelous thing for the criminal justice system in this state. In the intervening six years, the court has, for the most part, upheld what we did, even the more liberal court, which rendered most of the decisions. Of course, they were the ones who had the opportunity. Even they had to enforce most of what we did, and it was a good thing. And since then, there hasn't been as much need for a lot of legislative attention. There will always be criminal justice problems, but at least we got the system back on what to us was an even keel. It certainly doesn't deprive anybody of their due process

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1. 38 Cal 3d 301 (1985).

rights. The courts are still open; the juries still decide whether people are guilty or not guilty; appellate courts they can appeal to. I think, by and large, we rendered justice to defendants and to the public.

Personal Law Practice

HICKE: What kind of law did you or do you practice?

MCALISTER: Before I came to the legislature, I was mostly in a kind of a general business law practice. I was in general practice with an emphasis on business law. I was with two firms in San Jose, but the second of the two firms with which I served for four years was a firm that actually made most of their money out of representing plaintiffs in personal injury accidents. But I didn't do much of that. I was basically in their business law section.

HICKE: What firm was that?

MCALISTER: [James] Boccardo law firm. I think they're not too happy with the attitudes I've taken on the tort system since I've been in the legislature. That's understandable. Most people that specialize in that field think the existing system is a very nice system that ought not to be tampered with.

Since then—of course, I've only been out a year—I've done a variety of things. I'm doing lobbying right now; I have several lobby clients. My first year out, I also did a fair amount of work in insurance law, especially in insurance defense work. I've also done some appellate work in criminal cases, which I find intellectually interesting.

HICKE: So you've been involved in both criminal and civil law?

MCALISTER: Yes. I've had quite a number of years in the practice of law. I can't say that just the ordinary practice of law thrills me. It's kind of mundane. In just a general practice, you deal with a lot of very boring kind of mundane stuff, like hundreds of thousands of other lawyers

do every day. I like appellate work. Appellate work is more like what a legislator does, at least a conscientious legislator. You're making some effort to shape the law, at least, and to suggest to the court what the law ought to be and try to convince them what it is. That's always an intellectual challenge.

HICKE: Did you practice law while you were in the legislature?

MCALISTER: Very little. I quit the practice that I had in San Jose almost immediately. For some years then, I didn't practice at all. I really did almost no practice, except for about the last two years I was in the legislature. I started to get back in and was doing some appellate work, because I felt that I ought to do something else. But it was, as I say, very limited; most of the time, I wasn't doing any.

It's very difficult, frankly, for a lawyer to practice and be anything like a full-time legislator. There are two problems with it: one is a time problem; and the other one is that, especially if you're involved in the kinds of issues that I was, with all these economic interests, I don't know how you avoid conflict of interest questions. They're not necessarily legal conflicts of interest. That is, it's not necessarily something you would go to jail for or anybody could say you violated a law. But you're bound to be criticized. I mean, if you were to take cases from insurance companies or banks, and you're the chairman of a committee dealing with them, you're bound to be criticized for that.

I would say that all lawyer-legislators don't necessarily take that attitude, and there are some of them that practice and take any kind of case. There are only a handful of lawyer-legislators left, however, in our legislature. Most people have the idea that it's run by lawyers. There are only about a dozen lawyers left of the

eighty assemblymen. I think the senate has about the same number which, of course, would be a higher percentage in their case. But when I first came, we had more than twice as many lawyers in each house. And I think that's a nationwide phenomenon of which most layman aren't aware yet, because they still think that lawyers run the legislature. But I think most state legislatures have only a handful of lawyers now, and the main reason for that is that, as the legislatures have become more full-time, it's been too much of a sacrifice for them to make. They can't really practice law effectively or very well and spend all this time legislating; so most lawyers would rather make the money.

HICKE: Are there any other topics that come under Judiciary that we should cover?

MCALISTER: Oh, my. We could probably talk for several days about the things they covered. A lot of it's very technical law stuff. I think we've covered the big things that really affect the largest interests. There have been issues of court reform, questions of court consolidation, and whether the state should pay for all the costs of the courts or whether we should still have the counties paying for some of it. Those are probably issues that are of no interest other than to efficiency experts somewhere. We need them, we need efficiency experts, but I think that probably hits the highlights.

Constitutional Amendments Committee 1971-74: State Lottery; Privacy Amendments

HICKE: How about the Constitutional Amendments Committee?

MCALISTER: It was a fascinating little committee. Its main job, of course, was to review proposed constitutional amendments that would be passed by some other committee; but then it

would go through our committee so that we'd look at it from the standpoint of, did it fit into the constitution? and so forth.

HICKE: Was that a lot made up of lawyers?

MCALISTER: As a matter of fact, not so much. I think a majority were not lawyers. At that time, we were still reviewing proposals that had been made by a commission that had been created some years before called the Constitutional Revision Commission. It had proposed a number of changes in the constitution, and some of their proposals were still coming before us. There were two things involved: one's reviewing the constitutional amendments for technical correctness, and then occasionally you get into some really high-powered political questions that don't really have much to do with anything other than politics.

HICKE: Such as?

MCALISTER: Well, like, "Do you want an amendment authorizing the state to have a state lottery?"

HICKE: Was that one you debated?

MCALISTER: It was indeed. We always killed it. That was probably one of the most exciting of our constitutional amendments that ever came before that committee. I won't say we always killed it; it never made it out of the legislature. Our committee, as I recall, usually killed it, and on the occasion or two that it got out, why, it would die somewhere else. Constitutional amendments need a two-thirds vote in each house, so you might get a majority vote in the committee but fall short of getting a two-thirds vote on the floor of one or the other houses.

The legislature never believed in the state lottery. At least they could never get a two-thirds majority in both houses that believed in it. I was always against it, but eventually, of course, it went the initiative route. That's

one of those cases where a group got together, and one of those cases where, I guess, you could probably be critical of the initiative process in that the group that got back of it was very likely people who had an ax to grind, who wanted to have that. As I recall, the main backer of the lottery initiative was some company that makes equipment for lotteries. But that was, I think, one issue that was brought out in the campaign. It did pass when it reached the ballot by a substantial majority. And, of course, it was very cleverly done. They said that it would . . .

HICKE: Bringing the schools in for all the money.

MCALISTER: It would bring in some money for the schools. They also said, "After all, people are going to gamble anyway, and they're going to go to Nevada, and they're going to do this and do that. Why shouldn't we get some of this money?" The majority of people thought that was a good idea, so there we are.

HICKE: Do any other outstanding examples come to mind?

MCALISTER: If I'm not mistaken, I think that was the time that we put a privacy amendment into the California State Constitution.<sup>1</sup> If my memory serves me right, it either happened just at the end of my tenure on the Constitutional Amendments Committee or just after that, but I think it came in '74.

HICKE: Can you tell me about that?

MCALISTER: It was one of the recommendations, I believe, of the Constitutional Revision Commission. I'm not sure of that.

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1. Article 1, Section 1 (added Nov. 5, 1974), Prop. 7, Stats. 1974, ch 40, ACA 60, Cal. Stats. p. A-206.

But I know that there was a good deal of support for it at the time. We may not have asked all the questions we should have asked about it, because it's a good example of a very vague kind of concept that, in effect, we have delegated to the courts to tell us what it means. What is privacy? There are two things that the court has to do in deciding a privacy issue: one, what is privacy? and, two, do you balance, and to what extent do you balance, that against some other values?

HICKE: Public good?

MCALISTER: Yes, because the courts have always said that even the highest priority constitutional principles are not absolute. Even freedom of speech, even freedom of religion, that are probably the closest to being absolute are still balanced against the need for national security and law and order and those kinds of things. So I don't know whether putting it in the constitution was a good thing or not. But we did it and, as I recall, a great majority of us voted for it, and the courts will tell us as the years go by what it means.

HICKE: What did the act actually say?

MCALISTER: It says very little except that there's a right of privacy in the constitution. We can go out here and look at it; I've got the constitution right around the corner. There's not much more than that: the right of privacy. It doesn't say you've got a right of privacy to do things in your own bedroom or anything specific like that. It just says you've got a right of privacy.

HICKE: You said you weren't sure how this issue came up, whether it came from the commission or . . .

MCALISTER: I can't remember now whether it was a commission-supported proposal or whether it was some other group or groups that proposed it. I do remember that other groups got behind it

and there was no organized opposition to it; that I do remember.

HICKE: Who was behind it? What groups?

MCALISTER: It would probably have included the American Civil Liberties Union. I imagine it included the League of Women Voters, because I know they always took an active interest in constitutional amendments. At least those two groups, I think. Those groups wouldn't necessarily be of enormous power if there's some opposition to what they're doing. But if there's no opposition, a group with just a modest amount of power will have a lot of power.

[End Tape 2, Side A]

[Begin Tape 2, Side B]

HICKE: Have we covered the Constitutional Amendments Committee?

MCALISTER: I think so. You must remember, I served on it four years, but that was 1971 to 1974. We're now sitting here on, what? April 7, 1988.

HICKE: You did a lot of things besides that.

MCALISTER: I'm well over thirteen years removed from the end of that committee. You know, each year has its set of issues. Sometimes the things that seem so important, let's say, in 1971, don't seem very important in 1988. I mean, you can't even remember them.

Labor Committee 1971-74; 1977-83

HICKE: Well, maybe the Labor Committee. We could talk about that a little bit.

MCALISTER: It is one of the most fascinating committees to serve on I can imagine. A lot of people don't know that. In fact, there are a lot of people who don't want to serve on it. But I just found it fascinating, because it raised the

MCALISTER: constant clash of interest and opinion between, typically, management and labor, but even more than that. I mean, the clashes between different segments of all these groups, that's just so fascinating. We had, for instance, the agricultural labor issues in that committee, and the clashes between the Farm Workers Union and the farmers are just incredible. You could write books and books about them. However you come down on the issues, it's just such intense human interest.

And the legal issues are really, really interesting. Things like the access rule, which is the question, "Does a union organizer have a right to come onto the property of the farmer to approach the workers to interest them in the union?" Things like the "make-whole" rule, which is a rule under the Ag[ricultural] Labor Relations Act that says that the Ag. Labor Relations Board, if it finds the employer to be in violation of a law, if he's done an unfair labor practice, the board can order the employer to make the employees whole, even to the extent of giving a retroactive wage boost: deciding what the wages should have been set at in the collective bargaining process and ordering it retroactively.

Things like boycotts. Should the unions have the right to engage, not just in a boycott of the employer and his products, but a secondary boycott, a boycott of other people? Which is where the controversy normally arose. The boycotts are directed at people like Safeway [Stores] or some store that's using the grower's products. That's illegal under federal law, but it's not illegal under State of California law. Those are just a few examples.

Outside of the Ag. Labor area, things like the whole modern area of the role of the computer on the work site, particularly the word processor computers, where people sit

all day long, or much of the day, before the word processor, whatever they're doing with it. Typically, it's secretaries sitting there typing things, but it could be more sophisticated than that, you know; it could be doing . . . . [Pause]

HICKE: Data processing.

MCALISTER: Yes, all kinds of data processing. There is a body of opinion from the labor union side and employee side that says that there is a kind of health hazard in connection with this, that it's hard on your eyes and may even be radioactive, may even effect pregnant women. There are all kinds of things that they suggest, and so we had really interesting legislative hearings and bills on this subject.

Does the telephone company have the right to listen in on the conversations between the telephone operator and the people that she's serving? Not with the object of writing some expose on some lurid thing, but to make sure that the operator is serving the public properly.

HICKE: Checking on the operators.

MCALISTER: Checking on the operators, that's right. I'll tell you, the Communication Workers Union absolutely goes through the wall on this. They think it's terrible; their members think it's terrible. At least, they say their members think it's terrible. They either want it prohibited or regulated or restricted, because they don't like to be listened in on. The employer, the telephone company, says, "Well, we're not doing this just for ourselves. We've got all these millions of consumers out there, and we get complaints sometimes about operators who aren't doing what's right. We want to be able not necessarily to fire them the first time they do something wrong, but correct them, help them." That's been productive of at least half a dozen bills in different

sessions. Probably more than that, but half a dozen that were seriously considered addressing that subject matter.

HICKE: Just on that one area?

MCALISTER: Just that one thing. Now, it probably has more really controversial, exciting issues than any other committee in the legislature, with the possible exception of the Criminal Justice Committee in the assembly or the Judiciary in the senate, where they have the criminal law questions. But I'm not sure. Bill for bill, there's as much controversy there as you find anywhere, at least if you find all these labor law questions interesting. And they affect a lot of different people in a lot of different aspects of their lives.

I also found it interesting, because as I developed and as my own thinking evolved, I became—I guess you'd call it a swing vote. I became kind of an eclectic independent. I mean, I was the only person on that committee, for most of my time, whose vote wasn't rather predictable. I could sit there and I knew exactly how everybody was going to vote but me. I guess I knew how I was going to vote, but some of the other people didn't; and I didn't always until I did it, either.

Those are the kinds of issues that tend to really separate people into pro-labor and pro-employer and tend very much to separate the parties. Especially they separate the two political parties as to the kinds of people that tend to serve on that committee. They don't generally put anybody who's somewhere in the middle on these issues on that committee. That committee is usually composed of extreme pro-labor and extreme anti-labor members.

HICKE: Do they pick three and three, try to balance it?

MCALISTER: If it's a Democratically controlled legislature, the speaker will make sure that it has a pro-labor majority.

MCALISTER: The Republicans tend to be on the other side almost without exception. They don't particularly like to serve on the committee, I might say. I found the Republicans usually were not happy about serving on the committee and regarded it as a kind of disagreeable duty. They weren't going to make labor happy by the kinds of votes they knew they were going to have to cast; they were going to cast them, but they were unhappy about it. Probably it was only a relatively few Democrats who wanted to serve on it, those who were from very strong labor districts who thought it was a good thing in their district to do. Most of the others probably didn't want to serve on it.

I was kind of an anomaly, serving on that committee. But I liked it and I felt, really, that the kind of issues it had weren't really subject to that kind of knee-jerk thinking in the resolution of all the issues. They're really profound issues and they shouldn't be decided on the basis that your mind's made up. If you've decided you're going to be a 99 percent pro-labor or 99 percent pro-employer, or that you're a Democrat or you're a Republican and that's the way your party's supposed to be, that's dumb. It's not the way all Democrats or all Republicans are, as a matter of fact, but it's the way the legislative system seems to work.

So I kind of enjoyed being a swing vote. I frequently didn't have the true swing vote, in the sense that the result depended on which way I voted. To succeed, I usually needed one other Democrat with me plus the Republicans, if I was going to go that way. If I was going to go with the Democrats, that was usually simple; they had a majority anyway. But I had an opportunity to have some influence there and certainly had a good education.

HICKE: Who were some of the other people on the committee that you worked with?

MCALISTER: We had a number of chairmen in my tenure, but the first chairman that we had when I served on it was [Assemblyman] David Roberti, who's now senate president pro tem. He was a good chairman, able legislator. Then Leo McCarthy succeeded him. He later became speaker and now he's lieutenant governor, so it proved to have been a nice committee for some people. Then, succeeding Leo McCarthy, [Assemblyman William] Bill Lockyer, who's now a senator, I think was the next chairman. Then an assemblyman by the name of [Chester] Chet Wray, from Orange County, who's not in the legislature anymore. Then Assemblyman [Richard] Dick Floyd, from the Gardena area of Los Angeles, somewhere down in that southwestern part of Los Angeles County. He just left that committee, and [Assemblyman Thomas] Tom Hayden is now the new chairman. I never served with Hayden on that committee, but I served with all the others.

HICKE: Do you recall any particular anecdotes about big discussions or heated discussions? Anything go through without any discussion?

MCALISTER: Oh, there are things go through without discussion. In that committee, most of the things that would go through without discussion would be, obviously, noncontroversial matters, of which there would be some. But the bigger things aren't likely to go through without discussion unless the lobbyists concluded that the committee was a lost cause and they might decide to lay in wait to try to kill a bill somewhere else. Some of the employer representatives eventually reached that point with that committee. But that wouldn't usually prevent discussion, because there would be members that would kind of take up the cause, if they thought that it was a good cause.

United Farm Workers Union

MCALISTER: I suppose one of the more vivid memories I'll have of that committee are the many visitations we had from farm workers union [United Farm Workers] people. They liked to bring their members up and they would carry placards. I guess it was a character-building exercise for them to participate in the system, bring their placards, and urge us to pass laws favoring the farm worker.

I'll remember for a long time an episode that I had, not in the committee as such, but in my district office in either late 1971 or early 1972, where I had a group of farm worker people and their supporters, mostly their supporters, come to see me and urge me to vote against a bill. This was before we passed the Agricultural Labor Relations Act.<sup>1</sup> For several years it was a big issue whether we would pass a state labor relations act related to agriculture. There was a bill that Senator [John] Harmer had that would have adopted a labor relations act, but they didn't like it; they thought it was slanted toward the employer and they didn't like it. And they came and asked me to vote against it.

I said I thought I was going to vote against it, and they said, "Well, that's nice. But another thing: we think that Senator Harmer may be fixing to amend this bill. Now, we don't want you to support the amendment, so we don't want you to support the bill after it's amended." I said, "Well, that's entirely possible, but, of course, I'll want

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1. Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, 1975, Cal. Stats. ch. 1, p. 4013, Sec. 2.

MCALISTER: to see the amendments before I know whether I'm going to vote for them or against them." They said, "No, we just want your commitment you're going to vote against it, regardless of what's in the amendments. Senator Harmer's our enemy. The bill's a bad bill. Are you for us or against us?"

I thought that was an unduly dogmatic position to take, where you're asked to commit yourself to be against something before you knew what it was you were against. I said I wouldn't do that for my mother or my wife, much less them. I have a feeling that our relationship kind of was on a deteriorating pathway from that point on, although I was friendly to them early in my career and thought I was at that time. But as time went along, I found more reasons that I didn't feel that close to them. I think that their movement served some good in that they probably have upgraded the conditions and wages of farm workers in the state, and that's been good. They also probably served something of a social purpose in that they have taken people who were really kind of on the outside of our society looking in and helped them to organize and made them feel like they were somebody. There's certainly some good in that.

But in comparison to all the effort and all the money that was spent on their behalf by organized labor, they've accomplished very little. And it's a bit of a tragedy, in a way. For what good they have accomplished, it is so little in comparison to the overall needs and expectations. Even today, very few farm workers belong to the union or any union. I think they have a few thousand members. They put the fear into the growers. The growers, by and large, now pay wages that are high enough so that their workers aren't all that crazy about unionizing, because they don't like to

MCALISTER: deal with them. So organized labor in various capacities can say they did that.

But they weren't a very efficient union. They didn't know how to deal with people; they didn't know how to deal with even their friends, much less their enemies. I mean, I started out as a friend, and as time went by, the relationship distinctly cooled, because you don't treat your friends that way. I mean, you don't treat anybody that way; it's just intolerable.

But anyway, that was a great committee, really was. I found it truly exciting. I like the decision-making process; I like it. I think there are a lot of legislators who don't know anything about it because they don't really ever make a decision; I mean, the decision's foregone. But if you really make the decisions, there's no better place to be to develop your mental acuity and character and understanding and perspective. Because in one week in the legislature, particularly in the busy times, you may be called upon to make as many difficult decisions as the average person will make in a decade in his or her life. While everybody's got their personal problems and their personal life and they may have some difficult choices to make, most people aren't called upon to make thirty or forty excruciating decisions that affect the public interest in their whole lifetime, much less one week, which you can easily be called upon to make in a heavy-schedule, pressure-packed week in the legislature. Or, I presume, in congress or any such place. I think that's fun.

Particularly if you've been there long enough, after a while it loses some of its excitement, because you've done it for a long time and you know the players, you know the issues, you know what the result's going to be. Particularly if your side isn't winning on that occasion,

why, you get a little bit jaded. But I don't think it ever completely loses its attraction.

HICKE: You've been going almost two hours now. Do you suppose we can put the next questions off for another session?

MCALISTER: Sure.

[End Tape 2, Side B]

[Session 2, April 28, 1988]

[Begin Tape 3, Side A]

Ways and Means Committee 1975-76

HICKE: I read in an article about you that you sometimes, maybe even often, worked an eighteen-hour day when you were in the legislature. And as I've been looking over your legislative activities, I can well believe that that's true.

MCALISTER: Well, I don't know; the eighteen-hour day is probably a little exaggeration. There probably were such days, certainly numerous ten- to twelve- and fourteen-hour days. The thing is that in a political kind of life, it's difficult to say when your day begins, and it's almost impossible to say when it stops; whereas, I think most jobs, it's certainly clear when it begins, and it's probably just as clear when it stops. I've always been the kind of person that tends to take his work home with him, or with him wherever he goes. My wife would tell you that. I guess if you enjoy what you're doing, you tend to do that, which I did.

There's probably no end to the things that you can do and think about and prepare for and work on in public life, at least if you're oriented to studying the problems. I suppose if your orientation were fundamentally a more political orientation, you could still spend a lot of time on it. There's no end of things to be done.

- HICKE: To make a beginning here. . . . Well, we've already made a little beginning. Actually, I wanted to go back to one thing you said. As a member of the Judiciary Committee, you served several interrupted periods. You were on it from '71 to '74, and then '77, and then '79 until '86, according to my records.
- MCALISTER: Yes, I think that's right.
- HICKE: Why were those periods interrupted?
- MCALISTER: Well, let's see. The first interruption, I believe was in seventy . . .
- HICKE: Seventy-four I have. Seventy-one to seventy-four.
- MCALISTER: Well, '71 to '74, and then what was the next period of time?
- HICKE: Then the next period was '77, just that year.
- MCALISTER: I think if we took off '75 and '76, I think the reason for that. . . . Okay, the reason for '75 and '76 was that I was serving on the Ways and Means Committee during those two years. And between Ways and Means and the Finance and Insurance Committee and the Labor Committee, there was enough to do. I think that was the reason. Briefly in '75, I was still on Education Committee, but we dropped that in March of '75. But I think the reason I was off in '75 and '76 was it was just more than enough for one person to be doing, with all my other committees. I only stayed with Ways and Means for two years. The speaker decided that he didn't want a committee chairman to be also serving on Ways and Means Committee after that.
- HICKE: You mean because you were chairman of Finance and Insurance?
- MCALISTER: . . . of Finance and Insurance Committee, and he took the position that chairmen had more than enough to do without also serving on Ways and Means. There may have also been some political consideration there, too. Possibly the

speaker thought that was giving too much power to people who already had a good deal of power. However one might look at it. But I think that was the reason I wasn't on Judiciary for those two years. Then when I left Ways and Means, I guess I came back on Judiciary in '77.

In '78, I think I left. . . . As I recall, I believe the speaker removed me because I was thinking of running for attorney general and he thought that maybe I would be too busy. I ended up not running for attorney general. But I think that was the reason that year. And then I guess I was on it consistently since then, as I recall.

HICKE: Yes, '79 to '86.

MCALISTER: Yes, '79 to '86, yes.

HICKE: So you would say from the time of '75, '76 on, it was the speaker's policy not to have any committee chairs on . . .

MCALISTER: That was Leo McCarthy's policy. I can't remember for sure if he adhered to that religiously until the end of his tenure as speaker, which started about July of '74 and ended in the end of November of 1980. But I think he was pretty consistent with that. I don't know that Speaker [Willie] Brown exactly followed that policy; in fact, I don't think he did.

HICKE: Do you know why McCarthy decided that?

MCALISTER: As I said, there were only two reasons, really, that you could have had. One was the expressed reason, for which there is some serious argument: that chairmen are busy enough with their committees, and to have them serve on Ways and Means would overload them. That would probably be a good explanation for chairmen of really major committees. I don't know if that's such a good explanation for a chairman of some small committee. And it would also depend on what their other responsibilities were, and how many committees they served on.

Ways and Means, of course, is very much of a year-round, very busy activity. The first few months of each year they're working very busily on the budget; and then about the time that they finish most of the drudgery work on the budget, then they start getting a stream of bills that they have to review that involve some fiscal or monetary considerations. So there are few times during the year that they're not busy.

Then the other reason I think was that he may well have thought that that was giving too much power to people who already had a good deal of power. Speakers sometimes worry about giving too much power to people; they worry about them creating cliques and rival power centers, even if they're friends and allies. That could have been.

Also, I think there might be kind of a third consideration: that you want to spread the responsibilities around. You'd have a better opportunity to do that if you didn't have chairmen serving on the Ways and Means Committee. I don't think Speaker Brown followed that policy, at least not altogether.

#### Budget

HICKE: Since we're talking about Ways and Means, can you tell me what happened during the two years I think you said you were on that committee?

MCALISTER: It was a very busy time. It may have been the busiest two years of my life legislatively, because I was quite active in a lot of things. Ways and Means involves working on the budget and serving on subcommittees in which you work on the budget. My first year on Ways and Means, in '75, I was, I believe, on the Health and Welfare Subcommittee. Then in '76, I was on the Education Subcommittee. Those were—at least at that time and I suppose still are—the two biggest

MCALISTER: subcommittees because they spend the most money. Typically five people would serve on a subcommittee, at least at that time, and review the budget for various areas of responsibility under their jurisdiction. They basically make the decisions on the budget. They make recommendations to the full committee, and the full committee almost without exception accepts their recommendations. So you've given to five people, actually three out of five people, enormous responsibility.

The Senate Finance Committee has a similar situation. They're a smaller committee, of course, since they work in the senate where there's only forty members. But they have a similar type arrangement. Of course, the budget recommendations go from the subcommittees to the full committee, and the full committee generally ratifies what the subcommittee recommends. Then it goes from the full committee to the floor of each house where they vote on it. Then it ends up in a conference committee to work out the differences between the two houses' versions of the budget.

So I guess about the most important influences in the budget really are threefold: of course, the governor, who proposes the budget; the subcommittees that make the recommendations that basically are adopted by the respective houses; and then the conference committee, which works out the difference between the two houses; then of course, the governor again who has the final word. He gets the first word, and he gets the final word. Of course, he then gets to item veto anything he doesn't like. Although he can't restore items; if the legislature were to strike something or reduce it, he can't restore it or increase it. He can only reduce it.

Those are very interesting subcommittees. The Health and Welfare Subcommittee, of course, deals with the whole

gamut of welfare and Medi-Cal, the many billions of dollars that the state spends every year on health programs, Medi-Cal and the various welfare programs that we have, AFDC [Aid to Families and Dependent Children], and all the many other programs. Of course, education was an important thing to me because of my schoolteacher and school-board background. We dealt with elementary, high school, junior college, state college, university. We dealt with the capital budget of the state university and state colleges. If they wanted money for a new gym or a new library, or at least something very big, it was something that we were hearing about in that subcommittee. It's a very busy committee. I guess it had twenty-one members at that time. I think they have twenty-three now.

Then the other aspect of the committee's work is reviewing bills—specific bills, not just the budget, but specific bills. Probably a thousand bills a year or more have to pass through the Ways and Means Committee, because they're bills that contain appropriations or in some manner, according to the rules of the house, have to go to the committee because of the financial impact that those bills have. So the Ways and Means Committee actually hears more bills than any other single committee, although some of the bills don't involve much money. But they nonetheless have to be heard by the committee because of the rules.

HICKE: Well, at least in the aspects of education, you were dealing with matters not only on the Ways and Means Subcommittee, but also on the committee that handled the legislation.

MCALISTER: Yes, I was on both committees at the same time only for a very short period of time. I got off of the Education Committee about March of '75. I'd been on it for four

years, and I reached the conclusion that I was doing too much, that I shouldn't continue in the Education Committee.

Actually, it was the second year of my Ways and Means experience that I was on the subcommittee, so I never was on the two at the same time, although I was on Ways and Means for a very, very brief period of overlap. Actually it's a little redundant because you do see many of the same issues. Obviously you see with a little different perspective, because the Education Committee, while concerned about money, is more concerned about policy; and the Ways and Means Committee, while concerned about policy, is more concerned about money—at least in theory. Although sometimes that's only theory, because there's nothing in the rules that says that the Ways and Means Committee or the Senate Finance Committee people can't vote based on their views on policy. But at least in theory, and sometimes in practice, their main concern is money, not policy.

HICKE: What stands out in your mind as to actual matters that you handled on the Ways and Means Committee?

MCALISTER: Well, it's been a long time since I was on that committee. I guess one of the things that I remember, of course, during the period of time that I was on it, California was passing through a recession, as was the nation at large. Late '74 through '75, and I guess into early '76, there was a fairly serious economic recession. We had to follow what we felt were pretty tight fiscal policies to keep our budget balanced. The multibillion-dollar surpluses that later developed in this state were certainly not present at that time. We were just really kind of squeaking by.

HICKE: You made a definite attempt, or you did in fact balance the budget?

MCALISTER: Oh, yes. Of course, we always have to. At least we thought we had a legal obligation to do so. There are some who debate that, but as a matter of practice, California has always felt that it had a legal obligation to keep its budget balanced. It has been so except in one year. One year under Governor Deukmejian, in the period of '80 through '82, when we had an even more serious recession. There was one year there where they did not have a balanced budget, where they did a kind of deficit financing. But they did it because they thought the next year they would have enough money to balance it. So they kind of balanced their budget over two years. But that was something unprecedented up till that time. Till that time, we always had a balanced budget on a year-by-year basis.

We also had serious unemployment at that time, my guess would be more serious in the nation than it was in California; but it was still serious for what we thought. As I recall, it was somewhere around 9 or 10 percent unemployment, which at that time, at least, we thought was high.

HICKE: Are we sort of finished with that, or did you have something else to say?

MCALISTER: Sure; no.

Tax Revolt: the Watson Initiatives ('68 and '72);  
Proposition 13 (1978) and its Aftermath

HICKE: Ways and Means deals with spending money, but about the same time in the seventies, there was a problem with income, too, and that was the tax revolt. Were you involved in that?

MCALISTER: To a degree, I guess, all legislators were involved. In some respects they were involved more as targets than as participants. In the years following the '74 to '75 to '76

MCALISTER: recession, of course, the economy saw a gradual rise in inflation. That inflation had a number of impacts. One of its impacts was that it created enormous surpluses at the state level, at least in this state. In a very short period of time, as a matter of fact, actually, from '76 into '78, we developed I guess perhaps something like a \$5 billion surplus.

The other thing that happened as a result of that inflation was the escalating assessed valuation of homes that skyrocketed about that time. That meant the property taxes went up enormously. And that led to the tax revolt and led to the Jarvis-Gann initiative, Prop. 13 of June of 1978,<sup>1</sup> that drastically reduced, at least at that time, property taxes and forced a considerable revolution in state government finance as a result.

The legislature had been unable to meet the challenge that these inflationary pressures imposed on us so as to head off anything like Prop. 13, basically because there were simply too many conflicting interests and the legislators were of too many divided minds about what to do about the surplus and the property tax pressures. Some wanted to spend all the money, and some didn't. Then in addition, there were different views about how to solve the property tax problem. Some wanted to do something more or less like Prop. 13, others had different approaches to it. There simply was no way the legislature could get together.

Virtually anything that changes our fiscal structure, our tax structure, requires a two-thirds vote in each

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1. California Constitution, Article XIII A.

house. We couldn't get that. So the legislature proved incapable of meeting the challenge. I guess one has to say that probably our legislature is fundamentally incapable of meeting really powerful structural challenges. It can do a lot of little things, and it can do a lot of medium-sized things, and it can more or less keep the government going; but these great crises seem to be beyond, in most cases, legislative solution.

Fortunately—I think fortunately because there would really have been a terrible political crisis otherwise—we have the initiative process, to which the people could go. While the solution was far from perfect, there was a need to let off the steam. I mean, the political system, I think, definitely needed something like Prop. 13 at that time, although it has its negative aspects. But if the legislature couldn't solve it, there had to be some solution to it.

HICKE: Why is it that the legislature can't solve these major problems?

MCALISTER: Well, maybe democracy is almost built that way. Particularly a state like California: there are too many competing interest groups, there are too many differences of opinion among the people. And the legislature is accustomed to trying to resolve issues by consensus, not by confrontation and conflict. There's no consensus solution for something like the property tax revolt in '78.

Some of the groups that the legislature relies on had definite conflicts of interest with probably the majority of people in the state. Like teachers organizations, for instance. Teachers organizations were probably the greatest opponents to Prop. 13 that there was, because they saw that it was going to greatly reduce property tax revenues, and they were used to getting much of their money from property

MCALISTER: taxes. They didn't know where they were going to get their money if Prop. 13 passed. So they just thought it was the most horrible thing in the world.

People in politics, probably including virtually all Democrats and some Republicans, who had good relationships with the teachers organizations as a political matter and as a matter of the merits of the issues, who did believe in education and wanted to see education well funded, were in a terrible bind on that kind of an issue, just a terrible bind. That's just one example, but it's one that stands out in my mind.

There really was no good political solution to that. The legislature came up with another solution that at the time was called Proposition 8 that would have been less traumatic and had less of a shock effect, but in the long run might have solved the problem. Some people thought it was even better. But the legislature acted too late, didn't act on that until Prop. 13 had qualified. For people to understand it, they had to also understand legislation that we passed separately, and that other legislation wasn't even on the ballot. You could hardly understand Prop. 8 by just reading what the ballot initiative said about it, because you had to read the other statutory language too. So that was a loser from the beginning. It may or may not have been too little, but it was definitely too late.

So you had Prop. 13 pass. The result of that, of course, was a big fiscal revolution in the state in which we initially took our \$5 billion or so surplus and redistributed it over a period of several years to local government and the schools, cushioning the impact of the loss of property tax revenues. So the impact of Prop. 13, at least initially, wasn't as great at the bottom line as

it might have been. Had we had no surplus, it would have really been quite a shock.

This multibillion-dollar surplus smoothed the fiscal transition for several years, and I guess it helped us get through the '80-'82 recession. Of course, we finally ran out and in fact even had that one-year deficit, which we made up the next year. But it got us through that period of time, and we restructured our financial system.

Now, of course, while the property tax is still there, it probably doesn't raise as much of revenues as it would have had there been no Prop. 13, but it's redistributed differently. Virtually all school money now comes from the state. The county still gets a substantial amount of property tax revenues. But virtually all school revenue is distributed to them from the state now.

In some respects, I guess it depends on what you want to emphasize. It probably has led to somewhat more equalization in terms of school finance. It's also led, I suppose, to the virtual demise of anything like local control in education—a nice concept that was probably close to dead, anyway. There wasn't much local control left. But whatever local control was left, I think, was knocked on the head by Prop. 13.

HICKE: Is that a good thing or a bad thing?

MCALISTER: It was probably an inevitable thing. I would like to have seen more local control. I was a school board member for five-and-a-half years, and I would like to think that local school officials, board members, administrators, parents, and everybody who wants to participate has more of a say and more control and their participation means more. So in that sense, it was not a good thing.

But inasmuch as our financial system was such as to create a conflict between people's pocketbooks and local

control, it was probably almost inevitable that sooner or later there was going to be a revolt. People didn't really focus on the local control aspect when they did their revolt. All that they knew for sure was that they were paying maybe three thousand dollars a year property tax, whereas a few years before they had been paying seven or eight hundred dollars. It was going up too fast, and you couldn't blame them for being astounded.

There are some long-term problems with Prop. 13 and, again, the legislature may not be the group that can work them out. The essential freeze on assessed valuation that came about as a result of Prop. 13, which freeze is lifted only when the property is transferred, certainly gives advantage to people who never move.

HICKE: I've noticed that.

MCALISTER: Yes. People who do move pay much more taxes. There's very little to be said for that. The only thing you could have possibly said for it was that it was somewhat of a subsidy for the aged who don't want to move anyway and are going to stay in their same home. I don't know what that does to the aged on the other hand who decide that they have too big a house and they don't want to live in that house anymore. As I recall, we passed legislation trying to cushion that somewhat.

HICKE: I think you can move within the county.

MCALISTER: Yes, we did that only recently. I think in my last term there, we passed legislation that allowed you to move in the county and transfer your old valuation to your new house. But you couldn't move to another county. So there's not a lot to be said for the idea that your tax is based on whether you've moved since 1978. But we're stuck with that right now, and the only way to cure that would be costly.

If you're going to freeze everybody at some level, then you're going to have to find the money that's going to cost. And every year that you go by without changing it, a change becomes more costly. It's somewhat of a conflict, obviously, between those who have not moved at least not recently, and those who have. So I don't know when that problem is going to be solved. Someday probably, but I don't know when.

HICKE: As I'm sure you were aware, there were attempts in the seventies to do something about the property tax, and you've offered a fairly good explanation of why they didn't work. But were you involved in any of them, such as the 1972 Prop. 14, which was called Watson II?

MCALISTER: I'm sure that I was against Watson II. I think virtually every legislator was against the various Watson initiatives. As I recall, Watson II, and I assume there was a Watson I . . .

HICKE: There was, but it was in '68.

MCALISTER: Okay. As I recall, they went down by about at least 60 percent of the vote, maybe more. They were premature, of course. They were ahead of their time. Folks who want to do those things obviously had their finger on a problem, but were premature.

HICKE: The legislature then responded somewhat with SB 90, which increased homeowner's exemption and gave some voters tax relief.

MCALISTER: The homeowner's exemption never was big enough, really, to quell any taxpayers' revolt. But there wasn't a taxpayers' revolt exactly in 1972. Some were ready for the revolt, but most of them weren't. You didn't have this escalating inflation. It took inflation to really set off the taxpayers' revolt. And the inflation did not come until

. . . . Well, it started to come in the mid-seventies, and then it really started to race the latter part of the seventies. We saw in this state home values doubling and tripling, in some cases more, depending upon where you were.

[End Tape 3, Side A]

[Begin Tape 3, Side B]

HICKE: The surplus just added fuel to that fire, I guess.

MCALISTER: Yes, the surplus did add fuel to it. Normally, at least up till that time, I think most people in government hadn't thought that a surplus was a sin, but it did become a sin in the eyes of many people when they saw that they were continually being taxed more and more for their homes. It was the biggest surplus, I guess, that any state government had ever had in the history of the world. I suppose something would have had to have been done about that. You do need a surplus, but that was an excessive surplus. We were glad we had it, I guess, when we had to clean up as a result of Prop. 13. But something was going to happen. It was not a balanced situation; things were out of whack, and something was going to happen to bring it back into the middle somewhere.

#### Tough Problems with No Political Solutions

HICKE: What are the broad implications for this situation that we've described, and you've said there was virtually no political solution?

MCALISTER: The broad implications, I guess, if you want broad implications beyond fiscal consequences, are that there are a lot of issues for which democratic government, especially

legislative government, is really not very well designed to come up with solutions.

One of the things I do now is to teach as an adjunct professor at McGeorge; one of my courses is legislation. Legislation is kind of a cross between political science and law. A lot of the scholars who study this area and who write on it pretty well say as much: that the legislative system frequently bogs down where you have severe conflict between contending interest groups, or groups within society, that have conflicts of interest.

For serious conflicts, all the different sides have friends in the legislature, and due to the checks and balances of the legislative system, really ambitious legislation to solve the problem can't pass. It might pass one committee, but it will die in another. It might pass one house, but it will die in the other house. It might pass the legislature, but the governor will veto it. The governor might like it, but it may never be given to him. There are all these checks and balances.

Most bills of any consequence have to clear at least four committees, maybe a conference committee to boot, two houses, and a governor's signature, and if they're fiscal in nature, probably need a two-thirds vote, which is kind of a peculiarity of this state that many states don't have. But even if you didn't have that, it would be tough. The really tough problems frequently aren't solved, at least unless and until the thing gets so bad that there's a virtual political revolution. Now I don't know what they do in the states that don't have the initiative process.

HICKE: That was going to be my next question.

MCALISTER: About half the states have the initiative process, at least half, and I think about half don't. But in this state, of course, it has proven to be a safety valve in a number of

MCALISTER: areas. If you don't have that, of course, why then people have the option of kicking out political leaders, installing new ones. Tough to do; many constituencies are not that competitive, even without gerrymandering. If you add the element of gerrymandering in it, then even fewer of them are competitive.

I may paint a little too black a picture. That's not to say that the legislative bodies cannot solve some serious problems. The property tax problem of the middle- and late-seventies, though, was just too much for our system. It was one of the classic, really big examples of something that the system couldn't by itself solve without the initiative.

The scholars who study legislation say that the legislators are the most comfortable in areas where they can solve problems by consensus, where they don't have to anger either large groups or powerful groups; they're really happy when they can do things by consensus. And a lot of things are done by consensus. But it's these nonconsensus issues that they agonize over and gnash their teeth and make lots of pronouncements about; and no doubt, some of the legislators are making good-faith attempts to solve them, but institutionally they just find themselves unable to do so.

Another example of this at the national level, obviously, would be the federal budget deficit. Now there are differences as to whether the deficit is an important issue or not. But a lot of people think it is, and act like it is—or at least say it is. But clearly they haven't been able to solve that, at least not well. In spite of all the ink that's been written and all the political campaigns in which it's been an ostensible issue, the deficit goes on.

There are those economists who say it's not very important and that we shouldn't worry about it. But there are a lot of politicians who think it's important or say they think it's important, but still haven't been able to solve it. Of course, there's no initiative at the federal level. I don't know if there were whether there would have been a Prop. 13 or not at the federal level. I'm not sure; it's a much more complex thing at the national level, and I'm not sure that you could have such a thing. But that's just one example that may be the closest I could think of at the national level. And if the deficit ever ends, it will probably be more a consequence of our economy growing strong enough that we work our way out of it. But it could take a long time.

#### VI. FINANCE AND INSURANCE COMMITTEE 1974-86

##### Interstate Banking

- HICKE: That was very helpful, that discussion. Now I think I would like to go to your term as chairman of the Finance and Insurance Committee. Where to start? It covers from 1975 to '86.
- MCALISTER: I actually covered from July of '74 to '86, although that was just the tail end of '74. Of course, most of the legislative committee work was done by that time in '74.
- HICKE: Maybe we could start with some of the overall. . . . Well, let's just start here: banks and trust companies you dealt with.
- MCALISTER: Well, the Finance and Insurance Committee had jurisdiction over all the legislation affecting all of your financial institutions, including banks, and savings and loans, and what they call thrift and loans—every conceivable kind of lender, everybody who takes deposits or loans money.

HICKE: There's even pawnbrokers.

MCALISTER: Pawnbrokers, yes. We had legislation occasionally affecting pawnbrokers. If you loan money or take deposits, why, any legislation affecting you would come through the Finance and Insurance Committee. For the most part those are not issues that probably excite the public. Once in a while you get an issue that does. They're interesting issues; they're interesting politically. You see these different groups sometimes fighting it out with one another. You have conflicts of interest between banks and savings and loans sometimes.

HICKE: That's over the bank holding companies?

MCALISTER: You had a conflict in the last session that I was there between the banks and savings and loans over interstate banking. Up until that time, the entire California financial industry had opposed interstate banking. But the time came when the banking association decided that they were going to agree to a bill that would allow for interstate banking. Interstate banking would allow banks that are chartered and headquartered elsewhere than in California to come into California, have branches, and compete just as if they were a California bank.

HICKE: Why did they decide that this was a good thing?

MCALISTER: Well, they had resisted it for a long time. They reached the point, I think, where they probably weren't so crazy about it, but felt that it was almost inevitable: that it was going to come because of a number of economic and legal developments at the federal level, and that they might as well negotiate something that they could live with.

The bill we passed didn't say we were going to have interstate banking tomorrow. But it phased it in. It said we'd allow these other banks to come into California by, I believe it's 1991. We gave them several years' lead time.

So the state banks would have several years to get ready for it, but when that time comes, Citibank [Corp.] and Chase Manhattan [Bank], and anybody else that wants to can come to California and open up their branches. The savings and loans, however, resisted that, and ended up in fact being the main opponents of interstate banking.

HICKE: What was their position?

MCALISTER: They were against it because they were fearful that these large New York banks—and perhaps other banks, but especially New York banks—would come in and compete too much with them for deposits. Deposits are very important to them.

The savings and loan industry as an industry is kind of sick. It's divided into segments: some that are in pretty good shape, some that are really insolvent and ought to be wiped out, and some that are struggling. But as an industry, it's kind of sick, and they didn't want to see more competition. Whereas the banks generally are in better shape, and for the most part felt that they would be able to survive additional competition. The savings and loans felt that they would have some difficulty facing additional competition. I think that's probably it in a nutshell.

The savings and loan people are politically pretty strong and don't lose too many battles. But in this case, they did lose that one. The legislation passed, and so in a few years, we'll have full-scale interstate banking.

HICKE: Why are the savings and loans politically strong?

MCALISTER: Probably because of a couple of reasons. One is that there are lots of them. You'll find savings and loans operating everywhere. They have served a real need for many years. The big need, of course, that they've served has been providing finance for people to buy and construct their homes. That's meant that their well-being has been

something that's been of concern to just about everybody in our society.

The other reason is a political reason. I guess they have always been a politically attuned industry. Their executives and members, especially their executives, have been politically active; they've given campaign contributions. They've been essentially nonpartisan, but probably there have been more Democrats among the savings and loan industry than in the banking industry at the top level, so that they've managed to have a good deal of influence in both political parties. I guess this combination of their political astuteness and their economic importance to just about everybody makes them important.

HICKE: As chairman of Finance and Insurance, what was your involvement?

MCALISTER: On that issue, I was for interstate banking. I was for interstate banking for some time. My involvement was to encourage the people who were the authors of the interstate banking legislation, Assemblyman [Charles] Calderon and Senator [Alan] Robbins. As I recall, it was Assemblyman Calderon's bill that eventually became law, although Senator Robbins may have ended up co-authoring his bill. Assemblyman Calderon was on my committee and was chairman of a subcommittee that we had called the Subcommittee on Interstate Banking.

Mr. Calderon took an interest in this issue and surprised all of us by being successful at it. I think most of us had felt that interstate banking was probably not going to succeed, at least not yet, because until that last year it had been opposed by the banks as well as the savings and loans, and it was hard to see how these out-of-state banks were going to prevail over in-state

banks. But somehow Calderon took the issue at a time when things were changing and was successful.

HICKE: How was he successful?

MCALISTER: Well, timeliness is so important in politics and legislation. As I said earlier, there were some things changing about that time. There was a good deal of interest in this issue at the federal level. There were those who thought that congress might enact legislation allowing for interstate banking, although they haven't quite done that.

There were court decisions that allowed what they call "nonbank banks" to operate anywhere in the country. The nonbank bank essentially brings you a form of interstate banking without any further legislation. My recollection is that congress, far from sponsoring that, in fact passed legislation to close off any further expansion of nonbank banks, at least for a period of time. But folks saw the court decisions that allowed the nonbank banks to go anywhere, and there was at least a lot of ferment, a lot of unrest, by scholars and others that said, "This is the time for us to start encouraging competition rather than cartels or in-state monopolies."

So the banks, I guess, felt that maybe things were going to start turning. Then I think perhaps some of the big banks may have reconsidered a little and thought, well, it might work to our advantage, too. That means we can go to other states. Sure, California is the best market probably in the world, but maybe some of us might want to go to Texas, at least when their economy improves; maybe some might want to go to Arizona, which of course, has a very fine economy; and maybe some might want to go to Florida. Anyway, they were of mixed minds on it.

It's still hard to say, though, exactly how he was so successful, because for a number of years it looked like it

was a good issue that didn't seem to be going anywhere. But your local economic interests can often be quite provincial and parochial. In this case, the banks and the savings and loans were parochial and provincial; they thought it served their own interests. That's not just a California phenomenon; it's a phenomenon that exists in virtually every state. Your financial interests in almost every state tended to oppose interstate banking, except maybe in New York, where there were these big New York banks that wanted to go elsewhere. There they were in New York, a state that wasn't growing but that had all these financial institutions. They wanted to expand, maybe into areas better than Brazil or Nigeria.

HICKE: I presume he had hearings and . . .

MCALISTER: Oh, yes. Well, it's something that the legislature had hearings on for several years. Then when Calderon decided he wanted to take an interest in this, why, he persuaded the speaker that it would be nice if we had a subcommittee on interstate banking. He was appointed the chairman of it. Yes, he had hearings and lots of negotiations.

I wouldn't doubt that my support may well have been crucial in a sense, in that if I hadn't supported it in committee, there's a distinct possibility it wouldn't have passed. I don't remember what the vote was in the full committee, but as I recall, it wasn't exactly a landslide. A respected chairman can often have a marginal influence that will be decisive. But it was essentially Calderon's performance, and he deserves more credit, I think, than anyone else.

HICKE: Was there a difference between northern and southern California banks, Los Angeles and San Francisco?

MCALISTER: I don't remember that there was. Of course, some of the big banks have branches in various parts of the state, like the Bank of America. While I guess it's headquartered in San Francisco, it has branches everywhere. I don't recall that distinction there.

Sometimes small banks have been reluctant to contemplate interstate banking because they've felt that they wouldn't be able to compete adequately with other very large banks. It's something I've never really been able to understand, because they're not entirely competing for the same market, and the big banks can never really compete with a well-run small bank in terms of customer service. So it's always seemed to me that the small banks' fear was kind of pointless.

Plus the fact that some people who have small banks eventually have some hopes that someday they're going to be bought out. If other state banks can come in here, a well-run small bank that can build itself up to medium size may well reach the point where it will end up being bought out. So I've never really understood the feelings of a lot of the small banks. But some of them have had very strong feelings about that. Most of them didn't have any desire to become interstate banks themselves, of course. They were serving a community or a few communities.

HICKE: Well, the financial institution holding companies—was that a big issue? It seems to me Bank of America. . . . Did that become a holding company?

MCALISTER: Well, I'm sure they had a holding company. I don't recall issues exactly focusing on holding companies per se.

Limitations on Selling Insurance

MCALISTER: Another issue that was important for our time, and it's still important, I guess, was a question of whether banks and savings and loans should be able to sell insurance. Most financial institutions think that they ought to be able to do just about anything they want to do, including selling insurance. Some of them do sell insurance, having been grandfathered under previous laws where they were able to do so. But then laws were passed that in effect prohibited further expansion into insurance selling by banks.

An assemblyman by the name of [Louis] Lou Papan, who represented the North San Mateo County area and who was an insurance agent, felt very strongly about this. He came along and got a bill passed to prevent banks from selling insurance. He couldn't prevent those that had already started to sell insurance from doing it, but there could be no more entry into the field. He originally wanted to prevent savings and loans from selling insurance, too, but that proved to be too much for him to bite off, too big to chew. So he backed off of attacking the savings and loans and just concentrated on the banks, and he was able to get that bill passed. The governor vetoed it, and his veto was overridden.

So we have a law that prohibits banks from selling insurance. I was one of the few who opposed it. There may well be some exceptions somewhere, but for the most part, I don't believe in artificial limitations on who can do what and who can sell what and where they can sell and when they can sell. It seems to me if the banks want to engage in selling insurance, they ought to be able to sell insurance. If the savings and loans want to sell insurance, they ought

MCALISTER: to be able to sell insurance. And for that matter, if they want to get into the securities business, it seems to me they ought to be able to do that.

But the insurance agents felt that banks were their competitors when they did that, and that banks would get too much business and all the insurance agents would go out of business. The insurance agents proved to be very strong politically and they were able to convince the legislature to pass the bill and override Governor Brown's veto.

The banks have a good deal of political influence, but where they're isolated without other allies, sometimes they can prove vulnerable. They don't have the same kinds of political sympathies that some economic groups in our society have. I mean, people tend to look at banks and think they're big financial institutions. They don't associate them with people so much as just money and power. Banks versus a bunch of independent insurance agents to a lot of legislators looked like the kind of an issue where the insurance agents were the good guys. I tended to see it more in terms of competition: that the people who were going to buy the insurance ought to be able to buy it where they wanted, and that they probably could buy it a little cheaper if there were more people competing. If they wanted to go to their independent agents, that would be fine.

That issue again has arisen, though, in the context of the conflicts that we're having over some of these initiatives on the ballot in 1988. They are competing initiatives. One of the initiatives, an initiative that's being proposed by the insurance industry, the no-fault initiative, has a provision in it that would affirm the current prohibition on banks selling insurance. It doesn't change the law, but it would affirm the current prohibition. I don't know that that really changes

anything, but nonetheless it would affirm it. The banks are supporting a competing initiative that's being sponsored by one of the consumer groups that would, among other things, repeal this prohibition on banks being in insurance.

Speaking of insurance agents, there was another interesting bill that the insurance agents were able to pass about two, maybe three years ago now, that prohibits insurance agents from giving any kind of rebates. They didn't like the idea that insurance agents should ever give rebates. So this law was passed prohibiting the giving of rebates, making it a bad thing to do. It's a violation of law, and if you gave rebates, I guess you could be disciplined or fined or lose your license or whatever.

HICKE: What was the rationalization for that?

MCALISTER: Oh, I guess they felt that if you could give rebates, you'd end up discriminating in favor of some people and against others; you wouldn't treat everybody alike, and maybe you'd give a favored customer a rebate and not give another person a rebate.

HICKE: It doesn't show up in the premium statistics which consumer groups look at?

MCALISTER: Well, the consumers were against this. I was against it, too. That was another of Mr. Papan's bills; it passed rather handily. It seemed to me it was another kind of protectionist scheme. We don't prohibit car dealers from giving rebates if that will sell their cars, do we?

Unfortunately, a lot of debates before a committee like Finance and Insurance Committee do involve issues that are rather protectionist for one group or another. Of course, they don't all win. I've named two examples here where they did, but they don't all win. It usually depends on how strong the opposition is, whether it pits some other group that has a good deal of legislative influence . . .

[End Tape 3, Side B]

[Begin Tape 4, Side A]

MCALISTER: Much legislation in an economic committee, a committee that deals with economic issues, does involve the protectionist urge on behalf of one group or another. Hopefully, the system doesn't always yield to that. It doesn't, of course. But sometimes it does, I suppose in large measure because the public at large isn't that knowledgeable or concerned or organized. Your main hope is that there will be some other economic interest group that will be affected, and that they'll get into the fray and use their power to stop it. Sometimes that happens. But if there is no such group, or if the group is a disfavored group—either permanently or temporarily disfavored for whatever reason—sometimes you'll have protectionist legislation.

#### Juice Committees

HICKE: Is that why it's called a juice committee?

MCALISTER: It's probably one reason it's called a juice committee. The main reason it's called a juice committee, of course, is that people who serve on that committee do have the opportunity to obtain substantial campaign contributions. They have that opportunity because the economic interests of the people who are affected by their decisions are important to them, naturally; so they try to remain on good terms, or at least on terms where they have access. You have, of course, not only the banks and the savings and loans and the insurance agents that we've discussed here in the last few minutes, you have all the insurance companies. I mean all the insurance companies.

The F & I Committee has jurisdiction over most insurance legislation. It shares that, to some degree, with

the Judiciary Committee; where tort liability issues are involved, the Judiciary Committee usually has the responsibility. But other than that, the insurance issues are going to be heard by the Finance and Insurance Committee. That involves liability and casualty companies; it involves life insurance companies.

By far the greatest amount of problems in the insurance industry are with the liability companies, not the life insurance companies. The life insurance companies have only a minimal number of political problems. They're well organized and well represented in Sacramento, and they watch what the legislature does carefully but they seldom have big problems. They seem to have organized themselves well over the years and have a minimum of problems with their customers or with suppliers or anybody else. They seem to have adjusted to their niche in life pretty well.

But the liability people, casualty people, continually have problems because liabilities are hard to predict over a period of time; the amount they're going to owe is hard to predict. Their industry is very volatile; they seem to go up and down in terms of their financial success; and they're continually battling with the trial lawyers. Sometimes, in some parts of the state, they have to charge a lot of money for their insurance, too. People aren't always happy about that. So they've got just one array of problems after another. I guess a significant amount of the F & I Committee's activity is devoted to trying to address those problems.

#### Insurance Rate Regulation

MCALISTER: We've had, of course, numerous debates about insurance rate regulations, whether we want to regulate the rates that insurance companies charge. In California we do not

regulate most insurance rates; we leave it up to competition. If the commissioner thinks that the rates are excessive or inadequate or unfairly discriminatory, the commissioner can require that the rates be changed. But that's rarely done. For the most part the commissioner leaves it up to the market. Some states treat insurance companies somewhat more like utilities and regulate their rates. But we don't.

Especially the last few years, as insurance rates have gone up, there have been very big battles over whether the state should regulate those rates more closely. To this point, the California answer has been, "No, we don't want to regulate their rates. We don't think regulation would succeed." But that could change. There's lots of pressure for it to change. It could change either by legislation or by initiative.

HICKE: Was that an issue you dealt with?

MCALISTER: I did indeed deal with it, although it seems that it's gotten hotter since I left there. It was becoming a hotter issue the last two years that I was there. I would say until the last two years of my legislative career, it was not much of an issue. There were aspects of it that were an issue, but there was very little legislative interest in imposing regulation of insurance rates until '85-'86. Now, these last two years since I've been gone, it seems to be an even bigger issue.

The large issue when I was there, and it's still an issue, is the issue of territorial rating. Legislators who represent Los Angeles especially are very much against territorial rating. Territorial rating is a system in which your rates will be determined to a large degree by the territory in which you live, based on the loss experience of that territory. The territories are greatly different.

MCALISTER: And it's not just urban versus rural. People who live in San Diego and Orange counties have relatively low insurance rates. People who live in south-central and west Los Angeles have very high insurance rates. Los Angeles generally has high rates, but south-central and west Los Angeles have especially high rates. If you get out in the rural areas, generally it's lower. Urban areas in northern California are probably close to the average in the state. Los Angeles seems to really get it on the chin because of their very high loss ratios.

The legislators who represent the high-cost areas, the high-rate areas, of course, don't like that. They would like to abolish territorial rating; they would like to have one flat rate everywhere, or as close to it as they can get. They've been working on that for many, many years. That's the issue that we confronted time after time. But they've never gotten anywhere with that because of the fact that the large majority of the state would pay higher rates if you abolished territorial rating than if it continued on the present system. About two-thirds of the state would pay higher rates if you established a flat rate. So most legislators won't vote for that.

It's a problem that I think must eventually somehow be solved, not by one flat rate but in some other manner, probably by some form of subsidy to those people in those very high-rate areas. Because it really is a festering sore that I think is going to have to be healed somehow. But to this point, that's been something that we've not been able to resolve, other than to resist the attempts to go to one, big, flat rate around the state. Some of the proposed initiatives that are being pushed would abolish territorial rating.

The big push by people the last several years, of course, who don't like the insurance system has been to have more insurance rate regulation, to have the insurance commissioner regulate rates.

HICKE: Now, who is for this?

MCALISTER: Some of the consumer groups are in favor of that, and the legislators who are for it tend to be those from the areas that have very high insurance rates, which I can understand. As the insurance problems have spread, they have gained more support and more adherence, and the challenge has spread somewhat beyond Los Angeles to this point. And it's spread throughout Los Angeles. The challenge at first was just in certain areas in Los Angeles, and I think most L.A. legislators now tend to be rather anti-insurance industry because they're all paying pretty high rates. I don't think it's in the crisis situation or revolutionary situation outside of Los Angeles, but it is in Los Angeles. But there are a lot of votes there; it's about a third of the state.

HICKE: I still don't understand why consumers would want regulation.

MCALISTER: I don't either. I don't feel that rate regulation solves anything. But you understand, they don't necessarily speak for all consumers. They're groups that call themselves consumer groups. Like the Consumer's Union, Consumer's Federation--I think those are two of the groups--they have their programs and sometimes they advocate competition, and sometimes they seem to think that the solution for consumers lies in regulation.

There are those who feel that the insurance is not genuinely competitive and it needs to be regulated. People who say it is competitive say we have close to a thousand liability insurance companies in this state, and that they

are competitive. But of course, there's a limit to the range of rates. There is a range of rates, a substantial range, but there's a limit to it, obviously, at any given time, because there's a certain level of loss, at least in any given area.

So if you shop around, you will find different rates, but you may not find the rate you want. If you've gone through all your life with no serious accidents and proven to be a good risk, then companies like State Farm [Insurance Companies] and the others that have the preferred risks, you'll insure with them, and you'll probably still be reasonably happy wherever you are. But if you've had a few accidents, and especially you add onto that the fact that you live, let's say, in Watts or Beverly Hills—two rather disparate types of places, but that share the very high rate problem in common. . . . I guess everybody that lives in Beverly Hills isn't rich. Some are, but there are those who aren't.

HICKE: Do you see this increasing interest in regulation as perhaps an increasing dominance of southern California?

MCALISTER: Well, dominance would be too strong, but influence is not too strong, to the degree that the problem is especially a southern California problem, especially a Los Angeles problem. Not so much San Diego or Orange, which are a different culture, but Los Angeles, where a third of the population seems to have this serious problem. So there's a third of the vote, and those people get concerned.

HICKE: And they're going to be heard.

MCALISTER: They're certainly trying to be heard. If conditions don't stabilize somewhere in the next couple of years, why, I can't predict what we'll get. We could get initiatives that will change the situation drastically or you might even get legislation. Although again, it's one of those situations

where the legislature isn't quite sure what they want to do, where the conflicts are strong, especially between areas like Los Angeles on the one hand and San Diego or the rural areas on the other. They don't quite know what to do.

HICKE: Sort of what you described before.

MCALISTER: Yes, it's very much like what I described before. That's why you've got all these folks out there interested in their initiatives. Some of the initiatives are quite far sweeping, and in fact in some cases have things that we ought to do, as well as some things we probably ought not to do in them. But there's the frustration by people that they could easily go out and pass several initiatives which would all be in conflict with one another.

It would be a much more legally challenging area than we had with Prop. 13. With Prop. 13, we had one initiative that passed and the courts had to interpret it and the legislature had to implement it. But that was easy compared to what you'll have if several of these conflicting initiatives were to pass. The general rule is that where you have conflicting initiatives that pass, the one that has the most votes prevails. However, it's not simple; you've got to look to see where they're conflicting and where they're not. In some cases there might be sections that would be directly conflicting; in other cases there would be sections that weren't. It could become a real mess of goulash.

#### No-fault Insurance

HICKE: What about no-fault insurance?

MCALISTER: Well, that's an issue certainly that we had confronting us for years, and that I took a great interest in. I authored some legislation in that area that never passed. The F & I

MCALISTER: Committee did have jurisdiction, still has jurisdiction, over no-fault insurance. I was never able to succeed.

The main states in the United States passed various kinds of no-fault laws back in the late sixties and early seventies. Most of those no-fault laws were not worth the paper they were written on. They were bad laws, shouldn't have been passed, should have been repealed or amended and made strong. The basic problem with most of those no-fault laws is that they simply added another layer of recovery without eliminating anything. They certainly couldn't save any money; they only made the system more expensive.

A good no-fault law has to restrict your tort lawsuits. If it doesn't abolish them, it has to restrict and it has to eliminate most of them with a trade-off of quick settlement and a guarantee of your medical bills and a substantial part of your lost wages. The few no-fault laws that were good, such as the ones that were passed in Michigan and ultimately in Florida, place substantial restrictions on lawsuits. Florida went through a period of upgrading and refining theirs, but the final version in Florida was a good version. The Michigan version was a good version. The few that passed good laws I think have had good experiences. But you've got to substantially reduce the right to bring a lawsuit, with, as I say, the trade-off for medicals and lost wages. Most of the states did not make a proper trade-off, and did not pass good laws.

California never passed any law. By the time we seemed to have an interest in it in California, they had a lot of bad examples they could point at that were bad examples, indeed, and that shouldn't have been passed. The opposition of trial lawyers was always very strong to changing to no-fault. The insurance industry at first was in favor, then was kind of lukewarm, and now is in favor again. But

MCALISTER: legislators could never see a good reason to pass it. They didn't perceive a tremendous demand from the public. There was a period of time when there was some demand, but it didn't reach crescendo level. Then people lost interest.

Trial lawyers live and die by this kind of thing. It was the only issue to them--almost the only issue--that and similar liability issues. They concentrated their entire effort on that. The groups that would have liked to have changed--but it wasn't the only thing in the world to them--were insurance companies and business groups. But they have lots of problems. That's just one of many things that are of concern to them. Medical doctors are interested in the tort liability system. But especially medical malpractice was particularly of concern with them. But they've got lots of other interests, too. If you took all the people who were against the trial lawyers and really united them on one issue for any period of time, they'd win, because they're much bigger and much more powerful. But they're divided; they're all over the lot; they're concerned about lots of things.

It's a fairly small group that concentrates all of its efforts in one area and wins nearly all the time. I've seen groups like the trial lawyers having fantastic success because they kind of carved out a field for themselves. They concentrated all their efforts on it, and their potential opponents were divided. Not necessarily so much divided in position, but divided in terms of attention and interest and resources.

So I've capsuled about twenty years of no-fault history in a few words, but that's what's happening with no-fault. Now there seems to be a revival of some interest in it. The insurance industry is pushing their no-fault initiative. Some legislators are taking a renewed interest

MCALISTER: in no-fault, which is kind of surprising, because when I left there certainly wasn't any interest in it. The last two years, the interest has arisen again as people have been scratching their heads and saying, "What can we do about the insurance problems?" Some of them, to their credit, have been looking for some solution.

If they pass a good no-fault law that isn't just an add-on to the present system, it could help. It will not be the big panacea that anybody would hope for. I never presented it as a panacea. I didn't present it so much as something that would save money, although you might save a little if it's really well drafted. My concern, my bigger thrust, was that it was simply a more efficient way to distribute insurance dollars to injured people, and that we ought to reduce as much as possible the litigation, and simply distribute these dollars more efficiently. Studies of good no-fault systems show that's what they do. They do distribute a larger proportion of the premium dollar to the injured victim.

That is not the case in the traditional liability system, in which a large proportion of the premium dollar goes for costs of administration, to plaintiff's lawyers, to defendant's lawyers, to insurance agents, to this whole panoply of awful institutionalization that we've created to administer the injury process. Not to mention the billions of dollars that are spent by the taxpayers on the court system, just to maintain the court system, which of course gets farther and farther behind. Because the priority isn't on injury cases or civil cases of any kind; the priority is on criminal cases. So at any given time in almost any courthouse in the state, or the country for that matter, I suppose, most of the courts are occupied by criminal trials, not by civil trials.

In Los Angeles, you've got to wait almost five years to get to trial on a personal injury action. It's much better than that in most of the state. The wait isn't so terrible in Sacramento, for example. I think in San Francisco, you wait close to three years, if I'm not mistaken. It's kind of peculiar; it varies from county to county. Some that are very similar in size seem to have their court calendars under better control than others. Los Angeles is an absolute disaster.

So anyway, that's been the history of no-fault. Maybe now something will pass with the renewed legislative interest and the initiative battles that are being waged. But I'm not holding my breath waiting for the legislature to do it. My feeling is the legislature will not. Perhaps an initiative may pass. But I really still don't think they're going to pass the same bill through both houses, get it to the governor's desk, and have him sign it into law. I'm skeptical.

HICKE: What about no-fault collision?

MCALISTER: Well, let's see. In a sense you do have no-fault collision now in that you buy collision coverage from your insurance company, and if your car is damaged, they pay you for the damage to your car. It's not no-fault in the final sense in that your insurance company is then subrogated to your claim, and it goes against the person who hit you. That system we've had a long time. It's expensive only because the cost of cars has kept going up and the cost of repairs keeps going up. It's hard, really, to envision improving that system much.

HICKE: Was that ever an issue when you were . . .

MCALISTER: Not really. Most no-fault laws have not included collision within their coverage, I guess, basically on the premise that the present system, while there are lots of people who

have a variety of vexatious problems with it, nonetheless it still kind of works and nobody knows how to improve it.

Sex Discrimination in Insurance

HICKE: Since we're still on insurance here, one of the problems with life insurance now is men versus women. Was that an issue for you?

MCALISTER: It was an issue from time to time, but not a really big issue, and only occasionally was it an issue. There have occasionally been issues regarding differential treatment of the sexes on insurance rates generally. Not just life insurance, incidentally, although life insurance is one of those. For instance, today there is indeed a discrimination between the sexes on auto insurance rates. To the extent that there is such discrimination, it is antimale and profemale discrimination. The young male driver from the teens up till about twenty-five really gets it in the neck, even if he doesn't have any accidents. If he has an accident, I mean, heaven forbid either his or his parents' pocketbook.

The young woman of those ages, her insurance is much less. That's because the young men seem to have more accidents. Actuarially in all the statistics they have more. Obviously there are some young men who have never had an accident and are fine drivers, but there's a certain minority of them who are just. . . . You just shudder and you hope that they and those with whom they associate live through those six or seven years.

HICKE: And you hope you don't meet them.

MCALISTER: And you hope you don't meet them; that's right. So in that sense there is definitely discrimination against the young male and his parents, I guess, because they're frequently paying his insurance, at least for those first few years.

MCALISTER: In life insurance, there is, on individual policies, a discrimination, I guess, again in favor of women insofar as buying the life insurance, and in favor of men when it comes to buying annuities. Because women live somewhere between six and eight years longer on the average than men, you're not going to have to pay them their life insurance as quickly as men. Therefore, they can buy insurance more cheaply than men on an individual basis. On the other hand, if they're buying an annuity, they're going to collect on that annuity for longer than men; so for the individual annuity, companies tend to charge them more.

In health insurance, if you're talking about individual policies again, for much of their life, women are going to use health insurance somewhat more than men and the rates will be somewhat higher to them. I think this averages out somewhere after fifty or so, and there may even come a time when men use a little more than women, maybe because they're getting ready to die; I don't know. But through most of their life, on the average, if you took the male and female for their entire life, the woman is probably going to use health insurance somewhat more, so she's going to be charged more on an individual basis.

All that, however, is kind of moot. At least, the health insurance is a moot issue, because most health insurance is obtained through group policies, through employers, and the [United States] Supreme Court has interpreted the federal laws on sex discrimination to prohibit any differential rates between male and female on group policies obtained through employment. So your health insurance, and for that matter, annuity and pensions, obtained either through insurance companies or through just investments by a pension plan cannot make a distinction anymore between male and female.

HICKE: So was this ever an issue for you to deal with?

MCALISTER: Well, it occasionally was, but it was more a federal issue. The supreme court of the United States made the ruling on the pensions and on all the group insurance. It became an issue for us to deal with only because there were those who wanted to change the law and prohibit any form of sex discrimination in insurance, even individual insurance that was not obtained through employers.

HICKE: Who wanted to do that?

MCALISTER: Some women's organizations, such as the National Organization for Women, advocated this. Some of the other women's organizations, I think, for a time may have wanted to do it, but they all cooled off on it after they started figuring out just what the effect of all this would have been.

It gradually dawned on them that on the average, women probably have the best of all possible worlds right now, when you consider that the health insurance is mostly group insurance, so that's equalized. The annuities and pensions are all equalized now. The young woman gets the break still on the individual auto policies that she's buying. That leaves the other area of life insurance, where that would be more favorable to women because of their longer life. They would pay more if they were buying individual annuities, but there's not a whole lot of people doing that. So on the average it looks like we've kind of reached a system where only an occasional woman is being disadvantaged; and it seems like the move toward rigid equalization of the sexes has kind of lost its steam.

Senator [William] Lockyer carried bills on several occasions to require complete equalization, but he could never get anywhere. His bills never got out of the senate; so I don't think I ever saw one of his bills. I think there

were one or two occasions in which somebody in the assembly authored such bills, but I don't remember who it was now. They never went anywhere. I don't know if even NOW is for these anymore. They probably still are in theory, but I suspect it's a very low priority item for them. In their case, it may be more just a matter of, well, they've fought for total equality for so long, they just believe in the principle regardless of what it actually would accomplish.

[End Tape 4, Side A]

[Begin Tape 4, Side B]

Auto Insurance Plans: "Pay-as-you-drive"; FAIR; Assigned Risk

HICKE: You considered something called "pay-as-you-drive" insurance?

MCALISTER: Yes. And I think the legislature ought to look at that again. We looked at it back around '76, '77, and couldn't find any real support for it. The idea, as I recall now, was that there would be a gas tax, in essence, an additional gas tax, that would be used for purposes of insurance. You could have various systems of insurance, but I suppose the main idea is to provide a certain minimal insurance for everybody so that nobody would be uninsured. At that time we were concerned about the many uninsured people.

So what do we do about it? How do we take care of those many uninsured? How do we make sure they're insured? Well, you can make sure they've insured by having everybody pay an insurance premium every time they bought gas. We had an interim study on that; it's kind of an intriguing idea. We couldn't find any significant support for it, unfortunately. The gas station people thought it was the

most awful idea they'd ever heard of because they as small businessmen are, of course, deducting lots of things already. And while you or I might say, "Well, why can't you deduct one more?" It was just that much more red tape for them, and they didn't want to deduct all this stuff.

Also at that time there was concern about rising gas prices, and of course, if you add another tax, that's still higher. I think the legislature ought to look at it again, though, because it could be a potential solution for these people in these really impacted areas: if they simply took that money and subsidized some kind of minimal insurance. But at the time it was raised, it just didn't seem to go anywhere, and nobody ever tried to pursue it after that.

HICKE: Who raised it, do you recall?

MCALISTER: I don't remember the author now who was raising it. That was back in '76 or '77, as I recall.

HICKE: Senator [John] Nejedly told me that he was interested in this, and he was trying to pursue it with Speaker Brown. I don't know if he raised it [Inaudible].

MCALISTER: He could have; it's possible. I guess we could find out by probably contacting the Finance and Insurance Committee staff. They could dig into their files. Because we had an interim study, and we released a publication that had the statements of the various people. So I'm sure that would tell who did it. In fact, if I'm not mistaken, I've got that at home, and I can look that up for you. But I just don't remember now.

HICKE: OK. There were lots of other kinds of insurance. Does anything stick out in your mind? The California FAIR plan: Fair Access to Insurance Requirement?

MCALISTER: Well, the California FAIR plan is a program that we've set up basically to help provide insurance for areas that couldn't get insurance for things, like especially fire

insurance, proper insurance for people's homes in the event of fire in certain impacted areas. We've not had a lot of legislation on it, though. It was created before I was on the committee. I think it's existed for at least twenty years, maybe twenty-five or thirty. It seems to have worked, generally, pretty well. Although the people who run it seem to want to maintain contact with the legislature, I don't ever recall any major legislative battles on it.

HICKE: It's funded by the legislature every year?

MCALISTER: Well, we don't exactly fund it. They, as I recall, operate like an insurance company; they charge premiums. The theory, though, is that there are some types of insurance that the private sector doesn't want to cover. So this thing that has been created, that the legislature required to be created, was kind of a quasi-public/private thing. But it operates like an insurance company; they charge premiums. It's just that if they didn't exist, there would be certain people who wouldn't get insurance at all. It's somewhat comparable to the assigned-risk plan. We have the assigned-risk plan in this state—which there's not a lot of controversy over either—where if you can't get insurance through some other insurance company, you can go to the assigned risk plan. And the assigned-risk plan will sell you insurance; it cannot turn you away.

HICKE: Is this property insurance?

MCALISTER: No, it's automobile liability insurance. Some of these young male drivers who have had several accidents end up on it. In this state, I think a measure of our relative health in the insurance industry is the fact that only about 3 or 4 percent of California drivers, if that, are on the assigned-risk plan. Whereas in New Jersey and Massachusetts, something like half of the drivers are in their assigned-risk plan. So with all the problems that we

have, it seems to me we still have a reasonably competitive market if 97 percent or so of our people can find an insurance company that will insure them. That is, 97 percent of those who are insured. There are 15 percent or so of the totality that aren't insured at all. At least that was true until we passed legislation toughening up our compulsory insurance laws. I'm not quite sure what the figure would be now.

HICKE: Having just gotten rear-ended by an uninsured driver, I know they're out there.

MCALISTER: Well, he's violating the law, but it's very hard to enforce those laws. We've never been able to figure out how to completely enforce it. We did toughen it. Senator Robbins and I joined to author legislation that passed the body in 1985 that did put some additional teeth into our compulsory insurance laws. It enables highway patrolmen and policemen to cite you if they stop you for some other offense and you're not insured. That seemed to increase the number of people who were insured, but I haven't seen the latest figures, so I don't know how much. There was a substantial increase of insured people at the time, but that law was then enjoined from being enforced for over a year by the supreme court. Then finally just a few months ago, they lifted the injunction and said the law is valid and it can be enforced. Now it's being enforced again. But it's only been enforced now, this latest time, for about three months.

HICKE: Why was it enjoined?

MCALISTER: There were serious legal questions raised by people who thought that it was discriminatory against those who could not afford insurance, that we were requiring people to have insurance and it wasn't affordable for everybody. It is tough issue, as we discussed earlier. The previous supreme

court almost. . . . Well, in about two or three months after it had begun to be enforced, they stayed its further enforcement and sat on it for over a year. Then the new court, after the last elections, came in and after a period of, I guess, some further months, why, they decided they would allow it to be enforced.

HICKE: There was something called the California Crime Insurance Plan?

MCALISTER: Crime Insurance Plan. I think that may well be something that comes under FAIR. I think that's something that FAIR will do. I mentioned fire insurance, which is FAIR's big deal, but it's not the only thing they do. I think that they cover crime insurance, if I'm not mistaken. I can't think of any other legislation for legislative activities on that.

#### Workers' Compensation Subcommittee

HICKE: Was workers' compensation a big issue for you?

MCALISTER: Yes, continually a big issue. One of the most politicized, and one of the most important issues. Of extreme importance to both the employer and employee community. It was continually an issue before our committee. On all times we had a subcommittee that worked on that called the Workers' Compensation Subcommittee, and I nearly always, maybe always, appointed myself or asked the speaker to appoint me to that subcommittee.

HICKE: Why did you want to be on it?

MCALISTER: Well, because of the importance to both employers and employees of having a sound, effective workers' compensation system. If you're injured on the job, it pays your medical bills, it takes care of a portion, frequently a small portion of your lost wages, but at least a portion,

MCALISTER: and it gives you permanent disability [benefits] if you suffer some kind of permanent disability.

As the years went by, I also became more and more convinced that the system we have needs a lot of reform. I sponsored some legislation that was successful in the area, and a lot of reform legislation that was not. But then I'm not sure who ever has sponsored any successful reform legislation. The system spends about \$7 billion a year now. In other words, employers have to pay something like \$7 billion in California this year for a combination of insurance premiums and self-insured payments. There are numerous larger employers that are self-insured. They set aside money and act like an insurance company. And they can do that if they meet the qualifications.

So that's \$7 billion; that's a lot of money. It's been going up very rapidly. Just a few years ago, it was only half that amount or less. And yet our system is not very good in that we're not high in benefits, which seems strange. It's one of the most expensive systems in the country, but the benefits are just somewhere in the middle range. So there's a lot of waste in it, apparently, and it's hard to get a handle on that.

We'd like to increase our benefits; they're not nearly high enough. The maximum you can get on temporary disability, I believe, is \$224 a week. It's \$140 now, I guess, for permanent disability, after your permanent disability rating has been determined. But employers are kind of tired of paying such a large amount of money and feeling that so much of it is wasted. In fact, that's one of my assignments in my life after the legislature now. One of the things I work on for the [California] Chamber of Commerce is workers' compensation.

HICKE: What were the specific things that you dealt with on the subcommittee?

MCALISTER: Well, basically you deal with questions of, first of all, the level of benefits, what should the level of benefits be for the injured worker, and then you deal with so many numerous reform proposals that you lose track of them after a time. We've had bills that would have radically restructured our whole system, none of which did we ever pass. Some of the bills are less ambitious, but important. For instance, some workers have what are known as presumptions. One of the big questions in a workers' compensation case is, was your injury work-related? If you had a heart attack, whether it's on the job or not, in your case there would not be any presumption that was work-related. You would have to go in and show that it was work-related. If, on the other hand, you were a fireperson, you've got a presumption in the law that says that we presume that if a fireman or firewoman has a heart attack, that's work-related.

HICKE: On the job or anytime?

MCALISTER: Anywhere. You could have a heart attack at home or on the pool or relaxing in your backyard on Sunday, and the presumption is that if you're a fireman or a policeman it's work-related. Firemen and policemen have—I might say well before I was in the legislature—gotten these presumption laws passed, but they're always tinkering with them, usually to make them stronger and more convincing in favor of the injured fireman or policeman. Nobody else has such presumption; the average worker doesn't have such presumption.

Now, those laws were passed initially and repeatedly reinforced and strengthened and extended somewhat to various categories of policemen that they didn't apply to

in the first place. Those laws were passed and strengthened by legislators who believed that firemen and policemen had special problems, that they really had very tense, difficult jobs, where they were under continual stress, and that therefore, they shouldn't be forced to prove that their heart attack came about as a result of it being work-related, that there should just be a presumption that it was work-related.

We had lots of debates on that in the legislature. Even though those presumptions were passed before I came in, there were continual proposals to make them stronger and more convincing and more immutable, as well as some proposals to abolish them or to reform them a little bit. I think early in my career on the F & I Committee we did pass a law by then-Senator Howard Way that put a limitation on how long those presumptions prevailed after you retired. As I recall—it's been a long time—I think we now have something like a five-year presumption, that five years after you've retired, there's no longer that presumption. We passed that and got it signed into law, and my supporting that bill got me into all kinds of trouble with organized labor. They thought it was a terrible thing to do. But that's one example of . . .

HICKE: Why? Because it didn't apply to them too?

MCALISTER: Well, they would think it would be nice to apply to everybody, but they defend everything that anybody in organized labor ever gets. So they would defend the presumption for the policemen and the firemen even though it's not something that other workers get. They will never concede or give up anything they've got, at least in legislation. In collective bargaining sometimes they have to give back things; it becomes economically impossible not

to. But in terms of legislation, they won't give up anything.

I thought they were in a compromising situation where they had to defend for a kind of elite group of workers a very special benefit that no other worker got, and a benefit that's a little dubious. The facts are that, especially with men. . . . Most of these two professions are largely male-dominated, police and firemen, even though there are some women getting into them now, especially into police. But still, I'm sure they're over 90 percent male; certainly firemen would be. If you look at statistics, most men will get what they call arteriosclerosis; 55 percent of men, if they live long enough, will get this. So if you wanted to have a presumption, there's some argument for just having a presumption; but how much worse can it be if you're in a stress occupation? Even if it's some worse, is it so much worse that you ought to have a presumption?

That's a good example of a point that I think is important to anybody who studies politics: that law is not passed or defended or upheld on the basis of medical or scientific information; it's passed and upheld on the basis of political consideration. That's not saying something perhaps so terrible. People who believe in that may think that's a perfectly proper political situation and that these are individuals that we want to give special benefits to, because they do so much good for our society in protecting us from crime and fire. You can make an argument out for that.

HICKE: There's some sense that it's a dangerous job, which they compensates [Inaudible].

MCALISTER: Well, yes, and at least there's some danger.

HICKE: Maybe not danger from heart attack, but danger from other [Inaudible].

MCALISTER: The difficulty of that is that some policemen after all never see danger in their lives. Some spend all their time at a desk job. Some firemen, for that matter. . . . I'm sure all firemen aren't out there on the line.

But anyway, those are the kinds of things that you spend some time talking about and debating. Or things like vocational rehabilitation. Speaker Brown, about ten years ago or more, sponsored a bill. He wasn't speaker then, but he sponsored a bill that required that as part of our workers' compensation system, there be a system of vocational rehabilitation, which means that the worker was entitled to benefits to be retrained: if he couldn't do his old job, to retrain him in a new job.

That has grown. That has really become a very big thing in California in the intervening ten or twelve years. The figures we've seen now is that somewhere between 10 and 13 percent of the workers' compensation dollar is spent on vocational rehabilitation. Whether that's being well spent is seriously debated. But anyway, that's something that some workers' compensation systems do not have, and I guess we were pioneers in it. There's no question but what it's a good idea to have some vocational rehabilitation. Questions have arisen as to how efficiently our system is working. But when we passed that, we thought it was a very good thing to do. It probably was, even with all its inefficiencies.

#### Five Interest Groups

MCALISTER: But this is one of the most political areas. There are four, actually now five, major groups that have a very definite vested interest in what happens in workers' compensation legislation: the workers, obviously, which means essentially organized labor; they're the ones that

MCALISTER: are organized to follow the political activities and the legislative activities; the employers, who are also organized into various employer groups like the Chamber of Commerce, the Manufacturers Association, and numerous others; the insurance companies, who write the workers' compensation insurance for those employers who are not self-insured.

Then there are the lawyers who represent the injured workers. In many cases, lawyers represent particularly the more seriously injured, but sometimes the less seriously injured. They're called applicants' attorneys. There are also lawyers who represent employers and insurance companies, but they're not nearly so politically involved. To the extent they are, they probably largely support the position of the insurance companies or the employers, although they might have some differences. But they're not really politically powerful.

I've named four. The last few years, I'd have to add a fifth group. That is the doctors who specialize in what we call forensic medicine, who examine injured workers either for the applicant or for the defendant, the employer or the insurance company, and write reports that are submitted to the Workers' Compensation Appeals Board to decide how badly injured the worker is and what kind of permanent rating they should get and what kind of benefits they should get. The doctors who specialize in this are now organized in a group called the California Society of Industrial Medicine and Surgery. While it's the smallest of these five groups that I've mentioned—obviously it is dwarfed by the employers and the employees—yet it's a significant group now. It's very well organized, very ably represented. So they're concerned about what we do with the laws.

So there you have those five groups, and probably each of them is divided into subgroups, except maybe the doctors that are the smallest. The applicants' attorneys seem to be pretty much monolithic. But the employees and the employers and the insurers are all such big groups and they have their own little subgroups. Employers are divided into insured and self-insured and public employers and private employers.

So you mix all of that into one bowl, you've got a tremendous political bowl of goulash, haven't you? How you ever develop a bill out of that is really hard. And it becomes even harder when you have the differences, let's say, between the governor of one party and the legislature of the other. There's a consequence of the last several years where they've just been marking time, everybody knowing that it's a system that has all these inefficiencies and that we ought to have more benefits, but we ought to reform it, too, to spend our money more wisely, but we can't.

HICKE: It's the old thing we were talking about.

MCALISTER: Yes. They can't get together. Now people are becoming more and more concerned about this, and the legislature does seem to be making a special effort this year to look at it, although speaking not as a legislative advocate now so much as just an observer, I'll be surprised if anything happens this year.

HICKE: How are these various groups aligned? Is there any general way of looking at it?

MCALISTER: Yes. As a generality, the employers and the insurance companies tend to agree; as a generality, the labor unions and the applicants' attorneys tend to be on the same side; and the forensic doctors tend to be with the applicants' attorneys and then the labor groups.

There are potential disputes between the labor unions and the applicants' attorneys, because the applicants' attorneys probably have more of a stake in preserving a system where there's lots of litigation. The labor unions, perhaps, who have a larger stake in getting improved benefits, but maybe making concessions on other things, on procedural things, in return for getting more money for most of the workers. But most of the time, the unions and the applicants' attorneys do stick together and form a pretty effective coalition. It's become kind of a rule of thumb here that if you don't have substantial agreement among these groups, at least three of those groups, you probably can't pass a bill; you certainly can't get it both passed and signed.

HICKE: Do you recall any particular people who were involved in this?

MCALISTER: A number of the big players in lobbying activity. . . . For instance, for organized labor, [John] Jack Henning has been the chief of the AFL-CIO [American Federation of Labor and Congress of Industrial Organizations] in the state of California for many years. He's a gentleman now in his seventies who has certainly done his best to represent labor. Also, [ ] Jerry O'Hara has represented the Teamsters Union, who are now part of the AFL-CIO. But most of the time that I was there, I guess all of the time I was there, they were a separate union, completely separate. They still have a separate lobbyist. It's the single biggest union now in the AFL-CIO; it has 1,300,000 or 1,400,000 people, I guess about 10 percent of their membership, or close to it. Those were the two big people for labor.

The applicants' attorneys have been represented for a number of years by a gentleman by the name of [ ] Don

MCALISTER: Green. Don Green also represents the California Trial Lawyers Association. The California Trial Lawyers Association and the applicants' attorneys are sometimes indistinguishable. They have the same lobbyist or lobbyists, and seem to be kind of mutually self-supporting.

The employers—there are so many groups there. In the last few years, you've had an alliance of employer groups called the CCR, Californians for Compensation Reform, which was organized for the express purpose and the sole purpose of working on workers' compensation law reform. The chamber belongs to that, and I guess virtually all the employer groups do. Jose Hermocillo has been the executive director for the CCR.

There are numerous other people, some of whom come and go. If you got all the lobbyists that are involved in this subject into a room, it would be too big a group. As a matter of fact, you could probably bring in twenty-five or thirty people, easily ten or a dozen. Usually when it comes down to trying to negotiate something, why, it may involve five or six who really are the key players, like the top people I've mentioned in labor.

It's somewhat frustrating, though, because when you get so many people it's hard to know where you draw the line, who should be involved, who shouldn't. It's hard as a legislator to know even to whom you go if you want to know for sure what the position is of a group. It's even more frustrating when those people don't know themselves, either won't or can't tell you, which often happens. Of course they have the same kinds of frustration the legislator has. They've got lots of pressures from their constituency.

Take a labor union leader. He's representing a whole bunch of people, and then he's got his organization, he's

got various local labor leaders, all of whom have expectations, and I suppose meets with them from time to time. But legislation moves swiftly, like a swift-moving stream at times. It's continually being amended, new proposals are being advanced. He's really in a rather uncomfortable position.

[End Tape 4, Side B]

[Begin Tape 5, Side A]

MCALISTER: I think a labor leader, particularly somebody like [ ] Jack Henning who represents such a huge organization, would find some problems in just keeping in touch with his people and knowing for sure what they want, and acting on their behalf in as effective a way as possible.

HICKE: There was a Longshoremen's and Harbor Workers' Compensation Act.<sup>1</sup> Was that important?

MCALISTER: My recollection is that quite some years ago. . . . You're really going a long way back. There is a separate law with regard to longshoremen. However, my recollection is that this is a federal law, and it seems to me the state's only involvement was with regard to the insurance mechanism.

This goes back at least ten years. It's my recollection—I'm digging rather deep now, because it only happened once—is that there was a question of whether there was going to be any insurance available at all to insure these people. I think that was the issue, if I'm focusing right. We didn't have any control over what the benefits were. My recollection is that this is a federal

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1. 1977, Cal. Stats. ch. 459, p. 1513.

program that's set by the federal congress, and at least at that time, they set the longshoremen's and harbor workers' benefits at about three times what our workers' compensation benefits were.

The insurance companies that were accustomed to writing California workers' compensation at that time didn't want to write longshoremen's stuff at all. I think that we were concerned for a while, and eventually the problem went away. I'm not sure whether we even passed legislation. I remember we held hearings. I can't remember whether we passed a law. It's kind of awkward when you don't have control over the benefits; you haven't created the benefits, but these people are your constituents and they come to you wanting the solution to provide insurance for a program that you didn't control.

Relationship with Governmental Agencies: Federal Government; Department of Industrial Relations; Insurance Department; Employment Development Department

- HICKE: Would you have recourse to the federal government?
- MCALISTER: Well, we could ask the federal government to do things. We could ask them to do whatever we thought they ought to do. We may have passed a resolution; we probably did, and it was probably thrown in the wastepaper basket. We passed resolutions from time to time on things as mundane as longshoremen and harbor workers on the one hand, and Nicaragua and Central America on the other; I don't think they have much effect on what congress does, because they've got the authority. State legislatures are hardly their constituency.
- HICKE: Let's see; I have also the Department of Industrial Relations.

MCALISTER: Well, the Department of Industrial Relations, of course, was frequently involved in testifying before our committee, because they're involved with administering the workers' compensation law, especially their Division of Industrial Accidents. They're also concerned about all kinds of other labor laws, and employer-employee laws. So they were frequently witnesses in support of or against legislation or just to provide technical assistance or advice.

HICKE: What kind of relationship did you have with them? Was it just for hearings?

MCALISTER: I would say that it was a professional relationship. I don't recall any particular problems. Of course, in twelve-and-a-half years you had a number of administrations in that or any other department come and go, with some differences of emphasis, of course, as new governors would come along. But I never had any problems with them. They also appeared before the Labor Committee on which I served. They probably appeared before it as much as they did the F & I Committee. I never had any problems with them at all.

We probably had more dealings with the Insurance Department, which had a lobbyist who appeared before our committee continually. The lobbyist for some years has been a gentleman by the name of Brian Walkup. Sometimes the other people in the Department of Insurance, such as their general counsel or their top administrators or the insurance commissioner himself or herself—we'd deal with them. I always had a good relationship with all those people. Probably the best relationship was with Wesley Kinder, who was the insurance commissioner during the larger portion of the time that I was chairman. There were other commissioners, but he was the one who lasted the longest, and I thought he was a very able and responsible and honest individual.

We also dealt frequently with the Employment Development Department, which we call EDD. EDD's main responsibility is to administer the unemployment compensation system in California, which was another large area of the F & I Committee's jurisdiction. And like workers' compensation, we had a separate subcommittee for unemployment insurance. We called it the UIDI [Unemployment Insurance and Disability Insurance] Committee because it dealt with unemployment insurance and what we call disability insurance. We frequently dealt with the EDD department. I've lost track of how many directors they had; they had a lot of different directors.

HICKE: Why the turnover?

MCALISTER: It's not the kind of job that you raise a son or daughter with an ambition to obtain. I mean, it's a bureaucratic thing where you've got to run a big office with very little glory. If just paying out a lot of money efficiently makes you feel happy and good, fine. There's a lot of money they're going to pay out. But what other satisfactions are there? There were lots of problems, too.

But we always had good relationships with those people. I think all the people that ran it wanted to do a responsible job. We'd see them, usually, when we were considering improvements in the unemployment compensation law, either improved benefits or a change in the structure or change in the tax laws. We substantially changed the unemployment compensation tax laws.

HICKE: Can you elaborate on that a little bit?

MCALISTER: Well, we changed in a number of ways. We used to have a philosophy that we'd keep the tax rate high when unemployment was low, and the tax rate would drop when unemployment was high. Then we changed that; the employers who were the ones who paid the tax said, "No, we'd like to

do it differently. We'd like to have a low tax when unemployment is low, and we'd like to have a higher tax when unemployment goes up."

I don't know that that would be a good idea in a lot of states that don't have a surplus; but we had a big surplus, and so we said, "Fine, if that's the way you want it." In fact, I authored their bill. It was A.B. 4000 of 1984.<sup>1</sup> It changed that, and they now have a surplus, I think, approaching \$4 billion. In fact, they worked it out in such a way that there's probably no garden variety or even severe recession that could wipe out our surplus. The employers will pay through the nose, but it's a money-generator. There are \$4 billion there, and as the unemployment goes up, their taxes will go up. In fact, they figured that they could even survive a 1930s-style depression. I don't know; I hope we don't have to find out.

HICKE: Yes. Are there no protests against this kind of surplus?

MCALISTER: No, none whatever. It's in everybody's interest that we maintain the surplus. See, in a normal year, they'll pay out \$1 billion to \$1 1/2 billion, maybe even as high as \$2 billion, in benefits. If you had very serious unemployment, the money would start going out very fast. You could use up a billion dollars in surplus in a year quite easily, and more with real unemployment. So everybody grants that you need a surplus, or at least it's good to have one. We have a bigger one than most states. In fact, we have far bigger than any state in gross terms, and probably bigger percentage-wise than most states. But we never had to borrow money from the federal government like many states

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1. A.B. 4000, 1984, Cal. Stats. ch. 1275, p. 4349.

did. Most of the other big industrial states reached the point where they had to borrow money from the federal government. At one time, it was something like a \$12 billion deficit.

HICKE: During the seventies?

MCALISTER: Yes, largely as a result of the '75 recession, and then again in the early eighties. They developed this big deficit, and the federal government loaned them money.

HICKE: At a rate?

MCALISTER: Well, I don't know what the rate was. It was probably better than they could borrow from banks. But we didn't have to do that. We had a surplus the whole time. It wasn't \$3 billion or \$4 billion, but we did have a surplus. So now we've had prosperity for some time, and we've got this big surplus. I guess it will survive probably any kind of recession that's at all likely. That was important to us; we didn't really want to be dependent on the federal government.

The only down side to having this big surplus is that our UI system is somewhat like the workers' comp. system and some other systems that we have in that its benefits are not real high--there are other states that pay higher benefits than we do; we're just middling in benefits for an industrial state. We pay higher than some of the small states, but for an industrial state we're just middling in benefits. Yet our taxes are probably at least as high as most other states and higher than some.

The reason for this is that we are more liberal in giving benefits to people. It's not that we give them so much, but almost anybody can qualify. You don't have to work very long to be qualified. I forget what the figure is now, but I think it's something like \$1,600 a year. If you make \$1,600 or \$1,700 a year and are unemployed, then

you're eligible for UI. Not for the maximum UI, but for some UI. Or if you work for eight weeks and make at least twenty dollars a week, I think it is for each week. So that's not much of a week of work. Almost anybody can meet that.

Now, we've done that largely because we were sensitive to the needs of seasonal workers. We have lots of seasonal workers, especially in agriculture and agriculture-related activities such as cannery workers. We have people who work seasonally, who don't work all the year around, but it's a source of income for them; then they figured they would also supplement their income by the additional UI.

Employers at large don't like that, would like to reform that; but they've been unable to change it very much, and I don't think they'll be able to. Just realistically, I don't think it's possible. One of the down sides to having the big surplus is it makes it even less likely. Because you can't say, "Well, we're about to go broke if we don't make a tighter eligibility." You can't very honestly say that. I mean, at one time we thought that might happen, but then as we built up our surplus, it became increasingly apparent that we're probably never going to go broke. So you can't say that. I think all we've got is a big money-generator that's got lots of money and will take care of all the unemployed workers. It won't pay them a whole lot of money, but it will keep the wolf away from the door.

HICKE: Do employers also see this as a need for continuing buying power in the economy?

MCALISTER: Well, yes, I think certainly some employers do. It's obvious that something like unemployment compensation is a very important counter-cyclical economic tool, to use economic jargon, I guess. When you have a lot of people

unemployed, at least you have some money in those people's hands as a result of their unemployment program. So that money is all spent for food and rent, I suppose. I think some of the players see that. Some aren't happy with it, but. . . . [Pause]

HICKE: In any case, very few are protesting it?

MCALISTER: Oh, I don't think there's great protest. They're long beyond the point where they could protest the system, anyway. Employers would like to reform the system. Employers have a tendency, particularly small employers who work with employees, to see the worker who abuses the system. If you've got a worker who does abuse the system, it will certainly come to the attention of any small businessperson: they'll see it, they'll know it. That kind of affects their tax system, because they're taxed somewhat on an experience rating—not completely, but somewhat based on their experience.

So if they've got somebody they think is loafing, that makes them feel bad. In theory, they're not supposed to loaf; they're supposed to be looking for a job and making themselves available for work, and they have to file a report saying they're doing this. But that's hard to police. It costs more money to go out and police this really effectively than it would ever be worth, in terms of getting them back to work sooner. I'd like to figure out some way to make everybody work-oriented and not want to ever abuse any of our social insurance systems, but as a practical matter, it's hard to do.

Workers' compensation, of course, is somewhat the same way; at least it takes workers when they're injured, gives them some income, takes care of their medical bills, gives them some money to live on. Although it's not addressed to

the unemployment cycle as such; you could be injured anytime and get the benefits.

### Disability Insurance

MCALISTER: We also have one called disability insurance, which is still another program. Some people call workers' compensation disability benefits or disability insurance. But in California there's a technical meaning to what we call disability insurance. It's a program, I think, that only three states have. It is a program that is supported by a worker tax, a tax imposed on workers, where if you're sick or injured off the job, unrelated to the job, you can get benefits from the DI fund. It now includes benefits for up to four months of pregnancy. She had to have been working, because that's the way the tax is imposed; it's imposed on your wages. But then when she takes time off, she's given benefits for that period of time. My recollection is we key the benefits to, I believe, the workers' compensation rate, or to temporary disability rates. But anyway, they pay them. There are only three states that have that.

HICKE: How long have we had that?

MCALISTER: Many years, because we had it before I came on board, although we've improved it a good deal since then. We've occasionally slightly increased the tax. It's generally worked well. We've had only a modest amount of financial problems with it.

HICKE: You said that was a big item. Did you mean it was a big item on your agenda, or a big item in the budget?

MCALISTER: The UI?

HICKE: Disability insurance.

MCALISTER: If I said that, I think I somewhat misspoke. It's part of this total social insurance picture. When I say social insurance, I mean basically workers' compensation and unemployment insurance; and then the third component is the DI program. I would say it's the least of the three in terms of money spent, and easily the least of the three in terms of any political controversy. Employers aren't directly involved in it, so it's supported by a tax imposed on workers. Employers don't normally get uptight about what the program is doing.

The labor unions periodically will recommend tax increases or increased benefits, and the legislature has tended to go along with them as long as their requests were reasonable. It was the worker who's going to pay for it eventually. Although whether that really makes any difference from an economic standpoint is doubtful, since whether you take a tax from the worker's paycheck or from the employer, I guess it ultimately comes out of the same basic economic source. But somehow it makes people feel differently about things if you say it's out of one pot instead of out of another, even though these are really two pots that have been bailed out of the same bigger pot.

HICKE: And they would be adjusted if those things were changing?

MCALISTER: Yes, I would think so. You're not taking some particular tax out; whether it's out of the worker's check or out of the employer's, wouldn't there be additional money then for wages? Over the long haul, anyway.

#### Health Insurance and the Uninsured

HICKE: Is there something else on this insurance? I want to get back to finance, but is there anything else on the insurance side that you would like to talk about?

MCALISTER: Well, we've certainly hit the big ones. Perhaps just a few words about health insurance. One thing that the Finance and Insurance Committee does deal with is health insurance. Health insurance is largely written by life insurance companies. There's a tendency in the insurance business for life insurance and health insurance to go together. The other side of the insurance business is the liability insurers, the casualty insurers, people who write your automobile liability policies, your malpractice policies, your property damage policies, and so forth. Life insurance and health insurance tend to go together.

We have a number of issues in health insurance. One is the question of what, if any, mandates should the legislature impose on insurance companies in terms of what they must write and include in a health insurance policy. Starting at square one, the basic philosophy has been that for the most part, we leave it up to the negotiations between the insured and the insurance companies as to what the health insurance policy will cover. Most health insurance policies are group health insurance policies; they're written on a group basis today. There are still individual policies, but most people get it as members of groups, usually through their employment. The negotiation there is traditionally done between the employer, who represents the group, and the insurance company, with maybe an insurance broker in between kind of helping to work things out. But they work out what they're going to include.

If it's a unionized establishment, the union may well become involved in the negotiations of what they want to have included in their health insurance. Now and then some group, somebody, some organization, will say that there's something that ought to be included in these insurance

MCALISTER: policies as a matter of law that's not being included and that's not being negotiated but that ought to be included.

Frequently, it is some provider group that isn't getting paid by the insurance company that wants you to mandate that some particular type of care be included. One example is acupuncturists. A few years ago, we had acupuncturists come in force saying, "We want a law mandating that health insurance policies must include acupuncture coverage." Acupuncture, of course, at least in this country, in Western medicine, is a nontraditional form of medical care, although I guess it's very traditional in the [Far] East, particularly in China, and has become more popular in this country as you've had more and more Asian people in medicine. It still, I guess, is somewhat nontraditional in terms of our traditions.

The people who wanted to pass a mandatory acupuncture health coverage law were not really exactly successful. My recollection is the last we did, we passed a law that said something like you have to offer the coverage to the insured if they want it. But that really didn't satisfy the acupuncturists because a lot of the insureds don't want it and a lot of the employers won't bargain for it and the unions won't bargain for it. But that's usually kind of the middle of the road that we strike. We don't pass too many mandates. If we think it's at all got something to be said for it, we usually write a law that says, "Insurance company, you must offer this, but you don't have to give it unless they want it." Which, of course, doesn't satisfy the provider, because the provider wants to make sure it's included in all policies.

Another big issue, a more powerful issue right now, is should there be mandated coverage for mental health needs? That's a movement that's picking up some steam. My last

term there, we did pass in the assembly, and I think we passed in the whole legislature, a bill that would have mandated a substantial amount of mental health coverage, but the governor vetoed it.

HICKE: Why?

MCALISTER: Well, he followed the traditional view that most of us have followed—but some of us, as I do, make exceptions now and then—that if it's that important, let the people who are involved negotiate it. I became convinced, although I usually opposed mandates, that there are some cases where mandates are useful and advisable, and I felt this was one of them. They pretty well convinced me that in the long run, you would save money with mental health coverage, and that it ought to be mandated. I guess they convinced the majority of the legislature, but not the governor. Assemblyman Bruce Bronzan from Fresno is especially interested in this, and he's back this year with more legislation on this subject.

Employers tend to oppose the mandates because they feel that they want to negotiate what they want to negotiate. Labor unions are often kind of diffident about it, because they too want to negotiate what they want to negotiate. They feel that if some of their members really want something that they haven't been able to negotiate, they may come in and support the mandate. But usually it's a matter of providers versus insurance companies.

Another bill by Assemblyman Papan that I supported was vetoed. It was one to require pediatric coverage for preventive services for young children. He convinced a majority of us that you'd save money there, too, if you had preventive care covered by your insurance policies. The governor vetoed that again on the same basis: "If this is a great thing, it will be negotiated, and I don't want to

mandate it." I think those are two areas, especially the mental health coverage and maybe the pediatric, where at some point in time they're probably going to get their mandate, at least a compromise kind of mandate, if not with this governor, with the next one.

The acupuncturists I doubt will ever get it. I don't think there's that much demand for it. Aside from mental health and pediatrics, oftentimes these demands come from kind of peripheral groups that aren't illegal, but they're just peripheral. Whether they're right or wrong, they don't have that much political muscle. A lot will have to do with their standing in the medical community, too.

HICKE: Whether the California Medical Association supports them?

MCALISTER: That will have something to do with it, yes. It's not decisive, necessarily, but I think it's an important factor. Now that's one interesting kind of little side show, I guess you'd say, we have in health insurance.

The other really big one—and I'd call it the main show right now in health insurance—is the question of uninsured: the people who simply have no health insurance at all. There's at least one out of six people in California and perhaps as many as one out of five in the nation who are uninsured; either their employer doesn't provide any health insurance, or they're unemployed and they don't have health insurance at the time. What to do about those folks? That perhaps ultimately will require a national solution. There are states that are working on it. The California legislature has been more concerned about that, I think, than most state legislatures.

We've had a number of bills. I had one that I was very proud of, A.B. 600, in my last session there, that would have helped the people who are basically uninsurable, people who can't get insurance from the private industry

because of their previous conditions. This would have set up a statewide association that would have been quasi-state, essentially state, but it would have operated like a private insurance company. But it would have written major medical coverage for these people. The main qualification for being able to get the coverage would have been that you had been turned down by somebody else. We were going to create a big surplus for them to start off, like an insurance company should have a surplus to start, by an addition to the DI tax that I mentioned a little while ago. We would eventually have had a several-billion-dollar surplus. It would have rivaled the size of the UI fund . . .

[End Tape 5, Side A]

[Begin Tape 5, Side B]

HICKE: You were just saying it might have become bigger.

MCALISTER: It might have become even bigger than the UI fund. It certainly would have rivaled it in size. But it wasn't just a giveaway. Far from it; the people who would have wanted the insurance, then, would have had to sign up and would have paid premiums. And they would have been substantial premiums, which in a way was perhaps the weakness of it, because there were people who wouldn't have been able to have afforded it. But many of the people who wanted it were people who couldn't get it at any price, because the insurance companies simply wouldn't write the insurance for them because they had these pre-existing conditions.

I was pretty proud of it. We did our best to work out all the technical problems, and we certainly had it in a position where it was going to be fiscally sound. It was never going to end up with a deficit that the state was

MCALISTER: going to have to pay. The Medical Association decided to give their support, and I think it passed the assembly something like 60-9 or 60-10. It passed the senate unanimously; I think it was 38-0 or 39-0. But the governor vetoed it. It was one of my last two vetoes, I guess. I had two vetoes, I think, at the end of that last year.

The governor gave a couple of reasons that were really chintzy, trivial reasons that really didn't have any substance. The only real reason of substance was he didn't like the new tax we were going to impose. He didn't like the new tax, the addition to the DI tax. Well, that's some reason to be against it, I guess. We didn't know how to do it without having some kind of subsidy from somewhere. Otherwise, we were going to have to charge people too much money, and it would have been pointless; we couldn't have gotten off the ground. So he vetoed it. Had that been signed, I would have considered that the biggest bill I'd ever had in my whole career. But it was vetoed.

There are others. Senator Robbins and Assemblyman [Phillip] Isenberg are pursuing that cause, and Assemblyman Isenberg has reintroduced A.B. 600 with the same number this session. And Senator Robbins has S.B. 6 that's very similar. They're both trying; I don't know whether they'll be successful or not. That's part of the problem.

The other problem is simply the large number of uninsured who don't necessarily have some pre-existing condition that prevents them from getting insurance, but they can't afford it, or their employer doesn't provide it, or whatnot. That's really a difficult problem, maybe beyond the state's solution. We could, of course, as would the Kennedy bill at the national level, try to mandate all employers to have insurance. However, a state probably cannot do that under the federal law; the federal people

MCALISTER: probably have preempted that. So we probably couldn't do that.

We might try to impose some kind of surcharge on all of the insurance policies that are written in the state—I'm not sure whether that's legal or not—and use that to subsidize the uninsured. Or we could simply bite the bullet and say we're going to pay for it out of taxation. But that's very awkward for a state that can't indulge in deficit financing, and you're talking about an awful lot of money. I mean, you could ultimately be talking about billions of dollars. And this state, from what I read in the paper, doesn't have a surplus anymore.

So how do you undertake new social programs based on just general tax revenues? You more or less have to have an additional tax or some surcharge on something, some extra premium you're going to charge somebody. I don't think you're going to get it out of at least state tax revenues. So it may be a problem that in its entirety is beyond state solution. Although there are enough people in the state legislature that are concerned about it that I'm sure they'll continue to try to work on it. When I was there, we had people who wanted to develop something like a state health insurance program that would have been even more ambitious than my A.B. 600, and they're still at work on that. But I have a suspicion it will be some years before they hit paydirt, if ever.

So those are the big areas of health insurance. Those are the very big areas. I suppose the health insurance problems are the biggest problems the life insurers have. They have very few problems in life insurance, per se.

Malpractice Insurance

HICKE: Well, it seems to me we didn't talk about malpractice, but I don't know how much more time you have here.

MCALISTER: Oh, I think malpractice can be summed up in a few minutes. We did indeed deal with malpractice. There were two committees that dealt with malpractice, however, and the main committee was the Judiciary Committee. The F & I Committee got into it somewhat, but the big malpractice reform bill, what they called MICRA, Medical Injury Compensation Reform Act of 1975, went through the Judiciary Committee rather than the F & I Committee. My recollection is I was not on Judiciary at that time, although I was a co-author of the bill and I voted for it. But it didn't go through our committee. We dealt with a variety of proposed financing methods to try to finance malpractice insurance, most of which, fortunately, didn't pass.

The malpractice law that came through the Judiciary Committee did pass and was signed into law and has had an effect. It did a number of things. It put certain limits on how much you could recover for malpractice. It put a \$250,000 limit on general damages in a malpractice action. No limit on economic damages, but on general damages, meaning pain and suffering, basically, no more than \$250,000.

It developed a little stronger statute of limitations so that there does come a limit to when you can sue; the old statute appeared to be almost open-ended. It allows them to offset what they call collateral proceeds, money that you get from other policies. It at least allows the jury to know about those. It doesn't require they be offset, but it allows the jury to know that you, the

injured person, are getting money from some other insurance policy; and so they can offset it if they want.

It allowed the court to require that a judgment of over \$50,000 be paid on periodic installment basis, rather than all at once. Again, it doesn't mandate it, but lets the judge do that if he wants to.

Then, it had reorganized what was the old medical board, the name of which has escaped me, but created what they now call BMOA, the Board of Medical Quality Assurance. I think the old one was the Board of Medical Examiners. It gave it a mandate to be concerned about medical care quality. Whether that's worked out or not is probably doubtful. But anyway, that was the idea.

HICKE: Was lawyers' insurance a . . .

MCALISTER: At that time, lawyers' insurance wasn't any big factor. Since then, malpractice has become a bigger element throughout the whole society, and lawyers' malpractice insurance is certainly higher now than it was then. It's nothing compared to the doctors, though, even now, for most lawyers. I don't think there are any lawyers who pay \$50,000 to \$100,000 a year; there are still some specialties, at least in some parts of the country, where they pay that much. I'm not sure if there's any doctor paying \$100,000 a year in California anymore.

But malpractice insurance premiums of \$10,000 to \$30,000 are still not uncommon, depending on your specialties. I guess obstetricians pay more than others. Neurologists, I guess, pay quite a bit. Anaesthesiologists, as I recall, are one of the higher ones. Surgeons have more than nonsurgeons. The stuff somewhat fluctuates from year to year, but I guess the specialties that are impacted tend to be the same ones.

But that was an example of something the legislature did do because there was so much pressure. There really was. The doctors spent the whole year lobbying the legislature. Not only the doctors, but their nurses and their spouses.

HICKE: Yes, you mentioned that before.

MCALISTER: They faced the trial lawyers down and beat them. But it took their undivided attention for most of the year to do it. And the legislature did respond. Whether we did the right thing or not, people argue about; but at least we did what we thought we should do at the time.

HICKE: Okay, well, thank you very much.

[End Tape 5, Side B]

[Session 3, April 29, 1988]

[Begin Tape 6, Side A]

Consumer Finance: The Unruh Act; Rees-Levering Act; Song/  
Beverly Credit Card Act; Song/Beverly Consumer Warranty  
Act; Rule of '78

HICKE: We talked about finance of the Finance and Insurance Committee somewhat. But there were some things under consumer finance that I thought I'd ask you about: the Unruh Act, which was retail installment accounts and contracts?

MCALISTER: Yes. The Unruh Act, of course, was passed some years before I came to the legislature.<sup>1</sup> However, we had numerous bills that proposed to tinker with it, although in its essential outlines it has been very similar for a good many years. It has provisions in it that place restrictions on the interest rates that can be charged in consumer finance. They also have other more general provisions protecting consumers. Those other provisions largely have to do with disclosure that must be made to people when they buy things on time.

The largest issues, I guess, that affected the Unruh Act when I was there affected the question of the interest rates that could be charged on consumer purchases. The

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1. Unruh Retail Credit Act, 1959, Cal. Stats. ch. 201, p. 2092.

Unruh Act most of the time has put a limit, as I recall, of 18 percent a year on consumer purchases being financed through interest. We increased that once or twice when interest rates generally were higher. I forget what the maximum is we ever allowed. It was somewhere between 19 and 21 percent, as I recall. There were efforts to remove the interest rate limit which never were quite successful. My recollection is that sometime in the last year, the last increase that we granted--they were always temporary increases; they weren't permanent--reverted back, and I think it's back at 18 now, either 18 or 19.

HICKE: That doesn't apply to credit cards?

MCALISTER: It would not apply to a bank credit card, because, of course, the banks have no interest rate limitations. For the most part in this state, we don't have interest rate limitations. Banks and savings and loans have no interest rate limitations. The interest rate regulation in California is the exception rather than the rule, but the rates that consumers may be charged by a merchant are regulated under the Unruh Act.

HICKE: And what was [Speaker] Jesse Unruh's part in this?

MCALISTER: Well, he put his name to the original Unruh Act that was passed back in the 1960s. He was speaker at the time. I wasn't in the legislature then.

HICKE: And this was an extension of it or something like that?

MCALISTER: Well, the act was a permanent act, but from time to time there was debate over whether the interest rate should be either increased or whether the limits should be totally eliminated. There were also amendments from time to time proposed or passed with regard to the other areas of the Unruh Act, dealing with various types of disclosures that had to be made to consumers.

HICKE: OK. The Rees-Levering Act? About motor vehicles?

MCALISTER: Oh, yes. The Rees-Levering Act was kind of the equivalent act to automobile purchases and automobile financing. It, too, was passed before I came to the legislature. The legislation that we had was mostly cleanup provisions and various proposed amendments that would affect the kinds of disclosures that must be made to automobile purchasers when they buy automobiles. We had jurisdiction of that; we didn't have a lot of big issues on it.

I guess the biggest issues we ever had with regard to automobile purchases dealt with questions of whether a car could be repossessed by the dealer and whether the dealer could still go after the buyer for a deficiency judgment. I think that was probably the biggest issue that we used to have. We never changed the law; the dealer can go after a person for a deficiency judgment. I'm not sure how often they do. That was a law that, for the most part, seemed to work fairly well; there weren't a lot of debates over it.

HICKE: Speaking of credit cards, there's the Song/Beverly Credit Card Act.

MCALISTER: That was a law that was passed regulating the issuance of credit cards. Again, that law related not, as I recall, to interest rate limitations, but primarily to disclosures that must be given to the people who obtain the credit cards.

HICKE: And then there was also the Song/Beverly Consumer Warranty Act.

MCALISTER: That's an act relating to the warranties that a purchaser has when they buy a consumer item. Most any time you buy something, it's entirely possible there will be warranties. There will either be express warranties of what the thing will do or how long it will last or how good it is, or the law will imply certain warranties. Typically, the law implies a warranty that the product you buy is fit for the

use for which it's intended. That's just kind of a generally implied warranty, and that act refined this general-law warranty which we've had for—I guess it's been developing for centuries—and refined it generally in a proconsumer fashion. We haven't had any real disputes affecting it for some time.

HICKE: And then credit discrimination—was that an issue?

MCALISTER: Yes, from time to time it was, because as the women's movement arose, there were women in women's groups who felt women were discriminated against in obtaining credit. There have been laws passed at both the federal and state levels to attempt to address that problem and to help women get credit on their own, so to speak. That law, as I recall, is basically directed to that. It may have some disclosure provisions in it, too.

HICKE: Unfair debt collection practices.

MCALISTER: Well, that's a field of law that's been around for a long time. And over a period of time, people felt that there were collectors who did unethical things and made misrepresentations and abused debtors. So the state of California, along with many other states, has passed laws regulating collectors, regulating the kinds of practices in which they may engage, regulating and telling about the kinds of disclosures they must make, how they must account for the money they collect, and so forth. As I recall, regulating when and how they may attempt to collect their debt and so forth.

HICKE: What was the Rule of '78?

MCALISTER: The Rule of '78 was a rather technical rule that could be used on the calculation of interest, where a consumer purchases some product on time and is paying interest. The Rule of '78, more often than not, was used on, as I recall, automobile purchases. It was a very technical kind of a

rule, but the net of it was that virtually none of your payments were credited to principal until almost the end of the time that you were paying. And in fact, there were even situations, as I recall, where you could end up owing more than you borrowed—at least a little more in the early days after the purchase.

The Rule of '78 I thought was abused. A lot of people thought it was abused and it wasn't a very great rule. I tried to either abolish it or substantially reform it and restrict its application. My recollection is that eventually we did pass legislation that considerably restricted its scope. It can still be used, but it's not used nearly as often as it used to be. It can't be used for as many different kinds of purchases as it used to be. You don't hear too much about it; it seems to have been something that has largely been phased out, in part because of legislation that made it more difficult to use, and maybe in part just because of consumer complaints.

#### Real Property Finance

HICKE: In the real property finance area, mortgage bankers and loan brokers, was that a problem?

MCALISTER: There can be problems, but the mortgage broker, of course, helps to put together deals whereby if you need to borrow money for a second or a third mortgage on your property, he connects you up with the person who wants to loan the money. From time to time, there has been legislation regulating the kinds of fees the mortgage broker can charge. And at one time, as I recall, there was interest rate regulation on their transactions, which some years ago we ended up abolishing.

There seems to always—at least every other year or so—be some debate about the fees they can charge, although

that seems to have largely been worked out. And they have debates with other forms of lenders and financial intermediaries from time to time as to who can do what, most of it of no vast interest to the average consumer, but sometimes of intense interest to the competing financial activists.

They were more in the public eye, or the legislative eye, back in the late seventies and early eighties when we had more inflation and we had very high interest rates, and it was hard for people to get first loans or any kind of loan on their property. So people went out for secondary financing. That was probably a bigger, more active time for mortgage brokers than since or before.

HICKE: Variable interest rate loans.

MCALISTER: Variable interest rate loans are something that we did not have in this state or anywhere until the last six, seven years, I guess. Maybe eight at the most. Again, their genesis you trace back to the onslaught of double-digit inflation in this country, around the late seventies. The real estate lenders like the savings and loans and the banks—especially the savings and loans that put almost all their money into real estate loans—had made a lot of loans at relatively low interest rates. They had all these loans on their books, and then the interest rate shot up and they, of course, increased their interest rates. But then all of these old loans they had on their books weren't worth very much, and that had a lot to do with the plummeting financial condition of the savings and loans, with all these financial instruments on their books that weren't worth much of anything.

And they said, "The only way that we're going to be able to survive over the long run is to have variable interest rates. And the only way, in fact, that a lot of

MCALISTER: people are going to be able to qualify for loans is to have a variable interest rate. Because if we have to have just a straight interest rate that will be the same from day one of a loan for thirty years, and if we set that at, say, 8 percent, but then the general interest rate for the next thirty years is higher than 8 percent, we're losing money on that loan. So in the first place, we'll have to charge them a higher interest rate, and a lot of people won't even be able to qualify for that. So let's have variable rates that will go up and down depending on some index, some objective measurement to the cost of funds of the banks, or some rate that the Federal Reserve Board would set—there are various ways it could be done."

That was a big issue for some while. Eventually, the legislature did pass—and of course, our committee was in the thick of this—legislation that essentially authorized a whole host of variable interest-rate-type mortgages. So today, and for some time now, although conventional loans have still been available, there's a whole bunch of variable-type instruments out there in the market that you can get. If the interest rates are rising, if you're in a rising interest rate period, I think that the going-in variable interest rate would be lower than your conventional rate. So a person can presumably qualify better for the variable rate in a rising interest period of time than he could for a conventional rate loan, because it will be lower. I guess conversely, if the rate's going down, it would be higher.

There are ups and downs to this, obviously, for the consumer. If they get in with the lower interest rate, that's fine—it can go up later. But maybe they couldn't get in in the first place. The industry, in those terrible inflationary times, was really very afraid that they could

not survive, and for a lot of the savings and loans, it's problematical whether they can, anyway. But that was the picture. There was a lot of legislation on this. I had some; Senator [John F.] Foran had some. As I recall, one of my bills did pass and was signed into law by Governor Brown. But there have been several legislators that have passed bills, and these bills have been amended as time has gone by. Essentially, I guess you would say we virtually deregulated that field so that you could have almost any kind of a variable rate you want.

There was a time when it was thought that the old, conventional, fixed-rate loan would become an obsolete relic of history, but that hasn't happened. It's never happened, and I don't think it's going to happen. At least it's not going to happen unless we hit another terrible inflationary period. Of course, the really bad inflation period seems to knock the real estate market in the head anyway. There are not a lot of real estate deals, if you've got interest rates that are 15 percent and above.

HICKE: Was this a challenge to get some of this legislation through, or did it go through easily?

MCALISTER: Well, it didn't go through easily. I think a lot of people had to do some thinking about this and do some cultural adjustment to accept this idea, because people had been so used to the idea of fixed-rate loans. As I remember, Governor Brown vetoed the first legislation that was passed on this subject, which I believe was by Senator Foran.

There were people that were worried about the variable-rate loan, feeling that it was shifting the burden of risk to the consumer rather than to the lender. To a certain degree, that's true. But of course, so long as you have a variety of variable-rate loans, plus still have conventional loans, I guess the consumer can look around

and figure out what he thinks is best for him. It certainly wouldn't be in the interest of the consumer if very many of these financial institutions weren't able to continue operating or make loans at all. So it was a considerable cultural adjustment.

Of course, as I say, many people at that time were fearful that the conventional fixed loan would go out of business entirely, and that didn't happen. Especially today, it's not the case at all. I think today there are more conventional loans being marketed than there are variable, although I could be wrong on that; but certainly they're both available.

HICKE: Why was legislation needed to allow this?

MCALISTER: Well, because at the time, the law didn't allow it; the law didn't allow the variable loans, at least not in this state. I think in most states it did not. It was a very big issue for two to three years there in the late-seventies, very-early-eighties period. Eventually the people who had resisted it came to feel that it was necessary, or at least inevitable. Of course, then soon after we passed it, inflation started to end. So we'll see what happens if we get another big inflationary period. I think probably something maybe like what happened before: the real estate market would dry up, but hopefully not quite as much as it did.

#### Investment of State and Local Retirement Funds

HICKE: What about investment of state and local funds?

MCALISTER: My Finance and Insurance Committee had a subcommittee for several years that dealt with this subject, that dealt with the subject of investment of state and local funds, particularly with an eye to the investment of retirement funds. That was our principal interest. We didn't pass much

MCALISTER: legislation. We held quite a few hearings and educated ourselves to the problems of investment of retirement funds.

Again, many of the activities of this subcommittee were back in rather volatile economic times of the early eighties. Mr. Papan on our committee took a special interest in this, and he was chairman of that subcommittee. The one big issue that subcommittee and our committee and the legislature confronted was whether we should remove some of the old limitations on investment. Previously, there had been laws limiting how much of the funds could be invested in stocks, and there were some other limits on what kinds of investments they could make.

Most economists who had studied this came to the conclusion that this really wasn't a good idea, that the best thing to do was to hire good investors, professional investors, and say, "Go," and not attempt by arbitrary limits on how much you could put in stocks or bonds or anything like that to control them. So basically, that's what we ended up doing. I think we recommended—and I believe it may have taken a constitutional amendment; I think there was a constitutional amendment on this subject—we basically took the wraps off and said, "You're fiduciaries; act as prudent fiduciaries, but there are no particular arbitrary limits on what you can do." I think that's the wise thing. There was very little opposition finally to that; a little skepticism at first, but finally, there was not much opposition.

Our California retirement funds seem to have done well. Perhaps it would have been difficult not to have done well in the past five years when you had a generally rising stock market, and the economy was in generally good shape. Both our big funds, the P.E.R.S., Public Employees

Retirement System, and the State Teachers Retirement System, seem to have done pretty well in that period of time.

HICKE: Was a more aggressive investment policy then followed?

MCALISTER: I don't know that you would say it was more aggressive. "Aggressive" to some people has a connotation of a high-rolling, speculative nature of investments.

HICKE: Well, compared to what it had been?

MCALISTER: Perhaps compared to what it had been. Basically, the premise was that the legislators and the law have no way of knowing how, on a day-to-day or week-by-week basis, or month-to-month, or even year-to-year basis, professional investors should invest the money. It might be appropriate for them to have 80 percent of their funds in stock; it might be appropriate for them to have 20 percent of their funds in stock. That was the philosophy, and I think it's a sound philosophy.

With your real large retirement programs, of course, it becomes so large that over the long run, it may not be realistic to expect them to do any better than just, say, the general movement of stock prices or the general economy would show them doing. Because they would become so big, they may almost be indistinguishable from the rest of the country, when they become of a certain size. Probably the small investor in theory, and sometimes in practice, can do better than the big ones. But you can become so big, of course . . .

HICKE: Because they move the market?

MCALISTER: They can do all kinds of things; they can move quickly. Mr. Papan was interested in the inner administration of these organizations. I was, too, to a degree, although I think the nature of our interest was somewhat different. This was also the period of time in which the Texaco scandal

developed in the S.T.R.S. investment. Texpaco was a deal where the State Teachers Retirement System loaned money to a Colorado oil company called Texpaco on a very questionable deal.

It ended up being fraudulent. There wasn't any oil. The person who ran the company took some of the money for himself. One of the board members of S.T.R.S. ended up taking a bribe, taking half a million dollars or so out of the loan money that was given to him by the company as consideration for getting the loan. It was a rather ugly scene. The particular member of the board, in fact, was chairman of the board at the time. He disappeared soon thereafter, and then was located after being a fugitive from justice, about three years later, and was recently sentenced to federal prison.

HICKE: Do you recall his name?

MCALISTER: I'm trying to think of his name. It will come to me as I go here. As I say, he was a fugitive from justice for about three years. We held hearings. . . . I held hearings; nobody else in the legislature wanted to hold hearings on it, it seemed. But I held hearings on this soon after it developed. I don't know whether we ever fully got to the bottom of it. Certainly eventually the principal perpetrator was found; this board member chairman was eventually found and brought to justice. He's been sentenced to prison by the federal court. That kind of thing is not typical of our retirement system administration, I might say. It's the only example of that kind that I know of, that I can think of.

HICKE: After this legislation was passed, was there any provision for legislative oversight?

MCALISTER: Oh, yes. There is continual legislative oversight. This is the kind of subject matter that, especially periodically

but maybe also ongoing, the legislature is interested in: both houses and the governor's office, also the Public Employees Retirement Committee, which is interested in this. At least the structure is set up for oversight; I'd certainly be surprised if they just forgot it and let it run itself. There's so much money involved, and also you've got all the state retirees, actual and potential, who are interested in it . . .

[End Tape 6, Side A]

[Begin Tape 6, Side B]

HICKE: . . . administration of retirement systems—that was lost on the tape.

MCALISTER: I was saying you've got all these retirees, actual and potential, who are interested in the administration of their respective retirement systems. Probably the larger problem of all is one that, frankly, we didn't do anything about—at least not much, nothing significant—and I don't know that anybody has or will, although eventually they must—and that is the unfunded nature of the State Teachers Retirement System. The State Teachers Retirement System in this state is seriously underfunded and, by at least most actuarial accounts, will go broke someday and needs quite a few billion dollars to fill the deficit. Unlike the Public Employees Retirement System, which was always from its beginning more or less properly funded, the State Teachers Retirement System was not at all properly funded in its early and middle days.

It's only been the last fifteen years or so that it's been even close to properly funded. And there's a big gap; I don't remember how many billions of dollars it is, but it's in the many billions. I don't know what they do about

that. No one's been willing to really bite the bullet. There will come a point in time when a lot of teachers are going to retire and they're going to expect the state to meet its obligations. The wolf isn't just around the corner; there's still a lot of money in that fund. But I think somewhere after the turn of the century, the line on the chart starts to turn down; and unless they find a lot of extra money to pump in there, they're facing a big deficit.

Usury Law and California Right to Financial Privacy Act

HICKE: What about the usury law?

MCALISTER: Well, the usury law is a pale shadow of what usury laws are in some states. Usury as a law, of course—to the extent there is a usury law—it says if you charge more than a certain amount of interest, you're violating the law. We don't have any such things with regard to most lenders anymore; banks, savings and loans can charge whatever the market will bear. We still have a limit on what the retail merchants can charge, and there are some specialized-type lenders, particularly those who lend to what we call necessitous borrowers, that have some limitations on interest rates. But the vast proportion, over 90 percent of the lending community, I suppose, is not subject to any usury laws in our state anymore.

There are some states that still put interest rate limitations on banks and savings and loans, although not many. It's not very practical to put limits on them, because any limits you put on them, there will come a time when they'll bump up against that limit; and when they bump up against that limit, what that means is not that they're simply going to keep loaning money at that limit, but that they're not going to loan it at all. Because they've got to

get the going rate on the money, and of course, if the going rate's too high for people to borrow, I guess you have some kind of a recession or depression or whatever; you have economic turbulence, certainly. So the usury law is of minor significance in this state.

HICKE: The California Right to Financial Privacy Act.<sup>1</sup>

MCALISTER: This is a law that basically says that your financial affairs, as recorded in banks or financial institutions where you might keep your money and so forth, are basically private, and that banks can't turn over this information to other people. The only way that the government can get it is through some form of legal subpoena. If they suspect you of criminal doings, they can go to court and get their subpoenas and get your data. But that's about the only way they can do it.

HICKE: Was that passed during your time?

MCALISTER: The original law was passed early in my legislative career, as I recall, a little before I went on the F & I Committee; but then after I was on it, why, we had various amendments and proposals to improve upon or make modest adjustments.

## V. OTHER LEGISLATIVE ISSUES

### Changes in Committees' Jurisdiction

HICKE: From 1975 to '80, the F & I Committee had jurisdiction over public utility rates and regulations, and also truck and bus regulation. Why did that change come about? Why did

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1. California Right to Financial Privacy Act, 1976, Cal. Stats. ch. 1320, Art. 1, p. 5911.

they get that regulation jurisdiction and why did they lose it?

MCALISTER: You're always having some amount of change in jurisdiction in the legislative committees for reasons that are a combination, I suppose, of house administration and efficient use of resources and politics and whim on the part of the speaker, the committees, the people who are involved, etc. Before 1975—of course, that was my first full year on the committee—before that year, those kinds of things were handled by the Public Utilities Committee. When Speaker McCarthy became speaker, he reorganized his committees; he gave more jurisdiction to the Finance and Insurance Committee than it had ever had before, and that it ever had after that period of a few years there.

HICKE: Why did he do that?

MCALISTER: He thought, I guess—and there was a lot to be said for this; I tended to think the same thing—that it's a good idea to have one big business economic affairs committee that can look at the whole range of economic issues and treat them in a kind of comprehensive, coordinated fashion. I think that was basically his feeling. There may have been a certain amount of personal and political judgment involved there; I mean, he was just coming in reorganizing things. He appointed his own designated person as chairman of the F & I Committee. He put his own people on it, and I guess he trusted them and felt that that was the place to have those kinds of things.

As time went on, I think it dawned on the speaker—and he was probably right there, too—that the committee was almost too big, that it was so huge that it was almost too much.

HICKE: You mean the membership of the committee was too big or its jurisdiction?

MCALISTER: No, its jurisdiction. It was really a challenge to have quite as much jurisdiction as it did. We did it, and I think we did a good job, and probably did as well or better as it's ever been done before or since. But in my first two years on that committee, my recollection is that we had at least 700 bills in the committee in those first two years.

There are two areas of jurisdiction that we had at that time that we eventually relinquished. One was the utilities jurisdiction which we had for those five years. The other was occupational licensing that we had, as I recall, for just two years. I believe the little sheet that you've been reading from tells you when that was. But there was a fairly short period of time when we had vocational licensing. We gave up the vocational licensing, as I recall, after about a couple of years, and it was given to some other committee or committees. We kept the utilities stuff, though, for about five years, and I guess we lost that when McCarthy no longer was speaker. That indicated '75 through '80, but McCarthy ceased to be speaker at the end of '80.

Then Speaker Brown became speaker, and Speaker Brown had his own ideas about reorganization. I think that he, then, wanted a reorganized utilities committee to have the stuff that we'd been doing on utility regulation.

#### Deregulation in the Trucking and Railroad Industry

HICKE: While you had that, were there any big problems?

MCALISTER: The biggest issue during that period of time was deregulation—or some people call it reregulation—but the deregulation movement in trucking. That was the biggest political issue we had. It was a federal issue, too. Before that time, trucking rates were rather closely regulated by public utilities commissions in the various states, and I

MCALISTER: guess interstate trucking was similarly regulated by the Interstate Commerce Commission.

The movement came to deregulate and to let these people operate more or less like any other business, charging whatever the traffic would bear. We didn't go quite as far or as fast as some advocated, but we moved in that direction. We passed a bill by Senator [David] Roberti that basically set us on the path to deregulation.

It was a controversial bill because the trucking industry, for the most part, didn't like this idea; especially the Teamsters Union didn't like it. They disliked it even more than the truck owners. But none of them have ever been happy about deregulation. There are some industries that absolutely want nothing to do with government, don't want government to regulate them in any way. Then there are some that have more or less made their peace with regulation and kind of like it, and kind of feel like it even helps them economically. The truckers seemed to be in the latter category at that time. They felt that their profit margins were small, and that if they were deregulated, they would have cutthroat competition--which I guess they have had--and that there would be bankruptcies--which I guess there have been--and the Teamsters Union representing the workers were afraid they wouldn't be paid as much as they would make if rates were regulated by commissions at a level that would make sure that everybody survived and made a profit.

So regulation can sometimes be very comfortable for both the owners, managers, and the workers, employees. But that was a time when both the liberals and conservatives in both parties seemed to be dissatisfied with the old way of doing things and seemed to like the idea of deregulation. I think it was Senator [Edward] Kennedy who led the way in

the federal government, if I'm not mistaken, on at least some of the deregulation. So that was by far the biggest controversial issue.

Most of the utilities issues are interesting issues, but the legislature does very little about them. I served on the Utilities Committee after 1980, so I kept my hand in this. It's an interesting field, because you've got the truckers, you've got the telephones, you've got the electric utilities, the gas utilities, pipelines, and water utilities—these kinds of things. And you have the issues between pro- and antinuclear industry people. So it's kind of an interesting field, but it's basically one that the legislature keeps its hands off of, for the most part. I mean, they make noise; they hold hearings; they introduce bills, but prudently do almost nothing and leave it largely up to the affected business plus the Public Utilities Commission to work out their problems. It's so complex that that's by far the best solution in most cases. But it's interesting to learn about them and watch them.

HICKE: Were the railroads involved in the trucking deregulation issue?

MCALISTER: Well, the railroads. . . . I guess they're another utility, so to speak. My recollection is that if they were involved in the trucking deregulation it was very, very little. I don't know what position they took. They, of course, have felt for a long time that they're the subject of unfair competition from the trucks, but I guess the heyday of the railroads is fifty years ago or more.

Now and then there's an interesting legislative issue involving the railroads. Much of their fate, of course, is decided at the federal level. But the state does, once in a great while, confront a bill. There was a bill that was proposed by Senator [Alfred E.] Alquist about three years

ago that would have, as I recall, required every train to have a caboose. Senator Alquist and its advocates said that this was for safety reasons. The railroad said it was featherbedding to maintain jobs for whoever it is that rides in the caboose. I agreed with the railroads. The bill came through the utilities committee, passed, I guess, by one vote, passed each house by one vote, and was vetoed by Governor Deukmejian.

That was kind of an exciting bill, just to watch the political interplay. There probably is a fair amount of featherbedding in the railroads. At least the railroad owners feel there is, that they're kind of hampered by various work rules that they have to abide by and that the unions have more or less forced on them. Naturally, feeling that way, they don't want statutory regulation that forces still more things on them.

It seems to me that that kind of an issue, unless there's a very clear safety consideration one way or another, is best left to the private system to work out, or to regulatory authorities that have charge of safety issues. If they conclude that some safety issue is paramount, they can step in. I doubt that the legislature is well equipped, really, to make that professional judgment.

HICKE: Do the railroads have much influence in the legislature?

MCALISTER: Oh, only a modest amount at most.

HICKE: Not like the good old days.

MCALISTER: No, no. It's reputed that they dominated the state at one time, but that's a very different era. Well, of course, the railroads were a powerful economic force at that time, and were, I suppose, the principal means by which at least goods were transported throughout the country.

HICKE: Plus they owned all of the land, or a good part of it.

MCALISTER: Yes, they had lots of money. Of course, in the Progressive Era, Governor Hiram Johnson and his supporters did various things to reorganize and reform the political system that apparently greatly reduced the political influence of the railroads. No, the railroad's influence is. . . . They're not a nullity by any means; I mean, where issues affect them, they've had lobbyists. They're listened to. Well, in this one case I mentioned, of course, they lost on the caboose bill, although the governor saw things their way and vetoed the bill. That was probably the biggest bill affecting them that we had, though, in all the time in my entire career in the legislature.

Joint Committee on the State's Economy: 1977-86

HICKE: You were a member of the Joint Committee on the State's Economy for a long time, from 1977 to '86?

MCALISTER: Yes, I was. That joint committee. . . . I guess I should explain a joint committee. A joint committee, of course, is not what we call a policy committee. It doesn't hear bills, it doesn't vote on anything; it's a study committee. That committee existed to study the state's economy and to learn about it. It made recommendations. And they did develop bills that they would suggest should be passed, and then members of the joint committee would introduce bills that would go through the regular process sometimes. I was on that. Senator [Ralph C.] Dills was the chairman of it, as I recall, most of the time that I was on it. Senator [John W.] Holmdahl and Senator Dills. Senator Holmdahl is now a member of the court of appeals in the Bay Area.

HICKE: He is?

MCALISTER: Yes.

HICKE: I've been trying to get his address.

MCALISTER: Well, he's a member of the First District Court of Appeals. He lives in Oakland, and the court, of course, is in San Francisco.

HICKE: Is that right? Oh, that's wonderful. He's on our list to be interviewed and I couldn't locate him.

MCALISTER: He'd be a good one to interview. He was a member of the senate for, I believe, sixteen years. I think he served from 1962 to '66; then he was out for four years of his own free will. He came back in '70. When I was elected the first time, he was elected the second time, and he went through 1982. He's a nice man; I felt reasonably close to him. He reaches back about as far as you'll find any of the people that you're going to talk to, because he goes back to the early sixties when he started; '63 would have been his first year here.

Anyway, the joint committee was a study committee; it examined the state's economy. To be perfectly frank, it's questionable what value most joint committees are. That was a more interesting joint committee than most of them. I don't tend to take the joint committees too seriously most of the time because they are basically study committees. While I like to study, most people in politics don't give it a very high priority, and it doesn't usually translate into anything of legislative significance.

But it was kind of an interesting joint committee to serve on and to hear people tell us about different aspects of the economy. We studied all kinds of funny little nooks and crannies. We studied the problems of the pipelines, or the problems of the gas and oil industry. We got into things that some people have hardly even heard of. But ultimately, I think you have to say that joint committees are certainly of minor significance in the legislative

structure, because they can't pass a bill; all they can do is study.

HICKE: Has any major legislation ever arisen?

MCALISTER: Well, there was some legislation. Both Holmdahl and Dills took the committee seriously enough that they both did propose legislation from time to time which more often than not they would author. Once in a while, they would suggest some by other members. I don't recall anything earth-shaking, but I'm sure if you were to talk to them, they would have in their mind something that they did that they thought was really important. I don't recall whether I ever carried any bills for them or not. I'm not sure that I did; certainly nothing of earth-shaking importance.

I remember one issue that they were interested in for a time was the question of compliance in urban areas by industry with air pollution standards. And there were these laws that said that by certain dates they had to reduce their air pollution emissions to certain levels. But they were very strict laws, and it was really hard to know how you did this, how you reduced your emission to a certain level without shutting down your plant. Congress would periodically extend the dates and say, "But the next time you've got to be able to meet it; we really mean it." We held hearings on those things. I guess some of the deadlines just continued to be extended. Maybe they've met some of them. But I'm sure they haven't met all of them in Los Angeles. I don't think there really was any way they could meet all of them.

California Law Revision Commission

HICKE: You alluded briefly to the California Law Revision Commission. You were on that almost all the time you were

in the legislature. Can you elaborate on that, tell me more about it?

**MCALISTER:** The Law Revision Commission is really a marvelous institution that deserves far more credit and notoriety than it has. Not that it will ever get it because it's a low-key, kind of scholarly institution. It's a state commission that's set up by statute. It has existed since 1952. It's predecessor actually goes back into at least the forties, maybe into the thirties. The legislature created what's called the Code Revision Commission that revised all of California's statutes and combined them into the California codes. In 1952, the Code Revision Commission's work was presented to the legislature and passed by the legislature; they enacted in code form all the miscellaneous statutes that had developed over the years. Then they said, "But we need somebody to keep doing this kind of law-revision work," so the Law Revision Commission was created as a successor to the Code Revision Commission, and it has existed since '52.

There are, as I recall, seven members that are lawyers who are appointed to it by the governor. There are two others who are legislative representatives, one from the assembly and one from the senate. I was the assembly representative for fourteen years. Then there's an ex officio member who is the legislative counsel, who is now Bion Gregory. I believe that's the breakdown. So that would make ten members, I guess. It's either ten or twelve, if I've missed the number the governor appoints. He may appoint nine, but I think it's seven. Anyway, ten or twelve members.

Then there's an executive secretary, too, who currently and for at least the last twenty-five years has been a man by the name of John DeMouly. Their headquarters

MCALISTER: is on the Stanford [University] campus. It's a very small organization. I think DeMouilly doesn't have more than six or seven employees. He's got a couple of lawyer staff members and several secretarial people. They study any legal subject the legislature tells them to study, and nothing more.

The legislature every year passes a resolution, informs them of what they want it to study, and they study it. They will make a comprehensive study of a legal area. They'll issue a pamphlet or a book, even, that tells what their conclusions were and what their recommendations for legislation are. They'll go through it word for word and tell you what it will all do and why they want to do it. They consult with everybody in the world who's interested in the subject. They'll send their proposed bills to the state bar and to the banks and the title companies and everybody who might have any conceivable interest in it. And then they'll make the recommendation.

They'll spend years and years studying one subject. They spent twenty years working out the eminent domain laws of this state. Eventually I authored their recommendations and we revised the eminent domain laws. The probate laws on our books now are virtually entirely a product of the Law Revision Commission studies and our trust laws, our conservatorship and guardian laws are a product of the Law Revision Commission recommendations; our quiet title laws, many of our property laws. The Evidence Code in the state of California is a product of their recommendations.

The commission is responsible for more of the material in the code books than I'm sure any other organization by far, and it's just a tiny little organization that has an annual budget of maybe \$250,000 or \$300,000. It's the most cost-effective organization in the world, I think.

Certainly in the state of California government. Ninety percent of their recommendations are enacted. Not without some change, but they're at least meaningfully enacted.

HICKE: That's pretty impressive.

MCALISTER: Now we don't expect them to solve the partisan problems. We don't ask them to draft a reapportionment bill for the state of California. We don't ask them to work out for us a solution to the insurance liability problems because, while they would do that better than anybody else, the legislature would make hash of any recommendation they made to us in a highly politicized area. So we don't get in the highly politicized areas. But we get in some very important areas—very important—that are basically nonpartisan, at least nonpartisan in the sense that there's no party answer and there's not going to be an enormous hue and cry from interest groups about what's done. It's just good government things that need to be done. You need eminent domain laws, probate laws, trust laws, guardianship laws, property laws, evidence code laws—you need all that, and so they do it.

HICKE: Who decides what task to give them?

MCALISTER: Well, the legislature passes a resolution every year telling them what task they want them to work on. A lot of this is kind of an interplay between the legislature and the commission. The executive director will recommend to the legislature and to the legislative representatives what he thinks would be good things to study. Then unless there's some disagreement, why, those will generally be put into the resolution and they'll study them. If some legislator thinks they ought to study something, they'll talk to the executive director, and it's very likely they'll end up as something they'll decide to study.

It's not a quick turnaround; if you wanted something enacted this year, you wouldn't ask the Law Revision Commission to study it. They can hardly clear their throat in a year. They've taken as long as twenty years or more, and typically it's several years on almost anything. But they do it well.

HICKE: How much time would you spend on that?

MCALISTER: Well, I was the principal author of the larger number of their bills in those fourteen years. I didn't attend very many commission meetings; that's really not the role of a legislative member of a commission of that sort. I couldn't afford the time. But I was in constant communication with John DeMouly, talking to them about their problems and their studies and their aspirations and their proposed bills. I'd go over with him every year all their recommendations, and we'd decide pretty much who should author them. I'd take my share and then he'd farm out others to other legislators that had interests in different subject matters. So I spent a fair amount of time on the commission legislation.

[End Tape 6, Side B]

[Begin Tape 7, Side A]

Technique for Carrying Bills; Eminent Domain Laws

HICKE: You were just saying you spent a fair amount of time on the bills.

MCALISTER: I spent a fair amount of time on the bills, of course, as I introduced them, because there were some years when I might have had seven or eight or nine Law Revision Commission bills in one year, and other years only three or four. But there were always some in the pipeline, and I was always working on something.

But it wasn't an overburdening task, I would have to say, because they were so well thought out. And Mr. De Moully was kind of like an extension of my staff, because he would come up and present testimony to the legislative committees on these bills; he'd help to work out problems that different groups had and work out amendments. So it was really a pleasure to work with them. Basically, I was in the position of kind of being a jockey for their bills in the legislature and giving them advice and discussing things with them and helping them. But your time can be used valuably that way, when you've got skilled people that have worked out most of the problems already.

HICKE: Yes. How did you get appointed to that?

MCALISTER: Speaker Moretti appointed me, as I recall, in January of 1973. I think the preceding member had been Assemblyman Carlos Moorhead. He was a Glendale Republican assemblyman who was elected to congress in 1972. I was interested in it, and Moretti would rather appoint a Democrat than a Republican, I guess, anyway.

HICKE: Do you know if this is unique to the California legislature?

MCALISTER: It's not unique to us. There are a number of states that have law revision commissions. I don't know whether any of them have one with quite the extensive and very long record of outstanding service this one has given. I think the state of New York has a major law revision commission, and I think there are many other states that do.

They started out with the need to take what were often rather chaotic statutes and make some sense of them— consolidate them, put them together, weed out the obsolescent junk that's in them, and make them readable. And then it went on beyond just the grammatical and reorganization to really making recommendations for making

improvements in the statutes that the legislature by itself might never have time to get to. The kinds of things the Law Revision Commission does are things that the legislature itself would never take the time to study. The legislature's not going to take twenty years to study the eminent domain laws, obviously. In twenty years, the totality of the legislature has changed; some of the seats have changed three or four times in that period of time; the committee chairman of Judiciary or whoever would be doing it, they've changed. No, there's not that kind of cohesiveness and continuity in the legislature. So you've got almost an immortal organization there that can take a long time to study problems, and then the legislature can benefit and the people can benefit from all this effort.

HICKE: What were these eminent domain laws?

MCALISTER: The eminent domain law, of course, is the law where the government can take private property by paying for it. To a large degree, we generally made the laws somewhat more favorable for the private landowner, the private owner of land. Where there were serious conflicts between the government and the private owner, I think we took a turn in favor of the private owner.

We obviously didn't abolish eminent domain; there's plenty of eminent domain. The government takes property for public purposes all the time. As I recall, one of the significant things we did, I think we provided something that had been at least disputed in the law. I think we said that the good will that a business had was something that the government had to pay for. It would have to be established, but the good will in a business, if you took the business, you had to pay for the good will. You didn't just pay for the building and the land. Accountants, experts, have to come in and say what the goodwill is

worth. That just may be symbolic of what we were doing. I don't know how often that's a factor, but it can be a factor sometimes. It passed very easily, as I recall; there was very little dispute. Probably over a year the commission has anywhere from half a dozen to ten bills that they push.

HICKE: You were the principal author of 313 bills that got to the governor, of which 15 were vetoed.

MCALISTER: I think you're reading from something that's a little bit old.

HICKE: It's outdated? Okay, maybe I should read this next one.

MCALISTER: Yes, you are. That's October 1983.

HICKE: OK, that's the older one.

MCALISTER: Four hundred and eleven reached the governor's desk, and three hundred and eighty-eight became law; nineteen were vetoed.

HICKE: The next thing that I was going to read was that most of the ones that reached the assembly floor passed.

MCALISTER: Yes, all but two.

HICKE: I wondered how you can account for this.

MCALISTER: If you know your business, you shouldn't lose many on the floor. If you're going to lose them, you lose them in committee. But on the floor, you should not lose many bills. I've known a few authors who didn't have the knack of handling bills on the floor, and there are a few there that have lost more in one week than I lost in sixteen years. But you really shouldn't, because the committee works out the problems in the bills. If the committee passes it, most members on the floor are inclined to think, "Well, the committee did it, and that's good enough. They're the ones that spend their time on this particular subject." Unless it's a highly partisan or highly explosive issue, in which case they'll look at it more closely. Also,

over a period of time, people get a certain degree of confidence in authors, and they'll tend to trust or not trust a given author in proportion to what their past experience suggests.

A lot of my bills I carried were very involved and complicated kinds of bills, like the Law Revision Commission bills. There wasn't anybody on the floor that could really effectively challenge them. They didn't know that much. They could read the analysis; they could look at the digest; they could listen to what I had to say about the bill. But how are you going to challenge a twenty-year study that leads to an eminent domain law or a five-year study that revises the guardianship laws? You might delve into a little thing here, a little thing there, but you're not likely to make any very effective stand or even be inclined to do so.

So they came to trust me in the kinds of bills that I would come up with. I guess I was somewhere in the middle, politically speaking, which meant that when I rose, I didn't set off a lot of alarm bells. I didn't automatically have twenty or thirty members of the house who were just automatically going to cast a "no" vote. All that helps.

HICKE: Sounds like you're saying also that you were well prepared.

MCALISTER: Well, I tried to be. I think I was.

HICKE: Your bills were carefully . . .

MCALISTER: Yes, they were carefully thought out. If you do those things, you should win. The people that are going to have problems on the floor are going to be the people who, of course, aren't as well prepared or are perceived as being highly partisan individuals or highly extreme or highly one-sided in some respect or not thorough. Or they could be good people, but who just happen to carry a lot of controversial bills, too.

I've carried some controversial bills; I probably carried my share of controversial bills. Many of those, of course, were defeated in committee. The ones that emerged from committee, though, and reached the floor. . . . Again, all of the things that I mentioned tended to give some stature to what I was doing, and they were usually worked out reasonably well. At least I'd get a majority; you don't have to get everybody to vote for you.

HICKE: When you first went to the assembly, you didn't have this middle-of-the-road reputation or the reputation for well-prepared bills. Was it tougher at first?

MCALISTER: Well, it's amazing how quickly people's reputations are formed, though. It doesn't take long for people to get some kind of impression of you. I'd say they're acquiring some impression from the first moment you arrive, and in a few months, they get more of an impression. After a year, they have a considerable impression.

HICKE: Did you lay low at first?

MCALISTER: I didn't lay very low. I felt that I was well equipped, and I didn't lay low. I jumped in pretty strongly, I think. As I recall, my first two years I think I had thirty-five bills that were passed. I think thirty-five passed, and the governor vetoed two or three, so it was thirty-two or thirty-three bills that came along. They weren't all earth-shaking bills, but at least I was active in doing things.

I took the attitude that I was sent to the legislature to do something and to make a mark, and that's the way I wanted to be. If I had stayed longer than sixteen years, I would have probably gradually reduced the number of bills I introduced. In sixteen years you begin to discover—somewhat shorter than that, in fact—what's likely to pass and what isn't. And I was discovering that. My last eight

MCALISTER: years, I had a significantly higher win record than I had my first eight years. I think it was about fifteen percentage points higher, something like that. If I'd spent another four, six, even two more years there, I'd have still been active, but I think I would have been very discriminating about what I introduced. I might have developed a 70 or 80 percent win record by that time, because I was about to the point where I knew. . . .

After a time, you really can know what's going to pass. That doesn't mean you should never introduce anything that's not going to pass. There's a reason for people introducing bills that aren't going to pass, even bills that don't have the slightest chance, just to air issues and to get discussion going. There's room for that. After sixteen years, I don't know how much more of that I would have wanted to do. Probably maybe two or three of those bills a session, but the rest I would have just concentrated on the ones that I figured were going to make it. But everybody, whatever philosophy they bring to the legislative process, has a contribution to make.

There's a political scientist at [University of California] Berkeley by the name of [Alexander] Sandy Muir who wrote a book on the legislative process in California. He worked for me as a consultant on my committee for one year, in 1975, my first full year there. He took off a year or a year-and-a-half from the academic world just to work for the legislature to learn about the legislature, kind of like a working sabbatical. He wrote a rather comprehensive book about the legislative process.

He was less critical of the legislative process than some observers are. You can find many who are very critical of it and really slam it. Sandy has kind of an optimistic personality, and maybe it's a reflection of his

personality, but he was more inclined to see a lot of good in the process. He saw the legislature as kind of a great school, and he thought it was a place where people came and they really learned, and they were exposed to all kinds of ideas and problems. He saw the growth process in legislators, and he saw a lot of good in that. Certainly the potential is there. I think he may have been a little bit optimistic for all of them. I mean, some of them don't learn a lot, but there are certainly those who do. They all have different backgrounds and different points of view. Put all that together, there are some serious contributions made, even though, as I pointed out, I think, yesterday, the really big problems seem never to be solved. But they're beyond any individual.

## VI. VIEWS ON HOUSE LEADERSHIP

### Speakership Battle 1974

- HICKE: I'd like to switch gears here a little bit now and talk about the leadership and your views. We can start with the speakership. I know you witnessed, or perhaps were involved in, at least a couple of major speakership battles.
- MCALISTER: Yes, I was.
- HICKE: Can you tell me about those?
- MCALISTER: Yes. I served under three speakers: Bob Moretti, Leo McCarthy, and Willie Brown. I wasn't particularly part of Moretti's rise to power, since I was elected and came into office just as he was becoming speaker and he'd really already won that battle; that was just a matter of ratifying his selection. But I served with him for three-and-a-half years, then was very much part of the battle that McCarthy and Brown had, which McCarthy won in 1974, and then the [Assemblyman Howard] Berman uprising in 1980,

MCALISTER: in which McCarthy was eventually overthrown. But Berman was surprised to find that he didn't become the speaker; Willie Brown became the speaker. So I was very much involved in both of those.

The McCarthy battle was a very interesting battle. It was a very hard fight that lasted for, I guess, three-and-a-half years; lasted from the time I was elected until the summer of 1974. McCarthy and Brown were conspiring and struggling to be elected speaker for Moretti's entire speakership. The battle started at least by the time Moretti became speaker—probably a little bit before, actually, but at least by then.

I was a McCarthy ally. McCarthy had been helpful to me in my first election, and I had gotten to know him reasonably well, and no doubt felt a little closer to him politically and ideologically than I did to Willie Brown. Willie, at the time, especially, was known as almost a political radical. I don't think it would be unfair to say that at that time his image was almost that of, say, a black power radical advocate. Not quite. I don't use that in a demeaning sense, either. He would have probably been proud of that. He had many aspects to his political persona, and he changed as time went on. Of course, actually, the black power, the radical image was changing even in that period, because Moretti made him chairman of the Ways and Means Committee. So probably the real radical image for Willie Brown was in the sixties, before I got there.

But he still had some to live down, I suppose. And then people also think back to him as a leader of the [U.S. Senator George] McGovern delegation in 1972, at the Democratic National Convention. He made a famous speech there that gave him a good deal of national publicity. As I

recall, there was a battle, I think, between the [Vice President Hubert] Humphrey and the McGovern delegations as to which of them was going to be recognized.

Anyway, I was closer to McCarthy at the time, and, I guess, was one of the charter members of the McCarthy-for-Speaker Club. McCarthy had a few friends. He was elected in '68; I was elected in '70. I guess there were a few who were elected in '68 who were, perhaps, even more charter members than I; but I guess '70 is early enough to claim charter membership in the club.

HICKE: Who else was a member?

MCALISTER: [Assemblyman Edwin L.] Ed Z'berg. He was from Sacramento; he'd been a legislator for a long time, I think since about 1960 or '62. He was a McCarthy backer from the early days. [Assemblyman Robert] Bob Crown, who had also been a member since, I think, maybe '58 or '60, from the city of Alameda in Alameda County. [Assemblyman] Alan Sieroty was a supporter of McCarthy; I can't be sure how early. He later became a state senator, and then quit; he's been out several years now. I don't know. If I saw a picture of them, I'd know more to mention.

HICKE: That's a pretty small group so far.

MCALISTER: You must realize I am just starting. I mean, I'm talking about the initial people. Eventually, the battle was resolved in the Democratic caucus in June of 1974. Moretti announced that he was running for governor, and he, in fact, did run for governor. When he did that, that, in effect, meant that his speakership was soon going to end, because people started to maneuver to get on the bandwagon for somebody for speaker. He wanted to finish out the '74 year, but people just weren't going to let him do that. So the Democratic caucus had a big battle; they had a caucus, and McCarthy won by a vote of 26 to 23 in the caucus.

Obviously, 26 is more than four, but in the beginning he started with a few and it gradually grew.

HICKE: How did it grow?

MCALISTER: People had to make a decision one way or another, and I suppose they based their decision on, I guess, a couple of factors: one, who they thought would be the best speaker; and two—and these are not necessarily in the order that people made their decisions—where they thought they would do the best, which speaker would treat them the kindest and give them the best positions, that kind of thing.

HICKE: So there was a lot of negotiating.

MCALISTER: I'm sure there was a lot of negotiating. I was not an insider in that sense. I was a charter member, but I was not one of the people that did negotiating. I don't know if there were very many that did a lot of negotiating, other than the speakership candidates themselves. They probably, each of them, had a couple of people they relied on for the really political-type negotiations; I wasn't one of those. Whether either McCarthy or Brown made promises to people, I don't know. Nobody ever made promises to me, but then he didn't have to; I was with him, and that was that. Whether they made promises that they would appoint people to offices if they were elected, I don't know; I just don't know.

But it was a close thing. There were two black assemblymen whom Brown lost, one of whom, of course, he knew he was going to lose; but the other one, he didn't know he was going to lose until late in the game. If he'd had them, of course, he could have won. John Miller, who's now deceased, an assemblyman from Berkeley—Miller, incidentally, I think you'd have to count as certainly one of the very early McCarthy people—Miller and Brown never got along; I don't know why, they just didn't. They weren't

MCALISTER: much different politically, but they just didn't get along. Miller had been the minority leader during the brief time when the Republicans controlled the assembly in 1969 and 1970. Unruh, of course, had been speaker but wasn't speaker anymore because the Republicans had a speaker, [Robert] Bob Monagan. John Miller had been our minority leader during that period of time, just before I came, and he and Brown didn't get along. So Miller was for McCarthy.

But then also, there was another black assemblyman by the name of Leon Ralph. My recollection is that people thought Ralph was for Brown, but right near the end, he got in McCarthy's camp. So that was a very significant thing for McCarthy that helped him. I don't know why Ralph went with McCarthy.

Of course, the caucus doesn't officially elect him. Then you have to go to the floor and have all the members of the assembly elect. At that time, the Republicans weren't interested in participating in battles between Democrats, and my recollection is that when McCarthy won the caucus vote, the others decided that they would go along with McCarthy then and all be unanimous. I don't remember what the vote was, but I don't think there was really any battle on the floor. He was ratified, and that was that.

Brown was, for a time, kind of on the outside looking in. But he gradually worked his way back in and, I think, reputedly built up a substantial law practice while he didn't have any major responsibilities in the legislature, but gradually worked his way back and eventually became chairman of the Revenue and Taxation Committee. McCarthy appointed him to be chairman of Rev. and Tax, and he worked his way into the good graces of the McCarthy group. And six

years later, when Berman tried his uprising, why, Brown was a staunch McCarthy ally.

The Berman Uprising

HICKE: Can you elaborate on that situation a little bit?

MCALISTER: On which situation?

HICKE: The Berman uprising.

MCALISTER: Howard Berman and his people were not willing to wait for McCarthy to leave the speakership. McCarthy, it was widely felt, would run for governor in 1982, and he probably was going to run for governor. Some of them felt that he was spending more time raising money for governor than they thought he should and that he should pay attention to being speaker and raising money for Democratic assemblymen.

But Berman wanted to be speaker. He was a very ambitious and able young guy. And a number of other people supported Berman who were kind of in the same boat. They were probably on the average a little younger than the McCarthy people, but, age aside, on the average, they were people who weren't quite in the inner circle and generally weren't chairmen of committees, although there may have been a few exceptions to that. But they were people who were just impatient, and they didn't want to wait for McCarthy to run for governor, and they thought they could push him over.

I think sometime in the late fall of 1979, or early winter, they went into his office one day and told him to move out; they were moving in. He wasn't willing to go peacefully, and so that set off a year-long battle. So for the entire next year, the Democratic caucus was split right down the middle, and much of the time about 50-50. I guess there were forty-nine Democrats at the time, and most of the time it was 25-24 or 26-23, one way or the other; maybe

MCALISTER: one or two or three people that were kind of floaters, or uncommitted, who were on one side first, and then another side.

But unlike the Moretti battle, neither side would give in. The Republicans at that time were not prepared to side with either side until the end of that year. So McCarthy was speaker. There was no way to get rid of McCarthy. Even if McCarthy couldn't have won again if there had been a vote, he was in because the burden was on the other people to get forty-one votes to kick him out, and they could never do that. They seem to have overlooked that when they started their rebellion. I guess a lot of people thought that if there was a majority in the Democratic caucus that was against him, that he'd step down.

There was a small majority against him for some of that time, but there wasn't anywhere near forty-one. It was something like 25-24, 26-23, and so he remained speaker for that whole year. He was in a weakened state, there's no question of that. His control over the house was greatly reduced. Then, of course, after the election in the fall of 1980, that term ended. So either McCarthy or somebody had to be elected speaker, but there weren't enough votes for either McCarthy or Berman. So, essentially, the McCarthy people and the Republicans elected Willie Brown speaker.

The Republicans, at that point, had to go some way. And they couldn't elect a Republican, not when there are only thirty-one or thirty-two Republicans. When there were forty-eight or forty-nine Democrats out of eighty, they couldn't very well elect a Republican; so they sized up Brown and Berman and decided that Brown was the lesser of evils. Most of them liked Brown personally reasonably well, despite all the political attacks.

[End Tape 7, Side A]

[Begin Tape 7, Side B]

MCALISTER: Despite the political attacks that the Republicans love to make against Willie Brown. . . . And they feel it's to their advantage to do so because he has a political image that they think doesn't sell too well in a lot of the hinterland in California outside of certain liberal urban areas. They think it's politically advisable to attack him and try to associate local Democratic legislators or candidates with him; they think that hurts the Democrats. They love to do that. But they kind of like him personally; they've always had pretty good personal relationships with him.

I think that was probably not so much true of Berman. Also, they were deathly afraid of Howard Berman and his brother, Michael. Michael was a computer expert who they were deathly afraid of for reapportionment. They were afraid that if Berman was elected speaker that he would use his brother's computer skills to reapportion the Republicans out of office. So for a variety of reasons, they decided that Brown was the lesser of evils, so there was a vote of about two to one. There were two or three Republicans that voted for Berman, but all of the others voted for Brown. About half the Democrats voted for Brown. And that was that.

Most of the Berman people have since left the legislature. Berman himself went to congress the next election, and most of his people are now gone in a fairly short period of time, as indeed are a number of the others. But I think especially the Berman folks, you don't find many of them still left, at least not in the assembly.

MCALISTER: Now, the Republicans since then have had many occasions to feel disillusioned with their choice of Willie Brown, because Willie Brown proceeded to bring in Howard Berman's brother to use his computer skills to reapportion the legislature. So they were probably going to get taken on that score regardless of who they chose. They do feel somewhat disillusioned with that. That's one thing that holds them back somewhat right now in terms of trying to overthrow Willie Brown, because they voted for one Democrat for speaker in a hotly contested race, and now they might have a chance to get rid of Brown. But they're not sure who they'll get if they get rid of him or whether it's any better, and they're very much of mixed minds on that question. It is an awkward choice for them. Again, right now they probably couldn't elect a Republican; they don't have a majority. So maybe they'll wait until after the next election.

Anyway, those few remarks kind of capsule a host of activities, but much of it is pointless. A lot of things that go on in these battles are really kind of dumb. If you follow the stock market, you'll notice technical corrections that are made every day. The market goes up and down, up and down, up and down. Nobody knows why; there's no rhyme or reason to it. You can follow big general trends, but the little squiggles up and down are meaningless. And you have those all the time in politics. But basically, that's what happened.

There was not a great programmatic or philosophical political difference, frankly, in any of these speakership battles. I always preferred McCarthy to Brown and I preferred Brown and his organization to Berman, but there wasn't any vast difference politically and philosophically. In a way, that's too bad. Probably these things ought to be

decided more on the basis of ideas and concepts and issues; but on the other hand, they don't seem to be. They seem to be a matter of personality and political factionalism and, to a large degree, what's in it for the particular legislator from whom he thinks his political career will benefit the most if he throws in with them. He may or may not be promised something, but he has to make some judgment.

There is a lot of scrambling for power—scratching and crawling and backbiting—a lot of dumb things that hopefully will never be remembered and certainly don't contribute much to anything. The individuals involved are distinctly above-average individuals. The people we've elected speaker and who have competed for this job are very able gentlemen: McCarthy, Brown, Berman.

Bob Moretti

HICKE: That was going to be my next question, to ask you to assess the leadership of the speakers.

MCALISTER: I have a high opinion of the native, raw ability of all these gentlemen with whom I served, starting with Moretti. I probably was, just as a philosophical matter, closer to Moretti than any of these other people. He was more of a moderate Democrat than the others, although at the time most people thought of him as somewhat liberal. But he was definitely the most pragmatic moderate of the group. But they're all very, very able.

Moretti was probably the most pragmatic of the three, prided himself in his ability to negotiate with Governor [Ronald] Reagan and worked out a number of compromise deals with the governor. As I recall, there was a welfare reform bill in that period of time, and there was also a Medi-Cal reform bill. Every few years we have a Medi-Cal or welfare

reform bill. Every few years we have a Medi-Cal or welfare reform bill, and so that was the period we were going to have them. They were both touted as doing wonderful things; I don't know whether they did or not. But both Reagan and Moretti seemed to be able to work together. The Moretti period was less partisan than the era since then. It wasn't devoid of partisanship by any means, but I think it was less partisan than what we had under either McCarthy or Brown, and probably less partisan than the preceding Unruh era, from what I've read and have heard.

HICKE: Do you ascribe that to Moretti?

MCALISTER: Moretti had some hand in it, but probably more important, it was just the era. At least until the Watergate issue broke open, at the state level, the issues weren't quite so divisive. My first four years in the legislature, looking back on it, I don't recall that they were so divisive as some of them have been since then. My recollection of voting patterns by members, while certainly there was a cleavage between the two parties, it wasn't as deep and sharp and irreconcilable a cleavage as I've seen so much of the time since then. There were more people in both parties who would cross lines from time to time on issues, and you don't see a lot of that now, which is a great loss, I think.

Moretti was a good legislator. He knew the legislative system; he knew how to operate in it. He knew how to get things done within the limitations of whatever the issue was and the people he was working with. He wanted to be governor, and he would have been a good governor. But it wasn't to be. It's very hard for a speaker to run for any other office. It's almost impossible, it appears.

HICKE: Why is that?

MCALISTER: Speakers don't develop a good image. They develop a progressively bad image; the longer they stay in office, the worse it gets. It seems to be totally hopeless. There's no speaker, in my recollection, who's ever been able to run for anything. McCarthy eventually became lieutenant governor, which isn't much of an office and must have been regarded by him as a pretty lousy consolation prize. But he didn't do that from speaker; he did that after two years of not being speaker. He was made speaker pro tem, which is kind of a consolation prize in itself, and then he ran for lieutenant governor.

Unruh tried to run for governor, and of course, stubbed his toe. Moretti couldn't win the primary, finished third after Jerry Brown and [San Francisco Mayor Joseph] Joe Alioto. I guess he was close to Alioto, but I think he was third. Of course, McCarthy stubbed his toe along the way because of the Berman uprising more than anything else, I guess. And it's rather doubtful that Speaker Brown is going to become a statewide elected official, and he doesn't claim to want to be.

It's a very difficult job to hold. It's not one to which I ever really aspired, for a number of reasons. If you're elected as speaker, you have to regard it likely as the end of your elective political career. It's a pretty high position, and powerful; you can do a lot there. But don't go into it with the idea that it's a steppingstone; it's not likely to be that at all.

So Moretti wasn't able to become governor and, of course, lost the speakership, then, when the vultures started to circle; they realized that he was a short-timer and they made his time a little shorter than he would have preferred it to be.

Leo McCarthy

MCALISTER: McCarthy is a different kind of individual, I think probably the most idealistic of the three. I think McCarthy is a gentleman and has a very idealistic approach to politics, certainly the most idealistic, I think, that you're likely to find as a speaker of a large legislative body. In order to work in the political system, people generally aren't exactly what you would call idealists. He came the closest to that, I think, that you're going to find among speakers. Not that he was without his political skills. He could conspire and maneuver quite well, but I think despite that, he always had ideals. There's plenty of principle in Leo McCarthy, and he is a remarkably honest man to be at that level in legislative politics.

Of course, he was speaker during most of Jerry Brown's tenure as governor. He was speaker just at the very tail end of Governor Reagan's position, only six months or so. And then he was speaker during the early period of Governor Brown's administration, which was a dynamic period. I think that it was mostly downhill after his first two years, but the first two years of Governor Brown's administration were generally good years, and most people felt good about them. McCarthy, I think, can take some credit for that, because he was speaker throughout that time and he helped to guide a lot of the initial legislation that Governor Brown advocated and generally was working in the same direction. Leo had his frustrations with the governor, especially as the years went by.

But I think Jerry Brown owes a lot to Leo McCarthy's legislative leadership in helping him to get his legislative program through, especially the first two years, in '75 and '76, when just about everything that

Governor Brown could be proud of happened. After that, it was largely "stand pat" and responding to problems that were enveloping the political system, for which neither Governor Brown nor the legislature had any solutions.

Willie Brown

MCALISTER: Willie Brown is also a very able individual. Everybody who deals with him will tell you that he's exceptionally bright. He's a quick learner. Over the years, he's certainly managed to develop a good group of loyal supporters, some of it carried over from his days of battling against McCarthy for the speakership, and then some of it that came after he lost that battle. But he kind of worked his way back into the good graces of the McCarthy group.

HICKE: That indicates a certain amount of astuteness.

MCALISTER: Yes, it does, a certain amount of political realism and astuteness. And what must have been hard feelings at one time were not carried forth. I don't know whether he ever had any hard feelings towards me for being part of the McCarthy group. But we certainly weren't close politically in those early days. Yet we developed good relations as time went by, and he kept me as chairman of the Finance and Insurance Committee for as long as McCarthy had. So he certainly showed considerable ability to adapt and to be flexible and to work with a wide range of people.

I think, also, for one who came from really kind of one side of the political spectrum, very much so, he's done remarkably well to work with the broader base of people in politics as he has done, both within the party and even beyond. Even though they may have thought it was a lesser of evils, he did at least get 90 percent of the Republicans to vote for him for speaker when the showdown came. Whether

MCALISTER: they feel they got the worst of that deal or not, at least they did it. And so that took a good deal of skill.

I think he is torn somewhat—as perhaps any Democratic speaker would be in our political system today—between his natural inclinations, which in his case, I think, are pretty much on the very liberal side of the political equation on one hand, and the more pragmatic necessities of political leadership. In a way, he's in a cross fire between those competing values. The majority of the members of the Democratic caucus are what you would call political liberals. Certainly not as far to the left as the speaker's natural inclinations, but they're certainly political liberals. But there are enough who are in the moderate wing that continued leadership by very liberal speakers eventually makes them kind of restless.

Of course, we're seeing that now with this Gang of Five revolt. And there are more than just the five, although they're the ones that are the most dissatisfied right now. It's very difficult to be speaker under those circumstances. I'm sure one is torn between one's beliefs and the practical politics of the occasion; it's a marvel that anybody remains in such a job for seven years or so. Speaker Brown has now done it for over seven, and he'll probably last eight. That will be it, unless he makes decisive gains in the November 1988 election. But that's a record; he's been speaker longer than anyone else. He's been speaker and candidate for speaker far longer than anybody else.

You'd have to say he's certainly the most powerful black politician in the country; there's no question of that. He's had far more political power than any other black politician that I can think of. Most of the other black politicians represent predominantly black

constituencies. Most of your black mayors represent predominantly or very substantially black cities. Most of the black congressmen, the same thing can be said of. Mayor [Thomas] Bradley in Los Angeles is an exception, where he has maybe 15 to 18 percent black constituents in the city.

Willie Brown's assembly district is only 12 to 15 percent black. Of course, he's speaker of an assembly that has only a few black people in it. So he's risen to a very high position in politics without regard to race or any other consideration, but he's done so with the handicaps that black people obviously operate under in getting to the top of the political spectrum. All that he has every reason to be proud of.

Jesse Unruh

HICKE: Did you work much with Jesse Unruh as treasurer?

MCALISTER: Well, not a lot. Probably more with him than I would with any other treasurer, because Jesse Unruh loved the legislature and he'd come back sometimes and see people and talk to them. He occasionally even appeared before committees and would testify on issues affecting investment practices, mostly. So I had occasion to work with him once in a while, but even at that, the treasurer's job is mostly a kind of a dull job, where they sit in their counting house counting up their money. He made of that job more than any other treasurer ever made of it, basically by being a political activist. Much of the time politics is more image than anything else, and he knew how to make it look like it was an important office, whether it was or not.

Governors Ronald Reagan and Jerry Brown; Law Enforcement Problems and the Death Penalty

HICKE: What about the governors?

MCALISTER: Well, let's see. I've had three governors: Governor Reagan, Jerry Brown, and Deukmejian. The Reagan years, looking back on them, seem rather placid and uneventful in comparison to the turmoil that came later. As I said, that was an era that, looking back on it, at least, doesn't seem to be as partisan as the years since then. Governor Reagan knew how to appoint good administrators, so they ran a fairly tight shop administratively. While certainly we had our debates and differences, there wasn't as much of a cleavage as there has been since then.

Jerry Brown was, of course, a rather different kind of an individual. There was probably something of a love-hate relationship between Brown and many members of the legislature. A lot of the legislators felt he didn't pay enough attention to legislators. That didn't bother me; I wasn't into that kind of thing so much. But there were a lot of people who felt that he didn't pay as much attention to them as he should. There's probably a certain amount of that tension any time between the two branches of government.

The first two years of his administration were by far the most effective. Those were the years in which most of what he advocated was done. That was the time when the Coastal Commission really got off the ground, and a law was passed by the legislature to make the Coastal Commission into a permanent organization. There had been an initiative passed by the people with regard to the coast, but the legislature had to pass legislation to make all this permanent. And they did. That was the time that the Agricultural Labor Relations Act was passed and the

MCALISTER: Agricultural Labor Relations Board was created. There were unemployment insurance and workers' compensation bills that all the Democrats favored that passed by large majorities.

Other things that he advocated he had good success at those first two years. In fact, even for a time he ran for president in '76. He was into a number of the primaries. I think he got in somewhat late. And he met with a good deal of success in some of those primaries. But he got in late, and then, at the very end, I think he tailed off. I think he got in too late. He didn't do nearly as well after that. But that was his heyday in politics.

After that, it seemed to me that the problems just built up and it was never the same again. You had the tax revolt. He was pretty adept on the tax revolt. He tried to at least act like he joined it after Prop. 13 passed. Had the Republicans been more able, they could have taken advantage of him at that time. Their candidate, [former Attorney General] Evelle Younger, who looked in the beginning like he might have been a good candidate, didn't prove to be one for governor in '78. But I think to the extent that state government responded even half well to that crisis, after 13 passed, there was more of a legislative response than a gubernatorial response, and his response was essentially a kind of public relations thing, at which he was pretty good.

His big Achilles' heel, the really big Achilles' heel of his administration, were his appointments, especially his judicial appointments. If he had any one thing that really contributed to negative feelings about his administration, it was the judicial appointments. He simply made some bad ones that he could never live down, that were, of course, eventually removed from office.

HICKE: You're talking about [former Chief Justice of California Supreme Court] Rose Bird?

MCALISTER: Well, Rose Bird, yes. She's the only one that they'll ever remember, but there were two others that went down with her. There were some other appointments at lower levels that proved unpopular, and a few of them were even defeated for election after he appointed them. But it was obviously the Rose Bird appointment that really brought the negative publicity.

I think that there were a number of more traditional Democrats, as well as Republicans, who felt that he went overboard in what he regarded as affirmative action, that while it's good to select people from every kind of background, there should be more than just the fact that they're coming from those different backgrounds. There also should be some qualifications and some solidity to all of this, and he overlooked this in his quest for diversity. Diversity's a marvelous quality, but it shouldn't be attained at the expense of everything else. Ironically, of course, many of these appointees were anything but diverse politically and ideologically since they tended to be doctrinaire liberals.

Of course, about that time the state became concerned about law enforcement problems, the death penalty and all of this, and his responses were largely public relations responses. Again, to the extent that there was any kind of governmental response, it was more legislative than gubernatorial action. However, the legislature's responses were also poor most of the time. This is where I fault the various speakers. They were very traditional liberals when it came to criminal law, and neither Leo McCarthy nor Willie Brown really believed that the proper response to crime waves was tough criminal laws. They were basically of

the sociological school that says that there are root causes for crime; those root causes are poverty and malnutrition and disillusionment with the economic and social system and racial discrimination, and that's what we've got to work on; and the criminal laws are just a kind of regrettable thing that we have to have, of course, but that they're not the big thing.

I'm putting words in their mouths in a way, but I did work with these people for sixteen years and I think I'm being fair. They'd have to speak for themselves, but to me that is the traditional liberal, if not articulated response, their practical response to problems of crime. Of course, they're not totally wrong. Yes, you see more crime from people who have these terrible backgrounds and have been abused as children and who were poverty stricken. There's a certain amount of truth to all that, but none of that really solves the problem of what you do on a day-by-day and year-by-year basis about the people who are out of control, stealing, robbing, raping, doing all these terrible things. You do have to deal with them. You do have to apprehend them and hopefully put them in prison. It would be nice if you could rehabilitate them, although most of them that get to that point aren't probably too rehabilitatable.

[End Tape 7, Side B]

[Begin Tape 8, Side A]

MCALISTER: The serious criminal, as he gets older, may eventually outgrow it, but there's probably not a lot for most of them that society can do other than get them out of the way and hopefully protect us from them.

It also defies credibility to contend that we will ever cure all of the so-called "root causes" of crime, at least through secular politics. One of the big quarrels that I had with all of our Democratic speakers was that they always created a Criminal Justice Committee in the assembly that was very much against strong law enforcement legislation. It killed all kinds of bills that, from my standpoint as a law and order advocate, would have been great bills. They did so for two reasons: one being the reason that I've just articulated, that they really deep down felt that the solution to crime rested not so much in law enforcement and tough law enforcement but in solving the so-called underlying root causes of crime; and then secondly, they all had such close political ties with other political liberals who had the same views, and they got themselves elected largely with their support. They had such close ties with these people that it was very hard for them to suddenly turn around and do what they should have done.

The political pressures gradually built up, and they had to make some compromises as they went along. We reinstated the death penalty despite the fact that neither McCarthy nor Governor Brown favored it. They obviously couldn't stop it, so they didn't. They didn't lie down and die in front of the train just to stop it, because they would have died if they had tried. [Laughter] They had enough sense not to do that . . .

[Interruption]

HICKE: . . . We were just talking about the death penalty, but maybe you finished.

MCALISTER: The principal author of the death penalty legislation was then-Senator Deukmejian.<sup>1</sup> I, in fact, authored a bill on the same subject that was identical to his, but I wasn't able to get mine passed because I started in the assembly. Of course, being an assemblyman, I had to go to Criminal Justice Committee, and they hemmed and hawed. They knew they would have to pass something eventually, but they just couldn't stand to do it quickly.

So months went by. In the meantime, the senate acted quickly, passed his bill; then it came over to the Criminal Justice Committee. So my bill was still waiting in the Criminal Justice Committee; so I joined forces with Deukmejian, became a principal coauthor of his bill, and it passed. They knew it was going to happen, but they just couldn't stand to do it without agonizing.

But it's not the biggest issue in the world; it really isn't. It's the most dramatic issue. There are lots bigger issues that I saw one after another being killed in the Criminal Justice Committee. Once in a while they would retreat when they saw they'd better or there would be bad political consequences. But they never did so with a cheerful countenance and a willing heart. It was always under great pressure. It was, I suppose, like the Germans retreating from Russia. They didn't want to, and they were told to stand and fight till the last, but sometimes they had to back up or they'd be trampled. But they didn't do it with any glad heart at all, and that's always been the problem with them. I'm not saying that every proposed law

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1. S.B. 450 (Deukmejian) 1975, Cal. Stats. ch. 1030, p. 2431.

enforcement bill ever introduced was necessarily a thing we should have done, but I know they shouldn't have nearly all been killed, either.

So that was a weakness, and it's a kind of a weakness of the liberals in the Democratic party. A few of them have gradually awakened to the problem; but McCarthy and both Browns—the speaker and the governor—while they might try to talk a little different game sometimes, essentially I was very dissatisfied with all of them on that score.

Governor George Deukmejian

HICKE: What about Deukmejian as governor?

MCALISTER: I think most people agree he's been a good administrator, and he's been more or less an orthodox Republican. There certainly haven't been any surprises in what he's done. He's done a number of good things and he has some problems in the wings on which he will have to shift course somewhat in order to solve. Those of either party who like a stronger law enforcement approach, of course, like Deukmejian in that area. He was attorney general and that's always been his orientation, and so any differences on that score would be minor.

I think that he has been essentially what the state had to have so far as his reasonably tight control over fiscal issues. It hasn't been tremendously tight either, but he's vetoed, I guess, \$200 million or \$300 million a year or more from the budget, because the legislature gives him more than there is money in the bank to spend. So he knocks that out. People make a lot of noise about that, as the legislators always do, regardless of who the governor is; when he item vetoes stuff that they put in, they make a big fuss about it. Mostly he's had to do that if he was

MCALISTER: going to maintain any kind of surplus and keep us fiscally straight.

They appear to have made a mistake on their income tax rebate, which probably wasn't the most fiscally conservative thing to do. The governor can rightly say, "Well, nobody proposed just keeping the money," and that's true. Everybody had their own ideas what they wanted to do with it, and keeping it was not one of them. The governor wanted to give it back to the people, and that's what they ended up doing. The legislature either wanted to spend it on education or on something.

Probably if you're going to spend it, the most prudent thing of all to have done would have been to have spent it on some purpose for which you were going to float some bonds, in order to save interest. Here we're going to have all umpty-ump billions of dollars of bond issues on the ballot this year. I don't think the people will vote for umpty-ump billions of dollars of bond issues; I'm not sure that they should. I've usually been kind of a liberal when it came to most bond issues on the ballot. They were usually for good things, and the state had good credit, and we weren't overly indebted, and it seemed like they were generally good things to do. But we seem to be off on a new tangent now, where we're going to float a lot more bonds than we ever did before, and I don't know that that's a good idea.

Anyway, it would probably have been better to have taken that billion dollars or so and spent it for some purpose like that; at least you wouldn't be paying twice that in interest over a period of time. But we didn't do that. The best thing thing to do, probably, would have been just to let it sit there, because the billion dollar surplus really wasn't a big surplus for a \$35 billion to

\$40 billion annual budget. It's a very modest surplus. It's at most 3 percent of your annual budget, and you probably ought to have 6 or 7 percent of your annual budget in reserve. So that's what they should have done, but nobody was advocating doing that; and, of course, the Gann limits complicated their task. So they've all kind of a little bit got egg on their face. The state will survive, but it's embarrassing to all of them.

Changing Nature of the State: Growth and Transportation

MCALISTER: Dan Walters, the columnist here in Sacramento who writes for the [Sacramento] Bee now--one of his favorite themes that he recurs to often is that the state is changing. It has a lot of long-range problems that are very difficult and that certainly ideally ought to evoke some superior governmental response. He says we're becoming more and more of a third world state, more and more minorities, more and more people from the nontraditional white majority group. Not so much blacks; they're more stabilized. But lots more Hispanics and lots of Asians, and now Pacific Islanders, Vietnamese, Polynesians, Laotians. Just about everybody from much of the world is here and are bettering themselves and enriching our culture and our society but have their share of problems, like all immigrants do.

So we're getting this concentration of these people, and he says we, in fact, do have two worlds, maybe three, in this one state: the increasingly very affluent, white, upper middle class and beyond on the one hand, and the bulk of the minorities on the other hand. I think many of the Asians, at least the upscale Asians, he'd put with the white upper class. Certainly many of the Japanese and many of the Chinese are doing very well, doing better than the average white. But some of the more recent Asians, of

course, are still toward the bottom. But this huge number of Hispanics generally are toward the lower end of our economy, and there are over 20 percent of our population that are Hispanic.

So he says there's going to be a lot of need. We're going to have to do something for them. We're going to have to take care of their education better than we're doing, and the schools will become mostly minority as the years go by. And by the year 2000, the schools will be overwhelmingly minority. The percentage of minority students, of course, in our schools is much higher than the percentage of the population. There are many, many school districts in the state in which the majority of students are minority students, although the majority of people in the district are still white. So he says that creates a range of problems, economic and educational, enculturation type problems. They're going to have to be trained if we're going to maintain our tradition of being a great, high-skilled economy in which there are lots of high-skilled workers to keep the high-level businesses going. He worries about that.

And then our transportation problems. With all this population, the transportation system is running down, and neither Governor Brown nor Governor Deukmejian have done well in that area. They both have let it run down. It may be almost inevitable, unless they're willing to go out and find some more money to do things.

HICKE: That's what this Proposition 72 is about, I guess.

MCALISTER: Yes, that's what the Proposition 72 is about. But the awkward part of that, of course, is that it's going to take some money that presently goes in the general budget and transfer it to transportation funds. Anyway, those are just a couple of problems he worries about. I don't know that

MCALISTER: the present governor has done much about those problems. In fairness, I don't know that the present legislature has done much about them, either. Those are big problems for the whole political system. And while the political system finds it difficult to get way ahead of the people, yet some of these things are long-term problems and you do have to plan for them. If you're going to build a highway, it's not something you do in six months. You have to plan for it usually ten years ahead. If you're going to build schools, you've got to have a considerable lead time.

This creates difficult political problems, of course, because some of these needs are by people who aren't yet politically predominant in our state yet, but the needs are here now. The highway thing is a little different; everybody uses the highways. So maybe that's the kind of thing that everybody can unite on, finally, although we've certainly gone a number of years and allowed this system to deteriorate. I don't know how hard one should be on chief executives about problems like this. I guess the buck eventually stops there. They're at the top of the political apex, and if they're not thinking about them and doing something about them, why, maybe no one will. So I guess they've got to accept some responsibility for it.

And then the long-term problems in the state, the conflicts between growth and less growth and no growth. Most people in most communities, seems like they don't want growth. Yet that's totally unrealistic, because the state is growing faster in gross terms than any other state in the country. In percentage terms, I guess it's third or fourth or fifth fastest growing, maybe after Florida and Nevada and Arizona. But what do you mean, no growth? They're coming by the millions. The population's increasing by between 500,000 and 750,000 a year. Even though the

percentage growth isn't as fast as it used to be, you figure that up for a period of time. It's staggering.

HICKE: I guess the idea is, let it grow somewhere else?

MCALISTER: Well, you can let it grow somewhere else.

HICKE: I mean, that's what individuals think.

MCALISTER: That's what they would like to have it do. Maybe eventually that's what happens; I don't know. But what's happening in California now is that the growth is coming inland. We used to have our growth on the coast. Now we're not having growth on the coast, but from north to south, it's going from west to east. And that's true in Sacramento; it's true in the Central Valley; it's true in Los Angeles. They're going out to San Bernardino and Riverside and on to Redlands and Palm Springs. Everywhere. They're pushing east.

HICKE: It's true in the Bay Area. They're moving over to San Ramon.

MCALISTER: Yes, they're moving to San Ramon. Depending on their economic level, they may go to Tracy or Manteca. People working in the Bay Area are now living in Manteca, and even some people commute from Lodi, which must be a drag. I hope they don't do it for very long or they'll go crazy. There are those problems, and you can't constitutionally pass a law that says we won't let any more people into the state. The growth problems obviously are awkward problems. That may be another one of those problems that there's no great, dramatic solution for, politically.

HICKE: In those kinds of cases, though, could the executive take some responsibility?

MCALISTER: The executive really has difficulty. He can address some of this. Like transportation. The growth obviously affects transportation, so that's one area where the executive has serious responsibility. Under our present laws, he doesn't

have anything to do with passage of zoning or planning by planning commissions in a local city. But all those things are building up. I don't know how to solve them; somebody else is going to have to figure that out. But the current governor has proven to be, I think, a good governor in terms of groping with the immediate problems and the things, probably, that he can deal with. Like perhaps most governors, he's not so good in terms of reaching out and looking to the future. That's perhaps not being too cruel.

HICKE: I have just two more things I want to ask you, but do you have any more time today or do you want to take a break or do you want to just go for another ten or fifteen minutes?

MCALISTER: I'll certainly go ten or fifteen minutes.

Relationship with the Third House, Constituents, and the Media

HICKE: One of the things I wanted to ask you about was your relationship with the Third House, which you are now a part of, is that right?

MCALISTER: I guess you'd say I'm a part of it. I practice law and I do some legislative advocacy.

HICKE: But as a legislator, what were your relationships with the Third House?

MCALISTER: I think they were very professional. I generally got along with the people that I dealt with on more or less the same basis that I got along with legislators. They have a job to do; they represent their clients; they present their positions. You listen to them, and some you find persuasive and some you find unpersuasive. If you treat them honestly and the same way you do everybody else, why, your relationships will be fine.

Sometimes it seems like there are a million lobbyists. I think actually there are about a thousand in the city, at

MCALISTER: least something like that. Of course, a lot of those are in areas that I may have never heard of or never saw them on. But there were probably two hundred lobbyists that I dealt with, with some regularity: banking, insurance, legal, utilities, railroads, oil companies, labor unions.

Most lobbyists are decent people. There's an image that some lobbyists have that's unfair to most of them, I think. They're just out there doing a job, essentially the job that a lawyer does as an advocate. You don't have to be lawyer to be a lobbyist, and many of them aren't, but that's, in essence, what they're doing: they're an advocate for a position. The more successful ones, at least from my standpoint, are those who know their business and are honest about what they tell you. They're obviously advocates, but they don't stretch the truth—at least not very much, not beyond what's acceptable advocacy.

I was never a big fund raiser, incidentally. Even though I was chairman of the F & I Committee, I was only a middling fund raiser. I think there were four or five or six or maybe as many as seven, on my committee that raised more money than I did. I may have only been about mid-range in my whole committee in terms of money; I didn't put a lot of emphasis on it. It may have been more of a failing than a virtue. In a way it was a moral virtue, but it was probably a political failing. If I wanted to go ahead in politics, which I would have liked to, I guess I should have put more attention on fund raising. But I don't know, I never quite figured out how to do that in a way that was acceptable with my own standards. Maybe some other life or some other political career or someday somewhere I might learn.

HICKE: The California Journal called you one of the eight most respected legislators in the legislature, so I think there's something to be said for that.

MCALISTER: I appreciated that and those are important things.

HICKE: In your reelections, you didn't have any trouble ever, did you? I mean, not too much of a challenge?

MCALISTER: I didn't have any serious trouble.

[Interruption]

HICKE: You were just telling me about your reelections.

MCALISTER: No, I never had any really difficult reelections. I usually had a primary election opponent. There was usually somebody that thought that I was too conservative, but I usually beat them very badly. In the general election, the Republicans never ran a really substantial candidate against me after my first election. One year, 1980, I had no opponent in the general election, but I had opponents in every other election. I ranged from almost 65 to 78 percent of the vote in the general election since my first election, and somewhere in that range in the primaries.

HICKE: Did you vote according to what your constituency wants or what you yourself feel is right or according to the party?

MCALISTER: That's a nice question that's frequently asked by political scientists and by political psychoanalysts like yourself. [Laughter] I have to say that for me, I never recall a sharp cleavage in terms of constituency versus my principles. Now, I didn't pay much attention to party, I'll tell you that. I hardly believe in political parties. I mean, if I could somehow be a creator and create a world, I think that I would have a serious question whether I would include political parties in that world. I believe in democracy, but I'd somehow like to figure out some way to have democracy without having political parties.

HICKE: Well, that's the old Greek system of popular vote, I guess.

MCALISTER: It may not be practical. I'll be one of the first to admit I have no idea how to get there from here. And I worked in the political system with political parties and I'm sure I'd have to again if I were in politics again, but I don't particularly like them. I paid as little attention to them as I could, and the longer I went, why, that became less and less until it was almost none.

HICKE: That eliminates one.

MCALISTER: Yes, it eliminates one. But constituency is certainly more important. But I was blessed with a very nice constituency. I had a district that was really a very nicely balanced constituency. There were quite a few liberal people, a considerable number of conservatives—probably more liberals than conservatives. But in terms of the Democratic constituency, it was a very nicely balanced constituency. So I could do pretty well what I wanted to. And almost anything I did, I'd have a lot of people who were for me and I'd have some people who were against me, of course.

But I never had one of those issues where I was just wrenched between what I wanted to do and what my people wanted to do. Certainly there are issues that divide people, where it's not clear there is a majority. But I never had one of those problems like some of them say they had. They couldn't decide whether to vote for the death penalty or not, for instance, because their constituency was presumably for it and they were against it.

I didn't have those kinds of issues. I basically felt that if I ever had a really wrenching controversy, I'm my most important constituent and I have to live with myself longer than I do with them. There are periodic elections, every two years in fact, for an assemblyman, and if they didn't like what I did, there would be plenty of opportunity to express that and get somebody else.

The representative system of government isn't exactly a pure democracy, you know. You elect people and they're supposed to go and exercise their best judgment. Now, they're certainly foolish if they don't keep in close touch with the constituency. Because you learn it's not so much a matter of saying, "Well, do they agree with me or do I agree with them?" It's a matter of a mutual relationship, and in most cases you're not going to have this fearsome confrontation between a legislator and his constituents. The system, I think, tends to produce people that tend to reflect their constituencies as much as it's possible. There are hundreds of thousands, even millions of people out there, of course. Some of them are going to think you're the worst thing in the world; some will worship at your feet. But most of them seem to be happy.

HICKE: It sounds like you well represented your district.

MCALISTER: I hope so. I had fun trying.

HICKE: One last thing: how about the media? Your relationship with the media: television . . .

MCALISTER: My representation with media, of course, would be principally newspapers. Only occasionally does a state assemblyman really have to deal with television, although once in a while you do. My relationship with the newspapers was, I would say, well over 90 percent good. Most of the time it was excellent. I had two principal newspapers in my career, the San Jose Mercury News and the Fremont Argys. The Fremont Argys was the morning paper; the evening paper was the Hayward Daily Review. Those newspapers, with very few exceptions, were quite good to me. They were generally honest in their factual news accounts, and editorially they supported me the overwhelming amount of the time. One could always find something to complain about, but well over 90

percent of the time I would say I had no grounds for complaint.

For the most part, I don't think that most people in politics have a genuine reason to be negative about the press. I think once in a while something can happen where they might. But for the most part, I don't think the press are out to try to destroy anybody in politics unless they really think they deserve destruction. There are a few exceptions to that now and then, but most of the press are just out there doing their job, trying to report the news.

The commentators who express their opinion, of course, have opinions that you may not like. Most of them didn't treat me badly. The editorialists almost never. . . . As I say, well over 90 percent of the time they treated me well. I got into some controversial things now and then, but most of the time they were good. The very controversial legislator may sometimes find that he rubs somebody in the press the wrong way. That may be his fault, it may be their fault; I don't know. Maybe they trusted me. Maybe they thought I wasn't out trying to do something that was dishonest or crooked.

HICKE: There must have been a reason for that.

MCALISTER: Well, I hope so. As I say, I had sixteen years in the legislature plus a few years before that of some public exposure in the school board and community life. I would say that, by and large, it was a good experience. I think I learned something about dealing with the press. If you're reasonably skillful, you can get a lot of publicity at times, and it can mean a lot in a political career if it comes at the right time. But it largely, at least in my experience, has to do with really honestly making news; it's not an artificial thing. It's very difficult to just create it simply because you decide, "Well, I need some. It

would be nice if I had greater name recognition, and I need more publicity." It's more fundamental than that. If you're doing things and you're making news, why, you'll get the news, you'll get the coverage. If you're not, you probably won't. I remember my first election campaign when I ran for school board . . .

[End Tape 8, Side A]

[Begin Tape 8, Side B]

MCALISTER: My first election campaign, when I ran for school board, I got a great deal of publicity, much more than most people would ever get running for school board. But I was running a vigorous campaign and it became kind of, at that time, a campaign between the establishment that was running the school board and people that were not part of the establishment that wanted me at the time. One thing seemed to lead to another. And it was very helpful, particularly when you're running for an office that's not well publicized--there's not a lot of notoriety to what the school board is doing or who the candidates are--and you get just a little bit of publicity, especially if you get a front-page article in the daily, all of a sudden you're something of a public figure.

But you've got to do something and be somebody to do that, in my experience. You don't just go out and hire a press person to put out press releases. Maybe if you're running for president you could do that. Even then, it seems to me, they've got to have something to say. The artificiality eventually will catch up with them.

Final Thoughts on Legislative Changes

HICKE: Just briefly--in the sixteen years that you were in the legislature, what were the most important changes?

MCALISTER: Well, the most important changes that I saw in that time? I think that easily the most important change that I saw was a tendency toward more partisanship, more political confrontation, fewer people anywhere in the middle, growth of a more and more divisive political system.

Some people would say that during that period also a very major change was the great increase in money and the importance of money in politics. I'm not sure whether I would say that that is as big a deal as some people think. I think money was always important in politics, and I'm not really sure that there's a vast difference, let's say, between spending \$50,000 for an office and \$500,000 for an office if, in both cases, that's the top spender. What's the difference? It's like, is it a battalion of troops or is it an army of troops? Well, it depends on who your opponents are, doesn't it? The battalion may be just as effective as the army if the opponents are less.

That is not to deny that money has become more important. It may well be harder for just an ordinary citizen now to run than used to be the case, although I don't think it was ever really easy for the ordinary citizen to run.

But to me, the biggest change that I have seen is increased emphasis on partisanship. It is more and more difficult for anybody to operate in politics now unless they attach themselves to one of the big political establishments in the state. If you're going to run for assembly, for instance, you'd better have the backing of either the speaker and his friends or the minority leader

MCALISTER: and his friends. When I first ran, I didn't have any of that. I eventually worked my way into the establishment, but I didn't start out with any of those folks for me. And it's harder now, I think, to get in without that. I wouldn't say anything's impossible, but it's really hard.

That may be partly a function of money, but it's also a function of the increasing divisiveness of politics and the growth of these big political establishments that have very strong opinions about their retaining and augmenting their power. They've become pretty good at holding onto what they have. The solving of problems takes a back seat much of the time to the preservation of political power. I mean, I think we probably did a better job of solving what problems existed in the Moretti era, for instance, than happened in the eras after that. That may just be because the problems have become tougher; I don't know.

But as I said earlier, I'm not crazy about political parties; I don't think our political party system has served us well in the past twenty years. I think it's progressively served us worse. I think that's true across the country. I don't think it's just true in California; it's true in the U.S. Congress, where much of what I'm describing in California is true, and you can see it happening there. I don't know what to do about it. Maybe the system will eventually self-correct itself sufficiently. But that's the big thing that I've seen.

Then, of course, I guess somewhat smaller but maybe as an accompaniment to all that has been the tendency to have more and more people in politics who are former legislative staff. You have an awful lot of legislative staff running for office now. At first it didn't seem like it was such a big deal but they just keep coming; there's more and more of them. I think some of the legislative staff are very

able people and some of them are good legislators, but we do have too many of them.

That's a function, I guess, of the increasing professionalization of politics. It's become more and more of a profession, and there are very few people in private business or professions outside of politics who seem to want to get into it. It's difficult for them to do so, and they have to make a sacrifice in their own private lives and private business to do so, and most of them just don't care to try it. But the legislative staff, that's their life, and so they frequently run. And they run with the backing of these established political machines. Whichever party is dominant in their district will choose one of them to run and then back them, and they're typically winning.

HICKE: Is the problem that they don't represent their constituents?

MCALISTER: I think you'd have to look at them on a case-by-case basis. I don't think they represent their constituents as much as they do the political organization that's anointed them. Some of them may grow out of that with time as they become more established and more independent, but I certainly see some of them that don't appear to me to be growing very much, if at all. There's nothing wrong with having some people from that background, but there are just so many of them now, and I don't see any abatement of that trend.

All in all, nobody knows how to develop a better system. If there are problems it's not solving, which undoubtedly there are, is there any other system that solves those problems? If things are not satisfactory, why, there are a variety of safety valves for the people. At least in theory they can defeat people for reelection, although they don't do it very often. It's more than theory that we have an initiative system in this state where

MCALISTER: people can vent their frustrations. They could fundamentally change the system by constitutional amendment or initiative, if they wanted to. They could triple the size of the legislature; they could adopt a unicameral legislature. If somebody has enough money and enough political energy, they can go out and get the signatures for a lot of different concepts and different ideas.

If they don't, maybe that indicates that most people are reasonably satisfied with the state of the world and the country and the state of California and their personal lives. Or at least they don't see politics as the solution to whatever personal problems they have. You know, there are an awful lot of people like that. After all, they are probably right to a large degree. Politics doesn't have the solution to most of the problems that are dearest to most people's hearts and lives. They have their families, their lives, their work, and personal aspirations. Politics is a very peripheral thing to most of those values.

It's meant a lot to me because I devoted a good chunk of some of my best years to it. And I had the opportunity to work in deciding a lot of critical issues. It was certainly a good experience for me. It was a character-building experience for me just to have the opportunity to confront these issues and apply analysis to them and make tough decisions. Not many people have those opportunities. Especially since they don't have those opportunities and they've got their own problems, most people aren't going to focus on politics. Unless the people who are in power really do something awful, they're going to tolerate a lot from their political system, aren't they?

The nice thing about democracy is that, of course, you don't give so much power to any one group that they can go out and really make a truly awful mess of things. A [Josef]

Stalin can send 20 million people to prison camps and kill tens of millions of people and do truly awful things because he has total power. We've probably got people in the United States, if you gave them that much power, they would probably do the same thing. Out of 250 million people, you've got every kind, haven't you?

HICKE: Sure.

MCALISTER: But we're not going to give them that kind of power. If somebody reaches the apex of our political system, they don't have that kind of power. If they try to exercise it, the system will self-correct at that point.

HICKE: Well, you've given us a great wealth of information, and it's very thoughtful and analytical and very well told, and I thank you.

[End of Interview]