Conversing with Judge McCree

Special master guides Hughes case toward settlement

After nearly nine years of legal battles and over 10 million dollars in attorneys' fees, the Howard Hughes case was finally settled last spring with the active encouragement of Law School Professor Wade H. McCree, Jr. The former U.S. Solicitor General and federal judge had served as special master in the case since 1983. The special master's duty is to direct proceedings, take testimony, weigh evidence, and recommend a disposition to the Supreme Court.

The case centered on the question of Hughes's domicile. The eccentric millionaire, moviemaker, inventor, and pilot had owned numerous homes in various states and countries, and had spent his life commuting from one to the other. Ironically, even his death, in 1976, occurred in transit from Acapulco, Mexico to Houston, Texas, aboard a private plane that was transporting him for emergency medical treatment. With a multimillion dollar purse in inheritance taxes at stake, both Texas, where Hughes was born, and California, where he spent 40 years of his life, claimed Hughes as a legal resident. His estate argued for the selection of Nevada, a state whose laws do not provide for inheritance taxes.

The Hughes case, as a dispute between states, was one of those rare cases that fall within the original jurisdiction of the U.S. Supreme Court. In the vast majority of instances, the Supreme Court functions as an appellate body. It has original jurisdiction only in cases involving ambassadors, other public ministers and consuls, and those between two or more states. Because the number of cases falling within its original jurisdiction is so small, the Supreme Court, rather than maintaining a trial section, appoints a special master to serve as a trial judge in matters falling within that original jurisdiction. In the Hughes case, the parties involved had asked the Court to appoint a judge with experience on both the trial and appellate level. McCree's extensive background made him a natural choice.

Law Quadrangle Notes interviewed Professor McCree about his experiences as special master.

LQN: What was the primary issue that you were concerned with in this very complicated case?

WHM: The sole question I had to determine was what was the state of Hughes's domicile at the time of his death. The law doesn't say very much about this issue. A person's domicile is the place he regards as home—that is, what he really considers his ultimate home. This depends upon a number of manifestations, including where he votes, registers his automobile, pays property taxes, works, and so forth. A person who has as many residences and widely dispersed enterprises as Hughes did can pose problems.

LQN: What were some of the considerations in the Hughes case?

WHM: Hughes's father was an oil prospector who spent time in both Texas and California. When Hughes was born, his parents were in Texas, but they moved to California shortly afterward. If Texas was his domicile at birth, one of the first questions was whether he intended to change his domicile to California.

LQN: The first hearing was held here in the Law School's moot court room, wasn't it?

WHM: Yes, it was. That was in May of 1983. But that room was too
small to hold everyone comfortably. There were about 25 lawyers, a group from the press, and students. I wanted to be sure that students would be able to attend, so I arranged with District Judge Charles Joiner to use his courtroom in the Ann Arbor federal court building, and we held the next three sessions there.

LQN: If the case had come to trial, would you have held the trial in Ann Arbor?

WHM: I was really planning to hold it somewhere in Colorado, either in Denver or Boulder, because so many of the Hughes estate heirs, and likely witnesses, were elderly and would have had a difficult time traveling to Ann Arbor from the southwest. Colorado seemed an appropriate neutral site.

LQN: Did you play a role in encouraging the parties to reach a settlement without going to trial?

WHM: Yes. I believe strongly that parties should be encouraged to settle their own differences outside of court. If every dispute had to be litigated, there would be logjams of 10 to 15 years in most courts. Anyone concerned with the viability of courts has to favor alternate methods of dispute resolution.

LQN: What did you actively do to encourage a settlement?

WHM: Mediation is more an art than a science. The first thing is to get the parties to talk to one another amicably. Sometimes there’s coaxing and cajoling. Each time I met with the two parties, I’d ask whether they had been talking; to one another about the possibility of a settlement.

LQN: How responsive were the parties to your efforts to reach a settlement?

WHM: For over a year they didn’t seem to be making any progress, and in June of 1984 it looked as though the case might go to trial. However, there was a significant breakthrough at this point. One side asked for 2,500 admissions of fact at one of the pre-trial conferences. Admissions are factual items of information about which there is no dispute. I told them that if there were 2,500 disputed facts that touched on the ultimate determination, both sides would run a great risk. Almost on the week that the trial was scheduled to begin, I received a call informing me that the lawyers had worked out a formula according to which each state’s chances of prevailing were reduced to a certain percentage of what a favorable verdict would provide. They were willing to compromise their differences proportionally, based on those figures.

LQN: How did the heirs feel about this arrangement?

WHM: The estate derived a definite advantage because there could be an immediate distribution to the heirs without review by the Supreme Court of a proposed decree to which any aggrieved litigant could, and doubtless would, take formal exception.

LQN: How was your compensation determined?

WHM: I was paid on an hourly basis, which would have resulted in a considerably higher total amount if the case had been tried. Nevertheless, it was in the best interest of the litigants and the court for the case to be settled, and it was appropriate to put those interests ahead of mine.

Forty-one companies that provide temporary services, together with the National Association of Temporary Services, have honored the memory of Cedric A. Richner, Jr., J.D. ’55, by establishing a scholarship fund for law students in his name. Mr. Richner was executive vice-president and general counsel of Kelly Services, Inc. at the time of his death, January 28, 1985. Terance A. Adderley, at left, president and chief executive officer of Kelly Services, presented the Association’s check for nearly $30,000 to Dean Terrance Sandalow to start the fund. Also shown are Mrs. Cedric A. Richner, Jr. and A. A. Agnello, executive vice-president of the firm. Gifts previously received from friends of Mr. Richner have been added to the new scholarship, and additional gifts will, of course, be welcomed.