

Case: Paramount v. QVC
Interview of Charles F. Richards, Jr.;
Richards, Layton & Finger P.A.
Interviewed by David C. McBride;
Young, Conaway, Stargatt & Taylor LLP
December 12, 2019, Wilmington, Delaware

#00:00:00# - #00:00:32#

1 MR. McBRIDE: Good morning, Charlie. It's wonderful
2 to have you here. Just for whomever is watching, I am Dave
3 McBride, I am with Young, Conaway, Stargatt & Taylor, and I
4 represented, along with Wachtell Lipton, QVC in the case we
5 are going to discuss. And Charlie Richards, of the firm
6 Richards, Layton, & Finger, was on the other side representing
7 Paramount. And it is just wonderful that you have agreed to
8 take the time to talk with us this morning about the case.

9 MR. RICHARDS: Well, thank you. I enjoyed looking
10 back over it and digging up memories about what had happened.

11 MR. McBRIDE: Let me ask you, how did your
12 involvement start in this case? #00:01:18#

13 MR. RICHARDS: Well, I was thinking about that, and
14 it really went back a very long way because we represented,
15 and I, individually, represented Gulf and Western Industries
16 long before it acquired Paramount. And so, I was - I sort of
17 thought of Gulf and Western as one of my clients through
18 Simpson Thacher, to be sure. And there was a corporate lawyer

1 up there named Joel Hoffman, who represented Gulf and Western
2 and there was a big appraisal case when they spun off, I
3 think, Brown Industries, or something, which held about a
4 million and a half acres of timberland in New England.

5 So, I had been involved early on. And so, it was
6 natural that we would be hired by Paramount when this came up,
7 although we were not hired early on. You know, we didn't
8 participate in the early conversations or strategy.

9 MR. McBRIDE: Well, let me go back a little bit
10 because, in the Time Warner case, you were opposite Paramount,
11 correct? #00:02:31#

12 MR. RICHARDS: Yes.

13 MR. McBRIDE: And, so now they were going to be, at
14 least as I think I understood it, Paramount thought that they
15 were going to try to follow in the footsteps of Time Warner in
16 the case that you previously represented, I forget now, Warner
17 or Time? Were you—

18 MR. RICHARDS: Warner.

19 MR. McBRIDE: Warner.

20 MR. RICHARDS: Well, that reminds me that Paramount
21 was an existing client at that time and that we had to get a
22 waiver. But as you could imagine, with all those investment
23 bankers, and all the lawyers in the Time Warner thing,
24 everybody had to get waivers from everybody and, so, sometimes

1 people - clients decide to object and create chaos. But I now
2 remember that, in that case, everybody decided, well, we can
3 all disqualify each other's counsel of choice, but why don't
4 we just all waive it and let everybody pick whoever they want.

5 MR. McBRIDE: Yeah, and I think I remember because
6 we were with Simpson on the Paramount side of that case, and I
7 remember we had to get a waiver. And I remember being told
8 everybody was getting waivers.

9 MR. RICHARDS: Right.

10 MR. McBRIDE: So, it was... Well, did you get
11 involved at some point during the board process, and before
12 the offers started to fly? #00:03:49#

13 MR. RICHARDS: I think - I think, oh, we must have.
14 I really don't remember exactly. It would have been very
15 unusual if we hadn't been involved in some respects. But I
16 don't recall being present at any board meetings, and I don't
17 recall being on the phone at board meetings. And I don't
18 recall really being asked as to what my advice was as to the
19 various strategic events. But I think I must have had some
20 familiarity, and I have talked to other people in the office
21 here, and, unfortunately, my late partner, Don Bussard, is,
22 you know, no longer with us. So, he would have been the best
23 source. Anne Foster, who had participated, but she was either
24 a senior associate or a brand-new partner at that time, and

1 had a junior role. And so, I haven't been able to really flesh
2 out, during that summer, what exactly I did

3 MR. McBRIDE: Well, is it - it seems, from the
4 briefing and from the - especially from the briefing, that
5 Paramount, in this action, in the QVC action, was attempting
6 to follow the Time Warner script, if you will, in effectuating
7 this transaction. That it was relying upon the decision in
8 Time Warner in some fashion in terms of structuring the Viacom
9 - Paramount transaction. Is that- #00:05:27#

10 MR. RICHARDS: I think that's what they thought they
11 were doing, yes.

12 MR. McBRIDE: And from that comment, what they
13 thought they were doing, and I was going to ask you that there
14 seemed to me to be two aspects of the Time Warner decision.
15 One was that Time and Warner were undertaking this strategic
16 business transaction. And that Time and Warner didn't need to
17 upset their strategic business plan in order to even consider,
18 much less facilitate Paramount's offer. And the other was that
19 the Time Warner transaction originally started off as a
20 merger, and then switched from a tender offer by Time for
21 Warner, which changed the dynamic vis-à-vis Paramount. It
22 seemed like a lot of effort was made in the litigation, and
23 before the litigation to convey that Viacom and Paramount were

1 also pursuing a long-term strategic business plan that ought
2 to trump QVC's offer. Is that a fair- #00:06:36#

3 MR. RICHARDS: Yeah, that is certainly - what
4 Paramount tried to demonstrate. And I don't say that it wasn't
5 true. But there were other elements that really distinguished
6 their factual background. There were the personalities
7 involved here. Martin Davis and Barry Diller and Sumner
8 Redstone. And, you know, Martin Davis made it so clear that,
9 as part of the strategic combination, if you will, the most
10 important thing, as far as he was concerned, was that he be
11 the chief executive. Well, you know, that raises some
12 questions as to the entire fairness or whether you'd be
13 looking after the shareholders or were the prices very
14 important to you. And they had been fooling around with Viacom
15 for three years, really. So, was it Barry Diller who said,
16 well, I am not coming after you, that really triggered Martin
17 Davis to say, hey, this strategic combination looks pretty
18 good? Certainly, that question is raised. And then, who was
19 it? Was it Bob Greenhill or one of the investment bankers told
20 Martin Davis, Barry Diller is coming after you? So, there was
21 that kind of motivation or background that really didn't exist
22 in the Time Warner case, which I think - I don't say it was
23 outcome-determinative, but I think it cast a pall over the
24 proceedings when they were trying to talk about entire

1 fairness and the efforts they made. And I could go into other
2 things that they did or didn't do.

3 MR. McBRIDE: Well, I was going to ask. So, you
4 think that perhaps, and this, from our side, was an argument
5 QVC made that Paramount wasn't really that interested in a
6 combination with Viacom. That there had been earlier talks and
7 offers made that were rejected. But once Paramount thought
8 that QVC might be coming after it, Viacom looked like a better
9 partner. Is that a fair possibility? #00:09:00#

10 MR. RICHARDS: Well, when you talk about Paramount,
11 you know, you're talking about a corporation. And, really, a
12 corporation is made up of individuals. So, you can talk about
13 Martin Davis, what was moving him forward. That is not
14 necessarily the same thing that was motivating the directors,
15 especially the outside directors—

16 MR. McBRIDE: Correct.

17 MR. RICHARDS: -- so, I am not really challenging
18 the bona fides or good faith of outside directors as to what
19 they thought was going on. But, certainly, you are a little
20 bit suspicious, at least from reading this record, of - and
21 hearing the kind of guy that Martin Davis was, about his
22 motivation and what really got it started up again.

1 MR. McBRIDE: I don't remember myself now, did Davis
2 and Diller have an adverse relationship in the past?

3 #00:09:55#

4 MR. RICHARDS: Oh, yeah, they hated each other.

5 MR. McBRIDE: Yeah. I thought that was the case.
6 What do you remember about that relationship?

7 MR. RICHARDS: Well, you know, I didn't participate
8 in the relationship in the past, so I couldn't have told you,
9 you know, in the spring of that year - what year are we
10 talking about?

11 MR. McBRIDE: Ninety-three, I think. #00:10:14#

12 MR. RICHARDS: Yeah. You know if you would have
13 said, well, what's Martin Davis' and Barry Diller's
14 relationship? I couldn't have told you that. So, I can't
15 pretend that I was in on all of that. But in looking back on
16 it, and reading these materials, it reminds me that that's
17 what we thought, and certainly, the investment bankers knew
18 these individuals because they had been all circling around
19 for years. You know, the investment bankers want to see a deal
20 done, they don't care, really, between whom. And I have
21 forgotten the name of the - there was another sort of
22 investment banking firm - a media firm involved in this who, I
23 think, helped get the people together. But that media firm,
24 and I forget the-

1 MR. McBRIDE: And they had switched sides, I think--

2 MR. RICHARDS: Oh, yes--

3 MR. McBRIDE: -- at one point, right?

4 MR. RICHARDS: And that media firm, they knew all
5 these individuals and had opinions about them intimately. And
6 so, as lawyers, you know, we would be talking to the bankers,
7 and we would absorb some of this. Now, you didn't - nobody
8 filed an affidavit saying Martin Davis hates Barry Diller, and
9 Barry Diller hates Martin Davis, but you just - you got the
10 feeling that that was a fact.

11 MR. McBRIDE: Well, and you have been involved in a
12 lot of takeover battles in your career, and probably most of,
13 if not all of the most prominent. And I wanted to ask you -
14 and you represented one of the most controversial players in
15 the field, Boone Pickens. To what extent do you think
16 personalities play a substantial role in transactions? Are
17 they always present? Rarely present? Sometimes? I mean,
18 what's-- #00:11:59#

19 MR. RICHARDS: I think sometimes. I think, you know,
20 it all depends on, you know, what happens. Sometimes, it plays
21 a big role, and I think it played a big role in this
22 transaction. But there are other times where the people
23 involved are really strangers to each other. Now, the
24 personality, the individual chief executive, affects his

1 behavior. But you don't have the group dynamics that you, that
2 I will call it, that you had here.

3 MR. McBRIDE: And one of the big personalities in
4 this particular matter was, of course, Sumner Redstone. And I
5 can remember - I remembered reading something, in one of our
6 briefs, that talked about the story of Sumner Redstone was in
7 a hotel and there as a fire and he held on to the ledge of a
8 window, by one hand, until he could be rescued from the
9 burning building. Did you ever hear that? #00:12:54#

10 MR. RICHARDS: No, I saw some reference to it in
11 preparation for this interview. But I don't know whether or
12 not that is something I knew at the time or not.

13 MR. McBRIDE: I can remember that during the
14 litigation, on our side, on the QVC side, that story was told
15 repeatedly as to warn ourselves that this is a guy that
16 doesn't give up very easily-

17 MR. RICHARDS: He's pretty tough.

18 MR. McBRIDE: And sure enough, he didn't give up
19 very easily. But that sort of goes back to the Martin Davis. I
20 can't imagine Martin Davis thought that as between himself and
21 Sumner Redstone that Martin was going to end up being the CEO
22 over Redstone. But I don't know. #00:13:40#

23 MR. RICHARDS: Well, I don't know. I don't remember.
24 I looked to see - Sumner must have offered Martin Davis some

1 sort of a contract. But, of course, contracts are just
2 contracts. You can breach the contract, and then you pay
3 damages.

4 MR. McBRIDE: Right.

5 MR. RICHARDS: So, I don't know whether Martin Davis
6 had a relationship with Sumner, so he thought I am really
7 going to be chief executive for a number of years here. You
8 know, I have signed a five-year contract. Or whether he
9 thought, look, I've got this contract. I'm named the chief
10 executive for my pride and my face. If a year or two later,
11 down the road, Sumner lets me go, okay, but I'll get the
12 damages, you know. So, I don't know what he thought. And I
13 don't know what Sumner thought, so... But, from the outside,
14 as a lawyer, I was quite skeptical that Martin Davis would
15 have a long career at the combination, but I don't know.

16 MR. McBRIDE: Well, I think we were skeptical on our
17 side that he would have a long career there as well. And to go
18 back to the Time Warner as the precedent for this transaction,
19 I'll tell you; I got brought in by Wachtell Lipton. And, well,
20 I wanted to ask you this- #00:14:58#

21 MR. RICHARDS: Of course, they were our associate
22 counsel for Warner. Right.

23 MR. McBRIDE: Right. And, well, I meant to ask you-

1 MR. RICHARDS: And Herb Wachtell and I divided the
2 argument in the case.

3 MR. McBRIDE: Yes. And I wondered whether when you
4 got involved in the Paramount Viacom transaction, was anybody
5 saying, this is the guy that beat us in the Time Warner deal,
6 and we want him to do the same thing for us that he did for
7 Warner back in the Time Warner deal. #00:15:25#

8 MR. RICHARDS: Referring to whom?

9 MR. McBRIDE: You.

10 MR. RICHARDS: Oh, I don't know when anybody said
11 that.

12 MR. McBRIDE: Because it did seem like - well, we
13 had switched sides, my firm-

14 MR. RICHARDS: Right.

15 MR. McBRIDE: - so we were - except we were for the
16 hostile bidder in both circumstances. In any event, I wanted
17 to ask, when Wachtell Lipton called me - first called me about
18 this, and said - asked me if I would - could get involved and
19 told me what was afoot, it was the first time, to my
20 knowledge, that Wachtell Lipton had ever been on the hostile
21 side of a transaction. And everything that I knew of the firm,
22 up until 1993, was that they were the paragon of corporate
23 defense for a hostile deal. And I thought it was potentially
24 significant that this firm that had led corporate defenses for

1 the last 20 years would not be on - representing a hostile
2 bidder, taking on the very precedent that they had won in the
3 Time Warner case-

4 MR. RICHARDS: Right.

5 MR. McBRIDE: -- And I wondered, did you think - I
6 thought it was - I thought Wachtell's involvement on the
7 plaintiff's side of the case would be significant. Not just
8 sort of from a societal point of view, but perhaps significant
9 to the court. Did you draw any significance to the fact that
10 Wachtell was now representing a hostile bidder? #00:16:53#

11 MR. RICHARDS: No, no, I didn't. And I don't know
12 how - because everybody represented everybody here, and they
13 had to get all these waivers; I don't really know what the
14 sequence of hiring attorneys was. In other words, I mean I
15 have given you our history with Gulf and Western, and
16 Paramount, but I guess that's why we ended up on that side
17 because we didn't have any history with QVC and we didn't have
18 any history, as far as I can recall, with Viacom. So, I guess
19 that's the answer. But I don't know why - well, then I guess,
20 I guess because Oresman was determined to have Simpson play a
21 major role, so I guess that's why-

22 MR. McBRIDE: They were there-

23 MR. RICHARDS: -- and to answer your question, why
24 Wachtell would have been shut out because Simpson Thacher was

1 the dominating or leading counsel. So, I suppose that's why -
2 so, you know, Herb or Marty or whatever, they wanted to be in
3 this case. Now, I don't - you say they hadn't been on the
4 plaintiff side - I'm not sure that's correct, you know that
5 there is a - I don't know if you've read Malcolm Gladwell's
6 book, I think it's called *Outliers*, anyhow, but he makes the
7 point, he goes through how luck and being in the right place
8 at the right time is very important. But he really says that
9 Wachtell Lipton was formed in response to the fact that the
10 white-shoe New York firms, you know, said we're not going to
11 do this dirty takeover business, and well, if we are, we're
12 going to represent defendants. So, my impression from reading
13 his book, but I can't tell you what cases, was that Wachtell
14 Lipton had represented some acquirors before that, but maybe
15 that is not true.

16 MR. McBRIDE: Well, I'll tell you, I was on another
17 panel with Ken Forrest, and I made this comment that I didn't
18 think Wachtell Lipton had represented hostile bidders before
19 QVC, or at least they had a reputation. I am quite certain
20 that they had a reputation of representing - of being on the
21 corporate defense side. #00:19:14#

22 MR. RICHARDS: Oh, yes. Because Martin Lipton, that
23 was his whole schtick.

1 MR. McBRIDE: Yes. And Skadden Arps had a reputation
2 of being on the hostile bidder side through the late seventies
3 and the eighties. Ken said oh, no, that wasn't the first time.
4 But then, I think he acknowledged, and I am looking at Larry
5 because Larry was there, I think he acknowledged that they
6 really hadn't done much. And not to toot my own horn, but
7 actually, at the time I was retained, they said, you've
8 litigated from the hostile side, and that is why we want you
9 to help us on this. So, I do think it was a significant step
10 by them, which I thought would signal that merger and
11 acquisitions, going forward, were not going to be the sort of
12 black and white fights that had occurred through most of the
13 eighties. And I kind of think it played out that way that
14 after QVC, there weren't as many big hostile takeover bids.

15 But in any event, let me ask you another point.
16 Because when I got called - when we filed the lawsuit, Mike
17 Chepiga, who I had worked with in the Time Warner case, called
18 me and we exchanged some pleasantries, and then Mike said, you
19 know, Dave, I can't possibly lose both sides of the same
20 issue. And I thought it was interesting that we didn't view
21 this as anything - we didn't anticipate it was going to be
22 anything like the same issue that the court had in Time
23 Warner. But I thought Mike was really sincere in believing
24 that it was the same issue in both cases.

1 And that gets me to this question. In Time Warner,
2 when Paramount made its hostile bid for Time, the merger
3 agreement was restructured from a merger to Time making a
4 tender offer for Warner. So, Time was no longer going to be
5 sold. In the context of the QVC - Viacom transaction, do you
6 recall there ever being any discussion either before QVC came
7 forward, or after, of changing the structure of QVC - Viacom
8 from a merger to an offer, I guess, changing the structure of
9 Viacom and Paramount from a merger to Paramount making a
10 tender offer for Viacom? #00:21:45#

11 MR. RICHARDS: I don't know whether that was
12 discussed. I don't remember. Because I would think all the
13 alternatives would be discussed. But, as I have explained, we
14 weren't really in New York, where the investment bankers and
15 Marty Davis and his people, or Oresman, were discussing how
16 are we going to do this? So, I would have thought they would
17 have considered all the alternative structures, but I don't
18 think it's in the record as to whether they did, and so I
19 don't know whether they did.

20 MR. McBRIDE: And under the original agreement,
21 Sumner Redstone, or his affiliates, companies, were going to
22 be - would end up being the controlling stockholder of the
23 combined Viacom Paramount. That was built in from the
24 beginning. Do you recall any discussion - either at the

1 beginning or during the process of trying to put some
2 constraints on the power that Redstone would have as the
3 controller of the combined company to try to avoid the Revlon
4 argument? #00:22:54#

5 MR. RICHARDS: I don't recall any such discussion. I
6 can't say there wasn't any such discussion, but as really, as
7 an outside observer for this - purposes, I would have thought
8 that by the nature of Sumner Redstone, and the kind of guy he
9 was, that he would not have welcomed any such suggestions.
10 But, and so, whether suggestions were made, and he didn't
11 welcome them, or whether they were never made, either because
12 somebody didn't think about doing it or somebody thought,
13 well, this - we're not going anywhere with this - I don't
14 know.

15 MR. McBRIDE: Well, I can tell you, from our side,
16 when we were structuring the argument on our side, and
17 focusing on Redstone's control as triggering Revlon, the fact
18 that Redstone would have control and there was a change of
19 control, I was concerned that your side would respond by
20 restructuring something and putting some constraints on
21 Redstone and the powers that he would have as a controlling
22 stockholder. And I was told by more experienced attorneys,
23 particularly at Wachtell Lipton that knowing - just what you
24 said, that knowing Sumner Redstone, there was no chance that

1 there were going to be any restraints put on Redstone and we
2 could rely on this change of control argument and not worry
3 that something would - some restrictions would be put on
4 Redstone. #00:24:27#

5 MR. RICHARDS: Well, of course, and I have to say
6 that since I wasn't intimately involved in the councils of
7 Paramount, but I wasn't involved at all on the Viacom side. I
8 mean Viacom wasn't - whatever they were sharing, they were not
9 sharing with Richards, Layton and Finger. So, what their
10 innermost thoughts and hopes were, I don't know.

11 MR. McBRIDE: The argument that was made, at least
12 in your opening brief, and the original merger agreement
13 between Viacom and Paramount was the consideration was mostly
14 stock. So, the stockholders of Paramount would, I think it
15 was, get about 10% cash in the deal, and the rest, 90%, would
16 be a continuing equity interest in the combined company. And
17 the argument was made by Paramount that because the - most of
18 the merger consideration was stock, and not cash, that Revlon
19 didn't have any application because we weren't concerned about
20 immediate value. That Revlon itself was an all-cash
21 transaction, and, therefore, whatever Revlon said you had to
22 do in the context of an all-cash transaction that cashed out
23 the stockholders, didn't have any application where the
24 stockholders, 90% of their interest was going to continue as

1 equity in the surviving corporation. Do you recall that being
2 part of the structure and the rationale for avoiding Revlon?

3 #00:26:24#

4 MR. RICHARDS: Again, I don't really because I
5 wasn't involved in those discussions. But I do think that that
6 triggers another recollection of mine that all the things that
7 they did here, I think, raised suspicion in the Supreme
8 Court's mind, and the Chancery Court's mind. I mean, maybe
9 they weren't the reasons they were decided, but once again,
10 they were taking the stock, but it was pretty apparent to me,
11 maybe it never was a proven fact in the case, that Redstone
12 had manipulated the price of his stock by buying in, and
13 Paramount hadn't said well, therefore, we have to have a
14 collar around this so that it doesn't drop. And so, there are
15 a half a dozen of these, what I will call details, but they
16 are really not details where it just didn't seem that
17 Paramount was very skillfully looking out for the interests of
18 its shareholders, let's put it that way.

19 MR. McBRIDE: Well, in fact, I wrote that part of
20 the factual argument in QVC's reply brief, focusing on the
21 fact that an offer had been made by Viacom for Paramount in
22 July that had been rejected. And then, Redstone went into the
23 market and started buying up Paramount stock, and the price of
24 the stock rose. So that the deal-

1 MR. RICHARDS: It didn't just rise; it almost
2 doubled. It went from the thirties into the fifties.

3 MR. McBRIDE: Yeah. And so, the deal that was
4 actually done was less cash than the deal that Paramount's
5 board had rejected as inadequate back in July, and only had a
6 value - a market value in excess of the old offer because of
7 the inflated price of the stock. And, as you say, there was no
8 collar. So, we- #00:28:31#

9 MR. RICHARDS: And I think, I don't know what the
10 numbers were, maybe they are in the record, but I know it said
11 it was thinly traded. So, this was a stock--so this is not a
12 stock that was broadly traded where you could say well, he
13 didn't manipulate the price by buying the stock.

14 MR. McBRIDE: And I remember, we made much of the
15 fact that at least the minutes of the Paramount board meeting
16 didn't reflect any discussion of Sumner Redstone's purchasing
17 stock and raising the value of the stock - the market price of
18 the stock during that interim period. And we argued that the
19 Paramount board wasn't well informed. I think Paramount came
20 back and argued that some investment banker had mentioned it
21 during his presentation, and if you looked at the graph, one
22 of the exhibits in the investment banker's report, you could
23 see - you could see that the stock had gone up, but--
24 #00:29:28#

1 MR. RICHARDS: Well, I mean you mentioned the
2 minutes, I mean, again, in terms of these little collateral
3 matters, the reason why I am quite sure that we didn't have
4 much at all to do with the early thing is that we would never
5 have advised somebody to have the short-form presumptive
6 minutes - you know, the - it had been long established in
7 these cases, you have these long-form, almost script type
8 minutes, where you put every single thing that is that you can
9 think of that you want to tell the court, look, we did this,
10 we did that, we did that - you write there in the minutes.
11 Because my experience, and the experience, I think, of all of
12 us who were involved in these things, is that directors don't
13 necessarily have very good recollections of everything that is
14 reviewed for them. And they are generally told not to keep any
15 notes. So, and if you - if you were the trial lawyer, if you
16 weren't actually at that meeting, and you were prepping a
17 director, you have to say, well, what was discussed, and he
18 tells you the three or four things. You can't say, oh, no,
19 wait a minute, Fred; don't you remember we went over this; we
20 went over that, we went over the other. Now, somebody else can
21 supply you with that information, but you don't have the same
22 persuasive power as if you had been present at the board
23 meeting and you have recalled it. So, you know, I don't think
24 the Supreme Court said anything about the minutes, but I know

1 you guys argued it. But again, that would have been very
2 important to show due care. And while the case maybe didn't
3 turn on due care, the court was certainly very critical that
4 these guys had not done everything that they should have done.
5 And one of the ways they could have bolstered what they did
6 was the minutes.

7 Now, of course, you could also say, well, if they
8 had actually never discussed these things, then you can't put
9 that in the minutes. And so, maybe that would have been more
10 revealing than they wanted. But I am sure they did discuss a
11 lot of things that they didn't put in the minutes. They didn't
12 discuss, though, a lot of things that they should have.

13 MR. McBRIDE: And I had the impression, at least
14 before - I remember in the Revlon case, and we were on the
15 side of the hostile bidder there, when we got the minutes,
16 this was 1985, I was surprised, they were the Wachtell-style,
17 very complete minutes that told the whole story. I mean, you
18 knew you were getting minutes that were going to tell the
19 story that was going to be in the brief. #00:32:10#

20 MR. RICHARDS: Right. You just put that in the
21 statement of facts.

22 MR. McBRIDE: Right. And I remember getting those
23 minutes and being surprised because prior to that, my
24 experience had been that everybody used these short-form

1 minutes that just said we discussed X, and we decided Y. And
2 didn't put a lot in about the rationale for the decision or
3 what the facts were brought out and stuff. #00:32:31#

4 MR. RICHARDS: And I can't tell you why that
5 happened, but Oresman, who was the general counsel of
6 Paramount, and who had come from Simpson Thacher, was a
7 corporate attorney, but he was not a takeover attorney. So, I
8 don't know what advice he was getting and rejected to have -
9 for longer form minutes. But, as you have mentioned, the
10 standard transactions outside of the takeover area was you
11 have minimal; you just put in there what you need to get to
12 the next thing because otherwise, you might cause some
13 trouble.

14 MR. McBRIDE: Yeah, and you are not anticipating,
15 necessarily, litigation- #00:33:11#

16 MR. RICHARDS: Yeah, but that wasn't - hadn't become
17 the standard in takeover battles. And so, whether or not
18 somebody tried to get Oresman to do something different - and
19 see, I don't really know the - Simpson, of course, had very
20 skillful litigators, but whether they played any role in how
21 the corporate transaction was done, I don't know because as
22 you and I know, in Delaware, we - often, the corporate advisor
23 is also the guy to litigate. Now, I often, in many, many
24 cases, was in the boardroom, advising, and so, I could, as you

1 have suggested, try to set up my evidence for the inevitable
2 trial. The big city practice is that you have corporate
3 lawyers, as you know, and you have litigators. And the
4 litigators don't go the board meeting. That wasn't the case
5 when the takeovers came. And so, who was present at these - I
6 haven't been able to go back and look at the minutes - who was
7 present at these board meetings, whether Chepiga and any of
8 the guys who could have said, wait a minute, were there or
9 not, I don't know.

10 MR. McBRIDE: Yeah. It's interesting to me because I
11 have always thought that what was the Delaware practice, when
12 I started practicing, as you describe it where, if you were a
13 corporate lawyer in Delaware, you were often times both a
14 litigator and providing corporate law counseling advice. That
15 I thought that had tremendous advantages because often times,
16 my perception is that the non-litigators don't appreciate how
17 something is going to play in a courtroom; they are more
18 looking at technical points, and the litigators, often times,
19 don't have enough understanding of the dynamics of the
20 transaction. So, I have always thought that the kind of role
21 that you were describing that you had and that I had, at least
22 in my career, was a real advantage. And now, it seems like,
23 even in Delaware, we're getting more and more to the
24 specialist area, where there's- #00:35:25#

1 MR. RICHARDS: Yeah...which, I think it was a real
2 advantage. And there is another advantage that I am sure you
3 would agree with me on is that these cases were presented in a
4 terrible hurry. And if you were there in the board meeting, in
5 terms of - and you helped shape the event - in terms of
6 remembering what had happened, in order to make an effective
7 argument - now you're standing up - are you trying to remember
8 facts that you have discerned from minutes or from talking to
9 people? Or do you have this memory - it only occurred two
10 weeks ago, the board meeting, you were there. You don't have
11 to think of the citation in Jones' deposition, to page 84, as
12 to what he said he understood. You remember what Jones said,
13 and you can enrich your argument as a bystander. Now, of
14 course, you can't testify. You are not allowed to say, well,
15 Judge, I was there. We all know that. But that fact that you
16 actually know what happened, not only helps you prepare the
17 guys, the deponents, the directors, when they are done, but it
18 helps you make the argument, especially when you consider
19 that, in many of these cases, you'd be making the argument-if
20 it was TRO, you might be making the argument, you know, a week
21 after the event, and not more than two weeks, in any event.

22 MR. McBRIDE: Yes. And I think, it seemed to me that
23 being a litigator, you anticipate what your opponent, what you
24 think your opponent will argue with respect to the

1 transaction, and you can help either shape the transaction or
2 shape the deliberations in a way that anticipates that
3 argument and rebuts that argument. #00:37:08#

4 MR. RICHARDS: And, as a Delaware lawyer, I think
5 that's why Delaware lawyers were used so much in the beginning
6 of the takeover wars, and now, what we refer to here as
7 foreign lawyers, from places like New York and California, now
8 come here so often. But at that time, it was a big advantage
9 in what we were talking about of being in the boardroom is we
10 could remember talking to Chancellor Allen, or Vice Chancellor
11 Jacobs, and the questions he asked and the points he made, so
12 we said to ourselves, by golly, I am not going into court on
13 this one without having plugged those holes.

14 MR. McBRIDE: Yeah, understood. Well, the original
15 Viacom - Paramount transaction is proposed, and then along
16 comes QVC, and makes a hostile offer, but not a tender offer,
17 initially, an offer to do a merger. And the Paramount board
18 asked for proof of financing that was ultimately provided. And
19 then, there was some - our side complained about those long
20 deliberations over the terms of the confidentiality agreement,
21 which our side thought was just an effort by your side to
22 delay things. QVC makes its offer and almost immediately
23 demands acceptance of the offer. It was a quite aggressive
24 opening bid by QVC, Do you recall the - and then, obviously,

1 Paramount and Viacom - or Viacom made a new offer. The new
2 offer switched the transaction between Paramount and Viacom
3 from a merger, a stock-for-stock, basically, merger of equals
4 to a two-step tender offer by Viacom followed by a backend
5 merger. And the tender offer was all cash, and the backend was
6 all stock, and it was what your client, Boone Pickens, used to
7 get accused of, a two-tiered, coercive tender offer. Do you
8 remember any discussion, at the time, that that structure was
9 created about the risks - or why you went from sort of a
10 merger of equals to a two-step tender offer and followed by a
11 merger? #00:39:35#

12 MR. RICHARDS: No. I have to - I don't know whether
13 my memory is blank and, therefore, omitting things I should
14 remember. But my impression in talking to Anne Foster is, I
15 think we were presented, that, as Delaware counsel, I think we
16 were presented with the tactics and strategy that Paramount
17 did, and I'm sure we had comments. I mean if anybody had
18 talked to me and asked me about it, my thoughts today are no
19 different than they would have been back then. I mean, because
20 at that time, that was, as you had pointed out, there had been
21 quite a long string of takeover wars. So, I was a very
22 experienced, at least, participant in these wars. And so, my
23 reaction wouldn't have been any different than the reaction I
24 am giving you today.

1 So, I am forced to think that maybe as these things
2 happened, I said, okay, well, or that's something we're going
3 to have to deal with.

4 MR. McBRIDE: Well, from our side, we thought, and I
5 guess I still think that it was built on the idea that Viacom
6 didn't want to participate in a bidding contest. That if it
7 was put up to a stockholder vote, if we put a higher offer out
8 there, even if the Paramount board was not willing to accept
9 it - if our higher offer was out there, you might not get the
10 stockholder vote to approve the merger. Whereas, in this two-
11 tiered structure, precisely because it was coercive, people
12 would be forced to tender into the Viacom offer unless we
13 adopted the same structure, which we did. We then switched our
14 offer to a two-tiered with a tender offer. But your side had a
15 timing advantage of, I think it was-

16 MR. RICHARDS: Four or five days, was it?

17 MR. McBRIDE: Yeah.

18 MR. RICHARDS: Yeah.

19 MR. McBRIDE: Yeah, I think. And so, but so, from a
20 market point of view, we were at a disadvantage, we couldn't
21 compete. People - everything left alone; if the court hadn't
22 intervened, the stockholders would have been forced to tender
23 into Viacom's cash offer for fear of losing out on the back
24 end of either the Viacom offer or our offer. But from a

1 litigation perspective, we thought that that two-tiered
2 structure really made it - was going to make it very difficult
3 for your side to argue that Revlon didn't apply. Or to argue
4 that Unocal wasn't violated, which is another argument we made
5 that - but, I wondered if there was some other strategy behind
6 that two-tiered structure than was sort of apparent to us?

7 #00:42:38#

8 MR. RICHARDS: I don't know.

9 MR. McBRIDE: Well, we filed the litigation and -
10 oh, here is another interesting aside that I had forgotten.
11 George Conway was on our team in this litigation. And I think
12 it was the first time I had ever met George, and I don't know
13 if he was a young partner or an associate at the time. But it
14 is sort of a small world to now see George becoming sort of
15 famous for his criticisms of Trump in- #00:43:15#

16 MR. RICHARDS: Oh, I hadn't followed that.

17 MR. McBRIDE: Oh, yeah. This is a little story that
18 - George Conway's wife is Kellyanne Conway. And he - George
19 has been tweeting, had been for some time, tweeting criticisms
20 of Trump-

21 MR. RICHARDS: Right. Well, now that you tell me
22 that he is that Conway, I didn't relate him to the lawyer at
23 all.

1 MR. McBRIDE: Yeah ... the same guy. And now, he has
2 been on cable news, and he has written articles. He actually
3 wrote an opinion piece in *The New York Times* with Neal Katyal,
4 the lawyer at Hogan and Lovells, who has written a book,
5 *Impeach*, advocating for the impeachment of Donald Trump. And
6 George and Neal wrote an op-ed together in *The New York Times*
7 advocating Trump should be removed from office, that is he is
8 unfit and violated his oath of office. But I go back to—
9 #00:44:13#

10 MR. RICHARDS: Well, these names keep floating up.
11 I've seen Barry Ostrager was the judge who said that Exxon
12 hadn't cheated about climate change ... a couple days ago—

13 MR. McBRIDE: Oh, I didn't know that.

14 MR. RICHARDS: Yes. He is the judge that decided
15 that. And so, I thought, oh, I can see the alumni, in this
16 case, are still alive and kicking.

17 MR. McBRIDE: Well, for those who may not know it,
18 there was a recent litigation in the district court in New
19 York, the Federal District Court in New York where the, I
20 believe it was the Attorney General of New York challenged
21 disclosures by Exxon relating to climate change, contending
22 that Exxon was understating the, basically, the risks to its
23 business resulting from climate change. Barry Ostrager, I
24 didn't know this, Barry Ostrager was the judge in that case—

1 MR. RICHARDS: Yes, who dismissed it.

2 MR. McBRIDE: -- and he just dismissed the case. So,
3 a lot of the participants in this story have other stories to
4 tell.

5 MR. RICHARDS: Right.

6 MR. McBRIDE: Charlie, do you remember, we had, I
7 think, seven days of expedited discovery in this case. And I
8 know Anne was involved in that. Were you involved in the
9 discovery in this case? #00:45:28#

10 MR. RICHARDS: I don't think so, but I am not sure.
11 I asked Anne - and I mean, I haven't looked at the
12 depositions. I don't remember going to any depositions, but I
13 could have. I asked Anne whether she thought I did. She said,
14 well, Tom Beck did some, and some other people did some. And
15 she wasn't certain whether I had done any or not. But my
16 general feeling about this is that I wasn't as intimately
17 involved in this case as I had been in these other cases-

18 MR. McBRIDE: In terms of the discovery-

19 MR. RICHARDS: Yeah. You know, there was a struggle,
20 really, going on, I think directed by Oresman, as to who was
21 going to argue the case, who was going to take the lead. And
22 Oresman was very concerned that Simpson Thacher do it. Whereas
23 other forwarding counsel in other cases that we involved in,
24 hadn't taken that attitude. They had taken the attitude, well,

1 this is the guy that's argued these other cases. And so, they
2 put up Barry Ostrager, who was an insurance lawyer. And he
3 didn't know anything about corporation law, in general, New
4 York Law or Delaware law, or takeover law. And so, we urged
5 Simpson Thacher to - Chepiga was part of the team, and he was
6 a more - he was familiar with takeovers.

7 And so, we urged them to pick Chepiga. But Chepiga
8 had said some - my recollection is, and I guess Mike is still
9 participating, maybe he could - I mean still practicing, maybe
10 he could tell you. But my recollection is that there was some
11 internal difficulty between Chepiga and Oresman, and Oresman
12 didn't want Chepiga to make the argument. Because we were,
13 frankly, nonplussed that you would have, however smart and
14 bright a lawyer, that you would have a lawyer argue a takeover
15 case who was not familiar with any of the Delaware decisions
16 and so forth. And Barry had a difficult time. In preparation,
17 I mean, he did come down here, and we spent time trying to
18 prepare him. And I remember going back and forth to his office
19 where he was working and trying to help him understand our
20 case law and so forth. But it was a difficult thing, you know,
21 for anybody to do. Not only to learn the facts of this case
22 and everything. But then, when you don't have the background,
23 you know, that a lot of these decisions are 30 pages long.
24 Well, if you weren't in the case, and you have to read ten

1 decisions that are 30 pages long, and distill, for the first
2 time, for yourself, the essence of them, that is very
3 difficult to do.

4 And I did re-read his argument in the Supreme Court
5 in preparation for this interview, and I think he did a good
6 job. So, you know, as a bright guy who had worked hard. But it
7 was distressing at the time.

8 MR. McBRIDE: Well, I remember, I think you probably
9 know this, that Gil Sparks, at the time, and in his interview
10 in our prior discussion of this case, had advocated that you
11 argue the case. And as someone who had argued - I mean, this
12 QVC case was posing the issue of what did the Delaware Supreme
13 Court mean in the Time Warner decision about the application
14 of Revlon? And you argued-

15 MR. RICHARDS: Right.

16 MR. McBRIDE: -- that Time Warner case, and won it.
17 And, of course, so did Herb Wachtell on our side. So, we were
18 envisioning that Herb, as one half of the winner of the Time
19 Warner case- #00:49:36#

20 MR. RICHARDS: Yeah, that the team would now be
21 divided up-

22 MR. McBRIDE: Yeah-

23 MR. RICHARDS: -- arguing against each other.

1 MR. McBRIDE: Herb would get up and say, well, I won
2 the Time Warner case, now he wouldn't say that, but he'd be
3 standing before the court saying, having won the Time Warner
4 case, I can tell you, it doesn't apply here. And that you
5 would get up on the other side and say, well, I also won the
6 Time Warner case and can tell you, it would apply here.

7 MR. RICHARDS: Yeah, exactly. Well, that didn't
8 happen.

9 MR. McBRIDE: Well, and we had Herb Wachtell arguing
10 on the QVC side of this case what Time Warner meant, and he'd
11 won that case along with you. And we anticipated that Herb
12 would be, not expressly making the point, but implicitly
13 making the point, I know what Time Warner means, and this
14 isn't Time Warner. And that if you were on the other side,
15 could say well, I also won Time Warner and know what Time
16 Warner means, and this is Time Warner. But, so we were glad
17 you weren't making the argument. #00:50:35#

18 MR. RICHARDS: You know an argument that wasn't made
19 in Time Warner, but I was thinking about today or yesterday. I
20 thought an argument could have been made that okay, that there
21 is an aggregate of shareholders that own it, but the control
22 premium is going to be lost here because now, Time Warner is
23 so big that nobody will ever come along and offer. Now, of
24 course, as history has turned out, that wouldn't have - that

1 isn't true. But, at the time, I remember that there was a lot
2 in the press about how this is so enormous - I forget how many
3 billions it was, but it was so much bigger than anything that
4 had come before that people said well, that's it, you know,
5 Time and Warner are off, and they are safe because nobody will
6 ever be able to take them over.

7 And, of course, we have seen, in the years since
8 then, that there have been bigger and bigger and bigger deals,
9 of unimaginable size. But I thought that was an argument that
10 could have been made by your side-

11 MR. McBRIDE: There was-

12 MR. RICHARDS: -- and was that argument made that-

13 MR. McBRIDE: -- well, let me tell you-

14 MR. RICHARDS: -- that there can't be a control
15 premium because now it's too big.

16 MR. McBRIDE: Well, I'll tell you. I was - one of my
17 frustrations in the Time Warner case was that there were
18 arguments that I wanted to make that weren't made. But one of
19 the arguments that I wanted to make is I thought we were going
20 to lose, and deserve to lose, on the Revlon issue,
21 particularly after it was restructured where there was no
22 longer a merger, that Time was now making a tender offer for
23 Warner.

1 But I thought we had a good Unocal argument that
2 Time had put a tremendous number of obstacles to our ability,
3 or the shareholders' ability to make a choice as to whether
4 they wanted to entertain our offer or go forward with the
5 Warner transaction, even in the reconstituted form. And I
6 remember, and part of that argument turned on the proposition
7 that the tender offer that Time was making for Warner would
8 preclude Paramount being able to make the same offer to the
9 Time shareholders it was making now. That if you allow that
10 tender offer to be consummated, it would preclude the
11 Paramount offer.

12 And I can remember coming back after one day of
13 taking depositions, and we used to have team meetings at the
14 end of every day - that everybody would share what happened
15 during the day and inform each other. And I'm sitting there,
16 about to talk about the deposition I had taken when someone
17 was talking about Martin Davis' deposition. And said, oh, and
18 by the way, during the deposition, Martin was asked whether,
19 if Time and Warner merged, that would preclude Paramount from
20 being able to go forward with its offer to the Time
21 shareholders. And Martin said it wouldn't. And I thought, oh,
22 god, I thought we just lost the case. And nobody else seemed
23 to appreciate that until I blurted out, we just lost the case.
24 And, but so the argument you're talking about was one that we

1 anticipated. But our client's testimony sort of made that
2 weaker.

3 But here - let me go back to the Revlon argument
4 because Revlon ended up being the decision that was
5 controlling both in Time Warner and in QVC. And the Supreme
6 Court's ruling in Time Warner, shall we say, had some
7 ambiguity to it. And so, if you recall, the Court of Chancery
8 said that Revlon is not triggered because there is no change
9 of control in Time. Even in the original merger agreement,
10 that the subsequent transaction, there would be no controlling
11 stockholder. It goes up on appeal, and the Delaware Supreme
12 Court says, while we affirm the Chancellor's decisions based
13 on his well-reasoned opinion - I guess they made reference to
14 the change of control- #00:54:52#

15 MR. RICHARDS: Right, right.

16 MR. McBRIDE: -- but said, and then said, and for
17 the additional reason that there was no breakup of-

18 MR. RICHARDS: Was that Henry Horsey?

19 MR. McBRIDE: Yes. Yes.

20 MR. RICHARDS: And I think all of us, in the
21 takeover bar, we thought this is Henry Horsey's one and only,
22 and unfortunate, contribution to takeover law.

23 MR. McBRIDE: Well, and I wanted to ask you because
24 you were involved in this law from the very beginning up until

1 what I think was its ultimate maturation. And it is still, I
2 guess, literally the case under the Revlon doctrine that a
3 breakup of the corporation could trigger - can trigger Revlon.
4 And I often wondered why is that? Why should that be the
5 trigger? And why, potentially, was that a necessary element?

6 And the answer I came to was that it's almost
7 another constituency concept, but in a little different garb,
8 that keeping the corporation together as an operating
9 institution, as a sustainable institution, hiring people,
10 meeting the needs of communities, meeting customer needs, that
11 preserving the corporation was a reason why you could say no
12 to a tender offer, and maybe even no to a higher tender offer
13 than the deal you are doing because the court was concerned
14 with sort of the social importance of corporations, which
15 echoes today's - you know, the Business Roundtable discussion
16 of corporations having appropriately taken into account
17 customer interests and employee interests and community
18 interests.

19 But that was the only explanation I could ever come
20 up with, with the idea of why this undefined breakup of the
21 corporation should be a factor in the Revlon analysis. But I
22 wonder, do you have any- #00:57:12#

23 MR. RICHARDS: Well, of course, that wasn't - the
24 other constituency argument wasn't something that was really

1 favored by the Delaware Supreme Court 25 years ago if that's
2 what we're talking about. No, I think the answer is that if
3 it's - is that there can't be any other premium, if it's
4 broken up, then it doesn't exist any more. That's your only
5 chance to get a premium. And if you now break up the assets
6 for their constituent parts, then it's gone. It's - there is
7 no further chance. I always thought that was the reason.

8 But, I think your reason would be a supplementary
9 reason, which maybe might play better today, or play better in
10 some other court than the Delaware Supreme Court.

11 MR. McBRIDE: Well, in the case of the QVC case,
12 what would you have argued to the court on the Revlon issue in
13 the context of this transaction? I mean, would you have argued
14 that Revlon didn't apply? Or would you argue it applied, but
15 the company and the board had complied with it? Was there any
16 way to avoid the result that happened? #00:58:33#

17 MR. RICHARDS: Well, those are really two different
18 questions. I don't think there was any way to avoid the result
19 that occurred. But, and I really haven't - you know, it's a
20 long time since - I don't know what I might have tried to
21 argue. I mean, I think you had this difficult record, the due
22 care argument, which I think, you know, while not logically
23 related to the other argument, I think, you know, put you at a
24 disadvantage because it didn't like the way Paramount had gone

1 about it. But I don't know, you know, what you could have
2 argued, really.

3 MR. McBRIDE: Yeah, it seemed to be a - I often -
4 let me ask you this question because I asked myself this
5 question having been involved in a number of these cases and
6 in the trenches of the discovery and putting together the
7 factual record and making every little factual point you could
8 make to make the other side look bad in one way or another, or
9 the thing look unfair. But, in the end, at least with respect
10 to QVC, Sumner Redstone was a controlling stockholder, and it
11 seemed like no matter how good the Paramount board process had
12 been, or how bad it had been, that fact was, ultimately, going
13 to carry the day and require that Paramount not be sold except
14 to the highest bidder. #01:00:05#

15 MR. RICHARDS: I think that's right.

16 MR. McBRIDE: And I wonder how many cases I've been
17 involved in where a lot of what we have done has not been that
18 really outcome determinative.

19 MR. RICHARDS: Yeah, well it certainly, a lot of
20 times, the cases I argued for Boone Pickens, I thought, okay,
21 I can make a great argument, but it's you're just paddling
22 uphill with the Delaware Supreme Court.

23 MR. McBRIDE: Well, and like I say, you argued
24 Unocal, didn't you? #01:00:28#

1 MR. RICHARDS: Yes.

2 MR. McBRIDE: And I didn't attend the argument, but
3 I remember hearing stories of the argument. Did you make an
4 argument along the lines of we're being turned away from the
5 corporate lunch counter - or that there was discrimination
6 against Boone Pickens- #01:00:43#

7 MR. RICHARDS: I did make that argument, and that
8 wasn't in the Unocal case. That was - I hesitate to say, that
9 was an argument I made in Chancery, and I think it was another
10 case, Dumont Mining, or something. And I can tell you really
11 why I said that.

12 MR. McBRIDE: By the way, it seemed right to me, and
13 I'll tell you why, but go ahead. #01:01:04#

14 MR. RICHARDS: And I'll tell you why I said that,
15 and this will be sort of funny, and nobody ever knows why I
16 made that argument. There was a jury box. And in the jury box
17 were a number of reporters. This was in the Superior Court,
18 and this was a Chancery argument, and a number of reporters.
19 And so, I was making this argument, and well, there were ...
20 argument I was making - and, of course, the reporters, you
21 know, were looking at me quite puzzled and, you know, because
22 they didn't - you know, this was double talk to them,
23 corporate takeover law. And one of the reporters was an
24 African American woman. And I looked at her and I said, I am

1 going to make this argument. And, she put it in *The Wall*
2 *Street Journal* the next day. So, I wasn't trying to influence
3 the press, but if - I knew that would resonate with her, at
4 least, and the next day, in *The Wall Street Journal*, it said
5 that this was an argument made. And so, that made me smile.

6 MR. McBRIDE: Well, and the reason I raised that
7 question is because I think that Unocal was one of the best,
8 if not the best, corporate decisions that our courts ever came
9 out with. Because, to me, it was a good compromise on the
10 takeover battle. I mean, to me, in the takeover battle-

11 #01:02:31#

12 MR. RICHARDS: But as applied to those facts, it was
13 wrong.

14 MR. McBRIDE: It was wrong. You lost; I know-

15 MR. RICHARDS: No, no. It was wrong because that
16 defense was Draconian. So, if Unocal had been decided in
17 another case, that was Draconian because it was absolutely
18 preclusive. And, as you know, of course, I am always willing
19 to re-argue Unocal. As you know, the SEC then adopted the all
20 holders rule thereafter and made that illegal. And it was
21 pending at the time. And the Supreme Court just wouldn't pay
22 any attention to that whatsoever.

23 MR. McBRIDE: Yeah, and I- #01:03:11#

24 MR. RICHARDS: So, that's why I say that-

1 MR. McBRIDE: It was wrong-

2 MR. RICHARDS: -- often, when I am arguing for
3 Pickens, I felt that you know, I am not going to win in the
4 Supreme Court because, as we all know-

5 MR. McBRIDE: He is a nasty, hostile, raider.

6 MR. RICHARDS: Well, and Drew Moore hated Pickens.

7 MR. McBRIDE: Oh, did he - from anything other than
8 just his reputation or? #01:03:34#

9 MR. RICHARDS: Yeah, you know, I think I told this
10 story in the Unocal interview, but I'll tell it again. So,
11 when Charlie Crompton was president of the Bar Association, he
12 invited Pickens to come and speak because Pickens was a
13 frequent litigator here and a very interesting guy. You know,
14 Pickens was almost on the sports pages at the time of all
15 those takeovers. And Drew Moore wrote a letter around to all
16 of the judges and said that it would be a violation of the
17 canons of ethics if they attended the Bar Association meeting
18 because Pickens was a frequent litigant here. And-

19 MR. McBRIDE: And he wrote this letter when he was
20 on the Supreme Court- #01:04:18#

21 MR. RICHARDS: The Supreme Court. He wrote it to all
22 the other judges and said you can't go to the Bar Association
23 meeting. And Christie, who was the Chief Justice at the time,
24 was so mad at what Drew Moore had done that he called me up

1 and he said, not only am I coming, but I would be happy to
2 introduce Pickens if you want me to. And he sat next to
3 Pickens on the dais at the meeting.

4 MR. McBRIDE: Oh, I didn't know that story. That is
5 fascinating.

6 MR. RICHARDS: So, you know, and this - I don't
7 know, it should be of interest to the law students or
8 something, but there's stuff, you know, behind these cases
9 that doesn't appear on the surface.

10 MR. McBRIDE: Yeah, for sure. And that just reminds
11 me that here, I think that Unocal, and I still think that
12 Unocal was one of the great decisions by our court, from a
13 conceptual point of view. But, I guess, as they say, you don't
14 want to be in the kitchen when they're making dinner, or
15 whatever, because it - and I do agree, it sounds like it was
16 wrongly decided or wrongly applied if- #01:05:21#

17 MR. RICHARDS: Yeah, just applied. It was a great
18 decision; it just didn't pay any attention to what the facts
19 were.

20 MR. McBRIDE: But the reason I go back to the equal
21 protection argument is it seemed to me that the Unocal
22 reasonable in relation test sounds a lot like the equal
23 protection rational basis test or reasonable basis test-
24 #01:05:41#

1 MR. RICHARDS: Well, so I have to tell you another
2 story because when will I ever get the chance to tell this.
3 So, when I was a brand-new lawyer, now I don't know whether I
4 was an associate or not, but I mean, I had only been
5 practicing three or four years. And I started out as a deputy
6 attorney general. The Richards, Layton and Finger, had
7 seconded me and I spent a year as a deputy attorney general.
8 So, I didn't know much about corporation law, but I knew a lot
9 about due process. And so, I had a case before Vice Chancellor
10 Marvel, and I can't remember what the case any more is. And I
11 said, well, Your Honor, this is a violation of our due process
12 under the Fourteenth Amendment. And Billy Marvel, bless his
13 soul, said, "We don't apply the Fourteenth Amendment in this
14 court."

15 *Laughter ...*

16 MR. RICHARDS: Nobody makes a due process or Fifth
17 Amendment or Fourteenth Amendment argument in the Court of
18 Chancery.

19 MR. McBRIDE: For sure.

20 MR. RICHARDS: But that's why I made it in that
21 thing was because I looked over at the jury box and I said,
22 you know, this is not getting through to these reporters.

23 MR. McBRIDE: Well, and I had always thought that
24 you had made this brilliant equal protection argument that

1 moved the court into this rational relation test. Well,
2 however- #01:06:57#

3 MR. RICHARDS: Well, I was hoping to, but the
4 trigger was something else.

5 MR. McBRIDE: Well, now let me read you something
6 that QVC wrote in its opening brief. What we said about
7 Revlon, and then I want to compare it to what the court
8 ultimately decided. We wrote:

9 When Revlon is triggered, the directors are
10 obligated to evaluate competing bids solely on the basis of
11 which bid provides the most immediate value to the
12 stockholders. The impact of the bid on the corporate
13 enterprise or other constituencies, the long-term or intrinsic
14 value of the corporation, or corporate policies or plans are
15 no longer at issue.

16 That's what we argued the test was. I think that the
17 Supreme Court disagreed with us when it decided the case
18 because it said that immediate market value wasn't necessarily
19 the test. You did have to pick the superior offer, but
20 immediate market value wasn't necessarily determinative of
21 what was the superior offer. #01:08:14#

22 MR. RICHARDS: Well, you remember they do - that, I
23 think somebody made the distinction that none of the
24 investment bankers, or anybody, quantified the long-term value

1 of the Viacom deal. But that in Time Warner, they did. It was
2 quantified. And so, you asked, you know, before - a few
3 questions back, you asked what could have been done. But you
4 know, I don't think you could have changed the outcome, but
5 there are little things like that that might have affected it
6 because maybe instead of saying well, you don't have to take
7 the highest offer, maybe you could have argued this *is* the
8 highest offer. You see?

9 MR. McBRIDE: Yes, yes.

10 MR. RICHARDS: So, it wouldn't have been doctrinally
11 different; it would have been factually different.

12 MR. McBRIDE: Well, and that reminds me. Because I
13 remember, in re-reading the Chancery Court decision, then Vice
14 Chancellor Jacobs didn't decide whether a change of control
15 triggered Revlon in all cases. He said, but in this case, it
16 does because the board of Paramount, with the QVC offer at X,
17 the board of Paramount didn't have a factual basis to
18 determine that the long-term value of Viacom combined with
19 Paramount would exceed the value that QVC was offering.

20 #01:09:38#

21 MR. RICHARDS: Yeah...no, but that's exactly my - I
22 had forgotten that language, but that is exactly the
23 possibility I was just raising.

1 MR. McBRIDE: Yes. And I thought, wow! How cautious
2 is that? But then, when we get to the Supreme Court, the
3 Supreme Court clearly said that Revlon is triggered, but when
4 it came to how do you measure which is the better offer, the
5 Supreme Court left your side with the ability to not look at
6 the market values of the securities in the back end of these
7 two transactions, but to look at the intrinsic value of the
8 equity that the shareholders would be getting and, arguably,
9 pick one over the other on that basis. #01:10:19#

10 MR. RICHARDS: By the way, I have just remembered
11 something. When you told me about the bidding that occurred
12 after the opinion, I don't know why, but for some reason, the
13 role of our firm, after the opinion, was larger. And I
14 remember being intimately involved in the decisions as to how
15 to conduct the bidding.

16 MR. McBRIDE: Well, and that is fascinating. Because
17 from our side, after the Supreme Court opinion came down, our
18 concern was that the auction was going to be conducted like
19 most auctions where the board would be the auctioneer and make
20 the decision as to which offer was the higher offer and which
21 was the lower. And we were concerned, based on the Supreme
22 Court opinion, that the Paramount board would find the
23 intrinsic long-term value of Paramount combined with Viacom
24 vastly better than the intrinsic long-term value of Paramount

1 owned by QVC. And so, when the Paramount board came out and
2 said we're going to conduct an auction of competing tender
3 offers where the stockholders are going to make the choice
4 which is better, and whoever gets 50% or more wins. We were
5 like, Huh! What a relief! Because we knew the stockholders
6 would be making the decision based on immediate value.

7 But I wondered, there was an article that Chief
8 Justice Veasey circulated to us before the last QVC interview,
9 where the author speculates that the - the author asked the
10 question, why did the Paramount board turn the auction process
11 over to the stockholders and let them decide as opposed to
12 making the decision themselves? And the author of that article
13 speculates that the Paramount board, having lost Time Warner,
14 and then having lost this case, decided it didn't want to have
15 anything to do with the Delaware courts any more, it didn't
16 want to have to answer to the Delaware courts, and that the
17 structure that was chosen was one that no one could fault the
18 board in terms of the outcome. #01:12:29#

19 MR. RICHARDS: Well, I don't know what they were
20 thinking because, again, we didn't meet with them. But I did
21 help them come up with a structure that wouldn't be subject to
22 second-guessing. I worked with them on that.

23 MR. McBRIDE: Yeah. Then there was one change in, as
24 originally structured, there were these two competing tender

1 offers. And each time somebody raised an offer, that offer got
2 extended for ten days, and every other offer got extended for
3 ten days. And then, whoever got more than 50% of the stock
4 tendered, that offer would be extended another ten days to
5 allow people that had tendered into the other offer, or not
6 tendered at all, to tender.

7 But at some point, and the process was just going
8 to, supposedly, going to continue on until the last bid was
9 made. But at some point, the Paramount board said, okay,
10 enough of this. There had been some - a number of back and
11 forth bids, and they put a date out and said make your best
12 and final offer by this date. And do you remember why it was
13 changed from this-

14 MR. RICHARDS: Not specifically, but I remember we
15 just thought well, this can't go on forever. We decided to
16 stop this.

17 MR. McBRIDE: Yeah, it was getting pretty bizarre.

18 MR. RICHARDS: Or maybe, you know, we have extracted
19 all the money we are going to from this point of view, so just
20 leaving it open raises the possibility of mischief. But I
21 can't remember exactly.

22 MR. McBRIDE: Yeah. Because it occurred to us - the
23 other phenomenon is that whenever you increased your bid, and
24 the market began to anticipate that you might be the winning

1 bidder, the value of your stock went down. Do you remember
2 that?

3 MR. RICHARDS: I don't remember that.

4 MR. McBRIDE: It was very frustrating from our side
5 because we'd make a higher bid, we'd add cash, but the market
6 would anticipate we're going to win, so the value of our
7 equity dropped.

8 But I think that's all that I have. I've probably
9 gone longer than anybody wanted, but I apologize. But I've
10 been fascinated, Charlie, by having this conversation with
11 you, and I have really enjoyed it. Thank you again.

12 MR. RICHARDS: Well, thank you. I enjoyed it as
13 well.

14

15 #01:14:41#

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