

Institute Loses Bid for Hughes's Billions

Though failing in Nevada, the Hughes Medical Institute still has a chance of winning the financier's fortune

Las Vegas. The Howard Hughes Medical Institute has lost a hard-fought battle here in Nevada to become one of the largest private organizations in the world devoted to the support of basic biomedical research. In a decision handed down on 29 December, the Nevada Supreme Court threw out a 4-year effort by the Institute to take control of the estate of Howard R. Hughes, Jr., who died on 5 April 1976 while being rushed to a Texas hospital from a secluded retreat in Mexico. His estate is estimated to be worth more than \$2 billion.

The Institute came within a hair's-breadth of winning the Hughes fortune, but two star witnesses refused to testify. One went to jail rather than give a frank deposition.

If the proceedings in Nevada were the final showdown over control of the empire, the estate would pass to various relatives of Hughes, most of whom live in Texas. California and Texas, however, also want to pass judgment on who should be the beneficiaries of the Hughes empire. This is because the issue of what state the itinerant Hughes considered his legal domicile is still unsettled. At stake are millions of dollars in state inheritance taxes.

The upshot is that the Institute still has a chance of laying claim to the Hughes fortune. Attorneys for the Institute are now preparing to use some of the Nevada testimony in a Texas court fight over the empire.

An Institute victory would have major implications for U.S. research. About 150 of the best young biomedical researchers in the country are currently supported by the Institute. The Hughes billions would thrust the Institute, known for a style of funding virtually free of red tape, into the big leagues of biomedical research.

The Institute's loss in Nevada is at odds with the stated intentions of Hughes himself. In unexecuted wills, public statements, and private conversations, Hughes consistently said he wanted his money to go to medical research. One reason for this beneficence was that the enigmatic financier was loath to let his estate be "eaten up" by federal inheritance taxes. As a nonprofit organization, the Medical Institute is tax-exempt.

About 95 percent of the estate Hughes wanted to drop in the lap of the Institute consists of the assets of the Las Vegas-based Summa Corporation. Founded by Hughes, the vast holding company owns Hughes Helicopters, a slew of gambling casinos, and huge parcels of undeveloped real estate in and around Los Angeles and Las Vegas. The head of Summa is William R. Lummis, a first cousin of Hughes who is the court-appointed administrator of the Hughes estate and the court-appointed sole stockholder of Summa. Before taking on the chairmanship of Summa in 1976, Lummis was a partner in Andrews, Kurth, Campbell & Jones, one of Houston's old-line law firms. Upon taking hold of the corporate controls, Lummis found an empire as twisted and ill-nourished as the 93-pound body of his late cousin. A Merrill Lynch study commissioned by Lummis found that between 1970 and 1976 Summa lost nearly \$132 million.

Presiding over the day-to-day operations of Summa from 1970 to 1976, while Hughes was taking injections of

codeine and watching endless reels of motion pictures, was a three-member executive committee consisting of Frank William (Bill) Gay, a Summa vice-president; Chester C. Davis, Summa's chief counsel; and Nadine Henley, a one-time stenographer for Howard Hughes who had climbed the corporate ladder to a vice-presidency. Gay had started his corporate career in 1947 as a personal aid to Hughes. His duties included acting as chaperone for Hughes's collection of Hollywood starlets.

Lummis, after sizing up the situation, started on a round of corporate housecleaning. He fired Davis in 1977. He later "accepted the resignation" of Henley and Gay, who after the death of Hughes had assumed the presidency of Summa.

Far from being out in the cold, the triumvirate still had control of an old Hughes property that did not fall under the auspices of the Summa Corporation—the Medical Institute. Hughes in 1953 had given the Institute all 75,000 shares of Hughes Aircraft Company (today the sixth largest U.S. defense con-

The Tradition of Hughes Medical:

Since its founding in 1953, the Howard Hughes Medical Institute has quietly funded a growing number of the best young biomedical researchers in the country. Hughes investigators work at a dozen prestigious medical schools and are spared the financial pressures of competing for scarce federal funds. In 1979, the Institute supported a total of 312 full investigators, assistant investigators, and lab assistants who work in genetics, immunology, and endocrinology. If the Institute were to win the fight for the Hughes fortune, its operations might expand to about eight times their current size.

The administrative headquarters and scientific conference center of the Institute are located on a 12.7-acre beachfront property in Coconut Grove, Florida. The main building is a sprawling Spanish-style mansion, and nearby are guest cottages and a coral rock tower. The Institute moved to this \$2.2 million location in 1978 after abandoning its old home, two floors of a nondescript "medical arts" building in Miami.

The change of location is one sign of a continuing transformation in the way the Institute goes about the business of biomedical research. In 1954, its first full year of operation, Howard Hughes gave the Institute some \$3.6 million for medical research. The Institute then proceeded to give back to Hughes some \$3 million in lease and interest payments.

Little money was left over for medical research in the early days of the Institute. Not so today. In 1979, the Institute spent \$21 million, some \$15.7 million of it going to Hughes investigators and laboratories at the medical schools of Johns Hopkins, Harvard, Duke, University of Miami, Vanderbilt,

tractor) and appointed himself the lone trustee. After Hughes died, Gay and Davis, who were the sole members of the executive committee, and Henley, who was secretary, consolidated their control of the Institute.

The stage was set for a curious marriage of purposes: a play by Davis and Gay to win back the Summa empire from which they had been so rudely expelled, and an attempt by the Institute to claim Summa and the Hughes estate as a biomedical bequest.

After a futile worldwide search for an executed will, Gay had his wife retain the services of Peter Hurkos, a Hollywood psychic. Using a pair of Hughes's shoes to activate his extrasensory perceptions, Hurkos reported that the will resided in an old bank vault somewhere in Houston. Gay's agents fanned out and photographed every bank in order to help Hurkos narrow the search, but the psychic hunt turned up nothing.

Disappointed but not about to give up, Gay and Davis instructed the Institute's lawyers in January 1977 to start legal proceedings at the Clark County courthouse in Las Vegas to probate a so-called lost will. According to Nevada statutes, this can be accomplished if two "credible witnesses" are presented who have seen the executed will and are familiar with its contents. Evidence started to pile up. Fourteen witnesses were brought forward who had heard

Hughes say he wanted his money to go to the Institute. Five old press releases were produced from the Summa Corporation that related to the same bequest. There was even a copy of a will Hughes had written in 1925 saying most of his estate should go to medical research. It was only a copy, however. The signed original could not be found. (In separate litigation in Las Vegas in 1978, the so-called Mormon Will was judged to be a fake.) Evidence was also presented that wills had been written by Hughes in 1930, 1938, and sometime during the 1940's—all of which allegedly benefited medical research.

Unfortunately, none of the witnesses collected by Davis and Gay were "credible witnesses" who had seen an executed will. Seizing the initiative, lawyers for the contestants in the action (Lummis and the Hughes relatives) started motions to have the Institute's case thrown out of court.

Hope came anew for the Institute in the summer of 1978. Word arrived that Dan Newburn, a reporter for the Las Vegas *Sun*, had seen an executed will while interviewing Terry Moore, a one-time Hollywood actress who dated Hughes in the late 1940's when Institute director Gay was then Hughes's chauffeur. Moore later publically claimed that she and Hughes had been married. While interviewing Moore about her alleged marriage, Newburn was shown a will

that appeared to be signed by Hughes and three witnesses. Many of the 15-odd pages were devoted to descriptions of how the Medical Institute should function after his death. "It seemed to be a very meticulous kind of breakdown," Newburn later told Institute lawyers in an attempt to verify the facts. The will was dated 1957, making it the most recent of all the alleged wills.

Why had Moore not brought the will forward? Newburn recalled for Institute lawyers: "She does not want to do anything that would benefit Bill Gay, Nadine Henley, and Chester Davis and feels that as long as they are members of the Medical Institute, that they would, in some way, benefit directly. . . . She just can't get it through her mind, her former chauffeur ascending to the prominence that Mr. Gay did within the company. I think in her mind she sees him still as a chauffeur, and as a go-fer, and that kind of thing, and there's some resentment there."

Attorneys for the Institute immediately tried to subpoena the document and have Moore give a sworn deposition—to no avail. She denied everything. No will. No statement. Nothing. The lawyers then started to work on Newburn, who had already admitted having seen the document. But Newburn in particular and the Las Vegas *Sun* in general have no great love for Gay and Davis. (While Gay and Davis were in power, the *Sun* and Summa were constantly in conflict.) The lawyers needed a sworn deposition or signed affidavit from Newburn because their initial contact with him had been a tape-recorded but informal interview, which was not admissible in court. Newburn refused. He claimed that his decision not to testify was protected by the Nevada statutes on media privilege. After several turns of the legal merry-go-round, he was held in contempt of court and ordered to jail. The Supreme Court of Nevada, however, eventually granted a stay of the lower court's order.

Time was running out for the Institute by the fall of 1978, the contestants again having called for the case to be thrown out. Then, almost miraculously, a new witness materialized in December 1978—nearly 2 years after the proceedings had started. Most remarkable of all was that the witness had been under the nose of the Institute right from the start.

He was John T. (Jack) Pettit, a California physicist who worked for one or another of Hughes's companies since January 1952. Pettit and Gay were old friends, having met while attending the same Mormon church in Beverly Hills and teaching a Sunday school class back

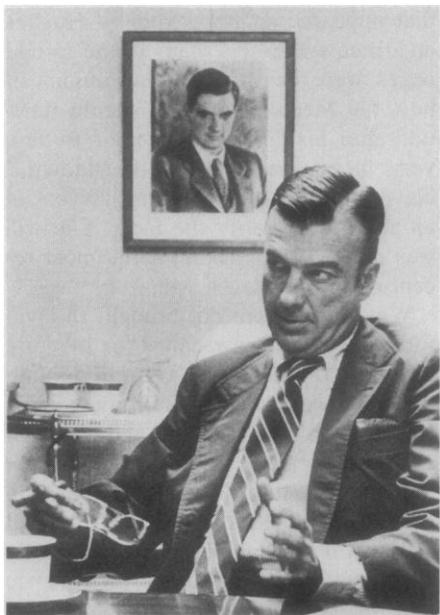
Support of Superior Research

Washington University, University of Utah, Stanford, University of California at San Francisco, Baylor, University of Washington, and Yale.

The investigators are not only generously funded, with money for the best equipment and for travel to international scientific meetings, but they also are spared the trials and tribulations of grantsmanship at the National Institutes of Health, accountability consisting of the submission to Miami each year of a short report outlining work in progress. Hughes investigators are handpicked by a medical advisory board chaired by George W. Thorn, professor emeritus at Harvard Medical School, with members including Victor A. MuKusick, chairman of medicine at Johns Hopkins, and James B. Wyngaarden, chairman of medicine at Duke. MuKusick, Wyngaarden, and some other members of the board are also members of the National Academy of Sciences.

Estimates concerning the potential expansion of the Institute follow from certain tax considerations. As a public charity, the Institute each year must spend at least 3.5 percent of its endowment on research. Assuming, conservatively, that Hughes Aircraft Company (its current endowment) is worth \$600 million and that the Hughes estate is worth \$2 billion, then the Institute would have to spend \$91 million each year. The Internal Revenue Service, moreover, since 1976 has argued with ever increasing vigor that the Institute is not a public charity but a private foundation (*Science*, 5 October 1979). If ruled to be a foundation, the Institute would have to spend 6 percent of its endowment or about \$156 million each year for the support of basic biomedical research.

—WILLIAM J. BROAD



Ben Martin/TIME magazine

First cousin fights for empire

Chairman Lummis at Summa headquarters

in 1948. Pettit, moreover, had ties to the heads of the Institute that went beyond friendships. On occasion Gay and Pettit had worked together for Hughes. They had also joined in several outside business partnerships. One was the Alpha Group, an incorporated venture by 13 Hughes insiders, including Davis and Henley, that bought up choice tracts of California real estate. In 1966, Pettit was named head of the Alpha Group.

During the Christmas holidays of 1978, according to sworn depositions in the Clark County courthouse, Gay, Pettit, and their wives were driving through Rosemead, California, on their way to one of their "favorite eating places," the Golden Cock.

"Well," said Pettit to Gay, "I know that this will existed because I saw it, you know, and I have told you this."

"What?" said Gay in a state of shock. "Jack, I don't recall you ever telling me that."

Pettit later testified that while in the law offices of Cox & Davis (Chester C. Davis) in New York City in 1962, he was shown the signed will of Howard Hughes by one Raymond Cook, a long-time Hughes attorney. As usual, most everything was slated for the Institute. Corroborating the testimony of Pettit proved to be no small task. Cook and his wife, while driving in their car through Brenham, Texas, in August 1975, had been struck by a bus and killed.

Conspicuous, moreover, was Pettit's not mentioning the "Raymond Cook" will to anyone at Summa except Gay. This omission occurred even though Pettit was right at the center of the world-

wide search for a will immediately after Hughes's death. Pettit, for instance, made a return trip to Florida, where in 1954, using the assumed name of Harold Hibbits, he had stashed some sealed envelopes for Hughes in a hotel safe.

Until his conversation with Gay on the way to the restaurant, Pettit says he had no idea that verbal testimony could be used in lieu of a physical will.

The testimony of Pettit became during the course of 1979 the foundation of the Institute's final legal edifice. Things had not been going well for Gay and Davis, and now the situation took a turn for the worse. Over at Summa, Chairman Lummis had been compiling a detailed assesment of damages. In 1979 he filed a conspiracy suit against Gay, Davis, and ten other Hughes lieutenants, charging them with taking "advantage of Hughes's age, poor physical and psychological condition, isolation, and use of drugs" to seize control of the corporation and to bleed Summa of \$50 million in fat salaries, interest-free loans, and questionable investments.

In response, Gay, Davis, and their friends filed a countersuit, claiming that the alleged takeover was a mere corporate power struggle. Their retort: The Summa suit "contains more gossip than 'As the World Turns,' 'Dallas,' and the Las Vegas *Sun* combined."

The showdown over control of the Hughes estate was now at hand. On 1 February 1980, attorneys for both sides made their final arguments before a packed courtroom. Present were Lummis and, on the other side of the courtroom, Gay. An attorney for the Institute summarized the testimony of Pettit. And who was the other witness brought forward by the Institute? None other than the recluse himself. Declarations made by Howard Hughes throughout his life were submitted in lieu of testimony from a living witness.

After the arguments, Judge J. Charles Thompson handed down his decision. The testimony of Pettit, he said, could "arguably" qualify as credible. But a dead man's declarations, "no matter how often, no matter how sincere, no matter how believable" would not suffice. He threw the case out of court.

The fight, however, had not yet drawn to a close. In briefs filed before the Supreme Court during 1980, attorneys for the Institute argued on appeal that factual issues remained in the triggering of the two-witness statute since, for instance, reporter Newburn might "change his mind" and testify. A jury trial at a later date, they argued, was in order. Despite this plea, the Supreme

Court justices on 29 December 1980 upheld the decision of the lower court.

Battles continue in other parts of the country over the Hughes estate. A signed will benefiting medical research might still materialize, or the Institute, with Pettit and some other witness in tow, might prevail in the Texas courts and ultimately start the flow of Hughes's billions into biomedical research.

Short of these events, however, the question becomes why Hughes was so careless with the execution of a bequest about which he obviously felt so strongly. Medical research is the sole continuous thread running through all the drafts and copies of wills that have come to light. A clue seems to lie among the other, more ephemeral beneficiaries in his wills. Hughes signed his first will in 1925, two days before he was married at 19 years of age. Three years later, when he and his wife separated, Hughes rewrote his will, deleting her and all his relatives. The bulk of the estate still went to medical research, but the cycle of reward and punishment for those who were close to the financier would pick up speed as the wives and girlfriends changed with ever more rapidity. In addition, business aids started asking to be put in the will so that the empire, as one said, "would not fall apart" at his death. In 1935 Hughes told the general manager of Hughes Tool Company that he had inserted such a provision—an out-and-out lie. Hughes over the years refined this tactic to an art, thinking the "beneficiaries" would remain loyal.

By 1950 Hughes had been fiddling with a new will for more than 6 years, adding names, deleting others, always leaving the bulk of his estate to medical research. One day he was finally ready for the signing ceremony. While three aids looked on, Hughes studied the 34-page document in silence, slowly leafing through the pages. This went on for some minutes until Hughes, with no explanation, suddenly handed the will to an aid and asked her to return it to a safe deposit box in a nearby bank. For the next 26 years, until he died, Hughes spoke on and off about his will, but no one ever saw him work on it again.

Some executives, aware of his tendency late in life to put things off, to avoid close personal attachments, to get upset with the growing ranks of eager "beneficiaries," believe Hughes deliberately avoided disposing of his estate. If so, the one beneficiary that had not changed for more than 50 years, the support of basic biomedical research, may have ended up being accidentally dismissed with the rest.—WILLIAM J. BROAD