

At one of Pittsburgh's largest family foundations, control has passed to a remote billion-dollar corporation. The family wants it back.

SHOWDOWN IN STEELTOWN

by John Sedgwick

photographs by Max Aguilera-Hellweg

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HILANTHROPY IN PITTSBURGH CONJURES UP ILLUSTRIOUS NAMES: CARNEGIE, Mellon, Heinz. But in fact, the city owes far more to an obscure charity little known even to those who have enjoyed its largesse. The McCune Foundation, with assets of nearly \$600 million, was created in 1979 by the grandson of a Rockefeller associate. It is the city's third-largest foundation, and, unlike the larger two, it concentrates virtually all its grants in the Pittsburgh region.

It was an anonymous gift from the McCune Foundation that provided early support for an organization that transformed an abandoned railway terminal on the Allegheny River into Station Square, a bustling urban mecca. The McCune also took a leading role in funding the Carnegie Science Center, the Andy Warhol Museum, and the Heinz History Center, all of which have become symbols of a resurrected Pittsburgh after the gradual withdrawal of its oil and steel industries. And the McCune has quietly aided hundreds of smaller institutions and programs. "The McCune Foundation is vitally important to the city," says Todd Hunt, Jr., president of the Roy A. Hunt Foundation in Pittsburgh. "I can't emphasize that too strongly. I'd hate to see anything happen to it."

Unfortunately, something is. A severely strained relationship between the foundation and its sole trustee, a Cleveland-based bank holding company called the National City Corporation, is threatening to bring the McCune Foundation's activity in Pittsburgh to a halt. The wrangle has pitted corporate interests against civic ones and, in the view of many observers, the law against common sense. It has also laid bare the intermingling of noble and ignoble purposes in the creation of a foundation, frightened the McCune Foundation's countless beneficiaries, and left other foundations—many of which have their own frustrations with their trustees—watching with grim fascination to see how the matter comes out.

THE ALIENATION OF THE MCCUNE FROM ITS CORPORATE trustee is in part a consequence of the larger process of consolidation in the banking industry. Increasingly, local banks with close ties to their customers and communities are being bought up by larger, more remote ones, which then inherit the smaller banks' trusteeships and other obligations. In this case, the McCune's \$2 billion family bank, the Union National Bank of Pittsburgh, merged in 1989 with a \$14 billion bank holding company, Integra Financial Corporation System. In 1996, the \$81 billion National City Corporation acquired Integra and became the McCune Foundation's trustee. Fateful decisions about the McCune Foundation that had once been made by family friends in Pittsburgh are now being made by strangers in Cleveland, who receive more than \$400,000 a year for the privilege. "Our capital used to be on the ground right here," says an angry James Edwards, grandnephew of the foundation's creator, in the McCune Foundation's office, which is decorated with the serious visages of his Scots-Presbyterian ancestors. "Now it's managed somewhere else. The money itself is somewhere else." He waves his hand in disgust. "It's all somewhere else."

Edwards finds it galling that McCune's descendants are expected to serve on the foundation's distribution

James Edwards, grandnephew of Charles McCune, wants a greater voice in the McCune Foundation's governance.

committee but are allowed no role in the higher level of governance of their family foundation. "I liken it to having an abusive spouse," he says. "They have the checkbook, and they make the payments. We're supposed to dress up real pretty and go to our charity balls." The distribution committee, composed of Edwards and two other family members, has no control over the selection of investments. In its court case, the committee has claimed that National City has taken unfair advantage of its position to load up on its own stock; currently, that stock is valued at \$159 million, or almost 30 percent of the foundation's entire investment portfolio. The distribution committee even lacks ultimate authority over grants, since a representative of the bank must co-sign every foundation check.

The committee has also claimed in court that the corporate trustee has engaged in complicated financial transactions that were more to the benefit of the bank than the foundation. As the case grinds on, the family has paid the distribution committee's mounting legal bills, but the foundation is obliged to pay for those of the trustee, which have reached \$200,000 a year. After three lower courts ruled against the distribution committee, the state supreme court appeared to doom the committee's legal hopes this June when it refused to hear its case against National City, thus letting the lower courts' judgments stand. Edwards has not let the matter die, however. Having lost in the courts, he has taken his case directly to the public. "I thought it was time to educate the outside world about our cause," he says.

OFFICIALLY, THE DISPUTE BEGAN IN 1990, WHEN Integra rejected the distribution committee's request to let a family member serve as co-trustee. But the conflict's true origins may lie in the complicated soul of the late Charles Lockhart McCune, whose will established the McCune Foundation in memory of his parents. Charles McCune never married (although his descendants still speak mysteriously of a "woman in blue" and a "woman in brown"); he was very fond of Cadillacs; his private estate was so grand that it became a country club after his death; and he was thrilled to put on black tie and tails to dine at the Ritz in London as a director of Texaco. But his one true love may have been the Union National Bank, which had been founded by his grandfather, John McCune II. Charles McCune was a director of the Union National for 56 years; he was also its president for 27 years, and its board chairman for 7 more. His office was

on the mezzanine of the bank's granite headquarters downtown; from there, he could oversee all the operations on the bank floor below. And, much to the frustration of his loan officers, he insisted on approving all loans personally.

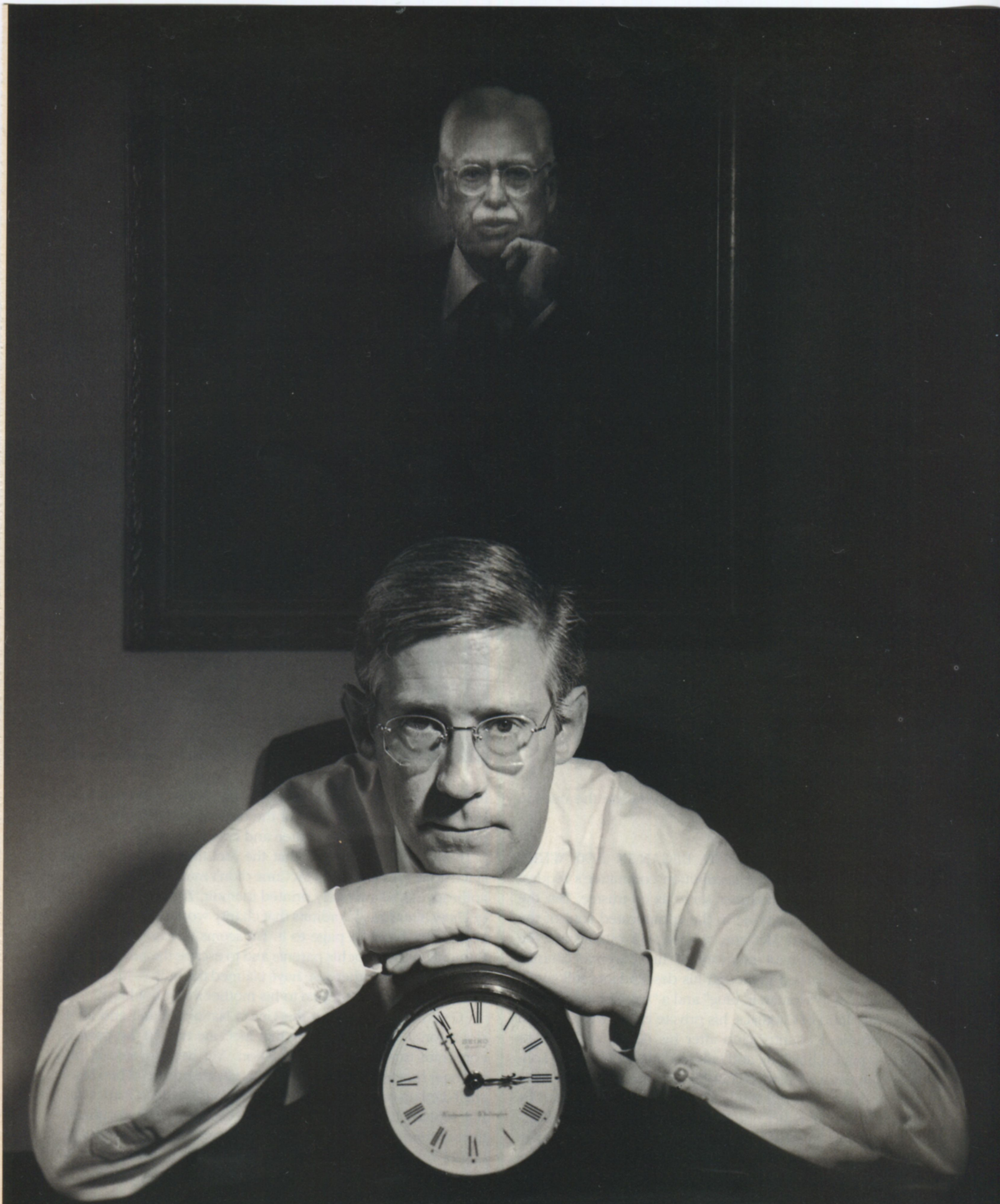
At the time of his death in 1979, McCune held 19.6 percent of the outstanding shares of the bank, a shade under the maximum permissible amount of 20 percent, making him by far the largest single stockholder. Most of that stock passed to the foundation and was eventually converted to shares in National City; through innumerable subsequent purchases, the stock

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increased considerably in value. Those shares, and what they signify, now lie at the heart of the dispute between the foundation's distribution committee and its sole trustee.

For all the good work that the McCune Foundation has since done for Pittsburgh, McCune didn't much believe in philanthropy. In his privately printed memoir, *Three Lives and All of Them Are Mine*, he admits that charity work bored him, and he devotes barely a page to it. He seems to have started the foundation to honor his parents and to escape the heavy death taxes that would otherwise have claimed the bulk of his estate, as he had watched happen to his mother's vast holdings.

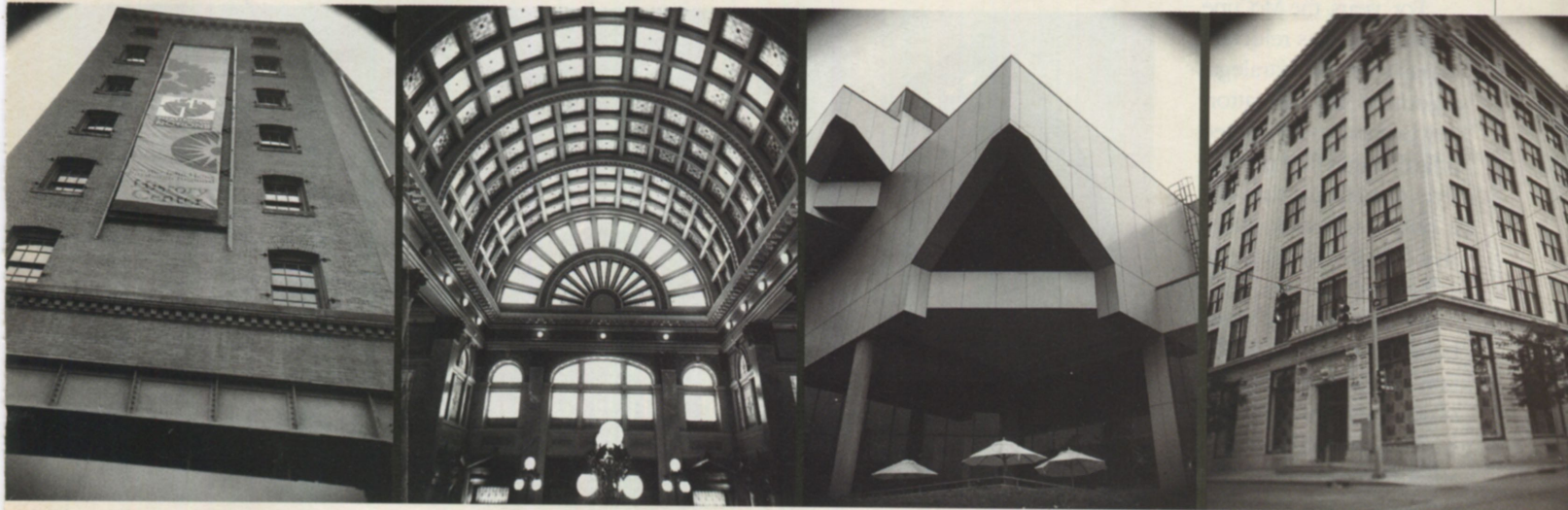
Given his devotion to the Union National Bank and all it stood for, it is not surprising that McCune named the bank a corporate trustee of his foundation. Yet he also named his younger brother, Marshall, to be a family co-trustee. When Marshall died unexpectedly three years before Charles, Charles did not replace him. Why he did not is unclear. The corporate trustee summoned two witnesses to assert that he deliberately chose not to, but Edwards dismisses their testimony as



self-serving, since both were executives of Integra at the time. For his part, Edwards finds it significant that Charles McCune routinely referred to trustees in the plural throughout his will, apparently on the assumption that there would be more than one. But Charles also indicated that Marshall “need not be replaced” by the corporate trustee. Those four words have received considerable scrutiny. Did they mean that the corporate trustee was under absolutely no obligation to name a replacement for Marshall McCune? Or did they mean that, in certain circumstances, it might be a good idea?

be reflected in its investments as well as its grants. “What if the foundation was antismoking, and the bank wanted to invest in Phillip Morris?” he asks. He believes that at the very least, significant opportunities to aid Pittsburgh through strategic for-profit investments are being lost because of National City’s detachment from the city.

In hopes of dislodging the corporate trustee, Edwards has concentrated his fire on the heavy concentration of the bank’s own stock in the foundation portfolio. Yet, as the courts have interpreted the relevant law, such self-dealing is acceptable if



IN THE EARLY YEARS OF THE MCCUNE FOUNDATION, it was implied that any grant money from the foundation would be deposited at the Union National. To Charles McCune’s way of thinking, this was sound business practice, a direct form of the general payback he expected from his philanthropy. McCune’s giving was meant to boost the economy of his city so as to enhance the receipts of his bank.

When the Union National Bank was the sole trustee of the foundation, such self-dealing was not so objectionable, or even so evident, because the two organizations were so tightly linked. What was good for one was good for the other, and both were good for Pittsburgh. But as Union National morphed into National City and moved to Cleveland, the trustee’s interests started to separate from the foundation’s. Now, what is good for National City is not necessarily good for the McCune Foundation, or for Pittsburgh. National City has argued in court that the growth in National City stock increases the amount of funds that the foundation has to distribute. But Edwards insists that the mission of the foundation should

the will specifically allows it. In one section, Charles McCune’s will expressly requests that the foundation retain McCune’s original shares of Union National Bank stock and directs it to reinvest the income in stock of “a bank or banks doing business within the United States.” As the corporate trustee sees it, that clause permits the purchase of the trustee’s own bank stock, for what other bank would it know better or believe in more? Since the bank stock has indeed done very well, it is hard to show that any harm has come to the foundation from the trustee’s failure to diversify more widely.

Inevitably, the issues on which Edwards is obliged to make a legal case are different from the ones on which he might make an appeal to reason. The current arrangement, with the foundation’s distribution committee at loggerheads with its

The McCune organization anonymously contributed millions to such Pittsburgh institutions as (left to right) Station Square, the Heinz History Center, the Carnegie Science Center, and the Andy Warhol Museum.

trustee, is an embarrassing nuisance for everyone. Edwards had hoped the Pennsylvania attorney general might step in on the family's behalf, but his office chose not to endorse the lawsuit. He appears to be exclusively concerned with honoring the intentions of Charles McCune, for fear that other foundations will be emboldened to break open the wills that created them. "These cases are all bigger than themselves," says Mark A. Pacella, the deputy attorney general who is representing the attorney general's office in the case. "If we rewrite McCune's will, we are opening up a horrendous Pandora's Box. There are plenty of other foundations that would like to rewrite their wills, too."

For years, the McCune Foundation was reluctant to push the one extralegal argument that the attorney general, as an elected official, might find persuasive: namely, the threat of a public relations offensive by the McCune. In adherence to the old-money tradition of quiet beneficence, the foundation has always given all of its grants anonymously. This policy has been so strictly observed that Pittsburgh philanthropy insiders have dubbed the



McCune "the McCunymous Foundation." Instead of the usual glossy, four-color brochure, the only report the McCune Foundation issues is a slim, gray booklet that lists the year's grants. However noble the motives of such reticence, the result was that, in its hour of need, the McCune initially found itself friendless and unknown in the city to which it had given so much. Indeed, it is partly to avoid this sort of situation that the Council on Foundations recommends that all foundation grants be given with the foundation's name attached. "We regard this as an important opportunity to educate the public about a foundation's value," says one council player.

Now, however, Edwards has decided to play the PR card. He has pleaded his case in the counties around Pittsburgh that make up the McCune's service area, and persuaded 14 of 15 county commissioners to write letters to National City complaining about the bank's treatment of the foundation. At Edwards' urging, the Pittsburgh city council passed a formal resolution in support of the foundation, and both of the city's daily newspapers have editorialized in its favor.

In response, National City released a statement on September 28 rejecting any possibility of a McCune descendant being named as a trustee. "Isn't it time to put these issues behind us all and do the foundation's work the way the courts have determined?" asked Thomas W. Golonski, president and CEO of National City's Pennsylvania operations. Not according to Edwards. "No good negotiation is over until both sides agree it's over," he says, "and this one ain't gonna be over until the governance of the foundation is fixed."

At this point, a completely happy solution to the McCune Foundation's woes is hard to imagine. Even if the bank caved in and allowed a delegate of the family to be a second trustee,

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the foundation might be paralyzed as each trustee countered the other. A better solution might be to expand the board to three: one trustee from the bank, another from the family, and a third from the community that the foundation serves. If the third trustee's primary qualification is, as it should be, a demonstrated support of the McCune Foundation's declared mission—enhancing Pittsburgh's civic vitality—he or she might help end the sniping and refocus the trust's governance on the organization's core purpose.

Then again, the restructuring in the banking business that provoked the McCune Foundation's crisis in the first place may change its fortunes once more: A recent *Wall Street Journal* report suggested that National City itself might be the target of a takeover. If National City were to be swallowed by a bigger financial fish, would the new owner be less adamant about controlling the foundation? Or, as Edwards worries, would the battle simply begin anew? ■

John Sedgwick, contributing editor of *THE AMERICAN BENEFACITOR* for trusteeship, writes frequently for *Self* and *GQ*.