ORAL HISTORY OF
HARRY C. MCPHERSON, JR. - FIFTH INTERVIEW
FEBRUARY 19,2003

This is February 19,2003. We've just been through the presidential holiday snow storm in Washington and this is day five of the interview series with Harry McPherson.

Mr. Vanderstar: When we left off, you were starting law school and I wanted to go back before that and first ask you to think about and talk about the people and events that, as of that point, as of fall of '53, had had a major influence on you in one direction or another. Your mother was obviously one such person and, of course, your dad and your grandfather; you've spoken about all three of them. But were there other people that you encountered or events that you became aware of that had a really powerful influence on the way your life was going at that time?

Mr. McPherson: I think we've probably covered some of these in earlier sessions and one always starts with teachers.

Mr. Vanderstar: Yes, that's true.

Mr. McPherson: We've all been influenced mostly for the good by teachers. The two sisters I've spoken of. Sarah Marsh and her sister Mitty Marsh both had a big impact on me. An American Indian woman married to an oil man, a woman named Meryl Chapman, spent the day with me after my mother died and had more to say to me at that point that meant something to me than anyone else did. When I got to Sewanee, I guess is the next time that anyone had a major effect, and those two fellows, Charles Trawick Harrison and Thomas Govan, affected me quite a lot.

You know, you find that environments themselves sometimes have a huge effect.

I was taught about the South by being at Sewanee, in part by driving around and visiting people in their homes, but as much by simply getting to know young men of my age or a little older from Mississippi, Alabama, South Carolina, North Carolina, Tennessee and Virginia. They all had different ways of looking at life, many of them steeped in southern culture, in a kind of relaxed, warmly generous way that southerners sometimes have, and that conveyed a lot to me about how to behave toward other people and what to appreciate in them. I guess those are the ones that come immediately to mind. The entire environment certainly doesn't mean everybody at Sewanee, but I think at least 20 or 30 fellows from these various regions became important to me—influenced me, you could say.

I enjoyed my father's friends but for the most part they weren't people whose turn of mind I was eager to follow, to become like; nothing wrong with them, nothing at all, they just didn't have quite the interests that I did.

I mentioned in an earlier tape Reverend Meade Brown of the Episcopal Church. I think the reason I still remember him without having known him profoundly is that he was both interested in and sympathetic to my interest in larger, what shall I say, ontological questions, questions about meaning, and, like an enormous number of young men and women who grow up in simple towns, towns without universities and without a lot of university-bred people, I was hungry to know more about life in its deeper aspects, and so I was eager to connect with anybody who seemed to be similarly interested. So this clergyman who read a lot, drank a lot and didn't sound like a blowhard as many of the Protestant ministers did in my home town—many of the Baptists and Methodists who came on like steam engines—this Meade Brown was a very cultivated man and could have had any number of callings within the church. Simply the fact that he was interested in serious matters meant a lot to me and drew me to

wonder whether I wanted to be in the church. It was not because I had any profound belief in the Gospels or in biblical matters, but I was drawn to him and to what he was doing because of it concerned serious matters in life, and I was keen to be similarly involved.

Mr. Vanderstar: Did you ever pursue in any way the notion of perhaps going into the ministry? Did you think about it seriously?

Mr. McPherson: I talked to him about it when I was 14 and he said, "I wouldn't rush it if I were you. You've had a hard blow"—I'd lost my mother—"and I think instead of committing yourself to anything like that now, just go ahead and live your life out and learn as much as you can and then at some point it may strike you that you want to do this." He didn't really put me off, but he gave me very common sense advice. After that, I don't know that I ever was really profoundly drawn to it.

Sewanee has a theological seminary. Several fellows, I think I mentioned them, in my class went on and became very distinguished clergy. Most of them went to seminary either at Sewanee or at Virginia Seminary in Alexandria. One was comfortable at Sewanee being with young men who were headed for the ministry even though one didn't plan such a thing one's self. You felt fine with them, and you played baseball and football and went to dances and lived normally with them. While the guy across the coffee table was going into forestry, they were going into the ministry. They didn't seem peculiar because of that but, at the same time, they didn't necessarily seem magnetic.

Mr. Vanderstar: Now, the seminary at Sewanee is an Episcopal seminary.

Mr. McPherson: Yes. Virginia Seminary in Alexandria is also Episcopal.

Mr. Vanderstar: Did the presence of that seminary on the (Sewanee) campus have any effect on you and on the life of an undergraduate, or was it just removed, sufficiently

removed that it could have been 100 miles away?

Mr. McPherson: Well, in the time when I was at Sewanee, this is not true today, undergraduates were required to go to morning prayer four days a week. It was at noon. When the 11 o'clock class let out at noon one went over to this lovely chapel the size of a small cathedral and went to morning prayers. And then you also had to go two Sundays a month. Much of our response to that was frivolous. We made up funny words to hymns as we sang them, very much like, I suspect, public school boys had been doing for centuries in England.

Mr. Vanderstar: Sure.

Mr. McPherson: There were, of course, times when you wanted to plumb some depths in life, and without having any scientific or psychological or historical training, any secular way of looking at it, you would, at least a few times, explore the religious way of looking at it. I don't remember exactly how I displayed that except in just conversations with people, asking them what they thought.

Mr. Vanderstar: After you graduated from Sewanee, did the experience of compulsory chapel serve to draw you in or repel you from church, at least for a while?

Mr. McPherson: I don't know. I think what drew me, has always drawn me to the church to the extent that I've drawn in any serious way, has been individuals wearing the collar. More than intellectual pursuit or more than some religious experience, it's been some person, some clergyman who seemed to be living on a plane that was more serious than others were, and I remember one time when I had gotten pretty much involved in St. Mark's Church, on Capitol Hill, an old church right behind the Library of Congress.

It might be worth telling you this if you don't mind me skipping ahead a little bit.

Mr. Vanderstar: Not at all.

Mr. McPherson: I came up here with my then wife to work for Lyndon Johnson and for a few months we lived in a dreary, Soviet-style apartment house in Arlington, (laughter) and then we moved into two floors of a row house on New Jersey Avenue, SE, just down below the House Office Building. I started going to St. Mark's Episcopal Church. I'm not sure why. I guess I was just kind of hungry for some sort of connection, maybe somebody said, "It's good to have some sort of religious community," and I realized I didn't have such a thing so I started going.

Bill Baxter was the minister, a robust, big-spirited person who had, I was to learn in later years, a lot of flaws as well as a lot of very strong attributes. He preached a sermon one Sunday that rather irritated me. I went back to have coffee in the parish hall. He asked me how long I'd been in Washington, what my interests were and so on, and I somehow managed to say that "I really didn't think much of that sermon you preached because I think you left out a very serious side of the issue." He said, "Let's go have a drink at Cole McFarland's house"; Cole was an architect who invited people over to his house on Capitol Hill after church. After we had talked for about half an hour over there and I told him what I objected to--he was such a good-spirited person that he accepted this without much complaint—he said, "How would you like to teach the adult confirmation class?" (laughter) And I said, "I wouldn't know what to say," and he said, "Yes, I think you would." And I said, "Tell me what you think I can do." He said, "I think you can take people down into the depths with some of the reading that you have done over time, Dostoyevsky and Kafka and so on, and when they really get down there they can hear the Christian message." And I said, "But I don't know what the Christian message is, I don't know how to say it." "Don't worry about that right now," he said, "and by the way, next Sunday I'm going to call on you to stand up in the church and say what you just said to me about the sermon

I just preached."

Mr. Vanderstar: Oh, boy.

Mr. McPherson: Well, I went, and he said, "We're going to start something here in the church and we're going to call it 'The Stranger's Sermon.' I'm going to call on a stranger to respond to my sermon." And he pointed out Harry McPherson who had just come up here from Texas. Well, I got up and told the congregation of St. Mark's Church what I thought about his sermon. That began a very interesting relationship with Bill.

One evening I was working late in the Senate when Bill called and said, "We're rehearsing a play called *The Sign of Jonah*" by, I think, Dietrich Bonhoeffer. It had been done at the Berliner Ensemble in East Berlin. Jonah was a U-boat captain. The vessel had been hit by a depth charge, and it was at the bottom. Then it's raised as Jonah realizes his helplessness in the situation and calls out for God's help and is redeemed. Bill said, "One of our prophets has gotten sick, would you come read his part?" I said, "Sure." So I went over there and read it and—although you can't tell from my snow-clearing voice because I've been out two days in the snow—I have a very big voice and I am a ham. I love to act, as you probably do, too. So I read it with power, and there was a lot of mumbling by the director and some others, and they said, "Instead of reading that, why don't you be Jonah." So I became the captain. And then after interfering with the direction during the next several nights (laughter), the director, a very nice woman, said, "Only one of us can be the director. Why don't you be the director?" (laughter) So I became the director and Jonah and in the next five or six years I wrote two plays and acted in them and directed them.

In other years we did *Mother Courage and Her Children,* by Brecht, my then-wife playing Mother Courage; we did *Brand* by Ibsen; we did *The Bald Soprano* of Ionesco; we

did all these avant-garde plays. And that was a huge experience for me. During that time, Bill Baxter kept drawing me into things that he was doing in the church. He even got me elected Senior Warden of the Church.

Mr. Vanderstar: And, for the record, Senior Warden is sort of the most senior civilian in an Episcopal parish?

Mr. McPherson: Yes, the parish has this little body of vestry people, and I don't know really whether they are empowered to make decisions or whether they just give counsel to the minister. In any event, they help with a lot of practical affairs of the church. And I was the Senior Warden for several years.

One day, I was driving out to the airport with Bill and another clergyman. I think we were going someplace where the two of us would talk about politics and religion. We sort of had this *shtick* as they say on Broadway; I was the religiously sensitive politician, Bill was the politically sensitive clergyman. We would go and talk about political life and challenges and the church. Bill was asked by the other clergyman something about my beliefs and how he had gotten this person so involved. Bill said, "Well, let's let him say. What are your beliefs and why are you committed to the church?" And I forget what I said, but it was most certainly not credible. The truth was this: because I have a new, serious and very positive friend who is involved in the church, and you have created in me and maybe 50 other people in St. Mark's what really amounts to a Christian community that is invaluable. **A** place and a group of persons to whom one could **turn** in times of trouble, and they weren't all professionals, they weren't scholars by any means. They were house painters and barkeeps, all kinds of people who became important to one another. That experience, being in a rich community of persons enriching each other, was the closest thing to a religious experience **I** think I ever had, closer than I ever got by

study, or searching for the truth of Christianity.

Mr. Vanderstar: Well, we'll probably come back to that point from time to time as we talk about your career in government and your career since then. Now, let's go back to the chronology and get you back to Austin, where you and Clay were in your 25 dollars a month apartment in Austin and that expensive tuition, it was 55 dollars a semester—

Mr. McPherson: Right. (laughter)

Mr. Vanderstar: —which sounds so funny looking at, looking back from 2003. Let's talk about law school. I'm not sure I have a sense of why you decided to go to law school.

Mr. McPherson: Well, there were three things. One was that I needed to have some occupation that would pay the bills. Another is that I wanted to do something involving speech, words, and ideas, and law was certainly one of the preeminent ones for that.

And the third, as I think I mentioned in an earlier session, was the concern that the American people were going to be beset by people like Joe McCarthy, demagogues who would attack them, and that they would need counsel. I guess if I'd have known more history and had a larger sense of the things that happened in life, I might not have thought about that at all because, this would pass, it always had before. There were people like McCarthy in existence throughout American history, and they've finally been done in. But I was at an impressionable age, and I was extremely worried sitting over there in Germany in the Air Force and reading about my country and its wrestling with Joe McCarthy. So I thought I would become a civil rights lawyer or a civil liberties lawyer. Those three things, the G.I. Bill, my wife's school teaching, and my father's 75 dollars a month made it the thing to do.

Mr. Vanderstar: And how did law school grab you in view of that background of thinking?

Mr. McPherson: Well, I was profoundly unprepared for law school. I had no economic or practical knowledge. I mean, I really didn't know what a mortgage was, I didn't know many commonplace things. I drove up to register in law school. I had a 1951 Ford, and right next to me a guy drove up in a 1946 Plymouth Coupe; in the back seat and just stuffed into every cranny of this Coupe were either his clothes or jars of Vicks Vapo-Rub (laughter). He had been a Vicks Vapo-Rub salesman (laughter) in Louisiana and had decided that he didn't want to do that anymore, he wanted to go to law school. Jerry Kirby was his name. Tall, skinny guy, he was about 32 and had on an old tom t-shirt.

During the time he was at Austin he started a small loan business, exploiting the very generous usury laws of the State of Texas making small loans to poor Mexicans and others. It wasn't that he was an evil man at all. He was just making some bucks to get by on and he did it through running a small loan business. He made A's in law school. He just knew virtually everything about life that you could know at the age of 32, business-wise.

I remember I was once on a visiting committee to Yale Law School; the ABA asked me to be part of the committee that every ten years or so examines the school.

Mr. Vanderstar: Is this for accreditation purposes?

Mr. McPherson: Yes. After a couple of days up there, and after talking to these gifted intellectual persons—Yale has a kind of a philosophical, soaring quality about it—I just thought, if I had been here I would have been the happiest of humans, if I could have had this spacious intellectual experience instead of learning about the usury laws and mastering what a person could keep on foreclosure, as I had done at Texas in those days. And I said to the Yale dean, "You know, if I were in your shoes, I would cause young students-to-be to come to New Haven for two or three weeks before school started formally, and I would have them meet

serially with a mayor, a chief of police, with an articulate banker, with a small loan operator, a used car dealer, a mortician, all kinds of people—not lawyers, but all kinds of other people involved in economic life and political life in a city. And I would just have the new students spend as long as such fellows would stand up there and talk to them, two or three hours answering questions like what do you do, what goes on in the city. This could be a big help—so that before they sat down to the Rule in Shelley's Case or the Rule Against Perpetuities, the many students who had come out of theoretical studies in college and grew up in families like mine who just didn't think it was appropriate to bring children into a discussion of family finances or the descent of property, would have heard somebody say, 'Here's what, not saying this goes on in your family, but here's what goes on in a lot of families and the kind of thing I have to deal with everyday'.'' I thought that might be a pretty good thing. The dean looked at me with an expression of amusement and said, "Well, that's an interesting idea." (laughter) That's all I ever heard of it.

Mr. Vanderstar: That's as far as it got?

Mr. McPherson: That's as far as it got. (laughter)

I didn't do worth a damn in the first year of law school. I finally got going in the second year.

Mr. Vanderstar: Well, now, there's a lot more to the first year of law school than mortgages and so on, I mean torts and contracts if you have those in first year and civil procedure are courses that help particularly and don't require that much knowledge of the wider world, as you call it.

Mr. McPherson: Yes, that's true.

Mr. Vanderstar: How did they strike you?

Mr. McPherson: Well, I don't know, for some reason I couldn't get my brain around them and/or didn't know how to study and felt intimidated by the material and wondered what on earth? Did I do the wrong thing? I was going to go right straight through so I could get out a little earlier, and that summer I had a couple of professors who helped me a lot. Texas had some extremely good professors, then and now. The dean was Page Keeton, W. Page Keeton, who was a great torts teacher. ***Keeton on*** *Torts* is one of the better case books. Charles McCormick on evidence. Leon Green also on torts. Joseph Sneed taught tax, he's been on the Ninth Circuit for a long time. A great criminal law professor named George Stumberg. These were really very fine teachers. And I began to do better, I began to get some sense of how to approach this.

Mr. Vanderstar: Talk about your classmates, at least in the first year, and whether you had a sense that everybody in the room was smarter than you were.

Mr. McPherson: Not everybody, but a lot of them, yes.

Mr. Vanderstar: Yes. It's an intimidating experience at a first-rate law school.

Mr. McPherson: Yes.

Mr. Vanderstar: No doubt about it. How many were in your class roughly?

Mr. McPherson: John, I don't remember.

Mr. Vanderstar: 100? 500?

Mr. McPherson: In my class, probably, I would guess 200, 250.

Mr. Vanderstar: And mostly young men from Texas?

Mr. McPherson: At that time, yes.

Mr. Vanderstar: That's a double question: young men? and, from Texas?

Mr. McPherson: Almost no women, let's say there were 400 in the class. The

more I think about it that sounds closer to the mark. I would guess out of the 400 probably 15 or 20 women.

Mr. Vanderstar: Oh! Okay.

Mr. McPherson: Despite the fact that *Sweat v. Painter* was a case involving the University of Texas Law School, I don't think we had a Black, or if we did, it was one or two.

Mr. Vanderstar: Well, now, you were a little older, you were not fresh out of college when you went to law school, you had a few years—

Mr. McPherson: —well, three years in the Air Force and one year at Columbia, so I was 24.

Mr. Vanderstar: Okay. And Jerry Kirby was 32. Did you two guys stand out in terms of age.

Mr. McPherson: No, no. A lot of people were in their late twenties. In fact, a number of guys had been in the service, as I had. This was Korean War time, and a lot of people had gone off to serve.

Texas had at that time a six-year program so that a student could start as a freshman in college and in six years be out of law school.

Mr. Vanderstar: Get the A.B. then the LL.B.

Mr. McPherson: Getting both of them, which always struck me as a terrible idea. I've told I guess a thousand applicants for a place here in the firm, and the people who are coming straight from college, that you'll do what you want to do but in my profound judgment you would be well served to take a year or two off doing something else and then go to law school. I think they would be much better served.

But we had a mix of all those: people like me who had some time in the service,

and like Jerry Kirby who had been selling Vicks VapoRub. (laughter) I think we were probably 90 percent Texans. It was by far the dominant law school in the state at the time. SMU got to be quite good thereafter. Baylor got to be good, and the Houston schools have produced some pretty good students. But Texas is probably the best and, as in most southern states, an LL.B. from the state university is a ticket to a lot of things that one would want to do later on in life, both in law practice and in business, and politics.

Mr. Vanderstar: Let me ask you a bunch of questions about law school. For example, if you have 400 or so in your class, your first year class, was it divided up into sections or did you go to a class with 400 students?

Mr. McPherson: No, it was in sections.

Mr. Vanderstar: Okay. And how many hours a week would you be in class and how hard did you study?

Mr. McPherson: Just going back to your torts, property, procedure, con law, and contracts, those five in the first year. In the summer, employee relations, which was workmen's comp and a smattering of labor law, and a course called "Injuries to Relations." That really lit my fire. It was taught by a marvelously articulate, bourgeois-shocking lawyer named Leon Green. He was a dean at Northwestern for many years, and Page Keeton persuaded him to come down. The two of them taught torts, so one section went to Dean Page Keeton and the other to Green. I had Keeton for torts but I had Leon Green for "Injuries to Relations," which included slander, libel, all the non-physical torts, injuries to reputation, standing in the community and so on. A wonderfully taught course and wonderfully interesting, and it helped me get going. Thereafter, I had Charles McCormick for evidence; he was one of the truly great professors. I always thought *McCormick on Evidence* was a clearer book than *Wigmore*, which was the other

one at the time that you turned to; he was a grand professor.

Mr. Vanderstar: You said that when you got into second year, you were catching on better, probably the summer too. What do you remember about the courses in second year?

Mr. McPherson: Criminal law and George Stumberg, a classic character, a tiny man who sat leaning back on a stool. Taught only the Socratic method, never made a declarative sentence (laughter) and drove some of us old Texas boys quite mad (laughter) as we tried to figure out could possibly be correct as Stumberg would just lead us into these blind alleys and mazes where we lost our way.

What else? Tax, Joe Sneed, a marvelous tax lawyer, very conservative political fellow, appointed by Nixon to the Ninth Circuit. Wills and estate, civil procedure, oil and gas—

Mr. Vanderstar: Yes. Good Texas course.

Mr. McPherson: Good Texas course. Better have that sucker. (laughter)

Mr. Vanderstar: What about bills and notes or commercial law or whatever it's called?

Mr. McPherson: Yes. And corporations.

Mr. Vanderstar: Corporations?

Mr. McPherson: Yes, corporations, trusts, a course in legislation—a pretty good one, I mean, legislative interpretation.

Mr. Vanderstar: To what extent were the courses you mentioned elective?

Mr. McPherson: After the first year you had to take criminal law and you had to take corporations, but I think a number of them were electives.

Mr. Vanderstar: Okay, So, and as you get into third year, pretty much everything is elective?

Mr. McPherson: Pretty much everything was elective.

Mr. Vanderstar: Okay. Was there any small course or seminar or something that you took in third year or was third year just all a continuation of the same.

Mr. McPherson: It was for me. I had done so poorly in the first year that, though I did well in the second and third years, my grades were never good enough to put me on law review.

I guess, in my typical political way, I was elected president of the local law fraternity, Phi Alpha Delta. I did that a little and got some guys to come and speak to us in the fraternity, but for the most part I was learning how to study law, wondering what I was going to do when I got out of it.

My wife was still teaching, and we were enjoying what at the time was a perfectly marvelous school and city. Austin had 125,000 people—this was before Willie Nelson and before much that has caused it to be super popular. It now has about a million and a half and has changed quite a lot, a lot more concrete and asphalt than it used to have. But it's a beautiful part of the world, and we loved it. I thought I would probably end up in a law firm either there or in Dallas or Houston. I interviewed in those three cities and had offers, but not being on law review I didn't get an offer from Vinson & Elkins or Baker & Botts or the big superstar firms.

The best law student, at least one of the two or three best law students, was a guy named Dick Hall. He and I looked a lot alike, tall blond fellows with big heads. His dad had a firm in Corpus Christi down on the coast. We'd become close friends. We went up one day to my home town, Tyler, and talked to several business people, bankers, insurance people, and the question was, "If Dick and I start a law firm here, in Tyler, would you steer some business our way?" And what else were they going to say? They all said, "Sure would." So we went back

and thought very seriously that we might do that. Dick's father wanted him to come down and join him in Corpus Christi, but it attracted us to start something of our own. I figured with my knowledge of the town and the people in it and his brains, that we could probably do a fair job.

In the fall, of '55, I got a call from a cousin, Jack High — the fellow who got together with Ross Perot later. Jack was working for LBJ on his Texas Senate staff in Washington. Johnson was the Senate majority leader and the chairman of the Senate Democratic Policy Committee. Jack said, "Senator Johnson wants an assistant counsel of the Democratic Policy Committee in the Senate. He's just about working the counsel into the ground. Would you be interested?" And I said, "Yes, I would."

A day or two later someone from Johnson's office called Page Keeton and asked him if he knew anybody who would be interested. I think that person must have mentioned me, and Dean Keeton must have said that I would probably do all right. I have a dim recollection of his telling me that at about the time I was interviewed.

I was interviewed in Austin and pretty much got hired during the interview. I asked what I would be paid, and the counsel, Gerald Siegel, said, "We'll let you know about that." In a few days word came back that I would be paid 4,600 dollars a year, which I thought was not very much. I said, "Some of my colleagues, including some who didn't do quite as well as I did in the last couple of years, are going to be paid a lot more than that in law firms." And the answer was, "Well, Senator Johnson thinks he'd like to bring you along by stages." (laughter) So there wasn't going to be much negotiation about pay, that was pretty clear.

Dick Hall and I and our wives had a very warm, sentimental steak dinner one night at Schultz Garden, the great place in Austin where generations of law students have been ruined. It's a place where you could get a small filet, a very good one, a baked potato, a little

salad and a big mug of ice cold Pearl beer for $1.25.

Mr. Vanderstar: Oh, boy! (laughter)

Mr. McPherson: We said good-bye and said in a couple of years we'll get together again and figure out if we want to go to Tyler. But he went off to one of the big Houston firms and I went to Washington.

Mr. Vanderstar: Okay. Could we go back to law school on a couple of points. First of all, did you go to school the second summer as well as the first?

Mr. McPherson: Yes, I had to. I wanted to get out in January of '56.

Mr. Vanderstar: Okay. And the school, law school allowed that, they didn't insist that you graduate in May or June?

Mr. McPherson: No.

Mr. Vanderstar: Okay, good. Did other people do the same thing?

Mr. McPherson: Yes.

Mr. Vanderstar: Okay. Next question. Let's go back now to the reasons you thought about going to law school in the first place and, in particular, the Joe McCarthy influence on your thinking. What happened to that while you were in law school? I didn't hear you talk about taking courses in civil rights or civil liberties, maybe there were none, but did that interest continue or did that kind of fade along with a lot of ideas you had as a young man.

Mr. McPherson: I guess it faded as McCarthy was done in. I went to law school in the fall of '53 and I think the famous Army-McCarthy hearing was in the spring of '54 when Joe Welch said, "Have you no shame, senator?"

That might help explain why I didn't do very well in law school. I listened to the radio in the hot little barracks apartment in the afternoons for hours at a time instead of studying,

I was so riveted by McCarthy. But my absorption in McCarthy was probably at its height when I was in Germany, and probably one of the reasons why that was so was that I was simply over there and was reading the European press, which was uniformly hostile to Joe McCarthy. That wasn't the case in parts of the U.S. I remember visiting my father in Tyler and going to the country club for dinner one night with him and hearing some of Tyler's business community speaking with real warmth about Joe, who was going to be there the next week, "He's flying down and we're having a big dinner for him." When I got to Austin my wife and I went to a lecture by the dean of Notre Dame Law School, Clarence Manion. In the question period after the lecture, which was about states' rights and so on, he was asked a question about McCarthy and he said, "I think he's a godsend." And I said, "Boo!" (laughter) and I thought the neck of the man in front of me was going to pop. It turned out he was a man named Ed Clark, who was the most famous lawyer-lobbyist in Austin and a great pal of Johnson's. When I mentioned the incident to somebody, he said, "You know, that's interesting. I was at a dinner a couple of weeks later with Ed Clark and some other people and we were talking about the Clarence Manion lecture. And he said, 'It was a wonderful lecture; if I hadn't been sitting in front of some liberal pup (laughter) it would have been just fine'.'' I was that "liberal pup."

Anyway, Leon Green and a man named Jerry Williams, a labor law professor, were several of the liberal professors in the law school who shared my feelings about McCarthy. Even the conservative professors were not McCarthy conservatives. They were economically conservative, but not hard over on foreign or social policies.

I suppose, without the enemy before me all the time and, in fact, with an enemy who had been defanged to a considerable degree by the censure motion, I had not exactly run out of interest in civil liberties, but I was not driven by these concerns as much as I had been. I

began to see that law and law practice would be different than carrying banners. It involved other skills than just political enthusiasm.

Mr. Vanderstar: One of the other points you mentioned that had made law school attractive was the whole notion of words and speech, of language being so central to the law. Did that attitude continue as you got into the study of law?

Mr. McPherson: It did, John. I have confidence that, if I live long enough, I'm going finally to connect and understand a lot of things. I have only occasionally understood many things the first time around and have had either to stay with them a long time in order to understand or to hope that I would come to understand. I have told all three of my children that their father, whatever his reputation for smarts, is really to be commended for one quality, which is doggedness—as I have really had to stay after things a lot longer than many of my contemporaries seem to have done. It has taken me a second or third shot at a lot of things in life in order to gain even a modest competence in them.

When I was in high school, when World War II was being fought, the military's physical training procedures became very much in vogue. I remember a young man who had been in the Navy and for some reason had been medically discharged became one of the coaches on our football team. He put in a barbed wire fence around our football field and built an obstacle course with a huge wall about ten feet tall; you were supposed to leap up and grab the top of it and then bring yourself up, chin yourself. Well, many of the guys in my class, most of them a couple of years older than I was, could do that. I couldn't. I could get my hands over the wall but I couldn't chin, couldn't pull myself up. So I went and got an oil barrel that was nearby and rolled it over and put it up next to the fence and climbed up on it and then got up and over the wall. And the coach just shrugged his shoulders and let me do it. It must have been clear to

him that this kid was not going to do it the right way and he won't do it at all the first time, but it's important to him that he go over that wall one way or another. And so, I've been that way in a lot of things in life, and I think understanding of legal concepts is probably one of them. I've not been a conventional practitioner in my life, either in government or as a counselor, an advocate, and a lobbyist, but I am a better lawyer, I understand the law a lot better now than I did when I was in law school.

Mr. Vanderstar: I guess that's true of most of us.

Mr. McPherson: But it just took me a lot of tries at it.

Mr. Vanderstar: In going back to the interest in words and speech and language, did you find in law school that your writing skills and your speaking skills were helpful or did you find that for lawyers in law school, it's a different kind of writing and a different kind of speaking and you were as green as anybody?

Mr. McPherson: That way.

Mr. Vanderstar: The second?

Mr. McPherson: Very much. In fact, having literary interests and even writing any kind of literary way or even journalistic way isn't much help in law school, at least so it seemed to me.

Mr. Vanderstar: And did you get exposed in any direct way in law school to learning how to speak and write as a lawyer or was that just something you were supposed to get by osmosis, if at all?

Mr. McPherson: As a writer about legal concepts or as an expositor of the law, I'm better than I was when I was in law school. I got a little better as a legal writer as I went along in law school. I came to appreciate language as an instrument of clear analysis. Reading

clear-headed legal thinkers helped. McCormick, for example. *McCormick on* ***Evidence*** is a book that I've gone back and looked at from time to time. McCormick, the gentlest of men, was a pure writer. I've always been struck by his simplicity of expression, which in time affected me, not as soon as it should have, but then I didn't have him until the third year.

Mr. Vanderstar: Now, let's go back to Dean Keeton saying you might be interested in national politics. Before you got that phone call from your cousin and then the call from Dean Keeton, had you given any thought to national politics?

Mr. McPherson: No, not in the sense of working in it—

Mr. Vanderstar: That's what I meant.

Mr. McPherson: —or working in the government. No, in those days, I mean, Sam Rayburn went to Texas Law School and then went back to law practice in Denton, got elected to the state legislature, and hardly ever looked back. He was enfolded in politics and came up here in Woodrow Wilson's first year. But most of the people that I knew who had a political interest, and there were quite a lot in Texas—Texas attracted many of such people—

Mr. Vanderstar: You mean the University of Texas?

Mr. McPherson: —particularly the University of Texas Law School. It attracted many young men who had a robust interest in politics. Most of them were like me, mocking of the political establishment, of the business establishment—most of us in those days were liberal. There was a group of about 30 representatives in the state legislature called the "Dirty 30" who just raised hell with the conservative program that was being offered to the legislature over and over by the business community, and these guys fought it—mostly oil and gas taxation and things like that. They could be found at Schultz' Beer Garden in the evening. They had gone to Texas Law School, maybe a couple of them were still in it. It had a wonderful flavor to it, a

robust, saucy, irreverent flavor.

I think I was the only one of the liberal students who headed for Washington at the time. Later it became very popular to do that. John Kennedy was the first politician since FDR to begin to attract young law students to come to Washington. My impression is that, while some fellows like me in the '30sdid come up here from Texas and go to work in some of the agencies, it was not anywhere near as common as it became in the '60s. And maybe LBJ's being president had something to do with that.

Mr. Vanderstar: Sure. Well, am I right in interpreting what you said that the University of Texas Law School was a pretty liberal-thinking place, both in terms of the faculty and perhaps the students as well, or have I misinterpreted it?

Mr. McPherson: I think it is and was. There are certainly exceptions. Charles Wright was, of course, I'm not sure where you'd put him politically, certainly he was Nixon's counsel in the tapes case, but I think it was largely an exercise of his vanity (laughter) as the Great Scholar of Federal Jurisdiction.

Mr. Vanderstar: Yes. I heard him speak at an ACLU conference, if that helps to put it into perspective. (laughter)

You were talking about the South in the early '50sbefore *Brown vs. The Board* and so forth and so on, but after *Sweat v. Painter* and so on, and so you felt at home at Texas Law School with your liberal, probably out-of-kilter with a lot of the society, views on things.

Mr. McPherson: Yes. If you went ten blocks across the campus to the business school you would have a totally different politics.

Mr. Vanderstar: Okay.

Mr. McPherson: But if you went to the so-called Plan Two at the University of

Texas, where the ablest undergraduates were enrolled, something started, I think, in the '40sto induce good talent to come to Austin and not to go off to the Ivy League or to more famously good schools. Plan Two is largely a humanities program, and it offers about as good an education as can be had. I think probably the people who taught there were by and large liberal.

You know, the Texas University campus was the scene in the '30sof one of the great academic freedom struggles. The president of the university was a man named Rainey, and he defended the right of professors of government and political science and literature to use such things as John Dos Passos' ***USA*** trilogy. The Board of Regents, composed of very conservative business people, many of whom had underwritten the campaigns of the legislature and of the governor, fired him, and it became a huge issue. On his side were the entire liberal arts faculties and, I suspect, much of the law school faculty, as well.

So that the struggle in Austin has not been so much town-and-gown as gown-and-legislature, since the legislature provides the funds for the University—and those funds were enormous because of oil properties out in west Texas. When the Midland fields came in, the University of Texas became one of the two or three wealthiest universities in the country. The university did its best to clear the pipeline between itself and that money and to keep the legislature out of it. The legislature did its best to make sure that the right things got taught and the wrong things didn't.

Mr. Vanderstar: The "right things"?

Mr. McPherson: "Right" in the very political sense of that word.

Mr. Vanderstar: But wasn't the legislature populated with UT Law School graduates?

Mr. McPherson: **A** number of them, but the "Dirty 30"—since there were a

couple of hundred people in the legislature, I think they were exceptional. They were beloved by the press but not widely admired by conservative Texans.

Mr. Vanderstar: So, in the midst of this ferment you got an education and you and Dick Hall thought about opening a law firm in Tyler, Texas.

Mr. McPherson: Right.

Mr. Vanderstar: What did you envision, before you got the phone call from your cousin, that you would be doing as your professional life? Writing wills and representing the local bank.

Mr. McPherson: Trying cases, representing the local bank—to tell you the honest truth, I would have been at a loss at the time to write a five-page essay on "What I Think I'm Going to Do in Law." I didn't know how you fitted together the academic world of law and the practical law of human experience.

Mr. Vanderstar: And making a living as you work.

Mr. McPherson: Yes, on top of that, the necessity to bring home the bacon.

Mr. Vanderstar: You mentioned trying cases and that reminds me, I meant to ask you, did you develop some special interest in trial work and appellate work as a way of using your languages skills, albeit in a legal context?

Mr. McPherson: Sadly, no. I very much wish I had. Many years later, when I was leaving the Johnson White House, I was visited by a number of people who showed an interest in what I wanted to do next. One of the things that I wish I had done at the time was to have gone to Ed Williams, whom I knew quite well, and ask him if he would take me into his law firm. My idea long after the fact was, I should have said, "Two-thirds of the time I'll be your bag carrier if you'll spend some time teaching me how to be a trial lawyer. And the other

third of the time I'll do the things I know how to do, which is deal with the government on behalf of clients. I can pay for myself in that third and over time I will learn how to be a trial lawyer."

It's a good question, John, and as I think about it, for the most part, very few of the academic teachers of law conveyed the zest of a trial practice. They did not say, as a voice teacher does, "Okay, Luciano, you're going to hit C flat here in *La Forza* ***del Destino.*** Nope, try it again. Let me hear you do this." They didn't coach us for performance using case law as a voice teacher uses the notes of the music.

This reminds me of a film called *Mozart to Mao,* a documentary in which Isaac Stern is seen in China. This is in the days after Mao was off the scene and I guess Deng Jao Ping had come on and Isaac Stem took a trip to China. And of course he played the violin. Isaac was a marvelous, big-spirited man. There was wonderful scene where he's on the stage with maybe 5,000 young people, probably at a university, filling a hall, and there's a young woman who has a violin and a bow. He is going to help her with a Bach Partita. She plays every note correctly, and it's meaningless. He said, "You absolutely got those notes right. You were not off one quarter note. You were right there. But let me show you what Bach was trying to do." So he take the violin and he plays the same notes with an intonation and a vibrato and pauses and a striking power that is just utterly different. It's like when I was trying to teach people how to be in the plays I directed. I would give them a sentence, "I don't think I want to go there." And I would then give them five situations in which one would say that sentence, "I don't think I want to go there." Just to have them see that they are all said differently, depending on the circumstances, and get them to read a text in a way, like Horatio, like the old Professor Long in college saying, "Nay, answer me!" I didn't have such a teacher in law school, somebody who

gave me a sense of the romance and the excitement and zest that would make me want to be a trial lawyer.

Mr. Vanderstar: And you didn't have adjunct professors who were practitioners?

Mr. McPherson: No, if such existed, I didn't go to the classes they taught.

Mr. Vanderstar: So there were no prominent successful jury trial lawyers that came into your view while you were in law school?

Mr. McPherson: No. The only one, the only lawyer I ever remember thrilling me was in Tyler, Texas, when I was about 9 years old at, my sainted grandfather had been made the executor of a very wealthy old lady's estate. He had made some decisions which were challenged in a lawsuit. He was defended by a (loud voice) man named Galloway Calhoun—a marvelous name. (laughter) And Galloway Calhoun defended him with passion and power and grandiosity; it was florid. God, I loved it. I could smell the tobacco juice and the urine from the men's room down the hall (laughter), and I just sat there for hours listening to Galloway Calhoun defend my grandfather. (laughter) I think he's the only great lawyer I can remember seeing in action.

Mr. Vanderstar: Oh, my. **All** right. Well, it seems to me that's a good place to stop because we've pretty well covered things up to the time you and Clay got in the car and drove to Washington.