

**ORAL HISTORY OF
HARRY C. MCPHERSON, JR. - ELEVENTH INTERVIEW
APRIL 1,2003**

It is April 1,2003.

Mr. Vanderstar: As I mentioned to Harry McPherson before we turned on the tape, we've pretty well gone through the public service aspect of his life after the early days, especially in view of the book and the transcripts of the interviews in the LBJ Library. So I want to get on to his transition to private practice in 1969.

Nixon was sworn in in January of '69 and you left about then, right?

Mr. McPherson: I did. I left on that day at noon.

I'm not sure if I've mentioned getting called by Johnson on the morning of inauguration. On the night before January 20, 1969, there was a party at the White House of senior and intermediate staff, lovely party, a kind of a melancholy air to it. We were leaving, and we were leaving on a pretty down note because of Vietnam. I gave a talk on behalf of the staff to the president and told him what it had meant to us to be able to work with him.

The next morning at about seven I was awakened by a phone call from the president. I was planning to sleep in for another couple of hours and then do something useful. I didn't intend to go to the White House on that last day. After the stroke of noon I wouldn't be welcome there in any event. Anyway, Johnson said, "That was a nice party last night, I thought." I said, "I did, too." He said, "You were one of the fellows who worked on the Kennedy Center for a long time with Roger Stevens," and I said, "I was." He said, "You want to be on the board?" And I said, "Sure." I can hear "scratch, scratch, scratch, scratch" as he put his name to an appointment to the Kennedy Center board where I became vice chairman and years

later, general counsel. He said, “You also started that Woodrow Wilson Center over at the Smithsonian, you and Doug Cater were working on it. Do you want to be on that board? I’m going to make Hubert [Hubert Humphrey] the chairman of it. Do you want to be on it?” And I said, “Sure.” “Scratch, scratch, scratch, scratch.” (laughter)

I had a feeling that if I’d played my cards right, I might have gotten even more out of that morning. I assumed a lot of it had to do with the talk I had made the night before, which was not in any way contrived; it was very genuinely meant. In any case, that was my transition to the non-governmental world for the first time since January 1956. This was January 1969.

Mr. Vanderstar: So, 13 years.

Mr. McPherson: 13 years.

Mr. Vanderstar: Plus, of course, you had been in the military, so you spent a lot of your years at that age in government service—

Mr. McPherson: That’s true.

Mr. Vanderstar: —of one form or another. When did you start thinking about getting a job somewhere or opening a law firm or whatever you were thinking about?

Mr. McPherson: I started wondering about that in the fall of ‘68, well before the election. I didn’t intend to stay in government, no matter who won. I was extremely fond of Hubert Humphrey, but there was nothing I really wanted to do in government at that point that I was likely to be appointed to. New presidents don’t come in normally and appoint some modestly well-known fellow from his predecessor’s staff to a cabinet job. So, I didn’t expect to be offered one of those; I didn’t know even whether I would want to take it if I were. And I didn’t want to stay and work at the White House. I had done enough of that. After four years, I

had had plenty of it.

So in the fall I started to think about what I would do. A number of people approached me about doing things in the private sector. Almost all of them were things that I had neither experience nor knowledge nor talent for, but they were intriguing. William Benton, the advertising genius—he and Chester Bowles had started Benton & Bowles. Benton owned *The Encyclopedia Britannica*, and he asked me if I would like to be the president of it. I said, “I didn’t really think so.” I’d worked with Benton when I was in that State Department job. He was the U.S. ambassador to UNESCO, and the two of us had spent a week or ten days in Paris one time, at a big meeting of UNESCO. He entertained me very lavishly at places like Maxim’s. Anyway, he made that offer. When I said I didn’t think I wanted to move to Chicago, he said, “Well, where do you want to live?” And I said, “Well, I like Washington, frankly.” And he snorted and said, “The only two cities in this country fit for a man are Chicago and Houston.”

Mr. Vanderstar: Oh, boy. (laughter)

Mr. McPherson: Those were the two places where fang and claw competition would bring the best to the top.

Arthur Krim, a very wealthy, very pleasant man, a very good man I believe, who was quite close to Johnson, asked me if I would be interested in being vice president of United Artists Corporation, in charge of corporate development. I didn’t even know what that meant. It obviously meant buying properties, working out deals. I went up to New York and I met with Arnold Picker, later to be number one on the Nixon enemy list for having given a lot of money to Ed Muskie, and Arthur Krim and Bob Benjamin. The three of them had taken over United Artists. I didn’t know whether I would enjoy doing that at all. I called Jack Valenti, who was at MPAA, and asked him for counsel. His counsel was, “Well, they’re three very good guys and

you'd probably like them. The one thing you've got to insist on, car and driver." (laughter). I said, "That's fine, if I decide that I'd like to do that, then I'll ask for a car and driver, but I don't know if I'd know where to tell the driver to take me if I had the job."

Two or three law firms, and in what was rather unusual in those days, asked me whether I would have any interest in joining them. Here was a fellow who had never been in a law firm for a day as a practicing lawyer, who had been in government ever since he got out of law school.

Mr. Vanderstar: Had you even taken the bar?

Mr. McPherson: Oh, sure. I took the bar before I left Texas. I was a member of the Texas Bar and one could easily waive into the District Bar. I thought it rather bold of them to be willing to risk this. One of them was your old firm, and that really intrigued me. I thought that would be quite wonderful. We never got beyond conversation with a couple of guys who came to see me to see if I would consider it. And I certainly did.

Clark Clifford invited me over to the Pentagon and asked if I would be interested in going with him. I was deeply flattered by that because I had been working with him, side by side, for a year on Vietnam and for several years before that periodically, when he would show up at the White House. Abe Fortas asked me if I had an interest in joining him; after he was forced to leave the Court he asked me if I would practice with him in his Georgetown office.

Robert Manning edited the *Atlantic Monthly*, and he persuaded the woman who provided a subsidy for the *Atlantic Monthly* to offer me the job of president and publisher. I didn't know what such a person did. I flew up to Boston and three of us, Bob Manning and I and a nice woman who underwrote the magazine's losses, went to the Ritz and had a wonderful meal and drank an enormous amount. I talked a blue streak about things that ought to be in the

magazine—not a word about how to produce the advertising that would sustain the magazine or the things that a president and publisher does. We got back to Manning’s house, and as he was bibulously untying his shoes he said, “You don’t want to be president of the *Atlantic Monthly*. You want to be the editor. You can’t be editor, I’m the editor!” (laughter)

Berl Bernhard and I had been good friends for close to 20 years, beginning when Berl was the Staff Director of the U.S. Commission on Civil Rights and one of the ten outstanding young men in America in that role. We had just taken to each other and remained close throughout the time. I’d persuaded him to leave his law firm to come over to the White House to be the director of the White House conference called “To Fulfill These Rights” in 1966, a tumultuous time. I was just thinking yesterday, sitting in a church on 10th Street in Pat Moynihan’s funeral, of a time when a reporter asked Berl in a press conference whether we were going to continue focusing the civil rights conference on the Negro family report of Moynihan’s, which by that time had become enormously controversial. Berl said, “Who is Daniel Patrick Moynihan?” with a big grin on his face, and that question was cited at least 50 times during Moynihan’s life by him and another 50 by Liz Moynihan. Both of them regarded it as evidence of such faithlessness on Berl’s part that they could never forgive him. (laughter)

Berl came over and said, “I wish you’d come with our firm, Jim Vemer and Gene Liipfert and me.” They did mostly transportation law, aviation and motor carrier work. They had come out of an old Washington firm called Tiemey & Tiemey. John Tiemey was Gene Liipfert’s father-in-law and was a tremendous surface transportation lawyer, railroads and trucking. He represented the Florida East Coast Railroad in a huge battle down there involving the Duponts. Huge litigation, savage controversy. Berl was his sidekick in that. At some point in 1959 or ‘60, I think Jim Vemer and Berl had had enough of Tiemey & Tiemey and decided to

form their own firm. Liipfert, who was, I really believe, the preeminent trucking lawyer, ICC lawyer in the country, which may not be saying a hell of a lot now—

Mr. Vanderstar: Then it was saying a lot.

Mr. McPherson: It was, yes. Liipfert had a master's in history from Vanderbilt and a Harvard law degree and was a pilot and navigator in World War II. He was a brilliant man. He was a real mastodon in a field of heifers at the ICC. Big head, superb lawyer, very tough mentor of young lawyers. Many people here still have the scars on them from Gene Liipfert. Vemer had been staff director and general counsel of the Civil Aeronautics Board. The chairman of the CAB in those days was a man named Don Nyrop—a very bright, able man who left the CAB and became chairman of Northwest Airlines for 25 years. When he left he immediately hired Jim Vemer as his Washington counsel. By the time I joined the firm, Vemer had been representing Northwest for ten years and for another four or five years continued to do so—something I'll come to later. In any case, Berl did not really fit neatly into this transportation world. Although he learned to be a good aviation lawyer at the CAB and to be competent in motor carrier law, he had a hunger for other things and was hoping to spread the firm's range of practice.

It was a tiny firm, only 11 lawyers when I joined it. I joined it because I didn't know what else to do really. I didn't know how comfortable I would be in any of these other jobs, even with a great firm like yours. I didn't know what to do in a private law firm, and something told me that if you don't know what to do and your best friend says, "Come with me," that you're probably wise to do it. So I joined it, and they put my name on the end of it, and I started trying to figure out what to do.

For the first six months I was a basket case. I didn't know how to keep time, I

didn't know how to deal with clients. I was taken to lunch one day by Verner and Liipfert and Berl, and in the nicest way they asked me if I was doing anything because I wasn't writing anything down—not keeping a record that they could bill clients with. (laughter) If someone asked me for help in the State Department, and the issue was one involving an international air right that was in the office of the assistant secretary for economic affairs, where aviation matters were handled, I'd call over there and talk to somebody that I'd known for a long time, I'd get an answer and report back and never think to write down any time. (laughter) So, it took me a while to begin to learn how to be a modestly productive lawyer.

Mr. Vanderstar: Let me go back to your exploring other options and the options exploring you. Nowadays, I would think that there would be a long list of things that might tempt you or might be put in front of you. Let's start with Valenti—a trade association of some sort. Anything in your mind about that or anybody come and approach you to head up the National Kumquat Growers Association

Mr. McPherson: Yes, they did and I think the forest products people did.

I hate to sound like a ninny, but I really didn't have any appreciation for what was legitimate to do in searching for and putting together a career. I think part of the problem may have been that I had been taken care of by events over the years. I happened to land a job when I came up here with the man who was the majority leader of the Senate, and the most powerful and effective member of the Congress. Working for him was very exciting. When he went off to be vice president, I continued with the majority leader of the Senate, a very good fellow, and in the course of those years came to know Cyrus Vance at the Pentagon, so I got a chance to do something else by just knowing someone who called me. And another friend at the State Department asked if I would like to go there. Johnson had by this time become president

because of the assassination of Kennedy, and he asked me to join him in the White House.

So events, fate, had produced a lot of options for me, and I think I just assumed that they would continue to do. So I didn't follow what Meyer Feldman, Mike Feldman, a predecessor of mine with Kennedy and Johnson, did, which was to work the net of businesses and law firms with whom he had had commerce as assistant counsel and counsel to the president—in the textile world, in the trade world, in aviation, in all manner of businesses. Mike Feldman made a lot of connections and, as it turned out, went with David Ginsberg and Howard Leventhal, later a D.C. Circuit judge.

Mike reached out to these businesses that he had already told, "I'm going to start a firm and I want your business." Many of them responded at once. A partner of mine, John Zentay, was in that firm, beginning as an associate. Mike had managed to acquire clients in the imported fuel oil business, the East Coast marketers of fuel oil, and John Zentay made a career out of representing that industry. He still represents them 32 years later.

But I didn't do that, and I didn't know how to do it. If I had had the slightest business imagination I think I would have really reached out and tried to see if there was any spark that might have started a blaze. As it was, I just sat in my office and received visits from people who made offers to do things I hadn't given the slightest thought to.

Mr. Vanderstar: You said in the beginning of that story you were unsure about what was the legitimate thing to do. What did you mean when you used the word "legitimate"? Were you thinking in ethical terms?

Mr. McPherson: Yes.

Mr. Vanderstar: What did you mean by that?

Mr. McPherson: Well, I meant that, while I think that it is entirely appropriate

for someone in the last few months in a job such as counsel to the president to make some inquiries and talk to people about what he might do when he leaves, he needs to be very careful not to speak to people who may have matters that will come before him. I was extremely fortunate in my second year as counsel to Johnson. I was being pressed to get everything done that I needed to get done, and I told him I would really like to have a deputy, an assistant. He talked about it one day with his old friend Senator Mike Monroney of Oklahoma. Monroney said, "Well, as it happens, the brightest lawyer in Oklahoma has come up here to work for me on the Joint Committee on Reorganization of Congress." Monroney had been appointed to chair that committee. W. DeVier Pierson came up to work with Monroney, and he told Johnson, "He is awful good."

Well, he is awful good. He came as my deputy. He was so tremendously bright and able as a lawyer, still is, that I felt enormously comfortable in turning over to him a number of things that normally I would handle. The more I got involved in working on Vietnam issues and in what amounted to race riots in the cities in '67 and '68, DeVier began doing more and more of the business side of the general counsel's office.

This was important particularly in 1968 when I had decided to go with this firm, Vemer, Liipfert & Bernhard. The CAB had before it a gigantic case called the *Transpacific* case. In it they were prepared to authorize a number of U.S. carriers to serve Japan, Thailand, Australia and Hawaii, and a number of foreign carriers that come here. They denied a lot of requests for service as well. This huge package came over to the White House for final action. I knew without reading it thoroughly that Northwest was very much involved in this decision, and I was about to go to work for Vemer, Liipfert & Bernhard, which represented Northwest. I had nothing to do with drafting memoranda for the president about the case. I gave it to DeVier and

said, “Don’t talk to me about it.” He never did.

But it was hard not to just get a sense around the building, because I had been handling the aviation cases for a long time, people would just start talking to me about the *Transpacific* case, assuming that I was involved in it. I would stop them, but words would come out. My partners-to-be were eager to know what was in it and what was going to be recommended. I had to tell them that there just wasn’t any way for me to let them know. So, that’s a particularly sharp case of the legitimacy question that I was mentioning.

Mr. Vanderstar: Okay. By the way, did you know Paul Wamke? You mentioned Clifford.

Mr. McPherson: I did indeed, very well.

Mr. Vanderstar: Paul went with him instead of coming back to Covington.

Mr. McPherson: He did. Clark’s idea was that it would be great to come back into private practice with two guys that he had worked with on Vietnam. Paul had been the assistant secretary for international security affairs and really had been functioning as a kind of general counsel or court of inquiry within the Pentagon, and I was Clifford’s “partner in the White House,” as he said.

Mr. Vanderstar: Yes. But that didn’t tempt you, the Clifford Wamke firm?

Mr. McPherson: It was very appealing. But I think I knew that, as much as I liked Clark—and indeed I admired him enormously as a truly gifted lawyer and counselor—I was pretty sure that the Clifford firm, no matter whatever the other names were, would be an essentially theocratic institution and that the theo would be Clark Clifford. He had another Monroney man, a really bright lawyer named Tom Finney, who, had he lived, would have given Clark Clifford the counsel that would have caused him to stay out of the First American BCCI

problem, organization scandal that he fell into in the 1970s. I knew it would be very much his firm, and I'd been living in a theocracy for a long time with LBJ.

I sort of knew that with Fortas as well.

Finally Ed Williams. One time in '77 or '78, when Califano had left him and gone to HEW, it was suggested to Williams that he persuade me to join him and be what was called his "State Department." He was the "War Department" and I would be the "State Department." That was the same thing; even more of a case in which there was a dominant lawyer who really ran the entire show. It's never been that way in this firm, and I like it.

Mr. Vanderstar: Nowadays, many people in your position or comparable positions in the executive branch would go into some kind of investment banking business or something related to investment or would go into some kind of non-governmental organization, the Red Cross or whatever—

Mr. McPherson: Right.

Mr. Vanderstar: —as the president, or might go in with some kind of major foundation. Rusk came out of the Ford Foundation, and I can't think of an example of somebody who went into a Ford Foundation from government, but there might be somebody.

Mr. McPherson: Mac Bundy.

Mr. Vanderstar: Bundy, of course.

Mr. McPherson: From Harvard to the NSC to the Ford Foundation.

Mr. Vanderstar: Right, okay, I knew there was an example and I couldn't think of it. Now, did anyone in the investment banking, NGO or foundation field approach you, or did you give any thoughts to pursuing anything along those lines?

Mr. McPherson: No, I didn't, and you're quite right that today that is something

that would be second nature to someone in a job such as what I had. You would have met a lot of people in investment banking and in business, and you could be very valuable to them. But at the time it didn't appeal to me.

Mr. Vanderstar: Okay, and the nonprofit foundations also didn't come your way?

Mr. McPherson: Something tells me that I was approached by someone in that world, the 501(c)(3) world, and I can't remember what it was.

I felt, among other things, John, that if ever I was going to be a lawyer in the practice of law, it was time to do it. I had no experience in the private practice of law and didn't know how to do it. How to try a case. After several months, I was given a case at CAB. When you want to, I'll tell about that.

Mr. Vanderstar: Okay. Well, let's talk about your transition to the firm. You've already told one good story about your first six months of not recording the time you spent or recording the activities you engaged in, but what did you think you were getting into when you came to the firm? I mean, you had a high regard for the people here, but it was not a theocracy, and what did you think you'd be doing from nine to five, Monday through Friday or whatever kind of work schedule you envisioned?

Mr. McPherson: I assumed that there would be aspects of the representation that people here had that would yield to treatment by Congress or by executive agencies. Much of the firm's practice—95 percent of it—was in these regulatory agencies, the CAB, the ICC, to a small degree the FAA. All of them contained policy issues that normally got decided within the regulatory agency itself but that sometimes cried out for a change the direction of government policy. So that if one could go see the chairman of the Commerce Committee or the chairman of

the Aviation Subcommittee and say, "Look, we've been following this course for some time as a nation, and it's not producing a good result for American carriers or for the traveling public or whatever. You really ought to consider making a change in the statute." I thought maybe that would be something that I could contribute to, and I did to some degree. I knew many members of the Congress and had worked with them there and dealt with them from the White House. I knew a lot of bureaucrats in a number of agencies, so I could be useful in that sense. My name was known well enough so that I could get my calls answered by most such bureaucrats. I had been one of them, and for the most part they would respond without hostility.

Mr. Vanderstar: Did you anticipate or did your new partners anticipate that business might come to the firm because you were here?

Mr. McPherson: Oh, I'm sure they did. (laughter)

Mr. Vanderstar: That's a ticklish subject.

Mr. McPherson: It is and I'll talk about my first few cases.

I can't tell you how many people in the last **six** months of my life in the White House suggested that as soon as I landed in some law firm, if that was what I chose to do, they certainly intended to be there with business. They all had business before the White House, so this was a nice way of saying, "I will want to help you then, and I'm sure you want to help me now." And almost none of it materialized. In fact, while some people think that the acquisition of law business is a science, I think it is essentially the work of tooth fairies. Business comes from the oddest places. You just don't expect it at all, and suddenly you are asked to take on a representation that absorbs you for months.

First I have to tell about my one case before the CAB. As I mentioned earlier, Jim Verner represented Northwest Airlines. The CAB decided to authorize some service

between Islip airport in Long Island and a number of cities —Chicago, Cleveland, Pittsburgh—as a way of taking heat off LaGuardia. Northwest was one of those who applied to serve Islip-Midwest cities. With the help of Jim Vemer, who was an old hand at CAB brief writing, I worked on the brief and prepared myself for my oral argument before the CAB. It occurred one steaming afternoon when the air conditioning was not working very well in the old CAB over on Connecticut Avenue. Some windows had been opened to let in a little air.

I got up and started talking about the merits of Northwest as the carrier to be chosen for these services. I looked at these board members, and I saw at least two of them who I knew had been appointed by Johnson. They were looking at me, apparently trying to remember where they had heard the name. Or so it appeared. One member was about half asleep, but he would suddenly sit up straight, staring at me with an expression of semi-recognition. And here I was going on and on about the particular merits of Northwest.

I had an experience that I think the Germans refer to as the “doppelganger.” My spirit left my body and looked back at me and asked that person talking about Northwest Airlines, “What on earth are you doing before the CAB on a humid afternoon talking about service from Islip” when the year before I had been trying to help figure out the shape of the table in Paris so that the NLF, the North Vietnamese, and the South Vietnamese and the Americans could sit down, and had been on the phone with Vance and Rusk—and here I was talking about service from Islip.

It was a clarifying experience. It clarified that I was now in private practice and that I was no longer dealing with such immense issues.

The first time I got a really interesting client on my own occurred thus: Richard Nixon, for reasons that he probably could not have told you a year after the event, imposed price

and wage controls on the economy. It was a lawyer's field day. Bill Coleman called me. He was in a Philadelphia firm. He was a marvelous lawyer, still is, an African American who had been first in his class at Harvard Law School, clerked for Frankfurter, and had served as a clerk for Thurgood Marshall when he was preparing to argue *Brown v. Board of Education*. Bill was Johnson's choice to go on the Third Circuit in 1967, and perhaps beyond, Johnson, interestingly, knew a lot of African-American judges and was interested in advancing them. Bill Hastie, and Coleman and Thurgood himself. I tried in two meetings with Coleman to persuade him to go on the Third Circuit, but he resisted. He wanted to be a powerful private lawyer, as he became.

One of the things he did in Philadelphia was to represent the *Philadelphia Inquirer*. The publisher of the *Inquirer*, Fred Chait, was a very bright lawyer who was on the executive committee of Knight Newspapers in Miami. Coleman had agreed to go on the Price Commission—he accepted Nixon's appointment there—and so he couldn't represent Knight Newspapers or the *Philadelphia Inquirer* and wondered if I would. Indeed I would, and I began going up once or twice a week to Philadelphia working on advertising rates, on pay scales for printers and members of the various guilds.

Fred Chait and I hit it off. He was the kind of lawyer who was not only good in business but was fascinated by regulation. He would sit up at night reading Price Commission and paperwork regulations, and he would call me every day and say, "You know, I was just thinking about, I'm sure you've been thinking, too, about 326(a)(4)." (laughter) I started going down to Miami to meet with the Knight Newspaper people, a charming man named Alvah Chapman who was one of the really capable newspaper executives; the Knights themselves were involved, Jack Knight. In Washington I would go to the Price Commission or the Pay Board and meet with their bureaucrats with the latest version of an ad rate increase or a pay scale change

that Fred Chait and I cooked up.

It worked well. This was not playing basketball at the Final Four level, because no one really knew what these regulations meant. The task was to cook up ways of living with them. Nevertheless, we got done what needed doing. I became the fair-haired boy of the Knight Newspaper people. One day Fred called me and said, “Can you do antitrust? Do you have anybody that does antitrust?” We had by this time 15 lawyers in the firm, and most of them were doing aviation and motor carrier. They were very able. Some of them were even brilliant lawyers, but they weren’t antitrust lawyers. He said, “What about communications? Any FCC capability?” “No.”

But I suddenly had a thought.

In 1972, during the period of this Price Commission and Pay Board business, a Yale classmate of Berl Bemhard’s, David Tillinghast—one of the preeminent international tax lawyers in the country who had been the head of the Treasury Department’s international tax work—approached Berl and said that his firm, Hughes, Hubbard & Reed in New York, had for a long time thought they wanted a Washington office but had never had the courage to start one. He wondered whether Berl and I would have any interest in becoming partners in Hughes, Hubbard & Reed while remaining partners in Verner Liipfert Bemhard & McPherson. We went up two or three times and met these exceptionally able pleasant lawyers. Their senior man, the chairman of their executive committee, was a great practitioner named Orville Shell. He was on the board of Merck and was their principal outside counsel. He was a most elegant man. Warm spirited, broad gauged, and chairman of Wall Street Lawyers for George McGovern, despite being *a* corporate lawyer. He was also chairman of the board of the New York City Ballet, big figure in philanthropic work all over New York, and I think the father of Orville Shell, the writer

about China.

We worked out a deal. Berl and I became full partners of Hughes Hubbard & Reed and went up to New York every couple of weeks. The deal was that each firm would try to steer business to the other, and each would get the benefit from what it steered while the other did the work. As a economic matter, it never produced a lot. Lloyd Cutler once took me to lunch and said, "Would you tell me how this works?" He said, "Cravath and I have been talking for years about some way to relate." This was before the practice began of huge firms like Piper Rudnick swallowing up small firms like Verner Liipfert. This was an association, a relationship, with the bond being a couple of partners, two individuals who were partners in both firms.

Something hit me after Fred Chait tried to hire Verner Liipfert for antitrust and FCC work, and I called Orville Shell and said, "Something's afoot. Knight Newspaper has got some kind of acquisition in mind. They want an antitrust guy and they want some telecommunications expertise. I want to steer them to you. You all have really got to be at your best because these are very bright people, it's a superb newspaper chain, and they will be looking for good work. They think they've gotten that out of me. Essentially what I've done is follow whatever Fred Chait thought was a good idea." I called Chait back and asked if they would be willing to interview Hughes Hubbard. Well, a team of Knight people went to New York and met with Orville Shell and four or five other lawyers, including a fellow named Jack Fontaine. To tell the story in three sentences instead of 30, they got hired, they were not only counsel for Knight as it acquired Ridder and became Knight-Ridder Newspapers, but Jack Fontaine moved to Miami as general counsel of the company and later became its president. He spent his next 20 years running that newspaper empire. All from that initial connection.

Here I was, I had done this, and I was looking for my next call from Bill Coleman

or somebody, now that I've learned what you do when you get hired.

Mr. Vanderstar: What you do is you sit in your office and answer the phone.

Mr. McPherson: And answer the phone.

Mr. Vanderstar: By the way, when was this Knight-Ridder deal?

Mr. McPherson: '72.

Mr. Vanderstar: Okay. So, you had been here for three years.

Mr. McPherson: Yes. I had been doing whatever came along that had a particular legislative or executive branch aspect to it, and we were getting into a number of things where I could be helpful. I got a call one day from Senator Bennett Johnston of Louisiana, whom I had known for a long time. He asked me whether I would be interested in representing some oil and gas wildcatters and developers who were trying to save the percentage depletion allowance for people in the oil business. I said, "Of course I would."

In came four or five of the most attractive clients I ever had in my life. These were virtually all Republicans. They were smart as could be, they were individual entrepreneurs, they were very wealthy. They operated in Kansas, Oklahoma, Texas, Louisiana, and they considered themselves under-represented by the IPAA, the Independent Petroleum Association of America. Essentially, the oil industry was composed of the Seven Sisters, the big giants, and then a whole bunch of medium-sized firms that dominated the IPAA—like Sun and Marathon and Conoco and those sorts—and lastly these small operators—small, certainly not by income in terms that you or I would recognize, some of them had maybe a thousand stripper wells, wells that produced under ten barrels a day, or who drilled maybe a dozen wells a year, had maybe ten rigs of their own and leased the rest, flew about in Beechcrafts, whose investors included, speaking of Beechcraft, people like Mrs. Beech in Wichita—people who had money and wanted

to make more through investing in oil and gas drilling and development operations.

These wildcatter-developers wanted to save the depletion allowance. I said I would be delighted to help them. And there were pricing issues as well. Nixon had imposed on the oil world a set of price controls. There was one control for so-called "old" oil, oil that had been produced years ago and was still pumping, and a higher price for oil from newly drilled wells. That is, if you went out and drilled a wildcat well you got \$11.25 a barrel, but if you were producing old oil, you'd get \$5.25.

Mr. Vanderstar: Now, were price controls generally still intact at this point?

Mr. McPherson: Not on the economy as a whole. I believe that, in the interim between my adventure with Knight and this imposition of oil controls, general price controls had been lifted.

These developers had decided to seek the help of Bob Nathan, an old lion of a Democratic economist who had his own economic consulting business. They asked him to do a study of the economic cost of oil. Essentially they wanted him to look at the whole spectrum of oil drilling in America, take into account all the dry holes, and factor that in to what it cost to produce a barrel of oil. So that, leaving aside opportunity cost, if you just looked at what you spent as you went out and drilled wells and added to it what you spent in exploiting a successful well, tying up to the pipeline and all that, and if you considered also what you spent drilling dry holes, that would give you an economic cost per barrel. The government ought to allow that higher price for new oil, which was enough to make this a worthwhile endeavor. Furthermore, a number of these guys, as I mentioned, had a lot of stripper wells, and they thought those wells ought to be encouraged to stay in production, even though they only produced less than ten barrels a day, by being allowed to charge whatever the market would bear just to keep them

going. If they were treated like old oil at \$5.25, it wasn't worth it to produce eight barrels at \$5.25 when you had to have somebody go out and check pumps and fix them. It was worth less at \$5.25 than it cost to keep the stripper well going.

Mr. Vanderstar: So, could you stop here and tell this easterner what a stripper well is?

Mr. McPherson: It's a well that produces less than ten barrels. It's what's left in Texas today. When you go out there and see that they have the old horse going up and down, it's producing six or eight, ten barrels a day. There are people who make a living at it, guys who have a filling station or auto repair shop and who own two or three of these wells. They go out and check them every now and then and they have them tied up to a tank; somebody from some larger distributor comes by and fills up his tank truck from the tank and pays the owner so much to keep him going. In those days, there were tens of thousands of stripper wells, and they were important because there were a lot of wells producing eight or ten barrels a day. If you could free them up to obtain 15 dollars or 16 dollars a barrel, then they were economical to operate. So, anyway, these were my clients.

Mr. Vanderstar: Now, they went to Bob Nathan to do the economic study.

Mr. McPherson: Yes.

Mr. Vanderstar: And was that after they came to you or before?

Mr. McPherson: Simultaneously. I knew Nathan. He and I liked each other and we worked well together. When I would come up before some member of Congress I would beat the drum, to set the stage and then present the great Bob Nathan, "whom of course you know of and who is a life-long Democrat, worked for Roosevelt and was a great friend of Hubert Humphrey" and all that.

Mr. Vanderstar: Wasn't Bob Nathan very active in the NAACP?

Mr. McPherson: In the NAACP, yes.

Mr. Vanderstar: He was a prominent figure.

Mr. McPherson: So from the point of view of these Republican oil men from Kansas and Texas and Louisiana, it wasn't a bad deal to have a pretty well-known Washington moderate Democrat McPherson and a very well-known moderate liberal economist Bob Nathan standing up for them.

I got a call one day from a friend, Al Hunt of the *Wall Street Journal*. He said, "I just noticed in looking at the lobbying registration that you have registered for "Americans for Energy Independence." I said, "Yes, absolutely." He said, "Well, that's interesting. Lyndon Johnson's lawyer signing up with a bunch of guys from the oil patch. Most of them are Republican, I think." I said, "Yes, they are." And he said, "What are you doing for them?" I said, "If these guys don't survive, if they can't retain the percentage depletion allowance" —and, incidentally, the big companies, for tax accounting reasons that I never understood really didn't give a hoot about the percentage depletion allowance. They did their accounting in a different way so that that depletion allowance, which I had always associated with the oil industry, was really meaningful only to individual operators and small companies, not to the giants, not to the Exxons and the Mobils and the Shells. I said, "You know, if these guys don't keep that percentage depletion, if they can't get a good price for their wildcat oil and their stripper oil, they'll go out of business and we'll be left with the Seven Sisters. You'll just have the giants, you won't have these guys, and we'll be at the mercy of these huge companies."

Well, Hunt wrote a perfect article, quoting me at great length. But I had completely forgotten that the biggest client that Hughes Hubbard & Reed had was Atlantic

Richfield. At the time, Atlantic Richfield and the other giants who were involved in a tense investigation of concentration in the oil industry mounted by the FTC. A guy named White, a lawyer from a Houston firm who knew the oil industry, had come up to be special counsel to the FTC. He was giving the majors fits. Jerry Shapiro, who was Atlantic Richfield's main lawyer at Hughes Hubbard & Reed, got a call from the deputy general counsel of Atlantic Richfield, who said that they were astounded by this article. The deputy general counsel was engaged in an intra-corporate war with the general counsel, who had approved my representation of this group of independent operators. I had asked Hughes Hubbard Reed if they had any problem with this a month before, when I first started.

Mr. Vanderstar: Without knowing that they represented Atlantic Richfield?

Mr. McPherson: No, I knew that. And, in fact, just to show you how it's possible to lose touch in the heat of the battle, I asked my clients if it was okay with them because of Atlantic Richfield. I didn't see any conflict. Atlantic Richfield didn't oppose the percentage depletion allowance, and they didn't oppose these higher prices for oil. I thought we were all on the same side—the two groups had different priorities. In talking to Al Hunt, I just lost it, I just really let go. The deputy general counsel was in control in Los Angeles at headquarters because the general counsel was out of the country on some business deal, and the deputy was really going to stick it to him. He would be able to point to this decision to okay this the month before. "You let McPherson do this, and now he's attacking big oil."

During the morning there must have been three calls from the Hughes Hubbard executive committee. They had a phone with a speaker up in New York. They had about five guys, and I was alone down here. Jerry Shapiro said, "The problem is, you see, they think that a guy like White at the FTC, reading something by you," he said, "is going to ask you to testify

before the FTC. And this womes them quite a lot, and when people find out that we also represent Atlantic Richfield, what are we going to say?" My secretary walked in and gave me a note, "A Mr. White is on the phone." I said, "Excuse me just a minute." White said, "Mr. McPherson, I read the article by Al Hunt this morning. This is extremely interesting, and I completely agree that the small oil man has got to have that percentage depletion allowance and really should have higher prices for wildcat oil." I said, "There is a vote on percentage depletion allowance this afternoon in the Senate at two'clock. Would you be willing to say on behalf of the Federal Trade Commission and its inquiry into the oil business that it is important to retain the percentage depletion allowance so that smaller operators can remain in business?" He said, "Yes, I would." I said, "Would you say that in a letter to Senator Bentsen?" and he said, "Yes." I said, "Okay, I'll call you back in just a minute." So I got back on the phone with New York. They said, "Well, let us talk to the Atlantic Richfield lawyer some more. Maybe we can calm him down. Just don't get into any conversations with White at the FTC."

Well, I called Ron Natalie, a very bright lawyer in this firm, still here, who had the best sense of what ethics were required of a lawyer. "What do I do here?" He said, "You don't have an option. You're representing these oil and gas operators and you've been handed something that can be of enormous benefit to them and you've got to use it." Then Mr. White called back. He said, "I'm told by my chairman that I can't speak for the commission because they would have to meet after they have a formal session, where they could take a position as a commission, and there just isn't time for that." I said, "What about you? Could you do it as special counsel?" He said, "I would." I said, "Could I draft something—it will only be two paragraphs long—could I draft it and send it to you?" He said, "Absolutely."

I called Senator Bentsen, the sponsor of our amendment, and I said, "Let me tell

you what's happened." He said, "I've got to have it. I must have it as soon as you can get it to me." I wrote it. White redrafted it. A kid from Bentsen's office was in White's office waiting for it. Bentsen took it the floor. It had quite an effect. Bentsen had a lot of friends in the business. And most of them were in this general category of wildcatters and developers. He was defending them, and in a way he was defending the consumer from abuse by the majors. This was right down his alley.

We won. By about four o'clock there was a vote in the Senate. We just shouted. By 4:30, more calls had gone back and forth between Hughes Hubbard and Atlantic Richfield in Los Angeles, and it was made pretty clear to Hughes Hubbard that they could either have Atlantic Richfield or McPherson. In the next room was a fellow named Phillip Lacovara, who had argued the Nixon tapes case and had just joined Hughes Hubbard & Reed. He was conscious of part of what was going on. I never invited him into this. He must have been dumbfounded. It was such an intense time. I said to the group in New York, "I'm really *sorry*. I've enjoyed being your partner and this was an error of mine. I had forgotten the relationship that you had with Atlantic Richfield and how this might be read. I really think it's an overreaction by Atlantic Richfield, but I know what you do with a client who overreacts when that client is your biggest client. I can understand why you've come out where you have."

A few minutes later they called Berl and said, "We've asked Harry to step aside but we hope you will stay." He said, "Thank you, but I don't want to do that." I walked into the john, and by this time my shirt was sopping. I must have looked like a ghost. But I wasn't at all unhappy. I wasn't grief stricken. I was delighted that we had won. I was exhilarated by the day, to be honest with you. The wild infighting that the day produced with extraordinary. A guy came into the booth next to mine, an associate named, Howell Begle, who had been with Hughes

Hubbard Reed and they had assigned him to Washington. He said, "Can I go with you and Berl?" And I said, "Yes." Begle remained with us until last month. He finally went back with Hughes Hubbard Reed because of a newspaper client issue, but his whole life was lived here in the city as a result of that day. He chose to stay with us. It was quite a day.

Mr. Vanderstar: Your resume, which I am looking at, has an entry here among significant accomplishments, and I quote, "Represented oil and gas wildcatters and developers in Kansas, Oklahoma, Texas and Louisiana in tax legislative battles." Is that the story you just—

Mr. McPherson: That's the story. (laughter)

There was another lawyer involved, Bob Sisk. Sisk is a great trial lawyer. He was the counsel for Hallmark Cards in their big antitrust case. He was the ASCAP-BMI lawyer. A robust, manly fellow. Sisk was on the executive committee of Hughes Hubbard. He was in the Tombs that day trying a case in downtown New York. He got back about 5 o'clock in the afternoon and his secretary, a very pleasant woman, told him what happened. He went storming into Shapiro's office and started yelling about letting this client push us around.

I had once taken Sisk into see a wonderful man, Senator Phil Hart, who was chairman of the Senate Antitrust Subcommittee. Sisk represented the Pepsi Bottlers Association. The bottlers, Pepsi, Coke and many others, have territorial jurisdiction rules for their sales, and this is always presented antitrust issues. Phil Hart and I were very good friends. I worked for him on the Calendar Committee in the late '50s. He was one of the truly fine human beings who ever served in Congress. A great person. If you want to bring tears in someone's eyes about Phil Hart, ask Bob Dole about him. Dole, Inouye and Hart were in a veterans hospital together as patients, and Hart, who had also been wounded, took the bed pans out, brought the food in. He was that kind of man.

I took Sisk in to see him, and we laid out the case of the bottlers. We had worked hard to do it well. Hart listened, and he had his Chief of Staff there. At the end of it he said, "You've got a good case. I'm going to support you." Well, Sisk went back to New York and said, "We have got a partner down there who did this with Phil Hart for the Bottlers Association." As far as Sisk was concerned, I was good value. Now I had been kicked out of the firm, and he was furious.

What do you do? This is the reason for telling the story, it's almost like a New Yorker story. (laughter) Sisk was in a psychotherapy group, which was common in those days, when you were having trouble in your marriage, kids were giving you a fit, that sort of thing. The psychotherapist believed in the curative value of contact, physical contact, including the contact of men's heads laid on the ample chests of women in the group. (laughter) Sisk called and asked if he could join some group, and he went there so he could put his head on the large breasts of this woman. And then, when that didn't help, he went to his apartment and got a bottle of Johnny Walker Black and drank about half of it through the night, watching dumb TV, anything. Had a splitting headache the next day.

He came down about a month later. He took me to dinner and said, "This is really, the one thing that's ever happened in this firm that made me sick." Orville Shell had retired. I think Shell had the size and the suavity to have finessed this with Atlantic Richfield even though it was not his client. I think he could have handled it and would have as the chairman of the firm. Jerry Shapiro was very intense, capable lawyer. This was his big client, the firm's big client, and he was just nervous as could be that this could cost him the client. In any event, that's my story of New York and Washington practice.

Mr. Vanderstar: Let me back up and ask you a question. You left the White

House in January of 1969. Now it seems to me that one's name and experience and contacts like yours have a shelf life, and there comes a time when other people have come out of government (laughter) with good credentials and your star sort of starts to fade. Yet you're telling me that three years later, Bill Coleman, and even more significant, four and five years later a United States senator is calling you because you had known people when you were in government. You see what I'm puzzled about?

Mr. McPherson: One of the big helps for people like me was that the Democrats controlled the Congress right straight through. Between **1933** and some time in the '80s, the Democrats controlled the House of Representatives in every year except two right after World War II when Joe Martin was Speaker, and they controlled the Senate almost the entire time as well. So, if you were a lawyer in a large corporate law firm and your business client had a big problem on the Hill, the chairman of that company might be a Republican in great standing with Richard Nixon and his gang, but your problem was with John Dingell or Fritz Hollings or some one of the old lions on the Democratic side. So if you were such a corporate lawyer and you looked around, you might find somebody like McPherson who could help you in trying to reduce the penalty that the company would pay. That helped a lot.

There were also a few things that I was doing that sort of kept my name in circulation. I was vice chairman of the Kennedy Center and worked with Roger Stevens, the chairman of the center, and with his great friend, Abe Fortas.

Which brings me to another client that lasted for many years. I was approached in 1972 or 3 by Raphael Hernandez-Colon, a bright lawyer who had been elected governor of Puerto Rico. I had had, as one of my odd responsibilities as counsel to the president, oversight of Puerto Rico. This is an interesting development. Puerto Ricans didn't want to be considered

a colony or a territory. They are a territory, the Supreme Court says so, but they don't like to think of themselves as a territory. So they didn't want to be under the jurisdiction of the Department of the Interior, which had an Office of Territories — Guam, Samoa, Virgin Islands. But where would you put them? No one could find a place to put them.

In 1952, when the Commonwealth Act passed and the great Luis Munoz Marin became governor of Puerto Rico, responsibility and oversight of Puerto Rico was vested in the White House. And where would you put it? Well, we'll put it in the counsel's office. I spent on average an hour a month thinking about Puerto Rico. There were some issues of very considerable concern to Puerto Rico that the government dealt with. If I got involved with it it was because they got the wrong answer in HEW or some other department. I got to know Munoz Marin a little; he was a very great man on a small island. Abe Fortas used to say, "If Puerto Rico were France, he would have been in a league with Churchill and Roosevelt as one of the great figures of the twentieth century."

In any event, Governor Hernandez-Colon came to see me and said, "You used to deal with Puerto Rico when you were in the White House, and you and I have a mutual friend in Abe Fortas. I am the heir of the tradition of Munoz Marin, and I see it as my duty to expand the concept of 'commonwealth', to change the relationship between Puerto Rico and Washington, so that Puerto Rico becomes, for many purposes beneficial to it, an independent country with the right to take a great many actions on its own—trade, tariff, immigration actions—while yielding completely on foreign affairs, national security, foreign commerce to the United States. The Puerto Ricans would be as they are now, citizens of the United States, but the tax regime under the famous Section 936 would continue." Covington was for many, many years the tax headquarters of Puerto Rico in Washington.

And he said, “I would like to retain you to work with former Justice Fortas and Resident Commissioner Jaime Benitez, a legal scholar. I’d like the three of you to work out the terms of a new commonwealth relationship between Puerto Rico and the United States.” Well, for the next couple of years I spent a lot of time in Abe Fortas’s library. I did a lot of reading of ancient, obscure international texts that Benitez produced at the University of Puerto Rico. I drafted and redrafted and I finally persuaded Senator Henry Jackson — “Scoop” Jackson — and 11 other senators to sponsor our new compact. They had a hearing. It was something like the Marx Brothers movie, “Fredonia.” Remember, “All Hail, Fredonia”? (laughter) I think there were cops everywhere, fear of assassins jumping out. After all, Puerto Ricans had once gotten into Blair House, shot up the House of Representatives. When you touch this status issue, you’re really on the third rail for Puerto Ricans. It doesn’t matter a hell of a lot to mainlanders, but to Puerto Ricans it is everything. So, we produced this document, and it was the subject of hearings and of a couple of *Washington Post* op-ed articles, and then it just faded.

Several years later, the Statehood Party candidate, Carlos Romero Barcelo, defeated Hernandez-Colon. He came to see me to ask if I would represent him and Puerto Rico. I said, “I can’t do that. I worked with Abe Fortas and Jaime Benitez on something exactly the opposite, so far from statehood that they are two stars almost not in the same universe.” He said, “Will you help me with some other things?” He meant other problems he had on the Hill. I liked him, and I said, “Okay.” I spent a couple of years doing the tin-cup routine, going around to Congress and the departments asking for more appropriations for education health care or different dispensations of vaccines or whatever. Carlos and I became friends.

One day we were in the office of a bright tax lawyer who worked for Bob Dole. We were talking about this famous Section 936, some variation of it that we were seeking, It is

the section of the Tax Code that permits American companies to operate in Puerto Rico free of U.S. taxes. As Carlos and I came into this fellow's office, he had his feet up on the desk and kept them there; he was listening to a Handel oratorio. The governor started to speak to him, but he put his hand up and made a gesture that meant "hold on," and he listened to the music. It was one of those epiphanies that you have in life that change your notion of things. For years, working for Puerto Rico, the Commonwealth side, and now for the governor, I had gone to Pat Moynihan, who was sympathetic to Puerto Rico and was from New York, where he represented a lot of Puerto Ricans and was on the Finance Committee to ask him to help, and he would help. There were some other senators — Jackson comes to mind — who also knew a lot about Puerto Rico and would help.

But I suddenly saw that until Puerto Rico was a state and had its own senator and Congressmen, its governor would be subject to be silenced by a staffer so the staffer might listen to some music. Puerto Rico would never have the clout that it should have with almost four million American citizens, all the men draft eligible, with one of the highest mortality rates in war of any jurisdiction in America in the Korean War, and in the Vietnam War, but with no vote in the Senate or the House. No vote. Subject to the taxes being changed, subject to all manner of laws being changed, without anybody representing them. That afternoon I became a statehooder. I'd never thought I'd be that. And this law firm, this office we're sitting in, the big conference room here became—in the late '80s and early '90s, when the Commonwealth government was back in power and the statehooders were not—the headquarters on the mainland for the statehood effort.

An extraordinary individual, Luis Ferre, the founder of the Statehood Party, a graduate of MIT and the New England Conservatory of Music who until his 90s never let a day

go by without spending one hour at the piano playing Bach, owned and developed the biggest cement and construction company in Puerto Rico. He was the godfather of the statehood effort. He was a great friend of George Herbert Walker Bush. The statehooders practically lived here. They were here months at a time in Washington, living in these offices by day. We were the headquarters of the statehood drive.

During that time, the years passed, and I was no longer “Oh, yeah, you’re Lyndon Johnson’s counsel.” I was doing things like this.