

**ORAL HISTORY OF
HARRY C. MCPHERSON, JR. - THIRTEENTH INTERVIEW
APRIL 17,2003**

It is day 13. It is Thursday, April 17,2003.

Mr. Vanderstar: We are going to talk today about work that you've done here at the ~~firm~~. A copy of your resume will be part of this record so people can look at it. I wanted to start with representing Czech Americans. And I understand you've written ~~an~~ article which I've got in front of me. Tell me what that was all about.

Mr. McPherson: Yes. After World War II was ended, a great deal of gold was discovered in Nazi hands. It belonged to people all over Europe. The decision about returning it to various countries or, indeed, giving it to countries from which it may not have been taken but who needed it, was left to a tripartite commission, U.S., U.K. and France. They began their work in the late '40s, early '50s.

In 1948, as you know, the Communists took over the government of Czechoslovakia and seized the property of many people, including about 2,500 Czechs who had become American citizens but who retained ownership of properties in Prague and other cities. They included a family of glove manufacturers who were represented by Edward Merrigan, a very intelligent lawyer whose son, John Memgan, was, in the early 1980s as he is now, a member of this ~~firm~~ and a good friend of mine. I hired him after law school, and he has worked with me over the years. Ed Merrigan tried every way he knew how to free up this property of the glove manufacturer family. Another one of the victims of this uncompensated seizure by the Communist government is the wife of William Fitzgerald, the philanthropist and business man who, among other things, gave the tennis stadium out in Carter Baron to Washington. His wife

was a member of an enormously wealthy Czech family, who had a harrowing escape from the Nazis. They also lost their property. Merrigan was a very close friend of Senator Russell Long.

Mr. Vanderstar: This is Edward, the father.

Mr. McPherson: Yes. Ed Memgan was a very close friend, had grown up with Russell Long in New Orleans. Russell Long, of course, was the chairman of the Senate Finance Committee. Ed Merrigan and a number of other attorneys representing people who had lost property to this confiscation took their cases to the Foreign Claims Settlement Commission, whose main purpose is to review claims and determine whether they are meritorious and then to announce a figure that represents the total value, as they see it, of the uncompensated losses. That figure amounted to about 110million dollars in the mid-1970s.

The Czech government, on being confronted with this, offered 20 million dollars in settlement of these claims. The United States government was prepared to accept it. Under the law of claims, if an individual claim is espoused by the United States, the United States has the power to accept or reject the figure. If it accepts it, that's it. The individual claim is extinguished. So, in effect, the State Department, under Henry Kissinger, was going to accept the 20 million dollars offer of the Czechs in settlement of the 110 million dollars loss as certified by the Foreign Claims Settlement Commission.

Ed Merrigan went up to see his friend Russell Long. Henry Kissinger appeared to testify before Long about some trade matter, having nothing to do with Czechoslovakia. Kissinger was eager, in his *realpolitik* way, to reach some kind of a *modus vivendi* with this Communist government of Czechoslovakia in the hope that he could encourage more liberal movements within Czechoslovakia, et cetera. At this hearing, Kissinger was astonished to be asked in an extremely aggressive way by Senator Long, "How in God's name can you be

thinking about accepting 20 million dollars in payment of 110million dollars of claims against Czechoslovakia?” (heavy Germanic accent) “Vell, the secretary would have to look into this. I would be very glad to . . .” “Well, let me just say,” said Senator Long, “there won’t be any trade legislation in the field that you’re here to talk about today unless we get an adequate answer to that question that I’ve just put to you. You’re going to have to tell me precisely why we’re going to accept such a fraction of what these people are owed.”

The matter was essentially in that status when John Merrigan and I were visited by Ed Merrigan and asked if we would assist in finding some kind of legislative means to improve that offer from Czechoslovakia. We were retained by a committee of these claimants, the 2,500, almost entirely on a contingent fee basis. We would be paid if we got the good result. It was not a, shall I say, huge class action contingency fee. It was a relatively modest fee. But it began one of the more interesting experiences I ever had in Congress. I’ll report a few pieces of it. John Merrigan and I told this story in a law review article of the *Washington & Lee University Law Review* in 1983, Volume 40, Number 2, Spring of 1983, in an article called “Congress in the Wings: The Czech Claims Negotiations, 1974-1981.” Of course, in the ‘70she and I were not involved.

Mr. Vanderstar: Let me interrupt you, if I may. You mentioned at the outset the Nazis taking possession of a lot of gold and then you mentioned the Communists taking possession of property generally, and I’m not sure which you’re now talking about.

Mr. McPherson: I wasn’t very precise. The property confiscated by the Communist government included apartment houses, department stores, all manner of private properties. Quite apart from that is the cache of gold recovered by the Allies from the Germans at the end of World War II. That gold was in Fort Knox and in the Bank of England until this

tripartite commission decided where it should go. They decided that twelve tons of that gold should go to Czechoslovakia.

Mr. Vanderstar: Twelve tons of gold?

Mr. McPherson: Yes. And, of course, at the time, it was probably worth 35 dollars an ounce. It was worth that for a long time.

Mr. Vanderstar: We were still on the fixed rate of 35 dollars an ounce?

Mr. McPherson: Yes, the price had not been liberated. Harry Truman, one of the gutsier Americans, said, "Well, not an ounce of that gold will be given to Czechoslovakia until there is an adequate settlement of the seizures by the government of Czechoslovakia of the property of 2,500 Czech-Americans." Some of the gold was being held by the U.S., and some of it held rather nervously by the British as well. The British thought that what Truman did skirted the edge of what international law and treaty law would allow, because, after all, a number of countries had come together and appointed this commission and given them power to determine who ought to get the gold and then to make the distribution.

Mr. Vanderstar: The linkage troubled the British.

Mr. McPherson: The British thought that the treaty might override these "political" considerations that Truman was invoking. I went to see Senator Moynihan, a very good friend of mine for many years, and explained the situation, and I said "I think that you and some other members of the Senate and the House ought to consider introducing legislation that would tie these two together, that would say that "Congress hereby declares that any gold held in this country on behalf of nations determined by the tripartite commission shall not be distributed to those nations if they are in violation of law in that they seized American property and failed to compensate for it."

Moynihan agreed and introduced such a bill. We went to the House side and met with Millicent Fenwick of New Jersey and a New York congressman on the Foreign Relations Committee. They were a little more nervous about it than Moynihan, who thought it made all the sense in the world. But they did agree to have a hearing about it. The hearing was an unforgettable experience.

Mr. Vanderstar: This was the House?

Mr. McPherson: The House Foreign Affairs Committee. It was an unforgettable experience. The hearing room was filled with elderly people. They had come to America between '45 and '48, between the end of World War II and the Communist seizure of power in Czechoslovakia. They were, many of them, rather elegant people with, I remember distinctly, frayed coat cuffs and shirt cuffs but still with real dignity; and for the first time, somebody in America was trying to take action that would go beyond merely the Truman decision to block the return of gold. I'm sure they appreciated that and realized that it provided some measure of pressure on Czechoslovakia, that for the first time there might be a real move.

Ed Merrigan, John Merrigan and I went often to the State Department. For the first time I saw what Jim Rowe and some other lawyers who had served in government had told me I would find in private practice — that, if I did not know the bureaucrat involved, I would discover that most bureaucrats were essentially unfriendly to people who came in with any kind of claim, particularly one that might produce diplomatic trouble for the State Department. We were treated as if we were the enemy throughout by the European Affairs people in State. I was really furious. I don't think I've ever been angrier. One of them leveled charges at Ed Merrigan for interfering with diplomacy and was entirely casual about what the Czech government had done to these now American citizens.

I got so angry that I stood up and delivered a Jeremiad. I said I had worked in this building as an assistant secretary, I had known the greatest modern secretary, Dean Acheson, and I'd worked with Dean Rusk and George Ball and I'd be damned if I was going to accept the kind of treatment of an American advocate for these people such as we were getting that day. At long last, somebody steered this issue to the counselor of the State Department, a terrifically able professional foreign service officer named Roseanne Ridgeway. She didn't take ten minutes to understand what was at stake here and to regard it quite differently. She said, "I'm going to Prague next week and I will raise this with the Czechs and tell them that there is a movement afoot in the Congress to insist on a better result than 20 million dollars."

Well, she did and came back with an offer of 40 million dollars. We said, "That's ridiculous." Moynihan had a hearing on his bill in the Finance Committee and, of course, with Russell Long there it whistled through. But it was referred as well to the Foreign Relations Committee on the request of the chairman, Senator Charles Percy, who I think was responding to the State Department. Probably it was the State Department's concern that it might find itself in an embarrassing situation with the Czechs. Well, we went to see Percy, who had been my co-chairman at the Kennedy Center and was a good friend from that. And we saw many other members of the Foreign Relations Committee. Finally, after several months, it was reported favorably by that committee.

We got it reported favorably by the House Foreign Affairs Committee to the House Calendar, at which point Roseanne Ridgeway called me and asked me to come over. She said, "I'm with you and I understand what you are doing and it's fine, but don't pass the bill because the department will have to recommend veto. We need to keep it right where it is and let me go back to Prague." Well, she went back and in that beautiful city sat down with a bunch

of miserable foreign office thugs in black suits and five-o'clock shadows.

She returned and one morning called and said, "All right, I think this is the best we're going to get. They have offered us 81 million dollars." And I said, "That's fine." She said, "You can get agreement on this?" And I said, "Indeed, we can." Went back to our committee, our clients. They were ecstatic.

As for the purpose of writing the law review article: I found the whole experience an interesting one and I thought it was one of the rare times when anybody looking at it fairly would have to say that congressional intervention in a foreign policy issue was not only merited but turned out to be extremely valuable and to help produce a good result. We quadrupled what Kissinger was willing to accept and got this money to the people who deserved it.

Mr. Vanderstar: And when did that final act happen?

Mr. McPherson: In 1981.

Mr. Vanderstar: Well, let's see. So that was a new administration. Was Roseanne Ridgeway still in office?

Mr. McPherson: She was.

Mr. Vanderstar: In the Carter administration.

Mr. McPherson: She was in the Carter administration, and this final okay happened in the first year of the Reagan administration. So the change in administration didn't affect that.

That reminds me that in the course of this effort I had a meeting with Lawrence Eagleburger, who was the deputy secretary, in which he was quite frosty about the whole deal. But such was the momentum of these talks with the Czechs and of the congressional action that he didn't want to step in and interrupt it completely. But he warned us that we might be facing a

veto.

Mr. Vanderstar: Great story. Okay, so that's the Czech Americans.

There are other references in your resume that I'd like to touch on and one, the first one listed, in fact, has to do with a major government-sponsored enterprise or GSE, and everybody knows that Fannie Mae and Freddie Mac are among those.

Mr. McPherson: That one was Sallie Mae, the Student Loan Marketing Association, which wished to go entirely private, and I was retained to help them do that. I remember vividly about helping it to bail out of the ditch when some people from the essentially Republican staff of the association—they had a legislative staff that dealt with Congress and the Treasury Department, and they were quite Republican—were reported as saying something quite contemptuous about Democrats who were insisting on certain provisions in the privatization of Sallie Mae. The Democrats involved, including one extremely powerful one, David Obey, the ranking man on the Appropriations Committee, said, "Well, that's it. It's over. This won't ever see the light of day."

I managed in the course of about four days to placate, assuage, beg and finally enable these Democrats to overlook this stupid statement of the Sallie Mae legislative people and to permit something which should happen to go ahead and happen.

That was rather a classic Washington lawyer job for a company with a matter before the Congress and the Treasury Department—to get in and try to keep people from hurting themselves. Very often it's not that someone is doing something harsh to them or treating them wrong, it's just that they are about to screw themselves, and your job is to repair or try to keep that from happening.

Another one on here has to do with the airlines. And that takes me back to one of

the jobs I had as special counsel to the president. In that position, that I have talked about, I received recommendations of international air route service from the CAB and told the president, after talking to the State Department and Transportation Department and the Budget people, what his administration thought about it.

Mr. Vanderstar: As I recall, the president does have the final decision on international routes.

Mr. McPherson: He must make that decision, right.

Pan American Airways wished to acquire National Airlines. National was an essentially domestic carrier. The Pan American plan was this: instead of feeding international traffic into New York, Boston, San Francisco, Los Angeles and so on and then having the passengers get on domestic carriers, Pan Am would have its own domestic routes and it would all operate as a seamless, single airline.

Mr. Vanderstar: As I recall, Pan Am did not have any domestic routes at all.

Mr. McPherson: It had none. It was purely international. A great airline. Juan Trippe was the head of it for many years. The head of it in the period when I got involved—in the late '70s, in the Carter administration—was a retired Air Force general named William Seawell. Pan Am, before it made this decision to go after National, was one of the applicants for Dallas-London authority. That was one of the last great international route segments that had not been established for any U.S. carrier. Pan Am applied and so did United and Braniff and several others. When the matter got to the White House, I believe Pan Am was the recommendation of the CAB. I was not involved in this at all at that time. The firm representing Pan Am included Welch Pogue, once one of the CAB's commissioners, an extremely well-known airline lawyer.

Mr. Vanderstar: From the Jones Day firm?

Mr. McPherson: Yes. Welch Pogue said to Bill Seawell, "Well, it is now in the White House, and we don't go to the White House to talk to people. We are lawyers, regulatory lawyers. Our expertise is in the Civil Aeronautics Board. And besides, President Ford, in response to a rather scandalous bit of lobbying by somebody [I forget whom] about another case, has issued an Executive Order that there shall be no receiving of lobbyists by the counsel or any other special assistant to the president." Ford just said, "We're not going to entertain the requests of airline advocates once the matter gets here in the White House." That was his way of dealing with it. It struck us all as rather weird. I mean, here is Gerry Ford, a man whose entire life had been spent in the legislative environment, receiving lobbyists 50 times a day, and his response to one bad-apple situation was to completely cut it out, especially since this was a required last step.

It wasn't as if you were trying to get the State Department or White House to intervene in something it normally didn't do. It had to take a position, and so it would. I used to receive people all the time and considered it genuinely educational. I would learn things that maybe weren't on the record and I would be able to check them out.

Ford apparently didn't apply that rule, or the White House didn't apply it, to congressional intervention. My later colleague in this law firm, the distinguished Senator Lloyd Bentsen, let it be known that he really thought that Braniff should be chosen for this. Braniff was a Texas carrier. Bentsen was very close to Harding Lawrence, the head of Braniff, and this would be exactly what the doctor ordered. Well, it's what Ford ordered. And Bill Seawell was livid and immediately determined to fire Jones Day.

I should say, within a year, Jim Lynn, who had been at Jones Day and then had

had a succession of cabinet jobs in the Ford administration, returned to the firm. I ran into him on the street one day, and he said, "If I had been back at Jones Day when that Dallas-London case went to the White House, you never would have been representing Pan Am." (laughter) It was Welch Pogue's stiffness, his unwillingness as a regulatory lawyer to engage in what I'm sure he regarded as the unseemly act of *ex parte* representation that caused him to lose the representation.

Two people on the board of Pan American were my African-American guardian angel, Bill Coleman, who had steered to me the first piece of business I ever had as a lawyer, the Price Commission paperwork matter, and Sol Linowitz, who was a fiend not only of mine but of Berl Bernhard. The two of them told Bill Seawell that he really should retain me and Berl to represent Pan Am in the future in Washington. Well, he came to see us and we told him that we'd sure like to, but we didn't know what to do about Northwest Airlines. It was still the firm's biggest client and, of course, we couldn't represent Pan Am and Northwest. They were nose-to-nose, head-to-head in many aviation matters. Northwest's business in the firm had been on the decline for several years, certainly not because of any failure of the firm. Jim Verner was the main counsel for Northwest, and the chairman of Northwest adored Jim and was very close to him. But because, among other things the CAB had been terminated, the future looked bleak for the regulatory law practice. And that was really the meat and potatoes of the **firm**. We had a lot of young partners and associates who came to work every day and immersed themselves in civil aeronautics and economic reports and all manner of complicated regulatory proceedings. Representing Pan Am thing would be different: while they would also have CAB work, because they were an overseas carrier, they would be involved with the Department of State, Transportation, and others. Northwest also flew international routes but was much less involved

overseas. Jim Verner, in a characteristic act of farsighted generosity, knowing that his main client would be lost to the firm, agreed within minutes that we should do this. And we did.

But before getting to Pan Am, I have to tell one story about representing Northwest. Northwest Airlines' biggest money maker was Chicago-Tokyo. It brought traffic from all over the Midwest into Chicago and flew it to Tokyo and back. That was their single most profitable route. They had many others that were profitable, but that was the real cash machine.

It was announced that the U.S. would consider other carriers for Chicago-Tokyo and in particular would consider admitting Japan Airlines into this competition. That was a big deal. Northwest didn't mind facing even United or other big American carriers. They thought they had such a foothold that they could continue to be the dominant American carrier. But JAL was a different matter. Berl and I went out to Chicago and got a very clear impression from Mayor Daley's administration that they thought that bringing in JAL would be a hell of a good deal for Chicago. All their trade people in the city government could see the benefit of Japan on the other end of a JAL route to Chicago. Pretty scary stuff.

Mr. Vanderstar: This would be the original Mayor Daley?

Mr. McPherson: The original Mayor Daley, Richard Daley.

I had to go out to Saipan for Northwest. I was trying to help Northwest get chosen to serve Tokyo-Osaka-Saipan, a segment that for some reason had never been granted to anybody. Since Saipan was a rather large US trust territory island and a lot of Japanese were beginning to come down on vacation, the trade was pretty good. Well, I got on the plane in Chicago to fly to Tokyo, a Northwest **plane**, opened up the *Economist* magazine, and read an article about how the government of Israel was campaigning in every way it knew how against

Japan Airlines because JAL, in order to placate Arab countries in the Middle East, was not serving Tokyo-Tel Aviv at all. The article went into the long history of the Japanese promising the Israelis they would do that and then not doing it.

When I got back from Saipan, I talked to Berl about this. We went back to Chicago and we went to see the most prominent rabbi in the city and asked him what he thought about this. Here was an airline that was turning its back on Israel. We saw a couple of the leading Jewish business men whom we had known through Democratic politics, and they said that they would speak to Mayor Daley about it.

I was not at all satisfied that we were winning this. When I got back I went to see my old boss, Senator Mansfield. Montana is served, or was served at that time, only by Northwest Airlines so he had a real stake in the carrier. I told him that we were very disturbed about the State Department intervening on behalf of JAL. As part of its whole mix of trade negotiations with Japan it intended, apparently, to force JAL into the Tokyo-Chicago market, and Northwest Airlines would be very badly hurt if that happened. A friend of mine, Frank Loy, a wonderful guy, was deputy assistant secretary of state for, among other things, international aviation matters. Loy was on the tennis court at St. Alban's one Saturday afternoon and was called off the court to the phone. It was Senator Mansfield on the phone and he said, "Frank," or "Mr. Loy" I guess—I'm not sure he knew Frank. "Why is it that the State Department is doing this? Why are they putting in a carrier that makes the Jewish community and our Jewish contributors furious?"

Frank Loy said if you had asked him what the likelihood was that he would get a call on this subject while he was playing tennis at St. Alban's, he would have thought you were nuts. In any event, the State Department chilled its ardor for this, and for a number of years

Japan Airlines was not allowed into the Chicago-Tokyo market. I think they were ultimately, but for a number of years it remained a Northwest monopoly. And it was because of that Economist article about Israel that we were able to do that.

Mr. Vanderstar: Was JAL serving the United States in any way?

Mr. McPherson: Oh, yes; they were in Los Angeles and San Francisco and New York but not Chicago.

Mr. Vanderstar: If Northwest itself had an interest in international routes, why did you folks here at the firm believe that Pan Am would be a more substantial client than Northwest?

Mr. McPherson: They were involved in many more markets. Northwest's principal market was Japan, and they also went to Hong Kong and Taiwan

Mr. Vanderstar: Of course, Pan Am was all over the world.

Mr. McPherson: Pan Am was everywhere, and they were involved in all manner of issues. It seemed in a non-CAB world, where airline regulation would be much diminished, that Pan Am would be a much bigger deal for us.

The biggest thing we ever did for Pan Am, and we did quite a number of things, was to spend a lot of time in the headquarters building there at 4 Park Avenue in New York, working on a merger.

Mr. Vanderstar: Yes, by Grand Central?

Mr. McPherson: Yes, above Grand Center, exactly. We helped them in their effort to acquire National Airlines.

The CAB was still in being when we started working for Pan Am, and it had to approve the merger with National if that was to occur. Today, the stock exchange, Goldman

Sachs, and J.P. Morgan would have to approve that, but in those days the government had a big role in it. And one of the major factors in the government's consideration of mergers such as this was what the main cities affected thought about the merger. In other words, large cities, particularly those served by both carriers, cities that would be substantially affected by the merger in any event. What do they think about it? Not just the mayor and city administration in those cities, but the business community, the community that could be said to be the city fathers and particularly those who might be affected in a business way by the merger.

That meant, for example, in the big-time National Airlines base city of Houston, that one had to go to the executive committee of the chamber of commerce. This was not like any chamber of commerce I had ever seen in America. In Houston, the executive committee of the chamber is a big deal. That's were the big elephants, the elephant bulls of Houston operate. It had 25 members as I remember. I called Joe Allbritton, who had come up here from Houston to buy the *Washington Star* and had changed our law firm when we represented him. I said, "Who would be good to hire to help us in this thing? This is going to be a big deal. It's going to be vigorously opposed by Texas International Airways, which was a very successful carrier at that time based in Houston and run by Frank Lorenzo, the famous buccaneer of the airlines. And he is going to have John Connolly as his counsel. So we've got to have somebody who can cope with Connolly."

Joe Allbritton said, "Call Ben Love." He is chairman of the Texas Commerce Bank, the bank in Houston that was used by Brown & Root, and the Houston Chronicle—it was a big-time bank with a reach into various business communities. So I called Ben Love.

Mr. Vanderstar: Did you know him?

Mr. McPherson: No, but he was a good friend of LBJ's and a particularly good

friend of Lady Bird's, so he was very responsive. He said, "I recommend Charles Sapp of Liddell, Sapp, Zibley and Brown." I called Sapp, a man of six-five or -six, with an electronic voice and who thereafter called me every day for months. (in electronic voice) "Harry, Charlie Sapp. Here's what happened today. I think I've got the chairman of Houston Gas on our side but I need you to do something for me." I cannot tell you how many phone calls Berl and I took and made, from and to Charlie Sapp, how much time we spent with him.

Finally the great day came. I would have given anything to have been present in the executive committee of the chamber of commerce. This thing had become so big that everybody showed up. And these were the heads of—it would have been Ken Lay, the head of Enron if it had been later—but it did include the head of El Paso Natural Gas, a Charlie Sapp client from the time it started; Houston Gas; Humble Oil, later Esso, later Exxon. Much of the Fortune 500 that was connected to Houston was there in that room. Somebody didn't vote and the vote was 12-12. We considered that a victory.

And that was wonderful because we beat the opposition in Miami, where we hired someone similar to Charlie Sapp; Newark, where we hired a Democratic chairman of the State of New Jersey; Los Angeles. So at the hearing of the Civil Aeronautics Board in which civic views were entertained, we won virtually all of them and the one where the strongest opposition was, Texas International in Houston, in that city there was no decision, and that was just fine.

Mr. Vanderstar: Sure.

Mr. McPherson: A draw. What an exciting thing it would have been to have heard the argument by Charlie Sapp. I talked to him the day before the meeting and he said (in electronic voice), "I've got to get off the phone because I've got to get myself ready. I'm going against John, you know [John Connolly]. I'm going against John." These were like two

mastodons in the legal and business life of Houston. Each of them had regarded this fight as a major one in which their ability to move and shake in that community would be measured. Charlie Sapp prepared for it, not with a bunch of back slapping or the usual chamber of commerce kind of things; he insisted that we get him every last number, every fact, everything that you could possibly put in a large economic regulatory brief to the agency. Charlie Sapp inhaled it all. So, when he got in there, he didn't make a rhetorical speech. He made a lawyer's argument. And so did Connolly. It must have been great.

Mr. Vanderstar: Don't you wish you had been there?

Mr. McPherson: Yes.

Mr. Vanderstar: Okay. That's the Pan Am story, a wonderful story.

Now what do you want to talk about next, television?

Mr. McPherson: Television.

For many years my beloved friend, Jack Valenti, had earned his keep for Hollywood by causing the FCC, the Federal Communications Commission, to keep, and keep applying, the "financial interest and syndication" or "fin/syn" rule. This was a rule aimed against the networks, essentially, apparently on behalf of little independent institutions—production companies, writers and others. This rule forbade the networks from producing very much of what they put on television. NBC had a very narrow window of time during the course of the week in which it could show programs that it had developed from the outset. It had to buy what had been developed by the various movie studios and independent producers. That included Universal and Warner Brothers as well as the mom-and-pop operations and the very successful individual writers, directors and producers.

Jack had helped to secure the retention of the rule, even though the networks

thought there was every reason on earth, in a world of cable and satellite, for there to be innumerable avenues in which programs produced by these studios could be made available on television. It was nuts for the government to retain the rule.

Just to show you why there should be a statue, not a life-size statue because it would be too small, but a big statue of Valenti, on that hill overlooking Sunset Boulevard: there ought to be a statue there for him because he kept that rule in being for a long time. The chairman of the FCC at the beginning of the Reagan administration was a bright free-marketeer, a person who really believed that the government should sit back and let these guys do their thing, and he proposed a rule that would eliminate the financial interest and syndication rule.

I believe this to be true. In fact, I think it's been written as such, and I will try not to wreck the simple truth of it. Jack Valenti took his best friend, Lew Wasserman, the head of Universal, to see Lew's one-time client when he was an agent in Hollywood — Ronald Reagan. They went to the White House and said to Reagan, "Your very conservative, free-market-oriented appointee as the chairman of the Federal Communications Commission is proposing to get rid of the rule that protects the movie industry." Reagan called the chairman and said "Come over here and see me." He went to see him, and he said, "You surely can't be thinking about doing that." And the chairman said, "I guess you're right."

Mr. Vanderstar: (laughter) Upon further review—

Mr. McPherson: Yes. (laughter)

Mr. Vanderstar: Good, good story.

Mr. McPherson: And I know that is what Jack will tell you happened, and I'm pretty sure it's been written about, so I don't think it's a fable.

Mr. Vanderstar: Well, it's an interesting point that the way, if at all, government

should step in to protect one industry against another is one on which reasonable people can differ, even among anti-government people. Like Ronald Reagan.

Mr. McPherson: Right.

Mr. Vanderstar: He had an interest in that industry although he was not any longer involved.

Mr. McPherson: Oh, very much so. Reagan's views about many things were affected by his own experience, as I suppose every president's is. That was one example. Another was Reagan's general view about taxes. Reagan was very anti-tax because one day, after having made a couple of big pictures I guess back when he was head of the Screen Actors Guild, he was presented with his tax bill and he was just staggered by the thought that he would have to pay almost half of what he had made to the government. And he was on a tear against it.

Speaking of Wasserman and Reagan, in 1984, I had been watching Reagan and, having worked for a president who suddenly announced one day that he didn't think he would run again, I was wondering whether Reagan would run. It occurred to me that he had achieved in the big tax cut of '82, had eviscerated the federal budget and made it almost impossible to think about any big social programs that required spending in the future. The rest of it was going to be number crunching. It was going to be administrative detail. I didn't think he had an interest in that.

So, in the winter of '84, the Kennedy Center Honors was having its annual honors show, and before those shows the honorees have a great afternoon at the White House in which the president puts the medal around them. I was standing at the back of the room and happened to be standing next to Lew Wasserman, a Kennedy Center trustee. I'd known Lew for a long time, I knew he was in the movie business. I knew he was enormously wealthy. He was an

extremely generous giver to the Democratic Party. And he adored, almost beyond all people, Lyndon B. Johnson and Lady Bird. He was the main donor of the Johnson Foundation and was on its board. So, for all those reasons I knew him, but I'd never connected him to Reagan. I didn't know that he had been Reagan's agent.

As Reagan talked at the front of the room, reading in his charming Irish blarney way about these winners, the honorees, I whispered to Lew, "You know, I don't think this guy is going to run again. I think he's done what he came in here to do and the rest of its going to be boring. I don't think he will have any interest." In most administrations, the second term is much worse than the first. Fate catches up with you. Foreign wars, scandals. As it did with Reagan.

Mr. Vanderstar: True.

Mr. McPherson: And Wasserman said (whispering), "You don't know this guy at all." I said, "Well, that's true." He said, "No, no. I mean, this is the best role he's ever had in his life. He's not going to give this up." (laughter) Boy, was he right.

Mr. Vanderstar: Yes, he was.

Mr. McPherson: But to get to my involvement with this fin/syn rule: one of the more important figures in Federal communications policy for 30 years has been Ernest F. Hollings, a Democrat from South Carolina, and a particularly good friend of Berl Bernhard, my partner, but also of Lloyd Hand, Jack Valenti and me. If Hollings weren't 81 and if he wanted to be a lawyer again—he was a very, very successful trial lawyer back in the '40s and '50s and early '60s before he was governor and elected to Senate—he would probably come here. Berl was his finance chairman in his presidential race, and we've all been his buddies. He's a brilliant man, really, but because of his mush-mouth accent and because of his eccentricities—

Mr. Vanderstar: He's finally the senior senator.

Mr. McPherson: —Yes. His brilliance has been overlooked by many people. He is certainly one of the more intelligent members of that body. How he felt about any rule in the communications field was, I wouldn't say dispositive at the FCC, but it had an impact on the way the FCC looked at the rule.

One time, after I had done what I thought was an A-level job in explaining our position on the financial-interest-and-syndication rule, Hollings said, "I hope you'll take this as it's intended. That was as good an argument as I have ever heard made by anybody on the network side, and I think it is fair to say that it was almost as good as the one Jack Valenti made in support of the rule about two days ago." (laughter)

Valenti is still in that job because he truly is a magnificent advocate. I've seen him a couple of times in an advocate's role and I really take my hat off to him. Covington & Burling and Verner Liipfert would have been much stronger if we had him as a partner. He studies diligently, and when he gets to a senator's office after a few pleasantries, not many, he puts up a chart, and behind it there are several other charts, and he takes his pointer and he goes through it and does it extremely well.

I knew I had a major task here, and I went to see each of the commissioners a number of times. The *ex parte* rules are very generous when you are talking about a rule instead of an adjudication.

Mr. Vanderstar: Ah, yes.

Mr. McPherson: They really allow you to come pretty much as you would with a member. The only price you pay is that it is recorded and published, so everyone knows that you've been in to see the member and pretty much they can tell why you were there. Well, that

went on for the better part of a year. We had a couple of big hearings at the FCC. I had been hired because of Ben Heineman, who was the general counsel of GE, and whom I'd known in government.

Mr. Vanderstar: This is Ben Heineman, Jr.?

Mr. McPherson: Ben Heineman, Jr. I'd known his father and worked with him on the 1966 Civil Rights Conference, and Ben Heineman, Jr., on several things when he was at HEW and elsewhere. He hired me but I went to work for the NBC general counsel, Rick Cotton.

I helped to prepare his witnesses for the FCC hearing. After doing everything I could think of, including getting the *Washington Post* to print an op-ed piece in favor of repealing the rule, Judge Posner in Chicago took the occasion in reviewing an earlier FCC decision to eliminate part of the fin/syn rule, simply to say that the rule had no factual basis whatever and could not be made consistent with the federal communications law. [*Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309,316 (7th Cir. 1994).]

In this struggle, in the hearing at the FCC, our effort was to show the networks as fighting for their lives in a vastly expanding communications universe with all manner of entities at play. Valenti's side showed the little ink-stained wretch writing a script which would never be seen by anybody if the networks with their huge factory of writers and producers had the control. These things are such show **biz** themselves. And all of a sudden here is this brilliant and rather eccentric judge in Chicago just coming down on the rule. I think cert. was denied, and the financial interest and syndication rule was no more. [*Reportand Order*, MM Docket No. 95-39, 10 FCC Rcd 12165(1995).]

Mr. Vanderstar: So you got into that because Heineman of GE had retained you to do this thing?

Mr. McPherson: Heineman got me retained to do this because it was thought that if anybody could persuade Hollings to support the networks, or at least keep him from supporting the studios, it might be our firm. I also had a couple friends on the FCC among the members, and I guess that was some help. But I was essentially chosen to be in combat against Jack for the mind of our mutual friend, Hollings. In fact, Jack said, "They hired Harry to neutralize Fritz." And Hollings at the end did precisely that, that is, nothing.

Mr. Vanderstar: So like the Houston executive committee, it was tie vote.

Mr. McPherson: And that was okay.

Mr. Vanderstar: Well, we've covered television. You also had this foundation thing, and that looked very interesting.

Mr. McPherson: Oh, yes. Well, let me spend a few minutes on those.

Foundations had a bad year in 1968. There were a number of scandals about foundations, about how people were abusing foundations. There were some hearings in the House Ways and Means Committee and the Senate Finance Committee. My old colleague, the president of the Ford Foundation, McGeorge Bundy, testified quite arrogantly before the members, and they let him have it. The foundation law was amended in many respects, among them to require that the foundations pay out a minimum of what they had earned during the year, or five percent of their capital. That was so that they ultimately —theoretically— would wind down.

The Robert Wood Johnson Foundation was the creature of General Johnson, who was the CEO of Johnson & Johnson. He left it a vast amount of his stock, which was worth, when he left it, lets say 5 dollars and when he died it was worth 100 dollars. All of a sudden they had this colossal corpus and were supposed to start distributing it. Well, they had given a

lot of thought to what they wanted to, and they decided to be a health-oriented foundation. It's quite a fine foundation. They make enormous contributions to the health of Americans, particularly poor Americans in places where your wife is active, in Kentucky and in North Carolina. There are mobile vans, hospital vans that drive around through the country and give people physical exams and treat illnesses, provided by the Robert Wood Johnson Foundation.

In any event, they had this enormous amount of money, and they were supposed to start giving it away at a huge clip. I can't remember what the previous year had been in the contribution side and what this would have been, but it was something like 20 times what they'd ever given. They had no way of managing that, of knowing how to give it, to whom to give it and under what conditions.

Mr. Vanderstar: Was there no phase-in stage for this?

Mr. McPherson: No! That's what I was getting to.

Mr. Vanderstar: Oh, okay. I didn't mean to ruin the story.

Mr. McPherson: I had a very bright associate. He was the lawyer who, on the day in which I became *persona non grata* to Hughes, Hubbard & Reed, followed me into the men's room and asked if he could come with me and Berl. His name was Howell Begle. Howell spent a few days worrying this issue and produced a matrix showing how the foundation's obligation would grow in the first five years after it had grown exponentially in assets and what it would be required to give away in those five years until, at the end of the fifth year, it would be up to the amount that it would normally have given out in the first year. That matrix, which is in a triangular shape, now appears in the Internal Revenue Code in just that shape so that any other foundation to whom that's ever happened would be entitled to the same procedure.

After working for the Johnson Foundation I was hired by the MacArthur Foundation to work on another kind of issue that affected very large foundations.

John B. MacArthur was a character who sat in a coffee shop just outside Palm Beach, Florida, over many years, using a phone to buy real estate. When he died, he owned thousands of apartments in New York City and huge amounts of property in Chicago. He also owned 44,000 acres of land in Palm Beach County, enormously valuable property. When he died, the foundation went to the Urban Institute and said, "What should we do?" The Urban Institute came back and said, "Well, you are in a pickle. There are going to be all kinds of environmental rules that don't apply now but that are going to apply when the Florida legislature gets done with the issue. You should start selling this land and get out of the real estate business. But first, since you don't know anything about how to sell land you need to hire some people experienced in real estate and in planning and development."

The Internal Revenue Service looked at this after it had been going on for a few years and said, "You look a lot like a real estate company to us. You don't really look like a foundation. If we find that you are a real estate company, we will have to tax you accordingly. So, instead of paying taxes at about 2 percent, you will pay taxes at 34 percent."

Well, we went to see a congressman who had an interest in Chicago, where the foundation management was located. His name was Rostenkowski, and he chaired the House Ways and Means Committee. He made a little speech upon the House floor and said, "It would be a terrible tragedy if a foundation which is doing the Lord's work in so many ways were to be suddenly taxed at a confiscatory rate simply because it was trying to sustain the value of its corpus." That developed into an extremely interesting experience, working with the IRS, the first time I had ever done that. Luckily I had two former staff directors of the Joint Committee

of the Internal Revenue Taxation, Bobby Shipiro and Mark O'Donohue of PriceWaterhouse, working with me. I knew them well and we worked together in going to the IRS.

After about five meetings over there over three months and a lot of memo exchanges, there followed another brief talk on the House floor by Rostenkowski to the effect that, "I certainly hope some progress is being made." This was the chairman of the Ways and Means Committee speaking to the IRS. One day these very experienced, very decent people who worked in the not-for-profit section of the IRS said to us, "You are required by regulation to announce the value of your assets every five years, and that becomes the base for your being required to pay out five percent. By doing it every five years, the beneficiaries who would be helped by your generosity are being denied the benefit of the rise in your assets on an annual basis. It would be better for them if you had to evaluate your assets every year. They would, because it would be stair steps . . ."

Mr. Vanderstar: As long as it grows.

Mr. McPherson: As long as it's growing, and MacArthur's assets have been growing for a long time. "If you will volunteer to do it every year, we will agree that you are doing nothing more in Palm Beach than administering your assets in hiring this firm to assist you in disposing of the real estate." It was a deal, and just offered out of the blue.

Well, it took all of about 15 minutes to call Chicago and get agreement. Since people on that board were in the business of giving away money, and indeed loved to give away money, and the government was saying you have to give a little more every years, they were delighted. That was exactly what they were in being for. So the deal was made at once.

Going back to our five-year stair-step for the Johnson Foundation: I thought that was such an obviously good result that it would be embraced at once, but nothing happened in

the Ways and Means Committee. I could not understand what was going on. I went to see Wilber Mills, the chairman of the committee before Rostenkowski, at least twice and maybe three times. He looked pretty bad, but he said, "We are certainly going to get to that just as soon as we can have a committee hearing, we'll certainly get to that." Well, the Robert Wood Johnson Foundation was panic stricken because the people in the IRS with whom they were dealing were saying, "Okay, now where's your plan? You're supposed to be giving out five percent of your assets." Nothing was happening because Wilbur was chasing Fannie Fox, the stripper, and he couldn't find time for business such as ours.

Mr. Vanderstar: Yes, I remember it.

Mr. McPherson: After several months of this, Wilbur wound up in the Tidal Basin with Fannie Fox and went off to a drying-out facility somewhere.

Finally, one day in late summer I got a call from his office and they said, "Mr. Mills said you are to go at once to the House Chamber and hear what he's going to say." Well, I went rushing to the House, went up to the gallery, **and** got in there just in time to hear Mr. Mills in his most orotund, mellifluous way, speaking about this great foundation that was going to benefit the health of all Americans, and they had this unique problem, and on he went as if he had just heard about it yesterday. (laughter) And, of course, somebody got up on the other side and asked him a question and he answered it in an even more flowing length, and then that person commended him for relieving the burden of an unrealistic requirement on this wonderful foundation and on they went blathering.

I went outside and called the foundation and said, "I think we're okay." Russell Long was ready to go at any time he got the bill, but it had to originate in the House.

Mr. Vanderstar: What did the bill do? Did it change the ruling to allow the five-

year delay?

Mr. McPherson: It allows the five-year delay. As I say, you can look at, you can find it in the Tax Code and see this thing just as we wrote it, this triangular shaped thing.

It kind of reminded me of something that Hale Boggs once did. He was the Democratic whip, and a very smart man from Louisiana, who also had a bad drinking problem. He wanted some tax relief for a constituent. He introduced a bill expressed in very general terms but actually applying to one taxpayer, one person. This was about—

Mr. Vanderstar: Any company whose name is XXX.

Mr. McPherson: Any such company, yes! You know the story about this?

Mr. Vanderstar: Oh, no, not this one.

Mr. McPherson: There was something that needed to be done for Station WWL in New Orleans which was owned by Loyola University. Boggs wrote a relief bill. The IRS just ignored it. They said, “It doesn’t really fit the situation.” Hale Boggs, who was brilliant and also capable of enormous outrage, put in an amendment to the already-existing law in which the first letters that begin the paragraphs are “WWL” (laughter) and he announced “In case there’s any doubt, that’s who I had in mind.”

Mr. Vanderstar: Well I have run into an experience where there was legislation that involved any company that disposed of its assets between—

Mr. McPherson: Oh, yes, between so-and-so and so-and-so. (laughter)

Mr. Vanderstar: Okay, well let’s wrap it up with your more recent work on the tobacco industry situation, and I should disclose that while I was an active partner at Covington & Burling I represented the Tobacco Institute in all the litigation. It was a minor player because the companies obviously did the heavy lifting and paid the heavy bills.

Mr. McPherson: Covington had a unique role for the tobacco industry, as I understand. They were the counsel that related to the Federal Trade Commission and filed with the commission materials about the companies and about the product—

Mr. Vanderstar: Right.

Mr. McPherson: —that were enormously confidential. Not one of those companies ever knew what the other company was filing and it was determined that Covington & Burling would be the common counsel—

Mr. Vanderstar: The repository of the information and communicated it to the commission in such a way that nobody's ingredients would be disclosed.

Mr. McPherson: Exactly. At some point in 1998, we had acquired a number of political figures, among them Senator George Mitchell. Mitchell got involved in the Northern Irish peace negotiations, spent two years at it and displayed unbelievable patience in sitting through discussions of wrongs that had occurred back in 1768 and so on. Mitchell had also, when he was a senator, had a period as chairman of the Senate Democratic Campaign Committee. He was extremely good at it, raised a ton of money in California and New York. One of the people that he had gotten to know and had raised a lot of money from was Larry Tisch, who with his family controlled Loews. Loews owned Lorillard, the cigarette company.

Tisch asked him to dinner one evening and said, "We [the industry] are about to be in jeopardy of our financial lives. We could find ourselves bankrupt. We're facing massive class actions. The states are threatening to bring actions against us because of their Medicaid burdens, which they say come from citizens who smoked. We are prepared to go far beyond what anybody ever imagined we'd be willing to do to satisfy those who want us to change, change our advertising and marketing as well as pay a lot of money to anti-smoking campaigns,

into state treasuries and so on. We need somebody to help us persuade Washington that this is an idea worth doing, and that means to persuade Congress and to work with the White House.” We learned later that Jim Hunt, the governor of North Carolina, a great friend of Clinton’s, had talked to him about this dilemma and the threat it posed both to the industry and tobacco farmers. The big class action attorneys were going to bring these massive suits, they might very well prevail, they would take 40 percent of the pot, the companies would fold, and the farmers would be imperiled.

Clinton is said to have said that he wanted this tobacco problem resolved, and he agreed with Hunt on the way it ought to be done. So, there was hope that there might be a real opportunity for a deal. Mitchell said, “I’m involved in Ireland but my friends, Berl Bernhard and Harry McPherson, could do a very good job here. Former Governor Anne Richards is in the firm and I think we could be of value.” Tisch said, “Maybe okay,” and Berl and I were invited to New York, where we began the first of a series of meetings in different hotel environments, and always with a considerable degree of confidentiality. We went into back alleys and up remote elevators and met with the CEOs and general counsels of these firms. The two dominant firms were Phillip Moms and RJR, and I guess the dominant figure with whom we dealt, the person who seemed to be the quarterback, was Murray Bring of Phillip Moms — formerly a partner at Williams & Connolly — whom I got to like a lot.

We were retained and went to work with some terrific lawyers in some of the firms who had long represented them. Herb Wachtel and Meyer Koplowitz, a brilliant lawyer, began negotiating with the state AGs and with some of the plaintiffs’ bar. The tobacco industry used as its intermediary with the White House—I first thought I would be me or Anne Richards—a North Carolina lawyer named Phil Carlton, a former judge and close friend of

Governor Hunt's.

I remember one of the most painful moments I ever had. Lawyers, especially when doing advocacy in a legislative or regulatory context or before a newspaper editorial board, are inclined to begin to believe their own cases, so I believed mine. I got Meg Greenfield to bring together the editorial board of the *Post* so that Meyer Koplowitz and I could make a presentation to them. It was one of the more excruciating afternoons I think I'd ever spent, in substantial part, because Meg was dying of lung cancer and she was sitting at one end of the table and I at the other. We had been friends for 30 years. When I wrote *A Political Education*, she wrote the front page review of it for the *Post*. We spent an enormous amount of our lives in Washington together, and she was dying from smoking cigarettes. I think the other people, Peter Milius, Colby King and other fellows who write for the *Post*, were all so conscious of that and so angry with the "weed" and its cost, that they just really ate our lunch in their questions. We would say extremely reasonable, well thought out lawyerly things, and they would broadside us with furious questions and statements that showed that they were ready to hang the defendant and try him later.

I was invited up by eight or ten Democratic senators. Tom Daschle asked Kent Conrad to chair a committee to look into this issue. It was a private, off-the-record meeting but it lasted an hour. I sat before them, feeling very much on the defensive. Here were guys that I'd known since I came to the Senate, for the most part, and for whom, I think I was as a respected veteran of Senate affairs. One of them said, "I can't believe you're sitting here speaking for this industry." I said, "I have never said a word in behalf of this industry. I never will. I have never defended anything about it. I have never argued that cigarettes are anything but lethal, not ever. All I'm saying is that it is a better thing in the public interest that a deal be cut and endorsed in

some manner by legislation, a deal in which the industry will make concessions that it has never made before. It will accede to Food and Drug Administration regulation. It will pay handsomely for anti-smoking campaigns.”

I remember after about the second meeting in the Plaza Hotel with the CEOs and general counsels, we had lunch in a big room in the top floor of the Plaza. I found it interesting that not one CEO smoked, though all the general counsels smoked and the room was filled with cigarette smoke. When we left it, we went out and got in a cab and I said, “Berl, I think these guys are talking about paying a couple of billion dollars.” By the time the legislation actually had a hearing in the Congress, the figure was 265 billion dollars. Clinton’s friend Bruce Lindsey in the White House was assigned the job of talking to Phil Carlton. Lindsey remained very positive, very sure that it was the right way to go. Clinton must have been looking at polls and what people thought about cigarette companies and manufacturers.

The polling, I’m constantly fascinated. Something like 70 percent, 70 to 75 percent of those polled answered “I agree” to the question, “If a person becomes sick because of cigarette smoking, he or she has himself or herself to blame.” Seventy to 75 percent agreed. So that when the industry said, “Look on the package. There’s every kind of warning.” My son takes *Sports Illustrated*. I was looking at the current issue. The cigarette companies still advertise there, but the warnings are bigger than the name of the brand. They’re huge things. (loud voice) “WATCH OUT! You smoke and you’re going to face all manner of physical disabilities.”

Maureen Dowd, the *New York Times* columnist, wrote a couple of columns about us, about my involvement and Anne Richards and George Mitchell. One of them just dismembered me. This guy’s supposed to have a good reputation in Washington, she wrote, but

what a whore he is. She didn't call Anne Richards that, but she was clearly expressing what a number of people felt. We kept taking the money and kept making the argument that it had nothing to do with the merits of smoking or the validity of the charges against cigarettes or whatever, that it had only to do with the adequacy of what the companies were willing to do and its resolution of the issues, so that the companies ultimately would have paid maybe a quarter of a trillion dollars, would have given up advertising that could be remotely said to aimed at young people, would have given up the NASCAR sponsorship and all that stuff, would have submitted to FDA regulation — almost anything you could think of they were willing to do

We went to a couple meetings over here with the Anti-Smoking Coalition, with their guy who was on television almost every day during a long period of this. He said, "I know that you and Senator Mitchell and Berl Bernhard have good reputations, but I cannot trust anything your client says." That was the first meeting. The second meeting was, "Let me put the following to you and get you to talk to your clients about whether they would agree to this." The answer was "Yes," they did agree to it. As I said, you could hardly think of anything that they wouldn't agree to. But there were a couple of bad jury verdicts during this time. The anti-smoking class action lawyers were beginning to shape the issue as one of the companies lying about what they knew and when they knew it way back.

There's a great book by a man named Kramer about the tobacco industry. At the end, after painting this Hieronymus Bosch picture of the industry, he says what ought to be done is to produce an agreement like the one we were promoting, in which the industry is required to do these things and pay this money and do all this. If you look at the last ten pages of that book, it's precisely what we tried to do.

In part it was done. Senator McCain, chairing the Commerce Committee, really

went after the industry. I went to the Hill with four or five lawyer/lobbyists. I got Hollings to persuade McCain at least to allow Hollings' counsel to meet with us and tell us what they were thinking about. Ron Motley, the billionaire plaintiffs' counsel from South Carolina, was there. And we got the figure that they were going to vote on. It was 360 billion dollars, 100 billion dollars more than the companies had swallowed hard and said "okay" to. The chairman of RJR had a Press Club appearance and said, "We're outta here." Because he was looking at 360 billion dollars in the Senate, then you get to the House and you get some of the fire-eyed liberals in the House pressing it further, it would be 500. So they just bailed out. In time the deal fell apart.

The biggest loser was the federal government, because the feds were going to get a lot of that money. It could have paid for Iraq. But the states are getting it. They aren't using it for what it was intended for, but they got it.

That was an absorbing and depressing, very challenging and interesting representation in which I'm not involved now.

Mr. Vanderstar: It raises as a kind of concluding point the whole issue of whether you exercise judgment about whom you are going represent when there is at least something to be said for representing an unpopular defendant. In fact, some of the heroes of the bar are people who have represented unpopular defendants.

Mr. McPherson: Well, it is certainly something I've comforted myself with at times when I've represented various people in Washington. Remember I talked about Glen Turner, the guy from Carolina who had the pyramid scheme. Many of one's clients are people who one would not be entirely comfortable with in a social or church-going environment. But you represent them and very often, being creative, you think of reasons why their case is a good

one.

There is a distinction, I'm aware of it, between representing somebody in an adversary context, when everything you say is challenged or challengeable by either the judge or the other lawyer, and representing somebody in *ex parte* situations. This is a kind of a self-justifying way of concluding this, but one reason I have been able to continue talking to people over the years in *ex parte* situations is that I have tried never to say anything that I didn't think was reasonably true. I say "reasonably true"—obviously I took the part of issues that my client was helped by, but most frequently I told the member of Congress or the executive in one of the departments or the person in the White House that there was an argument on the other side and it was as follows. I didn't think it was right but they should know that that argument was there and was being pressed by competent people. I've done that a lot, in fact, most of the time, and so may have been listened to with a little more credence than might have otherwise been the case.