



Donald MacPherson

Tax Lawyer

Career Highlights: sole practice, Phoenix, 1978-present

Law School: Oklahoma City University, 1975

Age: 50



DONALD MACPHERSON – The courtroom became my substitute for Vietnam. The IRS became my substitute for the Viet Cong," says the Phoenix-based tax lawyer, who describes himself as a "courtroom kamikaze."

Attorney Makes IRS New Enemy

From Jungles of Vietnam to 'Courtroom Kamikaze'

By Martin Borg
Daily Journal Staff Writer

PHOENIX – Donald MacPherson peers out from the cover of one of his self-published books, a ruggedly handsome 25-year-old platoon leader in military uniform and a crew cut.

When the book was published in 1989, MacPherson hadn't been in the jungles of Vietnam for nearly 25 years. Though his hair has grayed and he complains of a bad back, MacPherson still describes himself as a "courtroom kamikaze."

The Phoenix-based attorney's enemy is no longer the Viet Cong, though. It's the Internal Revenue Service – or, as MacPherson labels it in one of his books, "The Modern Gestapo."

As part of his law practice, MacPherson, 50, represents tax protesters and others who have had run-ins with the IRS. Not surprisingly, MacPherson finds his clients to be an unfairly maligned group of patriots.

He gives insight into his views in his book "Tax Fraud and Evasion: The War Stories," in which he recounts his cross-examination of an IRS special agent he believes has lied on the stand:

"Beads of sweat appear on his forehead. It is time to drive the

razor-sharp knife into his back, the one I purchased at the West Point cadet store, one of only 1,000 serial numbered, the blade curved so that it misses the ribs and punctures the lung, air escaping; only air sufficient for a final gasp rather than enough for a cry out for his comrades. I turn my back on him, and slowly walk, looking dead ahead to the jury box, then looking at the wall, not the jury. My voice is the key, not my eyes."

Such confrontations in the context of tax protester trials had tapered off in recent years, as the Justice Department focused its efforts on drug dealers, according to MacPherson. That's changed, however, with the recent focus on militias, and the strong link, in both rhetoric and participation, between the militia and the tax protest movement.

MacPherson claims there has been an upswing in prosecutions of tax protesters resulting from the focus on militias. The Justice Department, through a spokesperson, declined comment on tax protest cases generally and MacPherson's cases in particular. The spokesperson said prosecution of tax protest cases has been "flat" through the 1990s.

The head of the Justice Department's tax division, Loretta C. Argrett, said in a recent speech that tax protest groups "threaten the very essence of our government." She pledged additional training for the department's attorneys "so that these prosecutions are handled efficiently and effectively."

When he's not taking on the IRS, MacPherson is talking about it, or

the subject of government tyranny in general, sometimes to Arizona's controversial militia groups, in which he has found a receptive audience. Or he is writing about it, in his column in the Spotlight, a publication of the extreme right-wing Washington, D.C.-based Liberty Lobby, which has been accused of spreading anti-Semitism and bigotry by the Anti-Defamation League.

Among MacPherson's friends are some of the most notorious members of the militia movement, including Col. Bo Gritz, a former Green Beret who compared the U.S. government to the KGB and the Nazis, ran for vice president on a ticket with ex-Ku Klux Klan leader David Duke, and conducts paramilitary training.

MacPherson, however, decries violence. He also makes no apologies. He denies he is anti-Semitic. Of his politics, he says: "I'm so far right, I'm left." To his Jewish friends who give him a hard time for writing in the Spotlight, he says: "Go find me another national publication with 100,000 circulation that I can write for." And, he says, he will never find a publication with which he agrees 100 percent.

In a recent Spotlight column criticizing President Clinton for lashing out at militias in the wake of the Oklahoma City bombing, MacPherson wrote: "My guerrilla warriors are armed not with explosives but petitions. Lawsuits against ignominious bureaucrats."

Despite the preacher's zeal MacPherson brings to his

defense of tax protesters, he also retains a methodical approach gained from a college degree in engineering science earned from the U.S. Military Academy.

To the small cadre of lawyers who handled tax protest cases several years ago, MacPherson is known as "the killer."

"He's still at war. He'll always be at war," says a member of that group, Shelly Waxman, who now practices in a small town in Michigan. "That's his makeup."

A former federal prosecutor who tried cases against MacPherson also praised him as an adversary. "When he represents a client in a criminal case, he doesn't come in with frivolous arguments, like some attorneys who handle tax protest cases," said Scott Broome, an attorney in private practice in Cleveland. "He presents solid arguments and works extremely hard."

Waxman said MacPherson has another side to his personality. Behind the rhetoric and passionate belief, he is also a tough-minded businessman. "Of all of us who were doing tax protest cases in the 70s, Mac is the one who's made the most money," Waxman says.

MacPherson says he's handled about 50 cases classified by authorities as tax protest cases, and won one-third of them. "That's a pretty good track record," he said. "The feds usually win about 90 percent to 95 percent of their cases."

Along with tax-related cases, MacPherson handles a variety of cases, including court-appointed criminal cases in federal court. He's also handled some other high-profile cases, representing former

Arizona governor Evan Mecham in his unsuccessful efforts to get on the ballot after his impeachment.

MacPherson said he is active in a host of conservative causes, from abortion to gun control, though he has libertarian leanings and doesn't belong to political organizations or a militia. "I'm not a joiner," he says. After passage of the Brady Bill mandating a waiting period for purchase of a handgun, his teen-age sons joined the National Rifle Association. Now he, too, is thinking about joining.

His talk, and his columns, are sprinkled with bits of autobiography, quotes from the Bible, Mao, military strategy, political rhetoric and random pithy quotes. When he attempts to explain bankruptcy law or his own career, he'll resort to flow charts, sketching with a magic marker on a large pad set on an easel in his office.

MacPherson takes credit for a significant innovation in tax law — developing a strategy for discharging tax debts through bankruptcy. In promotional materials for his law firm, MacPherson contends it has helped clients discharge more than \$10 million.

He admits he didn't come up with the idea himself. "An airline pilot told me about it. He told me you could do it. I told him, 'No, you can't,'" MacPherson recounts. "Then I went and read the law book. He was right."

Said Waxman, "He wasn't the first to come up with it, but he picked up on it. That's his business sense. He was able to make a huge amount of money."

During a lengthy interview in his office on the second floor of a Phoenix business park, MacPherson stands the entire time. "It's a military thing, you think better on your feet," he explained. "And I've had back problems."

MacPherson was born in Cincinnati. There were writers and preachers in his family background. His great-grandmother on his father's side was a Methodist preacher, who wrote articles crusading against child labor. Another great-grandmother wrote poetry. His father was a public relations man who pitched war bonds and worked for Ohio governor John Brinker's vice-presidential campaign.

His father died when MacPherson was 4; his mother placed him in a

military school for first grade. "It's a typical story," MacPherson says. "When you're real small and you're on your own, you become an overachiever and you have a lot of drive."

An early example of his drive to succeed: the only non-Catholic in the military school, MacPherson says he was tops in his catechism class. His family moved to Connecticut when he was 12, moving back to Cincinnati before he entered seventh grade, where he graduated from high school. He then attended West Point, graduating in 1967.

After graduation, he volunteered for Vietnam where he served with the 173rd Airborne Brigade for 18 months, attaining the rank of captain and commanding 200 paratroopers in combat. MacPherson said though he was a captain during his active duty in the Army, his sympathy was with the infantrymen, "the line doggies."

On his return from Vietnam, he taught ROTC for two years. He left active duty in 1971, though he joined the Special Forces of the Army Reserves, in which he served for about 10 years, training on weekends once a month.

For the next several years, MacPherson, with his new wife, Barbara, went to school and worked. He obtained a masters degree in economics from Utah State University. Then he worked for two years in community economic development in Virginia, before deciding to go to law school at Oklahoma City University in 1975. After graduation, he was admitted to practice in Arizona in 1978, and moved to Phoenix, where he went "in search of a practice."

He interviewed with several big firms but decided to go solo. He was handling everything from drunken driving and divorce cases to landlord-tenant disputes when a friend asked for his help in a criminal tax case. He had yet to try a case in court.

His client, a pipe fitter, was charged with filing a false W-4, the withholding form filed with employers. Though the government claimed his client was a tax protester, MacPherson says he had merely followed bad advice about filling out the form. MacPherson tried the case to a federal court jury in Arizona, the jury hung, and the judge dropped the charges of filing false income tax returns against his

client.

For MacPherson, it was the beginning of his ongoing battle with the IRS in courts throughout the country, from Alaska to Arkansas, representing construction workers, farmers and anesthesiologists.

"The courtroom became my substitute for Vietnam," MacPherson says. "The IRS became my substitute for the Viet Cong."

For years after Vietnam, he was addicted to "living on the edge," mainly through the adrenaline he got in courtroom work. "I went to Alaska and tried three cases back-to-back. It's very addictive, but you trap yourself."

It wasn't until he started to write his "Tax Fraud and Evasion" book that he dealt with the stress left over from his war experience. "As you mature," he said, "you realize you don't have to be on the edge all the time."

His battle has continued, however, albeit at a more moderate pace. In one of his recent cases, he represented a Minnesota farmer prosecuted for filing false tax returns in connection with the farmer's deposit of funds into what MacPherson calls an "offshore triple trust." The triple trusts are promoted as a way of avoiding or minimizing taxes through a complex set of fund transfers from one offshore trust fund to another and then back to the investor. MacPherson's client was convicted and is appealing the conviction.

In another case, MacPherson represents a militia member, Rodger Aldrige, in a court-appointed case in Phoenix. Aldrige was indicted in 1994 on charges of possessing a number of weapons, including machine guns, AK-47s, and silencers.

"They found him with the weapons, so the best defense was not to go to trial," MacPherson said. He challenged the prosecution on double jeopardy grounds, because the government had also seized the weapons. MacPherson has filed a pretrial appeal to the 9th U.S. Circuit Court of Appeals, *U.S. v. Aldrige*, 94-018-PHX-EHS.

One of his most significant cases, according to MacPherson, was his representation of Jean Hylton, a Texas tax protester who filed a complaint for criminal trespass against two IRS agents who in 1981 had confronted her on the property she and her husband

owned outside Houston. Hylton was charged with interfering with IRS agents and acquitted by a federal judge. The agents were acquitted at a federal court trial.

When prosecutors appealed the judge's acquittal of Hylton, the 5th Circuit upheld the dismissal, ruling "Hylton's actions represented a legitimate and protected exercise of her right to petition for the redress of grievances," *U.S. v. Hylton*, 710 F.2d 1386 (1983).

MacPherson also finds significance in a case he ultimately lost on a technical issue that is key to tax protesters — whether a tax return to which the filer asserts a Fifth Amendment privilege constitutes a tax return. Protesters who have filed such returns have been prosecuted for failure to file, MacPherson explained.

Reno dentist Ted Kimball was convicted of failure to file a return after filing a so-called Fifth Amendment return. MacPherson appealed his case to the 9th Circuit, where a three-judge panel ruled, in *U.S. v. Kimball*, 896 F.2d 1218 (1990), that a Fifth Amendment return is a return. In a rehearing, an en banc panel reversed the three-judge panel, holding a Fifth Amendment return is not a tax return. *U.S. v. Kimball*, 914 F.2d 1386 (1990).

The issue of the Fifth Amendment and tax returns needs a fresh look, says MacPherson, who complains of conflicting statutes and judicial interpretations. "Even the judges can't agree what it means."

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