

**GREENSBORO VOICES/GREENSBORO PUBLIC LIBRARY ORAL HISTORY
PROJECT**

INTERVIEWEE: Clarence Malone

INTERVIEWER: Eugene E. Pfaff

DATE: N.D.

[Part II]

EUGENE PFAFF: [Telephone ringing] Yes, Mr. Malone?

CLARENCE MALONE: Yes. I'm sorry to have kept you waiting. I just got out of court. [I] just walked in the door.

EP: Oh, that's quite all right. I appreciate your taking the time to speak with me.

CM: [I'm] very happy to.

EP: I'd like to begin by getting on tape that you are aware that this conversation is being taped and that we have your permission to so tape it.

CM: Yes. I'm aware of it and you so have my permission.

EP: I'd like to begin by asking you how you became involved in civil rights activities.

CM: Oh! [laughs] Let's see. Well--pardon me just a second. [coughs] Well, actually, it was a sort of evolving kind of thing, I guess. In--persons my age who were in school and exposed to the kind of activities with which most students were engaged at the time, obviously were grossly aware of what we considered deprivations of blacks and that kind of thing. And it was sort of an era of joining, joining in various movements that we thought were obviously geared toward relieving what we considered a burden of ours.

EP: Were you a member of any organizations?

CM: Yes. I guess my earliest affiliation was with the local youth--that is, local in Durham--youth chapters of the NAACP [National Association for the Advancement of Colored

Peoples]. And from that, through high school I, or during the time I was in high school I was selected and I guess elected, as I recall it, to membership in what was then called the Southern Negro Youth Congress. I was, as a result of attending the conference, I guess back about '46 or '[4]7, was elected to the board of directors of that organization. My formal membership is pretty much just that on through high school.

And I, of course, attended different organizations and little group meetings regarding the civil rights push on through undergraduate school. I--formal organizations, my affiliation with the NAACP was pretty much the--and the Southern Negro Youth Conference--were pretty much the formal organizations. And thereafter, most--any organization that pretty much espoused the view toward a destruction of segregation in all its forms and the ongoing interest of black America pretty much attracted me, I guess. That's about the composite way I know how to put it.

EP: Where did you attend undergraduate school and law school?

CM: Both at North Carolina Central University.

EP: Had you been in practice for many years when you were contacted about defending the demonstrators at--in Greensboro in 1963?

CM: No, for about a year and a half or a little better. I graduated from North Carolina Central Law--School of Law--in 1959 and was not permitted to take the bar examination until 1961. I, of course, attribute it to the general trend at that time, or what I thought was the general trend, to exclude blacks from the practice.

Now the basis for the denial of my right to take the bar examination was ostensibly that of my having failed to register as a law student. But in all of my subsequent meetings with the board and with the then secretary of the board, Ed Cannon[?], all of the questions were directed toward whether or not I was active in this organization or that organization. I guess in their subtle form, the indication was that it's unhealthy to belong to these kinds of organizations, and these are the privations that you suffer if you do.

And fortunately--how, I'm at a loss even to explain today--having had numerous hearings and that kind of thing before the Board of Law Examiners, beginning really, I guess, back in '57 and '[5]8 while I was a law student, up to and including subsequent to graduation for a period of two years, I was not granted deferred registration as a law student, and therefore, not given credit for my law training for reasons that I cannot explain. I don't think that my status changed at all. But of course, I was begging all the time. I was granted deferred registration in, sometime during the early spring and summer of 1961 and was permitted to take the bar exam in August of '61, which I successfully passed.

EP: Were you in private practice at this time, or were you part of a larger firm?

CM: No. During the time--you mean between law school and my admission to the practice?

EP: Well, I mean once you did receive your law degree.

CM: Oh, once--well, my law degree I got in '59. I got my law license in '61. And I opened a, an individual practice immediately upon being admitted to the practice.

EP: Had you defended persons arrested in civil rights demonstrations prior to your defending those arrested in Greensboro?

CM: Yes. Let's see. The--at that time--from the time, about the time that I entered the practice, or within a very few months thereafter, the Congress of Racial Equality [CORE], along with the NAACP youth chapters across the state, I had been assigned to represent. When I say assigned, I had affiliated with the Legal Defense and Education[al] Fund of the NAACP through the state director counsel, Conrad Pearson, here in Durham and had defended and investigated numerous cases in which the NAACP was interested or wanted to become interested in. And as a result of my affiliation with the NAACP, I was called upon by CORE, through Floyd McKissick, who at that time was simply on the CORE general staff of attorneys.

And I had defended in, I guess, several adjoining counties and to a limited degree down east, various cases smacking of civil rights, usually police brutality. I had investigated a number of things that, in the education discrimination cases and that kind of thing. And [I] was sort of sent to Greensboro because McKissick, who was supposed to have handled those over there, got involved. As you know, racial demonstrations evolved, or just exploded, here in Durham, also, and Mr. McKissick was involved in these. And he sent me to Greensboro to sort of hold the fort until he could get there. I don't know if this answers your question.

EP: Were you aware of the nature of race relations in Greensboro prior to this time?

CM: Yes. When I say "aware," through my affiliation with the various organizations involved. I was generally aware of the metropolitan areas and the various places throughout the state. Not to any specific degree, that is to say, as to Greensboro per se. I was not chosen because of any particular expertise or awareness of any specific problems in Greensboro. But as to the general nature of the demonstrations, I was.

EP: Since, as you say, you were sent to Greensboro to hold the fort for Mr. McKissick, why then were you designated as the attorney, attorney of record for virtually all the demonstrators arrested?

CM: Well, if--you would have to sort of look back at the practicality of what was going on at the time. The general push, while it had its, its beginnings in Greensboro and Durham and all of your major cities across the state, it sort of had a domino effect. The demonstrations sort of erupted on roughly Friday or Saturday. And it was sort of like putting out fires.

There were only some three or four black lawyers across the state who were pretty much on call. And the others had obligations to their practice. I was young enough in the practice not to have but very little practice, so that I could go out of my office for extended periods of time without doing detriment to my practice. You can't hurt a nothing. And that, together with the fact that I had had, through my affiliation with McKissick and with C.O. Pearson, some experience in the trial of these kinds of cases.

EP: Did you lead the defense of these cases? I gather that you did, were in charge of the defense of the defendants rather than Mr. McKissick.

CM: Well, yes, because McKissick had his hands full, hands full over here in Durham. And it was simply a question of, you know, calling the tunes as you saw them. And a great amount of discretion was obviously in the hands of the lawyer who was handling it, and of necessity, as a matter of practicality.

EP: Was it a deliberate tactic for you to be designated as the attorney of record?

CM: Yes and no. And I'll see if I can explain that. As a tactic, the cohesiveness of the activity required--well, it was, it was desirable that at least there be shown a united front, a coordination of defense tactics, and, as such, obviously, with the consent of the defendants. It was more or less at their election. And they elected, you know, to be represented by counsel furnished for the most part--when you say furnished, it was damn little pay, if any, involved. Sort of a duty that we felt that we owed--

EP: Were you paid through the Legal Defense Fund of the NAACP?

CM: For the Greensboro demonstrations, it was the national office of the Congress of Racial Equality.

EP: Did anyone else represent the students or assist you in their defense?

CM: Overtly, that is, making appearances in court, no. I had the general support, logistical support, of the entire black bar in Guilford County.

EP: Can you--do any individual names come to mind at this time?

CM: Why, yes, one, in particular, who--and doggone it, the name escapes me at the moment. He's now deceased. But his practice had been generally purely criminal. Oh, the gentleman must have been seventy, seventy-five years old at--Parks, in particular, comes to mind. And I had the logistical support of Kenneth Lee, Major High, all the guys who were practicing there. If I wanted the use of their offices, their library, the use of their secretaries, just all the logistical support that there was, there was no problem. And it was just a question that they were a phone call away.

EP: What legal advice did you give the CORE chapter here?

CM: My specific role was more or less that of the trial of the persons who had been arrested in connection with the, the sit-ins and the jail-ins and all of that. Mine was, was trial counsel.

EP: So you did not--

CM: Very little--from time to time, I was consulted on legalities of the decisions that were obviously made almost hour to hour. But for the most part, they relied on the general consensus of, of the CORE chapter and from the national office of CORE. I don't know if that--does that answer your question?

EP: Yes. What sort of advice did you give to the people arrested, your clients? Did you speak with them individually or just deal with them as a group?

CM: As I recall, the circumstances were such that by the time I got there, or got involved, there must have been a thousand or fifteen hundred or more persons arrested and in custody in various places in and about the county.

As I recall it, upon my arrival there were--the defendants were incarcerated in all of the prison facilities and of course, the city and county jail. What had been known as the old TB [sic, polio] hospital had sort of been commandeered as a place of imprisonment. Some were out in High Point. And obviously, I couldn't possibly get around to where they were. And the, as I recall it, the first real conference that I had with the, with a mass of people was simply because of the large number of them.

As I arrived in Greensboro--and I had car trouble on the way over there the first morning that they were called for trial--Judge [Herman G.] Enochs permitted me to use

the courtroom more or less as a consultation room. By that I mean, he asked the--he removed himself and the court officials, together with the members of the general public, except for the persons who were defendants. He permitted me to confer with them in the courtroom, which is obviously unusual but necessitated by the large number of defendants, which sort of set the pace.

As they were brought in, I would ask for and was graciously granted, as a matter of logistics, the use of the courtroom as a, sort of a meeting room to discuss, because they were all in custody.

EP: Were they--did they appear as a group or as individuals at this time?

CM: Well, they obviously were arrested as individuals. But my conference with them was in a group, setting forth the guidelines and requirements and the tactics and having explanations of what, generally, was done sufficient to permit me to present their defense. And it was during these conferences that anyone who desired not to be represented by me or by the attorney furnished by the Congress of Racial Equality was of course permitted to withdraw or to speak then and there.

EP: Were there any who chose this course of action?

CM: None that I recall in the Greensboro demonstrations there. At a later time in Chapel Hill, there were. But there were no dissents in Greensboro, as I recall it.

EP: What legal strategies did you discuss with members of CORE and/or the students arrested?

CM: Well, the, most of the students were arrested--particularly in the early stages--most of the students were arrested and charged with trespass. When I say most, I would say 99 and 44/100 percent of the arrestees were arrested and charged with trespass, that is, trespass after being forbidden. That was the general charge which resulted when persons entered a place of public accommodation and were asked to leave and did not leave.

The state then leveled those charges. So it was simply a question of advising the defendants of what the possible, possible punishments were, advising them of, as best we could under the circumstances obviously, of their right to counsel, the--what was meant by a plea of not guilty, all of this. A sort of an acquaintance of them--what their activities meant legally.

EP: Can you--what plea did you advise them to enter?

CM: Not guilty.

EP: Was this--what was the basis of this not guilty plea? Were you contending that they were not guilty of trespass, or were you hoping to challenge the legality of the charge?

CM: Well, both. As a matter of the spirit of the law, it was my contention and my feeling, and that, obviously, of, of CORE, that the trespass law as it was being applied was unconstitutional. And for that reason, we were testing the legality of the trespass law, together with the fact that there was the feeling, obviously of mine--and I so advised my clients--that the--we had a moral duty to assert those rights guaranteed to us by the Constitution, which would override any application and violation thereof on the part of the state. So that my advice to them, or the feeling imparted to them, was that we feel that we're both legally and morally right and have not violated any law. In fact, the action of the state and the city in enforcing the segregation laws was both morally and legally wrong.

EP: In this connection, this was a tactic or legal argument that was frequently cited from the sit-ins right on through this time and beyond, that it was the right of a person who ran a private business to deny service to individuals that he chose. What was your feeling about this legal argument, and, and how did you intend to fight this in court?

CM: Well, my feeling there is that, yes, the individual private citizen, in his private capacity as a citizen, had a right to refuse service on a whim, if he so chose. However, state action in enforcing his whim was invalid under the equal protection clause of the Fourteenth Amendment, that when the individual sought the aid of the government, whether it be city, state or federal, to prohibit--that is to say, he made subservient his rights as an individual citizen by applying for a license to serve the public. He therefore made his individual rights subservient to that of the rights of the public.

The next thrust was simply that the--while he may hold these views, it is unlawful for the state--state in parenthesis, thereby being the state and/or municipal governments--to lend aid and to enforce his private whim or right as against the rights of other citizens.

EP: In other words, it sounds like what you're saying is that he was within his rights to refuse them service or entrance, but the minute he called upon the police to then have them arrested and removed--

CM: Then that was an abuse of the police power on the part of the state.

EP: This was an experimental argument, was it not, inasmuch as de jure segregation was the law of the land at this time?

CM: Well, obviously, it was. The--and that had been, simply not been presented. When we say presented, it had been argued in its various aspects on one or two occasions, but it had not become the law of the land. Of course, *Plessy v. Ferguson* was the ruling case law at the time. But this tact had not been employed prior to the application of the trespass laws.

You see, historically, such a situation had simply not presented itself. Ordinarily, it was just a question of an individual going and requesting service. And in most instances, the merchant himself or the individual business owner exercised self-help. He'd clobber the guy across the head and toss him out. But it was only in the, with the beginning of the mass sit-ins that it reached proportions that it was necessary to call in large numbers of--or a large amount of state action to enforce the de jure segregation, as you put it.

EP: Was it your intention to settle this locally, or were you hoping that this would evolve into a case that might reach the Supreme Court and have national or universal application?

CM: Well, to have a concerted single-interest point of view, I, I, I guess personally, I simply didn't have it. It was sort of a feeling of striking at it on every hand and any direction that I could and hopeful that it would take a direction, and in whatever direction it took to illuminate the scourge of segregation against us.

EP: But there was no deliberate or planned tactic of preparing this for possible Supreme Court argument?

CM: Well, certainly that's a part, that's part and parcel of, of any litigation to the careful voyeur[?]. You are obviously trying to get into the record those things that you think that will, you know, enhance if it becomes necessary to appeal it. We had no--I had no illusions about getting any kind of relief from the state courts of North Carolina.

EP: So you thought it'd take at least district court?

CM: Minimally.

EP: You've discussed your legal opinions on the charge of trespass. How about blocking a fire exit? Do you think there was any basis to this legal technicality?

CM: Well, now, as it turned out--and this would have to be limited to Greensboro, that is, well, I'd say, Guilford County. The blocking of fire entrances came about sort of as it evolved, really for lack of any other law to apply. You see, what was happening as a matter of practice [is] you had many, many more demonstrators there than the businesses could accommodate in terms of, you know, just physical facility.

Now the gathering of many, many persons around the exterior portions of the building--obviously they had not trespassed, because they had not gone inside the building. But now, this was a means on the part of the state, or--I say the state, on the part of the city--to come up with an ordinance, or to apply an already written ordinance, that would permit them to arrest all of the participants, so that most of the blocking of fire entrances and exits were placed against persons who obviously could not be charged with trespass because they never entered the place, but who were gathered around it.

And conceivably, theoretically, that did constitute a fire hazard. But the application, the ordinance itself was not designed to cover this kind of activity or human behavior. And it was sort of stretched to apply to this kind of activity.

EP: Do you think that it was forcible trespass when fifty-eight students were arrested for marching past the ticket booth at the Carolina Theatre and sitting down and refusing to leave?

CM: No. I think not, for the simple reason that the public was invited. And the, the problem was, we were very careful not to have--we were very careful to ask them not to go in without offering to pay. Once having offered to pay and the refusal of pay having been made, it represented an activity on the part of the management, which we held was morally and legally wrong.

There was no mass overthrowing of his right to collect a fare or to collect a fee for his services. There was always the offer to pay the advertised admission on the part of every person there. It was only after being, after the offer to pay had been refused that they entered what we argued was a place of accommodation, a place that, as citizens and as members of the public to whom all advertisements had been sent, that they had a right to enter.

If you will recall, it was not the objection on the parts of the management of their entry into the theatre. The objection on the parts of the manager was the--or the owner--was the section of the theatre that they entered. There were always reserved in the balconies places for blacks. So that the, the, the overall prohibition on the part of management was not that of, "You can't come in here with or without permission, with or without admission. You can go up there where you belong, up in the balcony."

So that for those reasons, I don't feel it was enforceable. Number one, they offered to pay the, the admission. And it was their right--I say any place of accommodation for the public, it was their right to enter all of the portions of that business open to the public.

EP: Do you think there was an inconsistency in applying this regulation about blocking fire exits? At least one time in the newspaper, there was an account where students and marchers were arrested for crowding around the ticket booth and presumably blocking

the door so that people couldn't get out--at the Center [Theatre] for instance. But the same situation did not result, result in arrests at the Carolina.

CM: Well, the, the whole thing was fraught with inconsistencies, but I don't think studied inconsistencies. We have to look at it in the light of the officialdom simply being faced with situations not theretofore faced. And therefore, they applied whatever came to mind.

EP: Did you defend anyone for charges other than trespass and blocking fire exits? Assault, for instance?

CM: Yes. I--the major number of persons that were arrested that was arising out of one march, they were charged with blocking a public street. They were charged under a construction ordinance, really, of blocking a public street, which resulted in--what happened was, during some of the marches, they marched down to the, as I recall it, Elm and Market Street, the sort of hub of the traffic center, and went out and laid down in the middle of the street and blocked traffic in every direction. There must have been fifteen hundred or two thousand persons arrested at that time and charged with blocking a public street, as I recall it. I don't know the specific, I don't recall the specific charge.

But those cases were subsequently carried to the state Supreme Court. And the state Supreme Court, in an opinion written by Hunt Parker, threw out the application of the ordinance in that it was taken out of context and therefore simply did not apply. Well, the thrust of my argument was that the ordinance was originally passed to contemplate inanimate objects, certainly not human beings, and therefore should not be applied to that.

EP: Did you ever visit the old polio hospital, the National Guard Armory, the Greensboro Coliseum or the High Point jail?

CM: I visited the TB [tuberculosis] hospital. I eventually succeeded in getting into the TB hospital. I went to the coliseum and was denied entrance. And after that we sort of devised, passively or otherwise, the idea that the defendants would be brought into the court, the court would then permit me to confer with them, and then we would proceed with the trials.

EP: Why were you denied access to the, your clients? Isn't this a violation of their rights as persons charged with--

CM: Very much so. I think it was out of sheer ignorance, for lack of a better explanation, obviously. If you recall, as the demonstrations arose there, it was more or less on election day, when, as I recall, that you had a sweep of a number of local offices by the

Republicans. Sheriff [Clayton] Jones, as I recall it, had never--had no idea. I think he'd been elected some two or three days, or had taken the office a couple of days before all hell broke loose. And he was simply trying to cope with an impossible situation with absolutely no experience.

And he had selected--or I don't know how they chose them--but they had a number of auxiliary police officers and auxiliary sheriff's deputies who, apparently without any training, without any pre-anything, were just told out there--put out there and told to keep the area clean of blacks. And upon my informing them that I was--I recall specifically, I attempted to get to the TB hospital for the first time--and obviously, I have no idea who it was, but a uniformed person who said that he was an auxiliary sheriff's deputy informed me that no parents, no doctors, and no prick lawyers or anybody else were permitted in the hospital. I thereafter went and called the Justice Department and informed them that I was being denied entry--

EP: You mean Justice Department of the city?

CM: No, of the United States.

EP: United States.

CM: And--out of sheer frustration, and, of course, I had not been home for a couple of days. I then came back to Durham to go back the next morning. And of course, by the time I arrived in Durham, there were calls from everywhere looking for me, saying now you have access, and this kind of thing.

It was--it's almost unimaginable in an ordered kind of situation. It's almost unimaginable the, the atmosphere that prevailed, that rationality just simply didn't apply.

EP: Do you think there was an unusually high degree of this feeling or sense of irrationality, of crisis mentality?

CM: It was extreme. That feeling was extreme throughout on what I choose to call both sides. It was a feeling of crisis--the "we's" and the "theys." It turned out to be war, cold or hot. Fortunately it remained cold. But it was--everybody was exercising, both sides exercised all of the psychological tactics that they could. It was simply a time of turmoil and upheaval.

EP: Did you sense intransigence on the part of the official city government?

CM: Oh, 100 percent. They were committed--for instance, I sat in on what were ostensible negotiations that one statement would be made to--in an effort to call off the

demonstrations--commitments were made that before you could get in your car and turn your car radio on were being denied by officialdom, the same officials who had just made the commitment behind closed doors.

EP: I'd like to get to these negotiations and meetings. But first, I'd like to ask, on your subsequent visits to one or more of the places of incarceration, did you notice any unusually adverse conditions that violated the rights of those incarcerated?

CM: Yes. But my feeling is that it was certainly not intentional.

EP: What, what sort of things did you observe?

CM: [laughs] It was just simply absolutely impossible with the number of people that they had involved to provide adequate sewage. For instance, all of the plumbing--everything broke down under the sheer force of numbers. There simply were not enough blankets. There simply were not enough beds. There was simply not enough food.

The--most of the arrested persons were--in fact, there was organized within the black community a cadre of persons who did nothing but cook and provide food. Not--the food was not provided as a means of recalcitrance on the part of officialdom. Hell, they just didn't have the facility for them.

EP: Was there any instance of, of denying them these--you just said that there weren't--but one of the persons incarcerated, [Bennett faculty member] Dr. Elizabeth Laizner, alluded to the fact that several cartons of Cokes were delivered to alleviate the thirst of the people incarcerated so they wouldn't have to drink what she described as the brackish water, and that they were drunk deliberately, she says, by the sheriff's deputy in sight of those incarcerated. Did you ever observe or hear anything about this instance?

CM: I heard about it. Obviously, I never observed it. And I don't doubt it. But I, I would be--my reaction to it--in fact, to Dr. Laizner and several other persons who made the allegation--was that just as this auxiliary deputy had no idea of what he was doing when he excluded me from the, from talking to my clients--you know, I think he just thought that that was his discretion.

I think that you had some individuals who, out of sheer ignorance of what they were doing, may have done this to get back at the arrestees. But officially I'm certain that that was not tolerated. And I don't doubt that it happened. I didn't see it. I heard numerous complaints. But insofar as I was able to tell, there was a tremendous effort put forth to avoid circumstances that would permit, would permit criticism on the part of the officials involved, so.

EP: The newspaper suggests that there were attempts to arrive at what amounts to a deal between the governor's office, the mayor's office, Judge Enochs, the A&T [North Carolina A&T State University] administration and the Bennett [College] administration to release the students into the custody of A&T and Bennett. Were you aware of any such deal?

CM: Well, there were, there were some discussions of it. I was not--well, let me see how best to put it. I was aware that there was such talk in the air. And I am aware that there were certain pronouncements made by the universities involved which would indicate its validity. But as to the truth of it, I simply don't know. I was not a part of it.

EP: There were other instances in which the newspaper reported that you were seeking to get a delay in Judge Enochs' efforts to have special court sessions set up, in order to have the students released on their own recognizance rather than have trial dates set. Could you explain this situation and what you were attempting to do at this time?

CM: Yes. Tactically, this idea of getting students released on their own recognizance and that kind of thing was simply, as I saw it, a practical solution to the overcrowded prisoner conditions. The city originally began arresting as a matter of punishment. And the, a part of the tactic was a mass jail-in.

EP: Part of the tactic on the part of whom, the city or the--CORE?

CM: On the part of the demonstrators--was to clog the facility, to clog the court system, to force the city and the administration to look at what this foolish segregation has resulted in, to break down, bog down [the courts] through their own efforts. By their own efforts, I mean a compliance with, with what they had ordinarily enforced this with. So that the mass jail-in as a tactic resulted in the efforts of Judge Enochs to--or the administration, I would say, through Judge Enochs--to clear out the jails and prisons to relieve the, the just impossible conditions.

EP: Why were you so interested in not having these special court sessions set up?

CM: As a means of keeping the jail system clogged, that was a part of the pressure. Theretofore it was, as I said before, simply a question of beating a few black heads and running them home bloody and put them back in their place and they--

[End of Tape 1, side A--Begin Tape 1, Side B]

EP: I'd like to continue, if I may.

CM: Alrighty.

EP: We were discussing the fact that the students were released, perhaps by some deal--at any rate, released on their own recognizance. And you were trying to delay that. And the admitted tactic of CORE was to try to jam the legal system in Greensboro to put pressure on the city. By the fact of their releasing the students, does this mean that they were able to get around this tactic to outmaneuver CORE?

CM: No, indeed. In fact, they compounded it. The end result was, the students sort of on their own recognized what was being done, that it was sort of a pressure release valve, so that as they were released, they simply went to another establishment and sat in and got re-arrested.

EP: So that there were constantly these large numbers of people in jail?

CM: Before the end of the day in the arraignment proceeding whereby he was releasing them--first of all, each of the defendants, as they were called to the rail and arraigned, were requested, did they desire to be released on their own recognizance. And as I recall their response, it was simply that they preferred jail, no bail. And of course, without the acquiescence of the defendant--and there was no legal way to keep them in custody if they were ordered released by the court and put under pain of contempt proceedings if they failed to return to court.

And obviously our overall tactic was to comply, 100 percent procedurally, with the law to test only that law that we thought that was illegal for reasons or, you know, whatever reason. So that I think that the court reasonably knew, based on past behavior, that everyone was going to return to court. So what they did was, they couldn't, you know, stay in any other way. So then they just went out and sat in, and before the day was over, we were getting the same defendants back again.

EP: Does this mean, though, that there were no longer any large number of people incarcerated?

CM: No. It didn't relieve the incarceration at all. Because what it amounted to was that it was an exercise in futility. He would obviously have to arraign each student individually and apprise him of his rights and apprise him of the consequences of failing to return. So it was a reasonably slow process.

EP: Did you--

- CM: And by the time, if he got twenty-five released, when you look around, there were fifty more coming in.
- EP: What is your opinion of this move by Judge Enochs? Did you have any personal, off-the-record discussions with he or any other officer of the court?
- CM: No. I--no. I wouldn't say that there were any personal discussions about it. We have since pretty much joked to each other about it. It was sort of like a game of poker. The court officials obviously attempted to act within the law and to show complete fairness, bent over backwards to adhere to all the procedural standards. We were sort of doing the same thing. That was rather understood. And it was a question of who could come up with a maneuver to get around the counter-maneuvers. But as to, you know, discussion, no, there never was any.
- EP: Do you think that Judge Enochs acted fairly and impartially?
- CM: Very, very much so. Very much so, as best he could under very trying circumstances.
- EP: So you don't think there was any kind of suggestion of collusion between the court and the city or, or the law enforcement agencies?
- CM: Well, collusion, I would say no. But they certainly were aware of each other's activities. And obviously, the court was, as it should, seeking to protect the government.
- EP: Did you have any discussions with the, either A&T or Bennett administration?
- CM: No, I did not. Let me see if I can sort of outline for you the chain of command, or the manner in which they operated. Now there was the president of the CORE chapter, whose name, as I recall it, was William Thomas, who was a Greensboro resident. And who, as president of the local CORE chapter, sort of called the tunes in conjunction with a--it was not denominated such--but sort of a steering committee on the part of the students themselves.

They were pretty much advised by the more mature black citizenry, some of Greensboro. And for a short period of time at least, during the actual negotiation, some, if not I wouldn't say most of it, was done under the direction of Jim Farmer himself, who was at that time chairman and director of CORE.

There were various advisory groups. The clergy, which was made up of the clergy, the general clergy in the city of Greensboro, some who acted generally as mediators between the demonstrators and the city administration, some, obviously, more partial to the city administration than to the demonstrators, and others more partial to the

demonstrators than to the city of Greensboro. So that it was--my personal activities were generally confined to trial and trial tactics, though I was usually reasonably briefed on what was going on in the negotiations and things of that sort.

EP: Did you sit in on any of these negotiations?

CM: As I recall it, I know that I sat in on a number of the sort of advisory strategy meetings. But the actual negotiations themselves, no.

EP: What was discussed at these strategy meetings?

CM: Generally the cause and effect, more a tactical kind of battle strategy. The overall strategy was to break the back of, of the segregated policies of the city.

EP: Do you happen to remember any of the discussions or differences of forms of tactics that were suggested?

CM: Offhand--well, as I recall, the, there was an absolute distrust for any and everything that--I believe the mayor at the time was [David] Schenck. And it was proven time after time after time that anything that was, that was said by him was whatever he thought was appropriate at the time, with no desire, no thought of ever, in any way, you know, adhering to any promises or discussions that he made.

It was simply--the cry of the city appeared to have been, "Look, we're ready to negotiate. But we will not negotiate as long as you're in the street." The cry of the blacks was, "Well, we've been waiting three hundred years for you to negotiate. Do something to show us and make a good faith showing that you truly want to negotiate. We have our momentum going. We're not going to stop it until you show something."

And of course, he would make half-assed promises and things of that sort that were calculated to stop the demonstrations or slow them down. And it's, it was the feeling of most people concerned that he did not intend in any way to live up to any promises he made. Because once the momentum of the demonstrations died down, it couldn't be rekindled just overnight.

So that most of the strategy sessions were devoted, as best I can tell, to trying to determine how best to make him adhere to whatever statements he'd made. And I, I don't refer individually to Schenck, obviously--he was a spokesman--but to the powers that be. Which of these were bona fide, which of these were they trying to mess us up in? What were they trying to accomplish? How can we best combat it? That sort of a strategy session.

EP: Do you happen to remember any of the promises he initially made in an attempt to try to wind down the demonstrations?

CM: Off the top of my head, I would, I would hate to simply come up with it. But what it amounted to--and it's not hard to ascertain. In fact, I kept most of the newspaper articles involved. What he would say in the negotiating sessions and then what he would publish at his press conference were usually directly opposite. Now--

EP: Did he make any promises that he would try to get the businesses to desegregate or that the city might try to take action along the lines of a desegregation [unclear--both talking at once]?

CM: There was a motive to it. For instance--and again, I, I hate to quote without being reasonably sure. The, as I recall it, statements were made generally, "Well, if you get out of the street, I think I can get the merchants to do this. If you stop the demonstrations, I think I can get this group to recognize this, that, or the other." But of course, then he would call a press conference immediately thereafter and say, "We aren't going to do anything, anything at all, until you get out of the street."

EP: So he was saying one thing in private and, and then making hard-line statements in public.

CM: Obviously, yes.

EP: Were there any city officials that you felt were trying to negotiate in good faith?

CM: Oh, yes, yes, yes. In fact--and obviously, we're talking a good while back. I should have brought my--I've kept a sort of private running, not notebook, but scrapbook, I guess, with various comments of--that I haven't looked at in fifteen, sixteen years. The names at the present escape me.

But there were, particularly on the part of the clergy, as I recall it, there were numerous white ministers who, in my opinion, stuck their necks out with their congregations to just restore common sense, you know, and try and produce this period of calm. There were any number of police officials, one of whom, I, whose name I simply can't recall, but who dealt fairly and squarely with everybody. And everybody had tremendous respect for him.

EP: Was that Captain William Jackson?

CM: That's it, Captain Jackson. I simply know that, you know, everybody knew that he was in the middle. But now, he played right fair and square. He had the complete trust of--and I say merited it. Not once did he attempt to mislead, insofar as I was able to ascertain, or go through the devious mechanisms that many did.

There were a number of police officials who I think very genuinely were simply trying to, you know, quell the situation. And of course, there were various city officials who simply made what I call political hay out of it by the hue and cry, "Get them out of the streets, these are outside agitators," and the usual.

EP: Were these members of the city council or city administrative officials?

CM: Normally I'm referring to city administrative officials, as I recall it. And there again, I was--the individuals were as, you know, as to me personally, strangers, so that obviously names simply did not stick.

EP: The city manager at the time was George Aull.

CM: Yes, that name--I could not have called it if you hadn't called it for me first.

EP: Do you remember his position?

CM: Not specifically in my mind. No, not specifically. My impression was that there were very few, if any--and I don't recall any--of the city officials as such who indicated in any way, except by means of devious conduct, that they were in any way sympathetic to the grievances and demands of the students.

EP: Without trying to get you to name specific names, could you dwell upon this--what you mean by devious conduct?

CM: Oh, they--as I indicated, a general tactic that was not only found in Greensboro but we found across the state was, "Give them a bone in the meetings, and if we ever get them out of the street, we'll take care of business." That was the carrot dangled at the end of the stick. "We are not going to negotiate in a, except in a spirit of calm."

The meaning thereby being, "Look, stop your demonstrations and we'll talk. We're not going to make any kind of commitments until the demonstrations stop. Then we'll talk."

And with every indication that the only talk you were going to get was once the momentum of demonstrations stopped, then, you know, the old adage of law and order. Order--to hell with the law, so long as it's orderly. And it's only orderly when you're back in your place.

I don't know if that answers you, but that's, that's what I meant by devious statements and devious conduct.

EP: How did you first hear that the students had been released from the centers of incarceration? It's my understanding that it was done in the early hours of the morning.

CM: Well, it began reasonably late in the evening. It began, really, during the court session after lunch one day. And I don't know how many days we'd been involved in it, because it went on for a goodly long period of time. When we came in, I was reasonably shocked when Judge Enochs began to release them on their own recognizance. And I think that the release of those from the other places of incarceration evolved really from that tactic. Finally what happened was that--and obviously I can't know, but I'm sure the police officers were acting under orders. When the jails began to fill up, and the tactic of releasing the persons who were arraigned on their own recognizance wasn't working, many of the students said that they, they would haul Trailways buses up to the place of demonstration, arrest everybody, load them up and take them two or three blocks down the street, and whip them out of the damn buses. [laughs]

EP: Oh, is that right?

CM: Rather than attempt to incarcerate them. And what we're talking about is pandemonium reigning. You know, there's, there's hardly anyone who could give an orderly sequence of events, because it just didn't happen in order. You know, you'd come up with this tactic--and apparently the city officials were doing the same thing--and you'd try that. If that worked, fine. If it didn't work, then try another.

And I think that the negotiations had begun in a reasonably earnest fashion when the students agreed to come out of jail. It was not just a wholesale turning out or beating them out of jail as such. There had been negotiations all the time. I think that we are reasonably talking about two periods, the one in which they started to release them on their own recognizance and the one that resulted in the students leaving incarceration generally--

EP: It's my--

CM: --which were like at least a week, week and a half apart.

EP: It's my understanding that the students and other demonstrators agreed to leave voluntarily once the [Dr. George] Evans Special Committee was, was formed.

CM: As I recall it, you're, you're right.

- EP: Did you have any dealings or discussions with the committee as a whole or any of its individual members?
- CM: I am reasonably certain that I talked with some of the individual members. I'm reasonably sure that I did in company with--well, one of the things that sort of colors my view--when I say, colors my view, one of the reasons that I personally was not involved in the, the actual negotiations, formal negotiations, was the hue and cry of "outside agitators." You know, I was not from Greensboro. And we didn't want to give the newspapers fodder for that kind of thing. To a large extent, there were so many crosscurrents in tactical maneuvers, not to mention the fact that I simply had my hands full dealing with the court proceedings.
- EP: Do you think that the newspaper reported events fairly, or do you think that they tended to support the official position of the city?
- CM: They supported whole-heartedly the official position of the city. And that's, well, that's really a two-fold question. The facts were presented I think truthfully, but presented in a light most favorable to the city most of the time, 99 percent of the time.
- EP: On what legal points did you defend the persons arrested, and how did you handle their cases?
- CM: Well, it was simply a question of developing my whole strategy based upon the factual circumstance. For the most part, I think that those who were acquitted, of which there were many, were usually acquitted on the basis of the inability of the complainants--that is the restaurateurs--to identify the individual acts of the persons charged.
- EP: Dr. Laizner says that all but a few, such as herself--because she was one of the few whites--and an individual who was practically seven feet tall, were dismissed for this very reason. And she says that, she really praises your strategy, as she understood it, to have people dress very similar so that individuals could not be identified. Was this, is this a fair assessment of your strategy?
- CM: Yes, one phase of it. When I say one phase of it, obviously, in a, in a war like that, you, you utilize anything that you can come up with that is tactically effective. As I recall it, yes, one of the major attacks, and really the strongest thing that we had going for us, was, was the inability of them to, to identify the students. And we simply capitalized on the age-old adage that all blacks look alike to whites.

EP: Were most of the cases dispensed with in this manner? Were, were charges dropped for lack of evidence?

CM: Yes, a very, very large number of them were. That is particularly the, you know, blocking of fire entrances and the trespass cases. A tremendously large number of those were dismissed for that, for that reason, for lack of evidence.

EP: One more--

CM: But now, as to the, the street blocking incidents, what we did was selected pretty much some typical cases, tried them out to a jury. And the district attorney agreed not to prosecute or just to hold in abeyance the remaining cases to see what the Supreme Court would do, or on what basis, you know, what--whether or not we had an effective defense. And it turned out that the Supreme Court ruled that the ordinance under which we were being tried was unconstitutionally applied.

EP: Now was this the state--

CM: Which resulted in the dismissal of the remainder of those cases.

EP: Was this the State Supreme Court, or--

CM: Yes.

EP: And was this statute which they were saying was unconstitutional, was this the one you mentioned earlier, whereby blocking the street referred to inanimate rather than animate objects?

CM: Yes. Yes.

EP: So they supported that contention?

CM: Yes.

EP: Did many of these cases go that far? To the Supreme Court?

CM: Not from Greensboro. Really, like I said, I believe, I think that the "thrust case," if there, if there is such an animal, is cited as State against Fox. It was, as I said before, a consolidation of--well, the district attorney selected what he thought were factually his strongest, two of his strongest cases. He being Lonnie Herbin, at the time assisted by

Hubert Seymour, who was privately employed by the city and county to prosecute these cases. That side chose two of what they considered their best cases. We, the defending, the defense side, chose two of what we considered our best cases and just chose one at random and consolidated them for trial.

EP: You mean that both sides agreed upon one case to go to court with, out of these four?

CM: Yeah. Well, really it turned out to be five cases that we selected as being typical cases under that particular ordinance.

EP: And they all--

CM: We must have had twenty-five hundred persons arrested and charged under it.

EP: Do you happen to remember who the defendant was in this case?

CM: Well, there were five of them. Let me see. I could perhaps--the, the lead name was Brenda Fox. But now, that doesn't mean that she was any more active than anybody else or anything of that sort. Her name was just listed at the top of the pleading, and you then shortened the pleading to State against Brenda Fox and others.

EP: Was she--was this a case that came out of the Greensboro situation?

CM: Yes.

EP: I know that--and, and, the Supreme Court then ruled that the statute was--

CM: It was unconstitutionally applied.

EP: And then what, what happened to the rest of the people who were pending the outcome of the Supreme Court?

CM: Then on that basis, the district attorney then simply dismissed them, dismissed the cases, because they were substantially factually and legally the same cases.

EP: One warrant was quashed because the warrants regarding fire law violations were, were defectively worded. Do you remember this situation?

CM: Yes, very vividly. In fact, that was the first case that came on for trial in the then recorder's court. The name of the defendant I simply don't remember. But the factual circumstances were roughly these.

The case was called when I, I got there earlier that morning. I'd had this conference with the defendants. That was in the very outset of the trials. The demonstrations had then been going on some three or four days, or possibly more. But the first case to come to trial, the--a part of the arraignment proceeding, obviously, is a reading of the charges against the defendant. And upon the reading of the warrant, I detected that it was too generally drawn or there was some element, the specifics of which I don't remember at the moment, there was some element that made the warrant improper. And I moved to quash that and reasonably argued the basis of my motion. And the court allowed my motion to quash.

Now as a matter of plain old logistics, the warrants were, had been mimeographed. They mimeographed the language of the charge. And of course, individuals had filled in the names of the complaining parties and the defendants. But the specific charge was mimeographed on the warrant form, which I recognized immediately.

And upon the allowance of my motion to quash that warrant, I called to the court's attention that all of the warrants were drawn exactly alike. And for that reason, I moved to quash them all. And of course, the district attorney then moved to amend the warrants to properly allege a crime, at which juncture I simply insisted that each of the defendants be served with the new copies of the warrant. Because every defendant to be tried in a criminal action must, you know, has a right to know of the offense wherever he's charged before coming into court.

Now this was a major bog-down tactic, for the simple reason that as many people as there were under--in the various systems of incarceration, there were absolutely no ascertainable records as to where or who anybody was. That was an almost impossible task for the city. On the other hand, it was a requirement of the law, and they tried very, very hard to comply with it.

Now this resulted in a stalemate within the courts for some two or three days--the exact length of time I don't recall--but for some several days, because it was necessary that every arrested person charged with that offense had to be served with a, with a new warrant.

EP: And were they out of jail by this time and each one had--

CM: No, no, no, no.

EP: They were still in jail.

CM: They were still in jail. This was the very earliest stages of the demonstrations. Now, the street-blocking incidences were weeks or months later.

EP: You've already discussed your opinion on the legal stance of the owners and the managers of these businesses. Is there any legal point on which they could have been forced to desegregate through the courts--

CM: No.

EP: --then in existence?

CM: Well, yes, I would say then the, the old civil rights acts of the--

EP: Of the nineteenth century?

CM: Yes. They--I, I still say that they were specific and adequate and everything else. It was just the interpretations of them in the various cases that stripped them of authority.

EP: Did you advise CORE in its formulation of the demands made on the city?

CM: Advise, no. The demands were pretty much drawn up by the, what I choose to call the student steering committee and sort of criticized by the more mature active leaders of the black community.

I simply felt that as a lawyer--and that was purely a personal feeling--that I should not advise, what amounts to advise something that I know is going to lead to litigation. I had input. We discussed it, that kind of thing. But I specifically let them act of their own free will.

EP: One of the principal demands that they made was that the city council pass an ordinance requiring desegregation of these businesses.

CM: Yes.

EP: Do you think that the city council could legally have done so--

CM: Absolutely.

EP: --had they been so inclined?

CM: Absolutely. There was no, there's no, there was then and there, there's never been any prohibition against such.

EP: I know the city council argued that they, as a municipal government, could not do this inasmuch there was no law, or so they claimed, on the federal statutes that--requiring this.

CM: No. But there was no law prohibiting it. It would not have--there was nothing to--the city for its own welfare can pass any provision not inconsistent with the laws of the state or the federal government. And certainly there was no law requiring that there be segregation.

EP: Did you have any discussions with Armistead Sapp, who was the principal attorney representing--

CM: Yes, sort of courthouse hall conversations, not in any formal manner at all. He--I simply recall his wearing his white suits, then his string ties. And on the one or two occasions I had to just sort of meet him, usually in front of the courthouse or in the halls or in--no formal relationship at all. I recall the first time I met him--and I don't know where--I simply didn't know who he was. But he walked up and introduced himself to me as Sapp the Sap.

EP: Sapp the Sap? [laughs]

CM: Yes. And of course he knew his position, I knew mine. And we sort of joked about it, and it sort of became a standing joke between us.

EP: So no personal animosities?

CM: Oh, no, no, none at all.

EP: Do you recall and could you summarize his, the basis of his legal defense or legal position of the businesses that were targeted for desegregation?

CM: Let me see if I can target [unclear]. [laughter] Frankly, to me, they were so ludicrous to me that I, I, I don't, you know, I didn't take any of it seriously. There was the old hue and cry, the age-old right of the private citizen to his property rights and that kind of noise. The general hue and cry that was put up--I don't know of anything that was, you know, unique [laughs] about their positions.

EP: So your courtroom confrontation was with the prosecuting attorneys for the students. And you had no official confrontation, if we can so characterize it, with Armistead Sapp or any of these other legal representatives of these businesses?

CM: No, no, not at all. They were, as I recall it, pretty much in the nature of simple advisors to various unincorporated associations for this or for that, sort of a lobbying kind of thing. There was--no litigation arose from any of those organizations, as I recall it.

EP: Did you witness any of the demonstrations?

CM: I witnessed several marches, because ordinarily I was in court all day, and I was studying, strategizing for the next day. Now there were several marches, community marches, that--from the various churches. I can't even remember from where, you know. But on several occasions, I was on the platform or was there at the rally when the marches started. But for the most part, my time was spent trying to strategize what was going on. The actual sit-ins or bail-ins or whatever you want to call it, no, I did not.

EP: Did you witness either the sit-down on Greene Street on June fifth or the sit-down in the square on the evening of June sixth?

CM: No, not personally. It was just a fluke that I didn't. But what had happened was, when the--well, first of all, I had simply not planned or had any idea that I would be involved in the Greensboro demonstrations until I guess about five o'clock in the morning before I was to appear in court over there. Because as far as I know, McKissick was supposed to have handled the cases that arose in Greensboro. And it just happened that there were mass demonstrations and jail-ins in Durham. And when it broke, he--I remember I left the Durham County jail at one, two o'clock in the morning. Incidentally, over here that night, I think just the pressure of the crowd and the excitement and all, some jailer had a heart attack and died here. I finally got home from that. And just as I started to get in bed, he [McKissick] called me and asked me if I could go to Greensboro the next day and hold the fort until he could get there. So that I went hurriedly there without, you know, closing out my affairs or, or taking any steps to be away for an extended period of time.

Once having gotten there, it was a sort of a round-the-clock kind of thing. And that weekend, I simply came on home. [laughs] And for that reason I was not present or did not witness any of it.

EP: Did you take any stand as to approval or disapprove--suppose your legal advice had been sought on the legality or advisability of doing this. Would you have counseled against it or not?

- CM: Well, I meticulously avoided counseling, period. And it was really on what I personally considered ethical grounds. In order--now, I knew this: that had I counseled them, said "Look, you're breaking the law. I cannot sit here and tell you to break the law. My job is simply to represent you and guard your rights if and when you do." And that was sort of my official position with the persons whom I represented, because I felt that for me to go out there and teach them, so to speak, how to get around the law bordered on champerty of maintenance and that kind of thing, and I didn't want to get ethically involved.
- EP: Wasn't this, in effect, what the legal counsel of the city and of these private businesses was doing, though?
- CM: Yes. But who was going to file a complaint with the grievance committee against them?
- EP: Why do you think Jesse Jackson was charged with the felony of inciting to riot?
- CM: Well, Jesse Jackson at the time was president of the student body at A&T. And it was the--first of all, Jesse Jackson was the least effective of the student leaders at the time. But he represented to the--for lack of a better term---the power structure, he represented to the power structure a leader because of his position as, as president of the student body. He had made a couple of fiery speeches and things of that sort.
- But the true spirit behind the movement was this Bill Thomas, who was reasonably unidentifiable. He was quiet of manner. And obviously, nobody really--when I say nobody, that is, within the city administration--knew where the impetus or the guidance was coming from. And they--since it was mostly students, it focused on A&T's campus. And he [Jesse Jackson] being the, the titular head of the student body, I think that he was charged with the more serious felony simply as a tactic of picking off the top. You cut off the head, and the body's bound to die.
- EP: I've, I've spoken with Bill Thomas on this point. And he--I said, wasn't this rather risky, having Jesse Jackson to be arrested for inciting to riot? And he said, "Well, the charge was a joke. There was no riot."
- CM: It absolutely was not.
- EP: Do you think that there was any chance of conviction?
- CM: Oh, absolutely, yes. Anything that the, the climate and the tenor of the times was such--and, of course, the jury selection process was as bad as it is today. The jury selection process at that time was, was geared to--so that the sheriff or the officialdom could rig

juries any way they wanted them. And for the most part, they would rig it up with Pomona and all of the outlying areas of rednecks who--the evidence would have made absolutely no difference at all. You had prevailing a, at that time, on a minor scale, and fortunately, a much less serious scale, the atmosphere in which the Wilmington Ten were convicted.

EP: So possibly he could have gone to jail for a number of years.

CM: Absolutely.

EP: Do you think it would have been reversed or overturned on appellate, by an appellate court?

CM: In the tenor, looking at the tenor of the times, no more than has the Wilmington Ten's convictions.

EP: Well, how was his case finally dispensed with?

CM: Simply dismissed.

EP: So that more or less in the spirit of cooling things down, the city didn't press those charges.

CM: Yes.

EP: I see. [pause] As a lawyer, what, what was your opinion on the legal position of the, the demonstrations? Could desegregation have been effected in any other way?

CM: Well, the only way I can answer that is that, you know, legally, desegregation was really never accomplished through the courts. The final and ultimate blow to segregation was dealt by the passage of the civil rights bill of 18--of 1964. We hacked away at it in the courts. But when I say hacked away at it, bit by bit, piece by piece. And I think that ultimately, somewhere down the line--

[End of Tape 2, side B--Begin Tape 3, Side A]

EP: [Tape malfunction] assuming that desegregation [sic] was dealt a deathblow by national legislation and not through any court action or test case.

- CM: Certainly it was weakened, and the climate of the times led obviously to the passage of the legislation. And I don't think that the climate would have been such that that legislation would have been passed in Congress had not there been the general upheavals that were really the manifestations of the seething feelings among the blacks against desegregation [sic]. I don't think one would have been possible without the other.
- EP: Addressing the legal, philosophical concept of, of what I see as one of the key issues here is--what is your opinion on, on, on this point: is deliberate violation of what is considered an unjust law justified?
- CM: Yes, extremely justified, assuming that the individual or individuals involved have made a personal commitment to suffer the consequences of their act as justification for deliberately breaking the law. Now where one simply goes out and breaks the law on moral grounds and simply says that this is a defense to my action, then I think he is, he's out there in a bar of quicksand.
- But now, recognizing the consequences or possible consequences and being able to accept whatever consequences are meted out, I think taken in that light, and where one is doing this as a means of protest or calling to the attention of the officials or of the public what he considers a wrong, yes, I think he's perfectly justified both morally and legally in breaking it. However, I don't think that the fact that he's doing it on moral grounds should constitute a legal defense.
- EP: So in other words, they just have to be willing to accept the consequences of their actions.
- CM: Yes. Yes.
- EP: Do you--you've, you've mentioned that--your belief that the demonstrations were--led directly to the passing of the 1964 Civil Rights Act, and I assume, by implication, also the '65 Voting Rights Act.
- CM: Right.
- EP: Can you attribute directly any other pieces of legislation to the demonstrations?
- CM: Well, I can attribute tons of state and local legislation that were designed to prevent these kinds of activities. But I assume, couched in your question is what, what I would consider meaningful or ongoing in the, in the objects of the demonstration?

EP: Well, I suppose I did couch it in more or less positive terms, that is, legislation designed to protect and ensure civil rights. But let's say, for the sake of argument, also include the coercive or negative legislation.

CM: Well, to categorize it, it's rather hard, you know, right off the top of my head. But I--it's my contention that the culmination of the racial unrest that built from the thirties right on up to the explosion in the mid-sixties was a direct cause of the passage of what I like to refer to as a poverty legislation, really most of your great society legislation. I think that the demonstration was a catalytic agent that brought about the climate whereby the Congress and the powers that be were made conscious of the need for this kind of legislation. But to say a given bill was a direct result of demonstrations, no, I don't think so.

I think that the tenor and climate of the times were influenced to the extent that the persons or groups of persons who were aware of what was happening to this country and to citizens of this country--the demonstrations created a climate whereby they focused on the injustices and thereby brought about a desire and the passage of legislation to ameliorate the situation, really. I don't know if that really answers you, but that's, that's my reaction to it.

EP: Could the city have brought suit against CORE for initiating selective buying or boycott tactics? I'm thinking in terms of the suit that was contemplated and later dropped by some city in either Alabama or Mississippi against the SCLC [Southern Christian Leadership Conference] when it called for a boycott in '67 or, I mean '76 or '78, somewhere in that area.

CM: Yes. Well, I think not. I think that the--but now, as to whether or not they could have brought suit, yes, they could have brought suit. But certainly I don't think it was--it would have been possible to successfully have brought the suit because of your, your First Amendment prohibitions--you know, the idea that the citizen has a right to petition for the redress of grievances and that kind of thing. Constitutionally, I think that the suit would have been struck down. While it might have run the gamut of the local courts, that is, the state courts, I think that by this time the federal courts were so committed to the enforcement of the Constitution that the bottom rungs would have been cut out from under it.

EP: Do you think it was the demonstrations that brought about desegregation in Greensboro, or do you think meaningful desegregation had to wait until the passage of the 1964 Civil Rights Act?

CM: It had to wait until the passage of the 1964 Civil Rights Act. It brought about statements from the city authorities and that kind of thing. But you had spotted compliance. It was more or less done on a voluntary basis. The merchants who became enlightened to the fact that the world ain't going to come to end, I'm not going to lose my business. But up until, and for some period after the passage of the civil rights bill, you had spotted segregated facilities. So that I'm saying that the, without the passage of the Civil Rights Act, it would never have become--when I say never, never is an awful long time. But it would have been years and years coming.

EP: Do you think any legal points or precedents were established by any legal action pursued in Greensboro?

CM: Not of which I'm aware.

EP: Did you continue in any capacity with the litigation that was going on in Greensboro once the demonstrations ceased on June seventh?

CM: No. After the--on June seventh? Oh, my goodness--[unclear, both speaking]

EP: The, the newspaper says there was a massive sit-down on, on Greene Street on the evening of June fifth and then the massive sit-down on the evening of June sixth. And then there was a march where there were no arrests during the day on June seventh. And that same day, through this behind-the-scenes negotiating--and many of the members of CORE that I've talked to suggest that it was this kind of massive sitting in the square that spurred the city to be a little more flexible.

CM: Yes. I would agree with that. However, the litigation went on for months. Obviously, just the--its processes through the courts went on and on.

EP: What, what constituted the nature of this litigation? Were, were students, the people charged, actually required to appear in court, or were there a series of delaying actions? What, what exactly constituted the nature of this ongoing litigation?

CM: Well, there were delaying actions on both sides. When you handle that many--well, first of all, the side of it in which I was involved, which was the side growing directly out of the demonstrations, were all criminal cases. And obviously, each side is entitled to be into a period of preparation and that kind of thing for each level of trial. Now we tried them. We slugged it out for a good many weeks in the recorder's court. And so, I think everybody's tongue was dragging. And then finally I requested jury trials in all of the cases in order that we could get up to the Superior Court.

After the momentum of the mass jail-ins and that kind of thing had stopped and negotiations had begun, the, there was no reason for continuing demonstrations. But while the demonstrations stopped, the litigation went on. By litigation, I mean the trials of the persons who had been arrested during the height of the demonstrations went on up to and including the, the early fall, which were, which culminated in the Supreme Court opinion in the State against Fox case, which sort of laid to rest all of the remainder of the cases. And by act of the court officials, many of the cases were, after that, were dismissed almost en masse.

The issue that went up was that involving the ordinance, the street-blocking ordinance. But by the time that the Supreme Court opinion came down, all of the cases involved in the street-blocking ordinance and the trespass actions and all of that were sort of lumped into the whole pile and flat dismissed to get them out of the courts and off the dockets.

As a matter of, of--well, let's start all over again. We've had our set-to. We've settled it. We're negotiating now. We're moving toward peaceful settlement. And it would serve no purpose to try these cases, so we dismiss them.

EP: Did you continue in civil rights activity or to represent persons arrested for civil rights activity after this time?

CM: Oh, yes, yes, yes. I sort of consider Greensboro my baptism of fire. As I recall it, I was next--oh, within a couple of days after I got back from Greensboro, a week at the most, I went down to Fayetteville and tried many of those cases or assisted local counsel in the trial of the cases arising out of demonstrations in Fayetteville. I tried a number of them in Dunn. I tried a large number of them in Elizabeth City. I just became sort of a troubleshooter all over the state wherever they arose.

EP: Would you consider--

CM: I was up in Halifax, just all over, generally.

EP: Would you consider your defense of the persons arrested and charged in Greensboro successful, given the outcome of the Supreme Court decision?

CM: I would say yes, yes, very much so. At least, I took it as a victory.

EP: Were your subsequent cases in Fayetteville and other cities as successful?

CM: Yes, to a large extent. By the--based on not just the Greensboro cases, but the experiences gained by both the court system and by the little cadre of defense counsel that was

developed, tactics sort of smoothed out. We didn't have the element of surprise and that kind of thing. Most of your cities began to negotiate within reason and that kind of thing. It became a saner kind of approach to the overall problem. Very, very few, if any, people served any sentences or paid any fantastic fines or anything of that sort until I would say a year or so later, couple of years later.

In fact, I believe it was in May of '63 when the demonstrations broke in Chapel Hill. I think by this time, much of the negotiation on the state and local level had taken place. Doors were opening. The momentum was about out of the--rather, I won't say the momentum was out. The enthusiasm was out. But I guess it had reached a point where demonstrations were not, just not that effective. Because what--the purposes that they had served had been served.

And then there was a resurgence in Chapel Hill, spurred by a small cadre of students over there, both white and black, which, by which time the--without that close guidance and mature thought that normally accompanied these things under the guise of CORE and, and the NAACP, it sort of--that was sort of a maverick kind of demonstration. And the kids got outlandish in their acts and--really, some acts of vandalism, that kind of thing.

And I think that the court system had sort of decided, "Well, look, it's time to stop this mess." And the Chapel Hill demonstrations served as a swan song to end all demonstrations.

EP: Dr. Elizabeth Laizner mentions that she was arrested in Chapel Hill--

CM: Yes.

EP: --and was brought to trial. And she said she received one of the harsher sentences.

CM: Yes.

EP: Do you recall her case?

CM: Very, very clearly, very clearly.

EP: Do you think she was singled out for punishment?

CM: Yes, indeed. All of the whites who participated were meted out--talk about unequal justice. As it went along, it was perfectly clear that the whites--the blacks, while they weren't excused, they were sort of looked upon as being reasonably justified, but that the whites or what have you who participated in it were, were real objects of the court system.

EP: She says that the judge in Hillsborough who presided over these cases--

CM: Raymond B. Mallard.

EP: Raymond B. Mallard humiliated a number of the defendants. She can recall one in particular, an Episcopal minister from, from Duke [University].

CM: Right. I don't think he was Episcopalian. Dr. [Frederick?] Herzog, as I recall. I don't know of his affiliation, but I don't think it was Episcopalian.

But first of all, Raymond Mallard was--thank God there are no more like him on the bench. He was an astute scholar. He was a true legal scholar. And within the context of his limited thought processes, he thought that he was very fair. But that just didn't work out that way. And he had an uncanny ability to throw around and toss around the power of his robe, and took delight in humiliation and that kind of thing. And the--his display of, of judicial attitude toward Dr. Herzog I could never forget. And anybody else who saw or heard it could never forget it.

EP: Dr. Laizner says that none of these people who received these sentences actually went to jail. [She said] that they were not pardoned, but their sentences were commuted by, by [Governor] Terry Sanford in the final months of his administration. Could you summarize what transpired in these cases?

CM: Generally, yes. What happened was this. As I've said before, the Chapel Hill demonstrations were sort of the swan song to demonstrations. And I think it exemplified a hardening of attitudes on the part of the entire court system. The attitude seemed to have been, "Well, look, you've made your point. Let's stop this mess." And the fact that the Chapel Hill demonstrations were pretty much spearheaded by a group of upper middleclass whites, university students, I think, incurred--and university professors and that kind of thing--incurred the extreme wrath of the segregationists.

And I'm, obviously, I am not privy to court assignments and things of that sort, but I'm pretty sure that Mallard was specifically sent to put an end to all of this. His tactic seemed to have been to make sure to break the back of the national office of CORE financially with fantastic fines. We had court costs averaging up to three, four, and five hundred dollars.

EP: Per defendant?

CM: Per defendant. For instance, during the demonstrations, Chapel Hill obviously sent out and got the assistance of law enforcement officers from surrounding communities and

taxed, as a part of the court cost, the cost to the city for the use of these auxiliary police forces and prorated among all of those who were arrested, you know, through the use of these troops, I call them. They simply prorated it and taxed it as part of the court costs and levied extreme fines.

Up to--up until the Chapel Hill demonstrations, with one exception, the sentences were usually limited to thirty days. Mallard came down and started tossing out two and three year sentences. And then he, in addition to--well, people were normally charged with one count of trespass and one count of resisting arrest. And the resisting arrest arose from the fact that the persons, when arrested, simply did not cooperate in being arrested. They went limp and that kind of thing. They were subsequently charged with resisting arrest.

And upon conviction by the jury, you would ordinarily impose a twelve-month sentence for the trespass, or the blocking of the streets is what it was, as I recall it. And they would impose an additional two years and suspended judgment. As I recall it, it turned out to be almost a speech. I, I almost learned it by rote.

The second sentence, he would simply enter a sentence of two years, because it was a general misdemeanor and the maximum punishment was a two-year sentence. He would impose a sentence of two years and direct that commitment upon the service of the sentence is suspended for a period of five years upon the condition that the defendant not associate with, not be seen with, or any way ally himself with--and he had the language down pat--any persons convicted of or known to be associated with any group known to demonstrate, in so many words, and that kind of thing. And which, in effect, took away all of the rights of that person, even after the service of the sentence and the payment of his fine, to participate in any demonstration. And obviously, that would have a chilling effect on any subsequent demonstrations.

And he selected out those professors such as Dr. Laizner and Dr. Herzog. And I was trying to think if, in fact--Peter, what was his name--there must have been about five or six divinity professors from Duke that he selected out to give, hand out these harsh sentences and to elicit from them just simple, embarrassing and degrading answers.

Obviously, when it came to a man like Dr. Herzog, a very zealous Christian individual, who acted, obviously, not out of any criminal act, but out of a deep feeling of moral conviction, to have him stand in--on pain of being sent to prison, actively stand and say that he would never do this again and that kind of thing.

EP: Did anyone--I mean, I realize that this was all geared to that if they did voice any protest in court, to slap them with contempt of court citations. But did anyone respond back within the legal language of court procedure or in decorum to Mallard, or was it a pretty much one-sided thing from the bench?

CM: It was a 100 percent, one-sided thing from the bench. The lawyers are put in the position of, you speak out and while he's going to get you down the line, it means an active sentence for your client.

EP: So, so the implication there was that the suspended sentences would only be suspended if, if they maintained their silence.

CM: Yes.

EP: But if they spoke out, then they would be handed active sentences.

CM: That was the full implication, implication of the whole procedure. It was disheartening, to say the least.

EP: What ever became of Mallard?

CM: Judge Mallard died about three months ago. He went on after the Chapel Hill demonstrations. He was at that time on the Superior Court bench. Shortly thereafter, within, say a year or two, after they were quelled and the appeals and all that, and finally they were dismissed sort of by, by pressure from the governor, he later became chief justice. He was the first Chief Justice of the North Carolina Court of Appeals.

EP: Do you think this was a direct political reward?

CM: Not purely. First of all, I would have to admit that at the time, and even until now, he's regarded by the bench and bar as having been one of the most scholarly judges to have sat on the bench, North Carolina bench, in recent years. So it was not simply a political payoff. His abilities and legal acumen really, you know, accounted for his being chosen. While politically it didn't hurt him that he had done these kinds of things, it was not done simple as a, simply as a political payoff. There was justification for his appointment from a purely scholastic point of view.

EP: To tie this up, and particularly, as you say, Chapel Hill was the swan song of active direct action, nonviolent demonstrations by CORE. Since it was not a pardon, what was the legal mechanism by which these people were, had their sentences quashed or at least not served?

CM: Well, the actual logistics of it is that of the exercise of gubernatorial clemency, which is activated a--there is a process by which the governor can, with or without cause, simply commute a sentence to time served or, you know, ameliorate any sentence for any reason.

It's under gubernatorial clemency. It's an authority given the governor and he had simply exercised it.

Of course, now, in terms of numbers, very few, comparatively speaking, very few persons actually served prison sentences. None of them served the full terms of their sentences. But there were, I guess, twenty-five or thirty of the so-called leaders of the Chapel Hill demonstrations who actually served sentences.

EP: Were they sentences of long duration or several months?

CM: From twelve months up, up to two years.

EP: This sounds like pretty stiff sentences. Does this mean that in the course of appealing these sentences handed down by Mallard, the, the appellate structure tended to uphold the imposing of these stiff sentences?

CM: Well, the--let's see how best to answer that. Well, from the outset--mind you, this is toward the end of the enthusiasm, so to speak. CORE was practically broke at the beginning of the Chapel Hill demonstrations.

EP: Do you mean nationally or, or statewide?

CM: Well, both nationally and statewide, because this was the whole period that they were carrying forward on the legal front all over the South. They had begun to--Louisiana in particular, the Plaquemines Parish incident. And there was all sorts of expensive litigation going on all over the country. And all of the coffers had been practically taxed, which is another factor that played a part in Mallard's actions. It was his idea to give plenty of reasons to, for an appeal. And appeals, even in their barest sense, become extremely expensive. And they were out to break down the power of demonstrating mechanisms, among them being to break them financially.

Therefore, the appeals--for instance, another tactic that he, that they used, the district attorney, who is now a district court judge in Alamance County, Dick [Thomas] Cooper, made a practice of calling the calendar three and four times a day or simply at will. And, pardon me, the--which had the result, if we were in the middle of a trial, he stopped to call the calendar, [and] some of the kids--it was in the springtime--they were wandering out in the hall, some of them were out on the porch, or--if they happened not to be in the courtroom when their names were called, and they had no way of knowing when it was going to be called.

And the trials went on straight through final exams at the university, or the various universities, which meant that the kids were reasonably just kept into court. They were locked in court from the time court opened until it closed, all day. Mallard

prohibited their reading or studying or eating, eating during the court under the guise of showing proper respect for the court proceeding.

In fact, he cited in contempt a Professor Wynn[?], who was a faculty member over at UNC [University of North Carolina], for an incident I happened to have witnessed. I was standing in the courtroom. The jury was out considering the verdict. There was no one in the courtroom but the defendant and himself. Judge Mallard was on the bench, and the bailiff. Nothing was going on. And I think rather absentmindedly--and it was obviously after the court had announced that there would be no newspaper reading or no textbook reading or eating or anything of that sort in the courtroom. But I think in the relaxed atmosphere that was going on, with nothing formally moving in the court, I think out of sheer frustration or very unconsciously, he picked up a newspaper and held it up. And from that second on, the judge ordered him placed in custody and cited him in contempt and just created a havoc and that kind of thing.

So now with that, in that context, by the time that we got down to sentencing, we were obviously attempting to avoid all of the appeals we could from a purely financial standpoint. And obviously, he knew that. So that the only, the harshest of harsh sentences were appealed, among them being Dr. Laizner's and--oh, as I recall it, there must have been fifteen or twenty--John Dunne, Pat Cusick. Those persons whom Judge Mallard selected out in his mind as being leaders, he imposed active sentences on. And obviously we had to give notice of appeal on them. And it was during this process that the, before the appeals were perfected, that Governor Sanford then exercised gubernatorial clemency or granted them gubernatorial clemency.

EP: Who petitioned Sanford for gubernatorial clemency?

CM: Well, no formal petitions, as far as I know, were, were filed as such. There was negotiation from the leaders of CORE, particularly Floyd McKissick and the general state leaders of CORE and state leaders from the NAACP, just an appeal to the governor [that] look, it's time you stopped that mess over there. You're telling us to stop the demonstrations, the demonstrations should stop. And while we've got them quiet, this is permitted to go on.

That's my understanding of what the pitch was. And I think he just did it at his own notion, as a means toward restoring peace and order to, to the state.

EP: Well, in conclusion, would you say that the tactic was successful of Mallard and the segregationists to coerce CORE into ceasing demonstrations and, and break the back financially of CORE?

CM: I would have to answer that, yes, a very qualified yes. They were successful, not because of, you know, the antics of Mallard. But by this time we were in late '64, and where the

segregationists and the state governments are dipping into the state coffers, obviously, of the taxpayers, they are fighting taxpayers with taxpayers' money. And the demonstrators and CORE and all, all of whom were taxpayers, were simply paying doubly, because they were out raising money, whereas the segregationists or the fosterers of the segregationist policies were taking their money to fight them with--with, you know, awful deep pockets.

And this fight had been going on for some three or four years. And by this time, not only were they financially, their backs were broken financially, but by this time the, most of the things that they had been agitating for were being put in force. It turned out to be just unfruitful, so to speak, to continue it. So that while there's a, a yes answer--yes, they stopped the demonstrations--but I think that they were headed out, irrespective of what they did.

[End of Interview]