

WILLOUGHBY ANDERSON: Today is Tuesday, November the 16th. I am here at the Hugo Black Federal Courthouse in Birmingham, Alabama interviewing Chief Justice—

U.W. CLEMONS: Chief Judge, UW Clemons.

WA: Chief Judge UW Clemons. [tape break] Okay.

UC: All right.

WA: So let's start if you can tell me a little bit about where you were born, growing up, and your educational background and experiences.

UC: Right. I was born in 1943 in Fairfield, a suburb of Birmingham. Two years prior to my birth my parents, both Mississippi sharecroppers, came to Alabama in the hopes that he would get a job at the old Tennessee Coal and Iron division of US Steel, TCI as it was then known. So my father worked there at US Steel from 1941 until he died in 1969. The family moved from Fairfield to Westfield. Westfield was a company-owned town about two miles from Fairfield. It was built by a subsidiary of United States Steel back in the '20s, and it was built for the purpose of providing housing to the employees of US Steel. Westfield was a, probably one of the few truly separate but equal towns in the state of Alabama. In fact in one significant way the blacks who lived in Westfield were better off than the whites. Whites were less than twenty percent of the population of the city. It wasn't a city, the village. But whites were bussed out of Westfield into the county schools, Hueytown and Pleasant Grove. There were three schools in Westfield for blacks, a grammar school, a middle school and a high school. The housing was equal. Of course whites lived in one section; blacks lived in the other sections. But the maintenance was equal. There was a dispensary, medical clinic just

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outside the village with separate but equal facilities, and there was Lord Noland Hospital, which was built for the employees of US Steel. It was probably the only separate but equal facility, medical facility, for blacks in the state of Alabama. In most of the other hospitals blacks were in the basement including the old Hillman Hospital, which is now UAB [University of Alabama at Birmingham].

So that's where I grew up. I went to, graduated from Westfield High School in '61. My family, I have eight siblings. My sister Arnice, three years older than I, was the first of our family to go to college. She went to Miles College in Birmingham. I started at Morehouse in Atlanta three years later but dropped out and came back to Miles and participated in the demonstrations and graduated from Miles in '65. I went to Columbia Law School and came back here in '68 and started practicing law with Oscar Adams and a friend that I had met in law school, Harvey Berg who was a year ahead of me at Columbia. Harvey was Jewish and had come down several summers during law school and decided that he wanted to practice civil rights law in Alabama, and so we ended up practicing together for two years.

WA: Okay. So tell me a little bit about your work in the Anti-injustice Committee when you were at Miles.

UC: Well, I came to Miles in December of 1961, and at that time the college had a new president, Lucius Pitts who was quite a civil rights activist on his own, and he encouraged the students to get involved in the civil rights. The president of the student body then was Frank Dukes, who was an older student. He was thirty-five years old at that time. He finished Fairfield High School and had gone off to Detroit and was pretty streetwise, but then decided he wanted to come back home and wanted to be a teacher.

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So he was majoring in elementary education and had been elected president of the student body for the '61-'62 school year, and in a conspiracy with President Pitts, they were urging blacks in Birmingham not to shop in the stores which offended their dignity. It was a boycott in the true sense of the word, but since boycotts were illegal under Alabama law, it was called a selective buying campaign. So even though I knew that I wanted to be a lawyer since age thirteen, it was a movement that I got caught up in and participated in it.

WA: So tell me about your first two years practicing law in Birmingham.

UC: They were some very interesting times. The schools in Alabama were all rigidly segregated at the time when I received my education or lack thereof. So they remained segregated during the time that I was in college and in law school, notwithstanding the *Brown* decision in 1954. In '57 Reverend Fred Shuttlesworth had taken his kids to Phillips High School, and all he got to show for it was a bloodied head in the view of the policemen and the press. So shortly thereafter a lawsuit was filed against Birmingham School Board, but consistent with the practice of federal judges, particularly the Judge, Mann, who was then the chief judge here, the case was never set for trial.

It was not until 1963 by which time Fred Shuttlesworth and Reverend Nelson who was another one of the original plaintiffs and several others had either left town or had been persuaded to withdraw from the lawsuit. That left only one plaintiff, Dwight Armstrong a black barber on Eighth Avenue who persisted, and in 1963 Judge Lynn ordered the school board to allow his kids to enroll at Graymont Elementary School. That was the beginning of the desegregation effort.

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Two years later in 1965 the lawyer who was later to become my partner, Oscar Adams, filed a lawsuit Blevin Stout on behalf of his daughter Linda Stout against the Jefferson County School Board. A local lawyer in Bessemer, David Hood filed a lawsuit against the Bessemer School Board. Demetrius Newton who was a black lawyer out in Fairfield, my inspiration for becoming a lawyer, had filed a lawsuit against--same year, same year--a lawsuit against the Fairfield School Board. So that the school systems in Jefferson County other than Mountain Brook--which is 1957 had withdrawn from the Jefferson County School System and set up its own school system. There were no blacks living in Mountain Brook so it remained an all white school system. The other, the county school board as well as the other municipal school boards were all in litigation, and in 1966 the Fifth Circuit Court of Appeals ordered the school boards in what they called the Jefferson cases--. By that time United States had filed a lawsuit against Jefferson County, Birmingham, Bessemer, all the rest of them. Under the Johnson administration the Justice Department had become actively involved. So the Justice Department's lawsuits were consolidated with that of the private plaintiffs. In 1966 in a pretty important case the court of appeals ordered all of the school boards to come forward with a freedom of choice desegregation plan, which of course put the burden of desegregation on the backs of black students and parents. That was the system of school desegregation that was in effect when I came out of law school in 1968.

In the meantime in 1967 the United States Supreme Court had decided the case, *Green v. New Kent County*, which it said that these freedom of choice plans had to go if they did not work in terms of bringing about meaningful desegregation of the school systems. The freedom of choice plans had not worked in Alabama and elsewhere in the

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country. So I was, I started working for the NAACP Legal Defense Fund when I was a second year law student and actually started doing some work in the Jefferson County school case, paralegal-type, when I was in New York. So when I came back with a subsidy from the Legal Defense Fund, I took the primary responsibility for the Jefferson County school desegregation case. So we filed in the summer of 19—no, we filed in the fall of 1968—right after I got my law license—a motion for further relief in the Jefferson County case and in the other cases as well asking the judge to require the school boards to abandon the freedom of choice plans and to come up with zoning plans of school desegregation.

Judge Lynn had all the cases at that time and he denied all of the motions, and in the summer of 1969 they were argued in the court of appeals in the city of New Orleans. The court of appeals ordered—it consolidated school cases from Georgia, Florida, Mississippi, Louisiana, Texas, and it was the lead case was *Jackson v. Singleton v. Jackson Separate Municipal School District*. All the others we, at that time the Fifth Circuit court of appeals had about twenty-five judges. So they set all of these cases down for a hearing at the, argument at the same time in New Orleans, and I argued the Jefferson County case. But the court of appeals either in late August or early, no, it was in September or October of 1969, the court of appeals ordered all of the school boards to abandon the freedom of choice plans and to come up with zoning plans effective at the beginning of the 1970-'71 school year, the next school year. The Legal Defense Fund sought certiori in the Supreme Court, and the Supreme Court had by that time decided that it would get serious, and so it announced the desegregate now strategy or formula. So the court, the Supreme Court reversed the Fifth Circuit and told the Fifth Circuit to

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order the school boards to desegregate by the beginning of the second semester of the '69-'70 school year. And that's what happened. And that's when the principal orders were in each of the cases requiring the school boards to come up with the zoning plans of desegregation. That's when that came about and teachers were reassigned to schools over night. Students were reassigned. It just happened. The major plans, which were adopted then, were the plans under which the schools were desegregated.

Now there was a whole round of new litigation relating to Jefferson County, for example. When the handwriting was pretty decipherable on the walls, four separate cities Pleasant Grove, Midfield, Homewood and Vestavia Hills withdrew from the Jefferson County School System. They set up their own independent school systems. I moved, filed a motion asking Judge Pointer to hold that they could not do so. I lost but he did do some interesting things. At that time the black population, student population of the city of Homewood approximated the black/white student enrollment in the county system as a whole. It was about thirteen percent. So Homewood was not required to do anything. It set up its own school system. It wasn't required to do anything. Vestavia Hills at that time as I recall had no blacks living there. So Judge Pointer bought into our argument that Vestavia Hills should be required to bus in blacks. So we went to a map, identified the nearest black community was then called Nixon Quarters, and that area was in effect adopted for school purposes by Vestavia Hills, and Vestavia Hills had to buy buses and bus blacks into the system. That area now is the site of a fairly new real estate development by blacks. So those blacks, although they live in the city of Birmingham are being bused into Homewood. Midfield, which at that time was an all-white city adjacent to the all-black Roosevelt city and adjacent to the predominantly black city of

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Brighton, Midfield was required to bus blacks from Brighton into, to buy buses and to bus blacks into the Midfield system and it did so. Pleasant Grove was required to buy buses and bus blacks from Dolomite, a mostly black city, into Pleasant Grove. Actually the schools, there was a fairly new school in Dolomite, the Woodward Junior High School. So we urged Judge Pointer, and he bought our argument, to pair the Woodward Elementary School with the Pleasant Grove, Woodward Junior High School with Pleasant Grove Elementary School. As it turned out Woodward was fairly close to the city limits of Pleasant Grove, and so the county cut a new road into the rear of Woodward's campus so that the whites from Pleasant Grove wouldn't have to go through a black neighborhood to get to Woodward School. But the Pleasant Grove City Council, the city board of education, the new one met and decided that it wasn't going to buy buses. So I then filed a motion asking the judge to shut it down, shut down the system and he did. I think Pleasant Grove is still a part of the Jefferson County school system. So that's what happened.

WA: So would the freedom of choice plan, the 1966 freedom of choice plan, did that involve integrating faculty or was that's just student choosing which school?

UC: It was just students. Now actually they were required not to discriminate against black applicants for employment as teachers in the system. So when for example my wife was hired in 1969, she was sent to an all-white school, Concord, and she's remained there until today. She is now the longest serving teacher at that school. She's going to retire at the end of this year.

WA: So what sort of, what were the defense or delay tactics of the school board in this extended period of litigation, twenty years worth of—

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UC: Well, principally what the school board did, school boards did, not just in Alabama but all over the South was to ignore *Brown*. They did not take any affirmative steps to desegregate. So the burden was then on black students to apply to attend the white schools. There was an Alabama Pupil Placement Act—

WA: Albert Boutwell law, right.

UC: Yeah. Which gave to the state board of education the right to assign students to various schools on all kinds of subjective criteria and that type of thing. So that was utilized to deny those courageous blacks who dared to apply for enrollment in white schools and give them the run around for a long period of time until the act was declared unconstitutional or whatever. So the boards just didn't, they just didn't do anything. They basically waited to be sued betting that in most instances blacks were not going to sue them because you had to get a lawyer and someone behind a lawyer to support the litigation in order to have a successful lawsuit. They knew that the judges for the most part were sympathetic and were not likely to set the cases. So they simply didn't do anything.

WA: What about once the litigation started, once the Armstrong's case was brought forward. What were some of the defenses that you came up against?

UC: Well, the principal argument that I heard was that the white parents wouldn't send their kids to black schools and that having black kids in white schools would be disruptive, both to—. It would be inimical to the educational objectives of the blacks, and it would in effect bring down the achievement level of the whites. I mean they, the lawyers knew that ultimately those ridiculous arguments would have to give way to the superior force of the law. But that took time. They were buying time.

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WA: So you continued the major plan for desegregation started that spring of 1970.

UC: It was in January.

WA: In January of 1970. That's when it would start.

UC: Right.

WA: So what sort of cases were you working on after that. Did you continue at that law firm?

UC: I stayed with—well, my law school friend Harvey Berg went back up north. He alienated most of the white federal judges.

WA: Yeah.

UC: Yeah. [laughing] Amazing guy. In fact Harvey was the one who really started the lawsuit against Bear Bryant. I inherited it. Harvey was meeting with the, there was an Afro-American student association at the University of Alabama, and Harvey would at his own expense go down and meet with them, encourage them, and by the time that he was thinking about going. His wife never liked it. She was from Rochester. Her folks were the founders of Eastman Kodak Company. She never really got used to [laughing] she never got used to, no Sandy never really did relate to the South. So he had to go on back up. So I ultimately I had to take over Harvey's case and actually file the lawsuit against Bear Bryant.

I stayed with Oscar Adams until I came on the bench in 1980. There was a lot of work to be done because the school boards were very devious, and there was, the superintendent of the Jefferson County School was Jay Rebus Hall an educational expert. But he was as devious as he was brilliant. I, one time I recall, we were refining this

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segregation plan, and I was arguing that the students from the Woodward community should be zoned to Rutledge School. It was true that the Woodward Plant had closed, but on the witness stand and under oath Rebus Hall said that no blacks lived in Woodward. I had just been out to visit it a week earlier. So on the lunch break I had to drive out to Woodward to make sure that there were still some black families. [laughing] They would often demote black principals and administrative personnel, and we'd have to go to court on that type of thing. There was a constant effort to build new schools in either all-black or all-white neighborhoods so we had to battle that type of thing. So for over a three or four year period, say from '69 to '72, '73 at one point I counted up, we had during that period of time thirteen or fourteen appeals to the court of appeals. Now that means, many times when we filed a motion in the district court, particularly after Sam Pointer became a judge and the case was assigned to him, he'd rule in our favor. At other times he wouldn't and we'd appeal it. But we were constantly in court on some issue or another, the demotion of principals, firing of a school teacher, non-renewals of contracts, the location of schools, the alteration of zone lines, the granting of permits – transfers to whites who lived in a particular zone so that they could go to school in another zone where whites were in a majority, that type of thing.

WA: So to ask sort of the bigger type of questions, so in your opinion, what were the goals of school desegregation?

UC: The goal, the overriding goal was to provide the black students the same quality of education as was given to white students, and as we saw it back then the only way to do that was to have black and white bodies in the same buildings, same classrooms.

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WA: Do you think that school desegregation fulfilled its goals?

UC: No, it didn't. Because Maurice Bishop, the now deceased lawyer for the Jefferson County School Board, he was an old man when we were fighting these battles. I remember him saying to me one day as we were leaving the courthouse he said, "Mr. Clemons, the mood of this country is about to change. You're going to see nothing is going to come of all this desegregation business." This is 1969. And it did. So what happened is that in Birmingham for example, the whites basically left the system. Either went to private schools or they moved out of the city. The county school system became whiter because Birmingham started annexing, and it annexed a number of the black communities making the Birmingham City System blacker and the Jefferson County system whiter. So all kinds of things came in. So the quality education which we sought was just never achieved, and when blacks took over the school systems, the level of dedication and commitment, which we assumed, never materialized.

WA: So for Birmingham City Schools, is school desegregation an ongoing issue or is that something that—

UC: No, it's no longer an issue because the schools are basically black run by black administrators.

WA: So now because of housing and white flight—

UC: Yeah—

WA: ... its sort of a "non-issue"?

UC: White flight and the annexation of black areas, it's become a non-issue.

Yeah.

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WA: Do you think that your view of school desegregation as having not achieved its goals is representative?

UC: Yeah, I think it's representative of the country.

WA: Of the country and of Birmingham.

UC: Yeah. I do.

WA: What is, sort of, the challenge facing our schools now?

UC: I don't know if I can speak to that because I've been away from it for so long. I've been a judge twenty-four years now.

WA: Okay. What, you mentioned Bear Bryant, what other civil rights cases did you take on after 1970, not specifically schools necessarily?

UC: Well, as I mentioned to you my father was worked for US Steel. He was always a bricklayer helper. They had racially segregated job classifications although he was actually a bricklayer. Actually laid bricks in the furnaces for making steel, the bricklayer classification was a white job classification. It was something like a job class sixteen. The bricklayer helper was a black classification. It was job class six. Blacks could never become bricklayers. So it was my joy to be one of the lawyers who handled the Title Seven case against US Steel. In 1971, we tried it for about six months in 1970-71, and at the end of the case – the government intervened in the case – the Justice Department, and at the end of the case Judge Pointer, rather remarkable man from Birmingham went to Vanderbilt College and Alabama Law School. He's a young Republican, but he was very conscientious, and like all of us a product of his background and upbringing. When the law was clear, Sam Pointer would follow the law, which I'm sorry to say was just not true of the other federal judges at the time. So in 1971 he

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entered a decree requiring a complete reformation of the employment pattern at US Steel, and it became a model decree for the nation. Within two years the nine leading steel makers in the country had entered into a consent decree, *United States v. Allegheny Ludlum* in which the US Steel decree was adopted by the other steel makers throughout the country.

WA: Wow. I wanted to ask you about the Birmingham Civil Rights Institute. I ran into your profile that you were on the founding board of that.

UC: Yeah.

WA: Can you tell me a little bit about the decision to create the Civil Rights Institute?

UC: Well, I was not a part of that decision. The idea was hatched somewhere between David Vann the former mayor of Birmingham and Richard Arrington who was at that time the mayor of Birmingham. Dick Arrington was the dean of men and later the dean of, the academic dean of Miles College when I was a student. When all of us were running around and doing our thing in civil rights, marching and demonstrating, boycotting, Dick Arrington was in the chemistry laboratory. He didn't participate [Clemons laughs]. So ultimately he became active in politics, served on the city council. Then when David Vann had a problem in doing what we thought was the right thing to do in a police brutality case, we encouraged Dick to run for mayor. He became the first black mayor of Birmingham, and I think to atone for his inactivity during the civil rights movement [laughing] he and David Vann came up with the idea of creating the Civil Rights Institute. The city funded it initially, funded the construction of it, and for a

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number of years gave \$750,000 a year to the operation of the Institute, and I just happened to be one of the persons asked to be on the first board.

WA: So tell me quickly, I don't want to keep you too long, about your appointment to federal judgeship in 1980 or 1979.

UC: There's been nothing like it before or since in terms of the appointment to the federal bench in Alabama. At that time I was a state senator—

WA: From Birmingham, right.

UC: Right and a civil rights lawyer, which meant that I was not a fair-headed boy for the legal establishment in this town. I had, I had been fairly active with the American Bar Association. There's a section of individual rights and responsibilities, a major section of the ABA. It affected the civil rights section. Ruth Bader Ginsberg was there at that time, of course. I was on the executive council, what they called the section council, about fifteen lawyers nationwide of the section of individual rights. But there was a lot of politics involved. The Omnibus Judgeship Bill of 1978, I think it was initially created two additional judgeships for the northern district of Alabama. I had this good friend, Elaine Jones, she's still one of my best friends. She was NAACP lobbyist, Legal Defense Fund lobbyist in Washington at the time. We'd handled a lot of cases together. She took the position that it was time to have a black judge in the northern district. So she lobbied with Senator Heplin and Senator Stuart to add an additional judgeship, to have three because each one of the senators we knew would want to appoint his man to one of the judgeships. So they'd agree on a third one for blacks. It was not at all clear that I would be the one. In fact initially I had no interest in it. Then I thought about it and decided that I did want to pursue it.

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At that time there was a, the Democratic party had two camps. There was a George Wallace camp, and then there was a Bob Vance camp. Vance was the chairman of the state party. He had sort of ousted George Wallace for control of the party. There was a little group here in Birmingham called—there was a restaurant called, I don't know if you ever heard of it. It used to be there on Fifth Avenue between, I mean on Twentieth Street between Fourth and Fifth Avenue. It was Joy Yung. It was a Chinese restaurant. It was the place to go for the power brokers in Birmingham in those days, and so there was this little group that I dubbed the Joy Yung for Lunch Bunch. Bob Vance who was chairman of the party, Clifford Fulford who was the lawyer for the party. Clifford Fulford's partner Max Pope, and there was Mason Davis a black lawyer who was a part of this little group who met at Joy Yung's and plotted the course of Democratic politics in the state. So when the judgeships were created—oh and Judge Clarence Allgood, federal judge. Oh yeah, he as part of that little group. So the Joy Yung for Lunch Bunch had decided that they knew that Senator Heflin was going to appoint his campaign manager and good friend Bert Halter to one of them. They expected Senator Stuart, Donald Stuart to defer to the party. So they were going to appoint Clifford Fulford to the other, to the Stuart judgeship, and they were going to appoint Mason Davis to the black judgeship. So two out of three, this little bunch decided. Well, Donald Stuart surprised them, he appointed, announced that he was going to appoint a lawyer who was basically unknown in Democratic politics but his former law partner Bob Probst from Anniston, which knocked out Clifford Fulford—

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START OF TAPE 1, SIDE B

UC: So Donald had made it clear all along that he wanted me to get the black judgeship. Senator Heflin was sort of committed to the Joy Yung for Lunch Bunch. So Mason was his, I think, his first choice. Just before the decision was to be made, he decided after he heard some rumblings that he would have his staff call a hundred black leaders throughout the state and see how they felt between me and Mason. Well, now I'm reliably informed that I got ninety-five of the votes. It didn't hurt that one of my former law associates, Mary Stanza was doing the calling. [laughing] But Senator Heflin then made it clear he would back me. Then Max Pope, Clifford Fulford's partner, Max Pope was the ABA delegate, represented the whole state of Alabama to the House of Delegates to the American Bar Association. Max Pope called a press conference and said that he was going to do three things. First, he was going to see to it that Donald Stuart, since he didn't appoint Clifford Fulford, Donald Stuart was not going to be elected, re-elected. And he was going to see to it, since Jimmy Carter hadn't appointed Clifford Fulford, notwithstanding the recommendation, he was going to see to it that Jimmy Carter was not re-elected, and he was going to see to it that I would not be confirmed.

WA: Oh wow.

UC: [laughing] So it was, it got to be very, very vicious. There were daily attacks on me by the *Birmingham News* and *Post Herald*. Just a whole lot of things. There were some tax issues. The IRS agent had filed a tax lien against me, which I didn't know about. As it turned out and so a whole lot of publicity about I hadn't paid taxes, filed a lien against me and I had lied about it on a judicial, on my questionnaire and various things. It turned out that the FBI during the confirmation, it was very, very

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contentious. It was the most controversial judicial nomination, federal judicial nomination probably in the history of the state. The *Columbia Journalism Review*, there's a Columbia Journalism School issues a Pulitzer Prize. They did a study of the articles to show that, show how biased they were. There were just absolute lies and things being told. But anyway, the whole thing seemed to turn on whether I was lying or the FBI agent was lying because there was no question that on a day certain I had, when I had promised him that I was going to pay ten thousand dollars on my past due taxes, that I had paid forty-five hundred dollars. My testimony was that I called Mr. Page that day and told him that I didn't have the ten thousand. I would send forty-five hundred dollars down there. Would he give me an additional thirty days to pay the balance. He said yes. Well, and he said, no, I had not called him. He didn't know anything about it. So and the only records we had were the copies of the IRS records showed January 15th, the only notice words written there were January 15th, tax lien filed. All right. So we up before the Senate Judiciary Committee, incidentally, up to that point, my testimony before the judiciary committee was had taken more time than any other nominee up to that point in the history of the country.

WA: Wow.

UC: Senator Heflin had the FBI go and get the original records. They showed that an erasure had been made for January 15th, and they couldn't make out everything that had been erased. But the FBI was able to lift some of the original writing, and the original writing showed January 15th, Mr. Clemons called and said, and he erased all of that. So when the true facts came out, even Orrin Hatch and Strom Thurmond voted for me. [laughing]

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WA: Oh wow. Oh wow.

UC: Yeah. Yeah.

WA: And so, quickly we're at about an hour. But maybe tell me sort of briefly about the cases that you worked on as a judge here, 1980 I'm sure there are many.

UC: Okay. I had the case that expanded the Jefferson County commission from three members to five so that blacks could be elected to the county commission. There are two members on the five, five person committee. I had any number of employment discrimination cases. I had consumer fraud and mass tort litigation. The contamination of the Triana, Alabama back in the, it actually happened back in the '60s, '70s and '80s. An older manufacturing company had a plant where it manufactured DDT near Huntsville. There was a black community, Triana, which was disproportionately affected by it. It eventually settled for what was at that time a fairly substantial amount of money. This was in the late '80s, fifteen million dollars. Most recently and this was a very controversial case too, I had this case involving the Monsanto Company which manufactured DDT in Anniston, Alabama.

WA: Right.

UC: Yeah. Yeah, and that resulted in a three hundred million dollar settlement. The lawyers got forty percent of it. *Forbes Magazine* wrote about it last week. [laughing] Yeah. Yeah. I now have the, I inherited the breast implant cases all over the country from Judge Pointer when he came on the bench, when he left the bench. I guess those are some of the more important ones.

WA: So is there anything that I haven't asked you about school desegregation cases in particular, school desegregation in Birmingham that you think is important?

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UC: No, I can't think of anything.

WA: Well, thank you very much for your time.

UC: My pleasure.

END OF INTERVIEW

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