

Interview

with

Harry Hopkins

June 15, 2005

by Willoughby Anderson

The Southern Oral History Program
University of North Carolina at Chapel Hill

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START OF TAPE 1, SIDE A

HARRY HOPKINS
JUNE 15, 2005

WILLOUGHBY ANDERSON: Today is June 15, 2005; the interviewer's name is Willoughby Anderson. I'm here in Birmingham at Ogletree Deacon, to interview Harry Hopkins for the Southern Oral History Program's Long Civil Rights Movement project on school desegregation in Birmingham. If you could please say your full name we'll see how you are picking up on the microphone.

HARRY HOPKINS: Harry L. Hopkins.

WA: So let's begin, if you could please tell me a little bit about where you were born, your childhood and growing up and going to law school.

HH: I was born in Pigett, Arkansas, which is a small town located in the northeast corner of Arkansas, right on the Missouri border. It was a town of three thousand or so, essentially a farming community. My father was a blacksmith. I have eleven brothers and sisters and that's essentially Pigett. [laughs] You might be interested in the fact that there are no blacks in Clay County, Arkansas and I don't believe there have ever been any. I used to tell some of my colleagues that we sort of served the function as the typical southern black because we were the agricultural workers. I moved away some years after that and spent some time in St. Louis, Missouri with an older sister. Then I moved to Mississippi where I went to college. I had always wanted to go to law school, not being a person with money it was very difficult to get a fellowship to go to law school. It may still be difficult. So, I went to Harvard University in anticipation of perhaps a career as an economist. That lasted only a short while, and then I got a fellowship to Tulane University to study law, so I did not graduate from Harvard University. I then went to Tulane University in New Orleans and I

was variously referred to as a Tulane Fellow, or whatever it was, but they were very nice to pay me a stipend and my fees and whatnot.

I always wanted to go back to Mississippi and be a small town lawyer, so that's what I did. I went to Meridian, Mississippi. I had done reasonable well in law school and the top people in my class were getting these exotic fellowships to go off and I was going to Meridian, Mississippi. That was kind of a joke to everybody. I went there as a private lawyer, doing whatever I could do. I did one murder case, represented a black person who was charged with murder. I did a lot of lawyer stuff on a small town basis. I have now forgotten the month in which it happened, but when the three civil rights workers were at first obviously missing and then found, Meridian became a very interesting place at that point. There were significant numbers of federal people, law enforcement of all kinds and you did not know who was involved. It was a very difficult environment to live in, to function in and it was protracted it took a while for them to find it. I was very uncomfortable, very uncomfortable, so that's when I left and went to New Orleans again with the Labor Board. From there as you indicated off the record I went to Lange, Simpson in Birmingham for a lot of reasons I guess, certainly not political, none of them were political reasons. Birmingham as you may know is not too far from my home in Meridian, it was! the principle industrial city that was closest to me in Meridian. There was a lot of activity here, the kind of stuff that I could do. A lot of labor activity and later on a lot of the civil rights, Title VII activity, which seemed to be Lange, Simpson's interest in my coming to work with them. It was certainly a struggle on my part as on the surface it appeared that I was joining up with the establishment when I went with Lange, Simpson. I did it for my own reason and I did not think I would be compromised and I was not. I also thought that I could do more working

inside than I could on the other side. So, that is essentially how I got where I am.

WA: Okay. Tell me how you became interested in Labor and Employment Law.

HH: Well, I studied economics and I am a sort of a phony economist by early education and very much interested in the labor component of the factors of production. As a result of that I became very interested in labor and the functions of collective bargaining, how it worked and how it worked to provide workers with a voice in the workplace. It was a natural fit for me somehow and I enjoyed it very much and still do. I am a strong believer in collective bargaining. Labor law is unlike all this other stuff we deal in, it sort of occurs on the live stage and you use economic factors in decision making and in the approach to collective bargaining. It's not something that lasts forever, you get involved and you finish with it and you get out, and that was very appealing to me as well. It was on a live stage and it was very active and you could see the end when you started, which is unlike a lot of law. I had never been involved with a union and my personal views were very much pro union and still are. I think I recognize when either side upsets the equation so it has been a natural fit and I wouldn't have done anything else.

WA: So, when did you join Lange, Simpson, what year?

HH: The only thing I can say is it was the early 1970s, like 1971 or 1972.

WA: When you first joined, is that when you began working with the school board cases?

HH: Yes, and let me tell you about the school board cases. Lange, Simpson represented the Birmingham Board of Education for many years, since at least the 1950s and perhaps even before then, I can't give you the exact dates. Lange, Simpson had represented the School Board on what I call a continuing basis and different lawyers within the firm did

different things for the School Board, as they required. Lange, Simpson represented them in the early desegregation efforts. As you certainly know we went through a separate but equal period and we went through freedom of choice/no-such-thing-it's-separate-but-equal. Then they represented them, this was before I got there, in the initial desegregation plan. What happens, and you probably know, because of the legal separation the courts required a plan of desegregation to be submitted. That plan was submitted. The lawyer that worked with me on the later part of the case was Bill Somerville, I'm sure he and some of the others worked on that initial desegregation plan. What you do is break up, the dual school system and you don't break it up just on the students, you break up all of the components, faculty, students, facilities and what not. You then submit that plan to court and if it's approved, you operate under it. That was done by the way of a consent decree in the late 1960s or 1970, which is my best guess as I don't have any of those records as you know. Then the school board operated pursuant to the plan and they are still under court supervision. One of the requirements of the decree is always that you submit reports about your compliance with the decree. Bill Somerville of Lange, Simpson did that.

Let me say that guessing, when we had a dual school system in Birmingham we had roughly 100,000 students. We began dividing up the schools and bringing them together and there were perhaps 70,000, then you take the faculty and assign them to the different schools, to break up that particular part of the historical segregation. Certainly the board filed its reports with the court and at some point, again I do not know the date but I am thinking it has to be the last half of the 1970s, somewhere from 1975 and on. There was a motion filed that is referred to as a motion for further relief, and the law was changing at the time. You start out with condemnation of separate but equal and then you go to the plan, then you move into

an area where the question is after the plan is developed, whether the plan is complied with or must affirmative action be taken to eradicate-if I remember the famous words out of one of the cases, "You have to eradicate the effects of past discrimination root and branch." I have always been intrigued by those words. Then you have an affirmative obligation to not simply comply with the plan but also take reasonable efforts to eradicate "root and branch" the effects of past discrimination. So then we have this plan that has been approved by the court, we have a motion for further relief filed and I can't remember who did the filing first, but the plaintiffs' lawyers filed motions for further relief and I know well they filed on behalf of some named individuals that sought positions in the central office. What I can't remember if the plaintiff's lawyers or the Justice Department filed the motion for further integration of the students, it may have been both or it may have been just one side. My present thinking is that the plaintiff's lawyers filed on behalf of the teachers and the Justice Department filed on behalf of the students. The records that I do not have would show that clearly.

Typically the way cases develop, you try to staff it from Lange, Simpson's point of view. You had Bill Somerville, who was one of the finest lawyers that ever lived, and he worked very closely with the school board. There was a new law regarding the faculty which essentially stated that you had to make the faculty equal, you had to integrate the entire faculty. That kind of case was something that fit my background. It is nothing more or nothing less than a court decree that incorporates anti-discrimination provisions and also questions whether you have done enough when you broke up the dual school system. So, that's how I got involved because I was also interested in the discrimination laws and certainly Title VII had come into play at that point. I had been doing the-are you familiar with Title VII, the Civil Rights Act?

WA: Somewhat.

HH: It was made applicable to the public sector and it involves typically individual discrimination or class discrimination, and you file a charge with the EEOC and then you may sue saying that, "I was not hired because of my race" or "I was not promoted because of my race," it also deals with sex, religion and other things as well. Somehow, I don't know how but I got the job of doing those kinds of cases, which perhaps qualified me to some extent to do the faculty side of the desegregation case. The decision was made and I was put on it with Bill Somerville and we sort of did it together. Bill had worked some of the prior desegregation cases against the Birmingham board and had a tremendous background in what was going on. I had some background at that point in the faculty, so we just put it together and that was the way the two of us were selected or however it was done, I don't really know.

William Cody was the Superintendent at that time, he was by far the best educated Superintendent in the Country. The only person I know, I believe, that has three degrees from Harvard in Education, but he was also just an outstanding person. I suppose it would be safe to say that at all times prior to his coming, you had a dual school system at some point and you broke that up, and a white person became a Superintendent, and then when the need to fill it came again, the board went outside to get Cody instead of taking some of these people that were perhaps qualified to take the position. They brought in one of the most outstanding educators I believe I have ever met, he is a great guy. We worked very closely with him. Of course he knew the ins and outs, he's not some theoretical person that-he's done it and he's very well respected.

WA: Where did he-was he working in a city before Birmingham?

HH: Yes and I'm not sure, God help me if I'm wrong, but I thought he had some Chapel

Hill service. I seem to remember when he left Birmingham that he went to one of the large school systems in Maryland just adjacent to D.C., but I can't recall the name of that school. He was in a school system before and I have forgotten where, but he was certainly a talented and well experienced person.

WA: So for the teacher desegregation case that you were working on, what was the school board's position on that? What were you doing?

HH: I'm not sure that I can speak precisely to that because of the developments. The question as to the faculty, the motion for further relief appears to have taken two different attacks that the black plaintiffs had some special right to be promoted under their decree or that they had been discriminated in not being promoted. Now that's kind of a subtle distinction, but none the less, they wanted to be promoted to what we call central office positions. Central office was sort of the group that runs the system; they don't work in a school full time. They have different roles and jobs in the central office. That was the part of the case that came along with the Justice Department's request that we further integrate the student body. Certainly, I will tell you anything you want to know, but as it turned out in terms of the long litigation that we went through and the many, many conferences, the student issue dominated the case. The central office issue wasn't the dominant issue at all, that was one that we had to deal with of course, but we did, as an end result. We dealt with it, but I'm not there yet. The Justice Department as far as I could tell had very little interest in that part of the case, now I'm just guessing. They had more interest in the student assignment portion of the case.

WA: Why do you think that was?

HH: You know, I don't know. I'm not a very good politician, and I don't know what

runs these things. It seemed to me that we had some very fine plaintiff's lawyers, the finest in the country and they are from here, one was Oscar Adams-do you know Oscar?

WA: I've interviewed U.W. Clemens were you up against him?

HH: Yes, and it was U.W. and Oscar and I had the pleasure of campaigning for Oscar when he became the first black Supreme Court Justice. I had the pleasure of recommending Judge Clemens for the Federal Court. They were certainly outstanding lawyers. U.W. was extremely experienced and they were both from Birmingham and that probably at the end result was a good thing. I sort of sensed early on at that proceeding that they were probably more interested in the faculty issues and the Justice Department were more interested in the student placement issues. I can explain that in some detail later if we need to. We had at that point a very interesting configuration. Birmingham is at the bottom of a bowl as you may know. The northern and western parts were essentially black, the eastern part, parts of it were white in the south and the eastern corner and at one time a significant part of this was predominantly black. Roughly generalized, that kind of configuration with the student population being sixty five percent black and thirty five percent white-

WA: In the early 1970s?

HH: Well, it's going to be the middle of the 1970s now. You can readily see that there has been a population shift, rather dramatically. I have drawn this bold here on this piece of paper. It was kind of an interesting location because if you start looking around the border you will see separate cities. Then we had twenty one cities and they were pretty much adjoining Birmingham, just fanned way out. Let me make it clear, I know what the definition of white flight is but I am not sure I can prove it. We had significant white flight for whatever reason. We had white flight I believe is because of crime and grime and pollution and

whatever, also you have white flight because of school systems. We had significant white flight, I want to say from the 1970 decree it was roughly fifty/fifty, please don't hold me to any of these. If you ask Judge Clemens if I'm giving you the right numbers, he'll set you straight because he has the records and I don't. He also has a much better memory than me. It's roughly that fifty/fifty at that point that they were striving for and at the time it was roughly sixty five percent black and thirty five percent white, so they didn't have that far to go when they wanted to move for whatever reason. So, with that kind of configuration and with white flight, if you look at the Birmingham schools you will find that the eastern schools were, I don't want to say lily-white, but were significantly white, and some of the southeastern schools and just kind of spotted. It's a good long ways from the tip of the eastern border to the tip of the western border, the Justice Department wanted Birmingham to further integrate and there was only one way to do it. That would be to use buses.

Birmingham never had buses, they had never bussed children so that was one of the issues. I can look at the sixty-five/thirty-five configuration today and no doubt I can see white schools and I can see black schools. There is just no doubt that these schools over here had a significantly higher white population and these schools over here had none. So, the Justice Department based on the reports that the board of education dutifully filed, said let's take these and mix them with these and we'll just have to buy some buses. That was one of our arguments, I don't believe until that time the school system had been essentially forced to buy buses in order to accomplish the affirmative obligation to desegregate. We, like anything else in the law had to figure that was very simple. Since then some courts have hesitated to say it's too bad you have to go buy it and put it in. At any rate it had not been developed at that point. Usually when that happened, and in some of the other cases you were not dealing

with sixty-five/thirty-five. If you were dealing with thirty-five/sixty-five, in my opinion you could make a better case for busing. We thought that we could be able to show and in fact I think we did show this, that if you look at the history of the student populations at various points from 1970 and on, you can gauge the loss of white population in the city of Birmingham by a percentage basis. Obviously, you can't say that's because of the schools, but anytime there was some activity in the desegregation case that percentage would go up.

There is a! so a known fact that once a school during the desegregation process reaches a certain population, it will tip. What that means is that it will essentially become all one race, with this population configuration. Maybe I'm simplifying it too much, but we recognized the () in the illustration I have given to you, predominantly white schools and predominantly black school is what we called them. To simplify it we said do nothing and you will, before this case is concluded in about five years, it will be eighty five percent black, if you do nothing. Our basic argument to the court was equity isn't blind and these statistics show that the population movement is going to continue and it was a needless gesture to impose busing on this kind of system, where you take white kids from one end of town and send them over here. They are just not going to go; they are more than likely going to jump over the border. The cases were clear that white flight was not a defense, but those cases didn't have this component of if we do nothing this is going to be the result in five years.

WA: The result being that schools were turning over racially or that they were desegregating?

HH: They would be all one race; eighty-five percent is what I predicted, instead of sixty-five. You certainly couldn't achieve much more than that with busing of any kind. We used Dr. Letson, who was the former Superintendent of the Atlanta school system as an

expert and that was his conclusion based on these statistical studies. Keep in mind we are flying into the face of white school, black schools and the inevitable that it is going to be virtually all black or significantly all black in a short period of time. The Justice Department seemed to be kind of blind to that. I don't believe the plaintiff's lawyers were blind to it because they I believe were each of them out of the Birmingham school system. We had significant numbers of black schools that didn't want to participate in this kind of activity that would probably not lead anywhere. The object of school desegregation was to have a unitary system. That means basically the two races together, but I suppose unitary could also mean one race. It appeared to me that we were on the verge of a one race school system. That was the hand we were dealt. I remember one time, one of the interesting moments in the case was when the U.S. Attorney [Sherris?], out of Oneona he had reached an agreement with us. The Attorney General did not like the agreement he had made, but Mr. [Sherris?] to his credit was going to report to the court that he had reached that agreement with us and that it was a binding agreement. He was going to be fired by the Attorney General. They had a Justice Department lawyer that was involved in the case as well along with the U.S. Attorney, but we had that agreement. So we had that little bit of drama there that the government was going to fire its own person-

WA: What was that agreement?

HH: A way of resolving, but I can't give you the details of the plan but it was a conflict between the U.S. Attorney and the Attorney General. We thought we had done everything within agreement with everybody, so I stood up in court and said we had released the gentleman from the agreement. Prolonged it protracted it, he did not get fired. He was a good guy. Very brave, we kind of lose that in lawyers these days. To get back to where I think the

primary players were. You had Dr. Cody who understood the system and both U.W. Clemens and Oscar Adams who also understood the system. Somehow the proposals advanced by Dr. Cody, and they were accepted by the plaintiff lawyers, but now it doesn't mean anything for something to be accepted by the lawyers, it has to be accepted by their clients. Somehow with the plaintiff's lawyer's help, they were able to convince the Justice Department that we did not need to bus and that we should try some of the things that Dr. Cody had developed. That was the ultimate plan, I must say that I did not think it would work, but it was certainly worth trying. You have obviously heard of magnet schools and that was part of the program, alternative schools were also part of the program. The alternative schools would limit the black and white ratios and you would apply special attention and programs in an effort to I suppose break up these effects of discrimination and at the same time provide an opportunity for some of the black people to participate on an equal basis with the white people. That was the settlement agreement that we finally reached with the Justice Department signing off on it.

Getting back to the part of the case that we never tried or never really focused on, part of the agreement was to fill these various faculty positions with black plaintiffs, but not just named black plaintiffs. I believe there were seven or eight positions would be filled by black persons in the central office, which was another interesting part of the case. The board of education was the ultimate client and they had to approve this agreement, and in Alabama we have what we call the sunshine law. The way some of the board members read the sunshine law was that they could not do anything collectively, together in private with their lawyers without opening it to the public.

WA: People in political positions or elected positions?

HH: These were not elected, these were public positions. They couldn't even meet with their lawyers to review the details of this desegregation plan, it was very difficult. So we finally posted it down at the school board and they would come by one at a time to avoid public meetings I guess. It was not a very effective way of doing it, but that's what we ended up doing. One of the questions asked of me at the board meeting when this was approved was whether or not it was legal to fill those positions with black persons. You might want to chew on that a while, because that is a very hard question. Certainly you can cure ! the effects of past discrimination, but you have got to do it ! on the basis of a hearing or some procedure that allows white people--

[END OF TAPE SIDE A]

HH: I think to this day that we were able to settle, it was a long and drawn-out procedure, it seemed like it lasted forever.

WA: Several years?

HH: No, I'm talking about in court. You are in court an hour or two and then you are in caucus and then you are negotiating and then it just goes on and on and on. I think what broke it down was the plaintiff's lawyers, influencing the Justice Department that perhaps we can live with that and I think had they been outsiders that did not know intimately the Birmingham community we probably would not have been able to resolve it. Which we did, it would not have helped anyone to bus, I still believe that and I suppose that is basically saying that I would condone white flight. I don't condone white flight, but I don't have any control over that. I do know what's likely to happen and I could see what was likely to

happen.

Today, I don't know when this happened. I haven't looked at my projections, but unfortunately today I want to say that Birmingham is one hundred percent black students. It's not one hundred percent because there are a few schools that have three or four percent white, but I think you would be safe to say that all the schools in Birmingham are ninety percent plus. It was apparent that that was going to happen, of course Birmingham didn't have a real good name at the time and I suppose that politically that had something to do with the Justice Department. I don't know that. I think the Justice Department reacts on the basis of an opinion that comes down that says a certain thing without really looking at the facts. I give a lot of credit to the plaintiff counsel for assisting, I'm sure had they rejected it we would not have been able to resolve it. I suspect we would have had some kind of imposed busing to eliminate these white pockets that we had, as a remedy. There probably would not have been a lot we could have done about it; I'm not convinced that the higher courts however, would have imposed busing in that situation because of the inevitable consequences of not doing it and of doing it as well. I guess it's the price that you pay for having a dual school system, that would be the rationale but I don't believe the court system ultimately would have been so blind to ignore that reality.

WA: Do you think there was anything that could have been done in Birmingham to maintain a fifty/fifty racial balance in the schools?

HH: Absolutely not. Absolutely not. At that point we were well down the road, you could see the population shift and they didn't have far to go. They would go to just across the line and it was one of those inevitable population movements and I can't attribute even most of it to school desegregation. Neighborhoods were changing and they were changing rapidly.

I don't believe there is anything in the world that could have been done to-what you needed! to do was hold the white population. What you could have done, had you had the right facts, was brought in this whole area that they have done in some other jurisdiction. But there would have to be some political [move] before you can expand. If you would have brought that group in then I think you could have achieved-we are roughly seventy thirty in our metropolitan SMSA, seventy percent white and thirty percent black, you could have probably achieved something but with this geographic situation I think it was virtually impossible.

WA: In the 1960s David Vann was pushing for that-

HH: He was one that was trying to find an outlet somewhere too, an outlet-I think they call that the Lasso Theory. Birmingham is essentially land locked and they couldn't get a way out to incorporate other cities and other areas and I don't think he was very successful ultimately. He may have one a case or two on that, but he was trying to do that and I think the May or Vann would have liked to have seen a metropolitan area, which is the only sensible thing to do. I guess that people in Homewood wouldn't agree and some of these other areas-I chose Homewood because it is probably now one of the more forward communities around, they have significant programs and significant diversity. It's to some extent lessened when you go beyond Homewood and go further south and further east, but I suspect we would have had another civil war had that been ordered. I honestly don't believe there was a legal basis for doing it because Birmingham had no political connection to these other cities around us. They would then be remedying our wrong, if that's a proper way of saying it. They were only very loosely tied together; I think we have a common water works system that provides for the area. You probably need more than that to impose that kind of remedy.

WA: So who was the judge in the case?

HH: Judge [Gailand?]. Judge Foy [Gailand?]. Had the traits of Solomon and Job, very soft spoken and a concerned citizen. He didn't push. He was very wise, he let it run its course. I think it would have been an altogether different situation had he said, "Trial begins today and it's going to be over in three days." I think he probably would have ordered, I can't predict what he would have done, but based on the law he certainly gave us all ample opportunities to explore all the different avenues. That's the reason it took so long. Of course the board is not a very efficient way of resolving these cases and I suppose the plaintiffs to some extent had some of the problem, and maybe the Justice Department. I can't quite figure out why we had to go that far to accomplish something that was reasonable evident to me. Judge [Gailand?] is still on the bench. I think we were in court all one summer, I believe. We were on again and off again. We would have to go out and see if we could resolve it and come back another day. I think that was probably a good strategy, certainly no one advocated that but it's just the way it worked out.

WA: I wanted to ask you about the school board, what sort of entity was the school board at that point? They are appointed positions but were they acting with one mind and one voice or was there disagreement there?

HH: I really didn't have any private meetings with them to try and figure out what happened. I tried to explain to you that the sunshine law was shining very brightly, whether that was a political ploy I do not know. I don't have any insights, we did have an integrated board with blacks and whites. I am quite sure that some were more sympathetic than others and I'm quite sure that some had political aspirations, of which I can't identify or describe. I

am convinced that they represented a certain community and that community was subject to this. They were very keen to protect their image and what not. It's hard for me to understand the mentality of the Board of Education. Frankly, I am not even sure what kind of structure that is, you have a well trained Superintendent putting all this together and I suppose they as citizens react on some community basis, but it's not real clear in the law how that's supposed to fit together. It did present some issues and it's also difficult any time, I have had this in many other kinds of cases. Even had we had an opportunity to sit with them and go over things, it's awfully hard to negotiate something like this with a board because everybody has their own input and it's hard to put it together in a sense of accommodating the wishes of each person, so we didn't do that. It still would have been difficult to have done, I believe.

WA: You said earlier that you could make a better case for busing with a sixty-five/thirty-five ratio, why is that?

HH: For no busing.

WA: Oh, no busing?

HH: For no busing, I could make a better case if it were the converse.

WA: So if it was sixty-five white and thirty-five black.

HH: That's correct, because then you would lose the concept that I had. You could accomplish something, you could lose students to a particular school and it would cause a collapse of your population. Also, you just don't have enough to go around, if that's not too gross to say that. You have the thirty-five that you are trying to mix with a sixty-five and that is tough. It's a lot easier to mix the other way and I don't believe there would have been any question had the student body been the other configuration and we had these white schools, or predominantly white schools. We could have handled that with out any kind of legal

defense at all.

WA: Just agreed to bus-

HH: Well, I think it would have been inevitable, and you could have accomplished something-for God's sake surely the law is there to accomplish the aim. The law is not there to make Birmingham all black. If it was inevitable, and scholars would disagree with me on that. They would not agree I'm sure, you could find a lot of folks that would disagree.

WA: Why, what would they say?

HH: They would say you shouldn't have had desegregated schools-

WA: To begin with?

HH: This is a penalty that you have to pay and this is part of the remedy. We feel it's kind of dumb, but none the less they would say that that would be the case. So more than anything it was sort of a practical solution on an interim basis. I think I have said, if I hadn't that I didn't think these magnet schools and alternative schools would slow the progression of the whites out and the blacks staying, you would have to ask Dr. Cody but I don't think he believed it either. Its set in motion, it's already there. You can look at the statistics and my gosh it was happening. It was inevitable, so I think Dr. Cody picked something that may work. I'm not sure it worked. Ramsey was one of the main magnet schools, and I bet today its ninety percent black, as are many of these others. There have been a lot of change! s in the school systems but I'll go back to what I said before, I suppose that Birmingham schools-also we had private schools that had some impact, but probably not as much as you would find in other areas because the ease that people wanting to escape it could by jumping across the line.

WA: So they weren't academies created?

HH: There were some, but I don't think they were nearly as significant as you would find in some other areas. I don't have the idea that they dominate the Birmingham area, do you?

WA: No actually, we were trying to find if there were some and are unable to locate very many.

HH: There are very few, you'll find some. Some of them are religious based ones and the ones that stand out are historical, and they were certainly here before school desegregation so that really wasn't-because it was so easy to move from here to there, it wasn't easy but you could accomplish it without a great deal of difficulty and then go to there school. Of course we have Jefferson County that had a busing arrangement, I'm not that familiar with it but they had busing. I think Jefferson County would be within the seventy/thirty kind of range.

WA: Would Jefferson County include these little cities like-

HH: Not necessarily. They would not, in fact if they are a separate school district then it would not. If I remember correctly, take Vestavia a town south of here, didn't come into being until after Jefferson County began busing. So they bus some black students and maybe some whites into Vestavia. Then Vestavia incorporated and the question is what do we do now? I think they continued the program to some extent, but most of these are all [pointing to the map he drew] or separate school districts and Jefferson County has what's left of the county that is not incorporated. Birmingham is sort of walled in and they constitute separate districts generally and then what is beyond that reign would be the Jefferson County system. I don't know what kind ! of success they have had with their busing program, but I'm thinking it was a success. Certainly no one would want to engage in the significant costs

involved in busing and the disruptions, but I think they have done quite well and I'm led to believe it has been reasonable successful. I maybe wrong about that, they would know more than I but-I don't know of another school in the country that would meet this kind of configuration and certainly none would have the unfortunate history that we have had in Birmingham. That would necessarily cloud just about any issue that you have and in terms of the politics of it I just don't know. I have often wondered why a sensible person didn't just sit down and try to forget about the past and figure out what we are going to do here, how we are going to accomplish this. I'm convinced that the black plaintiffs were not out to achieve an all black school system, I mean they are us, they're here and they know it. I used to tell Oscar Adams that the first place we are going to bus is Parker High School, that was his high school and I asked him how he would feel about that. This was joking of course, he was a great guy, he was such a great guy. He would laugh. He was very wise too, did you ever get a chance to-

WA: I never got to-

HH: He's been dead now five or six years. He was really an outstanding person. Of course U.W. was more of firebrand than Oscar, but he is still a very high quality, very knowledgeable person and we are very fortunate to have him where he is. He is now the Chief, don't tell him I talked ugly about him or he'll throw me in jail.

WA: So is there anything that I haven't asked you about this, the busing agreement that you feel is important?

HH: I really don't think there is anything there and I don't have a copy of it. Those were the essential ingredients of it, to try to avoid as much as we could what we knew would be a disaster, with something that would sort of prop it up, and then I think it did come to pass.

Probably on a scale of one to ten it was not very exciting, but it was kind of a unique situation there that caused the Justice Department to get bent out of shape and I have never really figured out why. I guess they have their law. But that is essentially all I know about it, I guess there are other little nuances here and there. I can remember one time in the case I saw this young guy come to court. He was nice and friendly and good looking, and I found out he was a student at Furman College and he was writing a paper. I thought what an honest pursuit there, then I saw him kind of get friendly with the Justice Department lawyers and then I'll be darned if I didn't see him take the witness stand and testify about the school districts to show something. I got to cross examine him in what we call a squirrel hunting witness; I thought the Justice Department was kind of weak for putting him up there-

WA: Oh, they just picked him out of the audience?

HH: Well, he had kind of befriended the lawyer for the Justice Department and I never really did figure out what that did for the case, but it was kind of an interesting aside to see. "I just happened to be there, I was squirrel hunting over there..."-have you not heard of a squirrel hunting witness before?

WA: No.

HH: Well, that was in the nature of this guy. He just happened to be there and offered his testimony; I have forgotten now what his testimony had to do with. A little hanky panky I suppose in the plan that was before the court where we had some discretion. I don't remember the Justice Department lawyer, he was a young guy. I sort of gathered that he didn't have much of a roll to play because most everything except the squirrel hunting witness he was relying on was in the court record as reported by the board of education. Then I think even though I left as you know, as other lawyers came on the scene at some point,

maybe in the 1990s seems that I read the Birmingham has been declared unitary, that it has achieved unitary status. So that's what we all strive for in these kinds of cases, and I think now they have escaped the decree because they are now unitary. They are certainly unitary, I don't know what in the world you can do to stop it. Have you seen the all the new houses they are building downtown? That's supposed to do something to it, I'm not sure what. Maybe they'll start creating some very fine neighborhoods here and it will come back. What I would call it is a hill to climb; it's a hill to climb with a closure. Not the closure but the lay off deal at US Steele in the 1980s, which really hit Birmingham very hard. Sort of the increase at UAB [University of Alabama at Birmingham] is what has helped us, but that is twenty five dollar an hour jobs for six dollar an hour jobs. I think those two economic factors have played heavily on Birmingham and its difficulty today.

[coffee/break interruption]

WA: So let's start back, the first of our general questions is when you were working for the school board, what did you consider the goals of school desegregation to be?

HH: I don't believe there is any doubt about what the goal was, what the legal goal was for everyone to have an equal opportunity to participate in the school system. I am a little hesitant to say that the goal was at times very difficult to achieve when you are working with the configuration that we had. I don't doubt that Dr. Cody's goal was equality and a good school system to the extent that desegregation plays a part in that. There is just no doubt that we should not treat people of different races and cultures differently and public enterprises. That's certainly the theory of the law and I think that was the goal. A lot of times the goals

are very difficult to achieve and have different ways of achieving.

WA: Is that the way you think about the goals of school desegregation today?

HH: Yes and no. Yes in the sense that I firmly and fully believe that it is dastardly to have separate school systems and not to have integrated school systems. I am afraid that there have been failures in accomplishing that, and I would encourage people when they criticize something that is failing that they offer a better mousetrap, and I don't have that better mousetrap. So, I think there have been a lot of costs associated with it and it perhaps hasn't produced what we would want, I think certainly it did in the areas where there was not an overwhelming majority of one race or another, in the smaller minority schools. It taught us a good lesson and it was wrong and everyone I know recognized it as being wrong. I think you need to roll in on top of that how you achieve or address that role as a remedy and to some extent it's very difficult either through the judiciary or as a private citizen to address it because of the different impacts and approaches.

WA: If you had had arbitrator's authority at the time, is there anything that you could see that could have been done to create a fifty/fifty racial balance in Birmingham schools?

HH: I really don't know, that would have been in 1970. I suppose the main culprit that may have kept that from happening was the location of Birmingham surrounded by these other communities. So, that would have been a drawback. What I am saying is that had you bused at that time I would dare say it would not have been successful, but it would have been perhaps temporarily successful but would not have lasted. I don't believe it would have turned a school situation around.

WA: How would you weigh the benefits and drawbacks of having children attend desegregated schools?

HH: Oh my God, there are many...the best thing to do in your life is get to know as many people as you can and not just people that are like you. You need to get to know people who are not like you. That is such an important thing in life and I think it achieves that. I never have considered myself in a separate group; I think that creates bad personal feeling about oneself. I'm separate and apart and above someone else, that right there needs to be broken down and I think you learn that when you are in a segregated school situation and everybody is treated fairly and equally. You can't judge a book by its cover, I always learned that. You can't judge a person by where they are from, as we talked about, people today once they find out your from Birmingham think you are some kind of fool or redneck or hater and that's what you fight. I think if you had the perfect world you would have significant opportunities with many different things. That has been my view forever.

WA: So is school desegregation an ongoing issue in Birmingham?

HH: No I wouldn't think so. I wouldn't think so, not with virtually one hundred percent black students. I would not expect any legal challenge to reach out and grab these other municipalities. The only thing I could see that might be an issue but I don't believe that is a bona fide issue, it's too far gone now. I don't really see much going on now in the legal circles about school desegregation, it seems to have calmed down and I just don't read about it much.

WA: Where did you children go to school, did they go to Birmingham schools?

HH: They went to Vestavia grammar school and high school, that's where I lived when I came to Birmingham. I then moved into the city about fifteen years ago, after they had already finished school. I don't believe that I would have, and I am not apologetic for this, put my children in the Birmingham schools because it would have been hard to find the kind

of school environment that I liked. Maybe I have confessed too much, but that's a fact.

WA: My last question is if we can talk a bit about your philosophy about law regarding school desegregation, also the law in relationship to social change like school desegregation and labor laws and that sort of thing.

HH: I think I have alluded to the fact that my idea of a lawyer is not as a philosopher. I think a lawyer needs to be a technician, I think they need to learn how to build a good house. They need to apply those learnings to the cases that they have before them without regard to their personal philosophy. I think we have run afoul too many times with everything politicized and philosophized and whatnot, so I think my main role as a lawyer is to determine what the law is and then apply the facts to that law as best as you can. Without regard as to whether I am a democrat or a republican or a Jim Bircher-do you remember Jim Birch-or anything else, and to do it to accomplish the aim of the ball. That's the most I can say about it, I always considered myself a technician. Certainly I have private philosophies that I go by but I try not to interpret the law in the sense of my own interim, feelings or beliefs.

WA: Is there anything else that you would like to talk about that I haven't asked you about today?

HH: A lot of things, but I think not. Thanks, but I think not.

WA: Okay, thank you.

END OF INTERVIEW

Transcribed August 2005 by Chris O'Sullivan