

Civil Rights History Project
Interview completed by the Southern Oral History Program
under contract to the
Smithsonian Institution's National Museum of African American History & Culture
and the Library of Congress, 2011

Interviewee: Judge Matthew J. Perry, Jr.
Interview Date: June 7, 2011
Location: His judicial chambers in the Matthew J. Perry, Jr. Federal Courthouse, Columbia, South Carolina
Interviewer: Joseph Mosnier, Ph.D.
Videographer: John Bishop
Length: 55:52

John Bishop: Okay, we're rolling. Could we have just fifteen seconds of room tone?

[Pause] Okay, thank you.

Joe Mosnier: Today is Tuesday, the seventh of June 2011. My name is Joe Mosnier of the Southern Oral History Program at the University of North Carolina at Chapel Hill. I am with videographer John Bishop, and we are in Columbia, South Carolina, at the, um, at the federal courthouse named for our interviewee today, Judge Matthew J. Perry, Jr. We are here to do an oral history interview for the Civil Rights History Project, which is a joint undertaking of the Library of Congress and the Smithsonian's National Museum of African American History and Culture.

Judge Perry, it's a great honor and privilege to be with you this morning. I know you have a busy trial schedule today, so thank you.

Matthew Perry: Thank you.

JM: Thank you for taking time here this morning, and we will, we will honor your calendar and the need to be fairly, um, fairly prompt and quick in our process here. Let me ask you to start today, if I could, um, with just a description of, um, of the circumstances in the late '40s, 1948, when you entered law school, and the context for the new law school, and what you encountered, uh, in that newly, recently created law school.

MP: Well, if I might, um, uh, take you back, uh, before the beginning of the law school, uh, you may know – uh, or if not, I'll tell you – that I am a veteran of World War II. I was born and reared here in Columbia. Um, I was born in 1921. And, um, I, um, was a student at, uh, at South Carolina State College when, uh, when the Japanese attacked Pearl Harbor. Um, uh, a national draft occurred, and I was, of course, a young person who fit within the, uh, age brackets and I received my notice, my draft notice, and, um, I reported for duty – well, the notice came in December of 19--, late November of 19--, uh, 1942, and, uh, I reported for duty, uh, near the first of, uh, January, 1943. Uh, I served in a segregated Army outfit, a quartermaster outfit. We did our basic training at, uh, at Camp Van Dorn, Mississippi, and traveled and did our maneuvers in that area of the country.

And, um, um, I mention this because you, uh, may know that having been born and reared in the Deep South, I, um, was subjected to and was very accustomed, uh, as a, uh, young man growing up, to the requirements of racial segregation. It was widely practiced. It was, uh – uh, there was no question but what we were subjected to the constraints, uh, imposed upon us as a people, uh, through, through the law. Now, [clears throat] uh, I mention that because, you see, having grown up and having, uh, been accustomed to it, why, um, initially as a child, I'm not sure that I fully appreciated – if I appreciated at all – the injustice of it, that anything was wrong with it.

But as I grew and as I developed, uh, and as my horizons expanded, um, as I grew intellectually, I did begin to wonder about the justification for much of what I experienced. [Someone coughs] If you have, uh, seen and read a, uh, a book, uh, that describes my, uh, my, uh, activities in South Carolina [Burke, W. Lewis, and Belinda F. Gergel, Eds. *Matthew J. Perry: The Man, His Times, and His Legacy*. Columbia: University of South Carolina Press, 2004], uh, you will note that they make reference to, to an experience I had when I was in the Armed Services. [5:00]

I was, um, I got a weekend pass – I think it was a weekend pass – uh, at the end of my basic training and was traveling home to Columbia, South Carolina, by train. This was before air travel had, uh, uh, come into existence – or, if so, I knew nothing about it. And, um, uh, riding on the train, of course, we had to sit in, uh, uh, passenger cars reserved for, for members of our own race. And, um, uh, there were just widespread practices everywhere, uh, including at restaurants and, uh, other activities. All right, the train – we had to change trains in Alabama, um, in Birmingham, Alabama. And, of course, uh, my, uh, wait there for my connecting train was something more than two hours. By the way, it was, um, uh, rather inclement weather, damp and everything. And I, um, I was hungry.

Now, they had a terminal restaurant, and, uh, I couldn't go in the restaurant. That didn't bother me, because, you see, I had never been permitted to go into a restaurant that was reserved for white citizens. On the other hand, remember now, I'm now a young person who is in the midst of growth into manhood. And, uh, [clears throat], uh, instead, I had to go to a window, uh, outside the kitchen or adjacent to the kitchen to order my sandwich through the window. Other black soldiers and other black passengers were doing the same thing, had to stand in a line and wait my turn.

Now, looking through into the restaurant, there were – by the way, our nation was already engaged in, uh, war with the Italians, and, um, uh, there were some Italian young persons who had been captured and who were being brought and transported into the United States to be housed in prisoner of war camps, as I later understood – but here were a contingent of, um, of Italian prisoners of war. They were dressed, of course, in their uniforms, and, uh, surely, our own military police were stationed around. But they were in the restaurant and, uh, they were being served. And the young waitresses were treating them with courtesy, and, and, uh, one got the impression that [laughs], that some of them found the young men very attractive, a quite understandable reaction on their part.

But, as I looked and as I contemplated, here I was at that time an American soldier. I was wearing the uniform of my country. I had just gone through basic training. I had been trained to, uh, to go into a matter involving our engagement with the enemy. Um, uh, of course, you know, I had developed a sense of, uh, pride in my status as an American soldier. But here I was, uh, uh, denied a privilege. Um, once again, it was not strange to me, but now, uh, a certain feeling of insult began to develop within me. Uh, the injustice of it all I think became more clear, and I wondered about its justification. I wondered what – if anything – could be done about it. I had not been trained in the law and so, therefore, I hadn't come upon [10:00] any solutions in my own mind.

Uh, I mention that to you because, um, uh, that, uh, experience, um, you know, remains with me. And so, as I continued – by the way, we served in England, France, Belgium, Germany, and we were – we traveled, you know, around the world. After the war, I was discharged in, in, uh, January of 1946, and I returned to my native Columbia, South Carolina. And, uh, now I needed to complete my undergraduate college training, and so I had decided that

I was going to return to my alma mater, South Carolina State College. Uh, I had to return in the fall, beginning September.

But during the spring months, there came to trial, uh, two cases in, uh, in the federal courts here in Columbia. And, uh, a couple of friends and I, also veterans of World War II, um, learned about the fact that these cases were about to be tried. They were getting a great amount of publicity. So, we decided to, uh, come uptown to the court – not this building, of course. The building is now the home of the, uh, United States Bankruptcy Court, around there on, uh, Laurel Street, near Laurel and Assembly. And, uh, that's where the Federal District Court was.

And so, I went in, and, uh, I and others were spectators. And we saw these two cases tried back to back. One of them was, um, uh, the case of a, uh, of a black citizen named George Elmore who, uh, had brought a suit on behalf of himself and others similarly situated against the election officials, uh, of South Carolina, challenging the fact that he and others similarly situated, meaning black Americans, were, uh, were denied the right to vote in the, uh, Democratic primary elections. The Democratic Party of South Carolina and the Democratic Party in other states around the, certainly around the Deep South, operated what were known as white-only primaries. And, um, uh, Mr. Elmore and others were challenging this.

By the way, the United States Supreme Court had already decided a couple of years before that, uh, in a famous case called *Smith versus Allwright* [1944] that the, uh, that practice, as practiced in Texas, was, uh, unlawful, that it was a denial of equal protection and a denial of the rights guaranteed under the Fifteenth Amendment, and so that was the precedent. I did not then know about *Smith versus Allwright*, but I've later learned about its significance. But that was the basis upon which the case was fought in the District Court here in South Carolina.

By the way, the attorneys in that case, um, headed by Thurgood Marshall – uh, I had never seen or heard of Thurgood Marshall before that time. Um, also, Robert Carter was there. Uh, Robert Carter was then a young associate of Thurgood Marshall's, who was either then or later became the Chief Assistant to Thurgood Marshall. The local attorneys were Harold Boulware [Harold R. Boulware, Sr.], a lawyer here in Columbia, uh, and, uh, there were other lawyers who were listed on the brief: Fred Robinson [W.R. Robinson] and, uh, I understand that a Mr. Parker [Esau Parker], who was not present in the courtroom – his name was on the brief. Uh, I believe that Mr. Morgan [Shadrack Morgan] of Orangeburg [South Carolina], who was popularly known as “Squire” Morgan – that was not his real first name, uh, short for “Esquire.”

[Laughs]

In any event, uh, I, uh, witnessed the trial of that case. And, um, um, it, uh – they tried it and, of course, the judge took it under advisement; later decided, of course, in favor of Mr. Elmore and others.

But then, upon the conclusion of that case, the other case was tried. That was the case of, uh, of a young black American named John Wrihten, who had applied for entry as a student in the law school at the University of South Carolina. And, um, uh, Mr. Wrihten, also represented by Thurgood Marshall and others, was suing for the right to, uh, enter the University of South Carolina's law school. Again, um, uh, I was, I was aware that I and other blacks could not attend the University of South Carolina. We, we had a, uh, a black school. Uh, there were other black schools here: Benedict College [Columbia, South Carolina] and Allen University [Columbia, South Carolina] and Claflin [College, Orangeburg, South Carolina], but, uh, South Carolina State College was the only state-supported institution.

By the way, that was not its correct name in the statute. The statutes, uh, defined it or named it the Colored Normal Agricultural and Mechanical College at Orangeburg [Colored Normal Industrial, Agricultural, and Mechanical College of South Carolina], uh, a name that we, that we found distasteful [laughter]. And, of course, popularly we began calling the school South Carolina State College. All right, [clears throat] now –

JB: Could we pause for –?

[Recording stops and then resumes]

JB: We're rolling.

JM: We're back after a very short break. Judge?

MP: All right. [Clears throat] Now, uh, I witnessed the trial of that case, uh, completely and I was certainly impressed by the performance of these very fine lawyers. And, uh, remember now, I'm – as a young person I'm in the stage of developing into manhood, developing intellectually, uh, and chronologically. And so, uh, I had naturally begun to contemplate what my life's work might be. I had already started my undergraduate training. I was about to return to complete my undergraduate college work and I had begun thinking about, "What will I turn to? Will it, uh, be in the business world? Will it, uh, be, uh, in other, other professional callings? How about medicine?" I decided against that.

Uh, but I, uh – the business of wondering about how society might justify the racial practices that I had become increasingly aware of, uh, weighed with me. Uh, could I enter some field or study some field that might better equip me to understand what I was looking at, to understand the reasoning for it, and to perhaps, uh, along with others, try to find some solutions to them? And I think that these were the considerations that prompted me to turn and to decide upon the study of law.

Now, where will I pursue my training? I had, of course, uh, privately decided in my mind that, well, I'll go to Howard University. That was the school that, uh, that I, uh, had heard about. And I knew, I'd learned that the lawyers that I admired so much had gone there. [20:00] And so, I had made that decision.

All right, uh, Judge J. Waties Waring, who had presided over both of these trials, uh, made his decisions, uh, in both instances: He decided in favor of Mr. Elmore and others in the voting rights case, and, um, uh, he decided in favor of the plaintiff in the Wrighten case. Uh, in that case, uh, he decided that South Carolina had to either admit, uh, John Wrighten and others similarly situated to its School of Law at the University of South Carolina *or* provide for him and others similarly situated, uh, a separate [laughs] but substantially equal education in some *other* institution *or* cease to offer a legal education at all. So, those were the three alternatives.

Well, South Carolina decided to, uh, to, uh, open the, uh, very *inadequate*, uh, [law] school at South Carolina State College. I say "the very inadequate," I didn't know *then* that it was – well, I did. I did know then that it was certainly not the equal of the law school at South Carolina. I didn't know much about any other law school [laughs], and so I didn't know what to compare it to. But, um, uh, history, of course, will support my assertion that, uh, it was not, uh, it was not an equal, uh, facility. In fact, [laughs] Thurgood Marshall referred to it as "a Jim Crow dump." [Laughter]

Um, all right, well, they began. They hired a law school dean and, uh, they began hiring teachers, uh, who came to the campus while I am in the process of, uh, of completing my undergraduate studies. Now, these, uh – the law school people needed students. And, of course, I guess the word had gone around that there's a veteran down there, a young fool named Perry,

who claims he's going to study law. "Why don't you see him?" So, one such person came to me, and I responded, "Well, no, but I'm going to go to Howard. Yeah, I'm going to study law."

So, this fellow said, "Well," said, "I can understand and appreciate that. Why don't you come in and sit in and listen at some of what will be going on? And you'll better understand what you're going to be exposed to when you get to Howard." I was, of course – I had only part-time courses, so I did have time to go and, and, monitor and sit in. And so, that's how I became involved in the study.

Uh, I ended up remaining at that institution. And, um, there weren't many of us, and we studied hard. We had teachers who had been well trained. Uh, Dean – the dean was Benner Turner [Benner C. Turner], a graduate of Harvard University's law school. There were others, uh, who had graduated from other very fine institutions: Columbia University, uh, University of Kansas, University of Iowa, uh, and several others. And, of course, they instilled, uh, within us a, uh, uh, a concept of hard work. We had to develop. We had to study. Uh, [clears throat] –

JM: Just five in your – [clears throat] excuse me – just five in your class?

MP: In the graduating class of 19 –

JM: '51.

MP: '51.

JM: Yeah.

MP: Uh, the first class [25:00] had only two graduates.

JM: Yeah, yeah.

MP: That was the class of '50. Now, interestingly, the first class – you see, at the time, and up until this time, South Carolina had a practice by which, uh – well, it was known as the "diploma privilege." If you had graduated from a law school in South Carolina, you didn't have

to take the state bar examination. You were admitted under what became popularly known as the “diploma privilege.”

Uh, now, when [laughs] the law school at South Carolina State was created, uh, the officials decided, “Well, look, we’ve got to do something about this, this diploma privilege.” And so, they, uh, persuaded the legislature to enact a law requiring the taking, the passing of the bar examination by all law school graduates. And so, I tell – I tell, uh, young people, “Anybody who has graduated since 1951, [laughs], uh, that you – if you had to take the bar examination, you can, of course, blame me.” [Laughter]

All right. The first graduates, the class of, uh, of ’50, did not have to take the examination. But the second class, my class, uh, came into contact with that new requirement, and we had to take the examination. By the way, I was the only person who passed, of the group. Now, um, whether the examination was fairly administered or anything like that, I cannot tell you. But I can tell you, I studied my can off [laughter] for, uh, the thing, and I have no, no question in my mind that I passed.

I took an enormously long time to answer your question.

JM: No, Judge, that’s wonderful! Let me, let me – it’s superb and exactly what we’re hoping to learn, so thank you for all of this. Let me, let me ask you this: So, graduating in ’51 – obviously, being in law school, ’48 to ’51, you’re tracking cases like *Sipuel* [*Sipuel v. Board of Regents of University of Oklahoma*, 1948] and *McLaurin* [*McLaurin v. Oklahoma State Regents*, 1950], so that would be, those would be notes of some optimism in a still very difficult context.

MP: Oh, yes.

JM: Yeah.

MP: I studied them –

JM: Absolutely.

MP: Uh, as every case was decided –

JM: Exactly.

MP: I studied them. And I sat and I, um, um, I – they became a part of my concepts.

Uh, and whenever other cases were tried, if it was physically possible for me to do so, [laughs] I went and I attended.

JM: Yeah.

MP: Uh, I began, um, even before law school – even *during* law school, but certainly during my first period after I graduated from law school, I would go and I would sit in the courtroom while cases were being tried.

JM: May I ask about –?

MP: Certainly!

JM: Yeah, I want to ask, indeed, if you have any recollections of sitting in at the trial phase of *Briggs v. Elliott*?

MP: Yes! Yes! By the way, *Briggs versus Elliott* came to trial in, uh – what was it? In early June of 1951 – and, um, I had just graduated from law school, had already taken the bar examination! The results, of course, had not yet been published. I didn't know whether I had passed or failed. So, I and a few others traveled to Charleston.

Now, there were hordes of people there. It was a well-publicized case. And, of course, uh, you had, uh, this – turned out, it was going to be a major challenge to, to segregated education. And so, I, uh, managed to worm through the crowd and ultimately – didn't immediately – succeed in getting into the courtroom. But being tall and having a long neck, I

was able to rubberneck over and eventually I managed to squeeze into the courtroom. [30:00]

But, yes, I sat and I witnessed the trial of *Briggs versus Elliott*.

JM: Yeah, yeah. Um, [clears throat] meanwhile, you are also having to find a strategy that will earn you a living.

MP: [Laughs]

JM: And it's not an easy thing.

MP: Not an easy thing.

JM: Can you tell me this: Can you quickly sketch, quickly sketch the nature of black law practice in South Carolina? And there weren't many black lawyers, obviously, in the early '50s.

MP: Right.

JM: And then, how you made your choice about how to proceed.

MP: Uh, yes. Uh, there was no such thing – I couldn't get a job, certainly not as a law clerk. Um, no, uh, no government employment was offered me. Um, in fact, no employment opportunities presented themselves. And so, it became obvious that if it was going to be the law, then I was going to have to open a law office.

Well, uh, I was born and reared in Columbia. That was home. I had relatives in Spartanburg [South Carolina], uh, one of whom operated a rather successful funeral home establishment. And he, uh, and my mother conferred, and he suggested to my mother that it would be a good idea if I, if I chose to come to Spartanburg. Spartanburg did not have any black attorneys. Columbia, by the way, had, um, I think, about three at the time. [Someone coughs] [Laughs] So, Columbia was, was considered crowded. Can you imagine that? [Laughter]

JM: Yeah, yeah.

MP: And, uh, ultimately, of course, I went to Spartanburg. By the way, I practiced there and stayed there for ten years before I returned in 19--, uh, the end of the 1950s, early 1960s to come back to Columbia.

JM: Yeah, yeah.

MP: Well, [clears throat] I, um, opened a law office in an abandoned – it must have been a condemned building, [laughs] uh, a one-room office, um, a desk that I had purchased from some company, a secondhand desk. I had an old, um, typewriter, one of the old, uh, Underwood typewriters [laughs] that you could look through and everything. And, uh, this was, of course, before word processing, certainly before computers and everything. And, uh, by the way, I did have some typing skills, [laughs] so I was able to, to type, you know, my own documents.

JM: No secretary?

MP: No secretary. That was –

JM: Out of the question?

MP: That was later. That was out of the question. Um, and, of course, uh, you know, uh, the idea was you needed, you needed cases. Well, you know, uh, people just don't rush into the office of a very young, inexperienced lawyer, [laughs] uh, certainly not a young inexperienced black lawyer. Uh, white lawyers might fare just a slight bit better, but, uh, when you're young and inexperienced, you don't attract business.

Now, this cousin of mine, who, uh, had this business, uh, signed a bond or in some way got a person out of custody who had committed some traffic offense, just a simple traffic offense, had to go to the Municipal Court. So, this was my first foray into a courtroom. And so, I went, and, um, there were lots of people – plenty of young lawyers, also, of whom I was the only black.

And the municipal judge, uh, who was just a racist of the first order, [35:00] um, received the other lawyers cordially. By the way, the extent of his authority and jurisdiction was, [laughs] upon the finding of “guilty,” to impose a sentence that included, uh, *either* imprisonment for up to thirty days *or* a monetary fine of up to a hundred dollars. That was the extent of his authority. And so, routinely, as these young white lawyers appeared before him, [laughs] he was letting them off with a ten-dollar fine or, uh, maybe fifteen dollars, uh, or just, just probation.

Uh, finally, when they called my case, I went forward. By the way, I had on, had on my clean suit, my clean shirt. I had my briefcase that my wife had given me for graduation; didn’t have a thing in it but a legal, a pad. Uh, and I went forward and stood before him. There weren’t – there wasn’t a prosecuting attorney. The police officers normally did their own prosecuting. So, he looked up at me and he said, “Yeah? What you want?” [laughs] I said, “Well, your Honor, I’m Matthew Perry. I’m an attorney here to represent Mr. Such-and-such.”

So, he looked, with a frown on his face, and, um, without affording me an opportunity to present evidence on behalf of my client, he announced that he found my client guilty and imposed a sentence of thirty days or a fine of a hundred dollars – by comparison, you see, with what he had been doing. Well, I was crushed because of the, uh, the, uh, unfairness of – but what could I do about it?

You can imagine that didn’t do anything for my reputation. Uh, who would want to hire a young lawyer [laughs] who got that kind of result at the Municipal Court? It took quite a while for me to get another case. And the next time I went over there, something similar happened. And so, on a third time, sometime later, by this time I had, uh, learned – you see, in law school, you know, you don’t really learn how to operate in court – back at that time. Now, in today’s

law school training, much of this is, uh, is, uh, imparted to students in clinical courses, but not then, certainly not in our law school.

To appeal from a decision of the Municipal Court, you had to file your appeal within – [pause] within five days.

JM: Wow.

MP: The appeal was from the Municipal Court to the Circuit Court of the county, and from an adverse decision there to the State Supreme Court. So, the circuit judges had appellate rights over the decisions of the Municipal Courts and also Magistrates Courts. But you had to serve a notice of appeal, and your notice had to contain your exceptions, [laughter] the grounds on which you were going to appeal.

Well, I had, uh, you know, come upon this idea, “If you’re going to exist here, you’ve got to find a way to get around this judge,” and so I learned how to draft a notice of appeal. And so, I had drafted the notice of appeal for use, and when the case came, I put the name of the client on it. And, of course, uh, very simply, I had some grounds that, uh, the, uh, decision was not based upon, uh, evidence, uh, was contrary to the evidence presented, words of that sort. I forget what other ground I laid out in there, but it was a good ground.

And so, when I appeared before him, he, uh, he tried the same thing. And when he did, I opened my briefcase, [laughs] still brand-new [40:00] briefcase, pulled out my notice of appeal, laid it before him. By the way, it had to be served upon the municipal judge. He had to acknowledge receipt of it. And I said, “Your Honor, would you please accept service of this notice of appeal?”

So, he was shocked. He looked up at me and he says, “What! What is this? What, what did – how did you know what my decision was going to be?” I said, “Your Honor,” I said, “This

has been your decision every time I've come here. No doubt in my mind. So, would you –?"
So, I went up to the circuit judge and I got him reversed. Now, the next time I appeared, the reception was somewhat, somewhat different.

JM: Wow.

MP: And so, meanwhile, the word had begun to get around. People started coming to me in Spartanburg County, and the word began to spread into adjoining counties. I began getting calls. One such call came from some people down in Union County that adjoins Spartanburg County to the south, uh, a group down there called the Union County Voters League. A group of black citizens had gotten together to form a local group to address injustices.

And so, there was a young man who had been convicted of some offense before a magistrate judge down there. Um, he was, uh, given just a gargantuan sentence under circumstances that were unjustified. And they came to me – they didn't get to me until Day Number Six. By the way, the five-day rule was applicable. Now, I had to get around the fact that, that, uh, the appeal time had expired. And yet, here was this young man sitting in jail. He was illiterate. His family was illiterate. And, uh, you know, these were people who had no resources at all.

And, uh, so, uh I decided [laughs] to file a petition for a writ of habeas corpus [laughs] uh, challenging things. And, of course, uh, it didn't get – the magistrate judge ruled against me, and so did the circuit judge. But I appealed to the South Carolina Supreme Court, and lo and behold, we won it. So, that was my first, uh, my first victory.

JM: Amazing.

MP: In the South Carolina Supreme Court.

JM: Yeah. Judge, may I –?

MP: Now –

JM: I'm sorry. May I ask?

MP: Certainly, certainly.

JM: [Clears throat] I know we have, I think, about ten more minutes.

MP: [Laughs]

JM: I want to draw your attention –

MP: I told you. I warned you. [Laughter]

JM: I want to draw your attention to two issues.

MP: Yes?

JM: One is, um – one is the network of civil rights attorneys into which you became, in the early '50s, mid 1950s, closely involved, um, and your perspectives on that expanding network. You've mentioned Thurgood Marshall, Robert Carter, but now the circle will widen even further.

MP: Yes.

JM: Um, and how that – I'm interested on your perspectives on that network and how it operated and what it meant to you as a –

MP: Yes.

JM: That issue. And then, the second question –

JP: I'm going to pause.

JM: Oh, John is going to pause just one sec.

[Recording stops and then resumes]

JB: We're back.

JM: Okay, we're back on. Let me have you start with that, and then I'll finish with one other question –

MP: All right.

JM: And we'll talk about the Flemming case [*Flemming v. the South Carolina Electric and Gas Company*].

MP: Well, of course, uh, I became associated with, uh, with the NAACP Legal Defense Fund, um, in this respect. I became what was popularly known as a “cooperating attorney.” I was not a paid, uh, uh employee. However, that, uh, group, uh, paid a small stipend from time to time whenever I handled a case that was, uh, um, supported by that group.

I also became, uh, friendly with and associated with the office of the NAACP General Counsel, uh, two separate organizations, and [laughs], uh, in this respect, why – the public knew nothing about such a division, but it nevertheless was, was a fact – and in this respect, why, I, uh, I attended seminars, uh, sponsored by the NAACP Legal Defense Fund and by the NAACP Office of General Counsel. At all of its national conventions, they had meetings of lawyers who were called in from around the country, and we, uh, we formed a network of associates. We began to interact with each other nationally. We formed friendships. And we, we, um, gained a measure [someone coughs] of knowledge about what was going on in various places. And in this respect, why, I guess we grew and we developed.

JM: And one – I know one very interesting experience that arose out of that network was you traveled to D.C. for, um, the, uh, the dry run of *Brown v. Board*.

MP: Oh, yes, I did.

JM: Can you describe that experience?

MP: Well, uh, when, uh, the cases were set for argument in the Supreme Court, uh, [clears throat], uh, lawyers from around the country gathered, as did other citizens from around the country. And so, I and a group of South Carolina colleagues traveled to Washington. And, um, the, uh, cases were first argued, uh, moot court style over at the Howard University Law School. The, uh, the “justices,” of course, were in some instances professors at Howard or distinguished lawyers from around the country who sat and who mimicked and who acted as the then-sitting Supreme Court Justices, uh, each of them, you know, uh, speaking to or representing the judicial philosophy of a particular justice. And so, uh, these lawyers argued, argued out, uh, the principles that they argued before the Supreme Court beginning the following day. Uh, it was a, an exhilarating experience. Thurgood Marshall, Robert Carter, Spottswood Robinson, um, uh –

JM: Jack Greenberg?

MP: Jack Greenberg argued, yes.

JM: Constance Baker [Motley]?

MP: You see, Constance Baker Motley was, had become a part of the staff, but did not argue –

JM: Yes.

MP: Either of the cases.

JM: Of course, yes. Yeah.

MP: She was then sort of a neophyte.

JM: Right, right. Let me ask, um, to finish up here today, let – you, um, you became involved in a very interesting and very important, um, case, uh, that evolved from '54 to '56, the

Flemming case on intrastate travel. And, um, I'm wondering if you can describe that case and its implications.

MP: Well, *Flemming versus the South Carolina Electric and Gas Company* – the, uh, bus transportation system in Columbia, South Carolina, was then – is it still operated by [laughs] the South Carolina Electric and Gas Company? At least, it was then. Uh, I'll have to come up to date [laughter] on who operates it now? Um, but it – the bus passenger service was provided on a segregated basis. Uh, you got into the bus, if you were a black citizen, you went to the back of the bus and you, uh, you sat on seats beginning from the back forward, uh, never sitting in an area of the bus reserved for white citizens. Uh, again, you know, I grew up as a boy under that system. I guess, you know, as a boy, you know, as a child, uh, I just accepted it. It did not – it didn't offend me. But as I grew, as I began to grow intellectually, I did begin to wonder about it.

Okay. There was, of course, a law in South Carolina that *required* such [50:00] racial separation, whites from the front and blacks from the rear. So, uh, the case that you mention, uh, Sarah Mae Flemming – she later became Sarah Mae Flemming Brown – uh, a young black woman traveling to her place of employment as a domestic, uh, sat in a seat, uh, near the dividing line, you might say, but one that [laughs] the bus driver perceived was for whites. He ordered her to remove herself. And, uh, through some difficulty, she was trying to get off of the bus, and even there, he was going to prohibit her leaving through the front door. Buses had a front door and another door in the back. He was going to require her to go out of the other door. In the process, he shoved her. Uh, she claims that he, that he, he hit her in her abdomen.

In any event, she, uh, came and, uh, she made her situation known to local persons. Uh, there was a woman here at the time who became very famous, very active in South Carolina civil rights matters, Mrs. Simkins, Modjeska Simkins. And Mrs. Simkins sent her to a, uh, very fine

white attorney named, uh, Wittenburg, Phil [Philip] Wittenburg, and Mr. Wittenburg filed a suit on behalf of Miss Flemming against the South Carolina Electric and Gas Company. Um, he, uh, by the way, incurred the wrath of the white community in so doing. But in any event he did, and, uh [clears throat], uh, his case – uh, let's see. They dismissed his case. He, he, uh, went out.

And so, they contacted Thurgood Marshall's office. And so, they came, Thurgood Marshall and Bob Carter came, and, uh, [clears throat] they appealed the case to the Fourth Circuit. The Fourth Circuit, uh, reversed and sent it back. Well, [clears throat] meanwhile, uh, I understand – what – the Klan or somebody burned a cross on Mr. Wittenburg's yard over there in Sumter County. And, uh, either then or later, he got out of the case.

JM: Left the state, I think, even.

MP: Yes.

JM: Took his family and left the state.

MP: That's right. And so, uh, uh, the case was sent to a friend of mine, uh, with whom I later joined, and we joined forces, Lincoln Jenkins [Jr.], who took over her case at the trial level. And he called me, uh, to come and assist him. I came to Columbia. I was still at Spartanburg. And, uh, we, uh, we ultimately went to, went to trial. Uh, by the way, the precedent had already been established in the Fourth Circuit, uh, holding that the South Carolina statutes requiring separation of the races on intrastate travel in South Carolina was, uh, unconstitutional. And, uh, so, we went to trial. We, uh, brought the case to trial, but we lost it at trial. The trial judge, no friend of ours, uh, dealt with us. But we left with the impression that the case had served its purpose.

Now, that case preceded *Browder versus Gayle* [1956], the Montgomery bus, uh, case, of course, that everybody says was the premier case. That case made Ms. Rosa Parks famous.

[55:00] But Sarah Mae Flemming Brown's case was the first one on the record.

JM: Indeed, her— the incident that set it all in motion was, uh, June 22, 1954, indeed, a good bit ahead of the Montgomery case.

MP: Yes, right.

JM: Yeah, yeah. Judge, we want to be respectful of your time. In fact, I think we've kept you a tad bit beyond [laughter] even what was announced. But I just want —

MP: [Laughs] And I'm responsible for —

JM: Well, I just want to say what a special honor and privilege it is for us, and we're most, most grateful.

MP: Thank you.

JM: And it's an extra privilege to meet you here in this courthouse named for you.

MP: Thank you, thank you.

JM: And we're very grateful for the opportunity.

MP: Well, I'm certainly — it's my pleasure, and I thank you for coming.

JM: Thank you.

[Sound of door opening?]

MP: And I, uh — all right.

Unidentified Female: I was coming to get you, Judge Perry.

JM: Wow, right on the mark!

MP: All right!

[Recording ends at 55:52]

END OF INTERVIEW