Introduction to the Oral History of Judge Herbert E. Phipps

By David F. Walbert*

I had recently seen the movie *Hidden Figures*[1] about the African-American math whiz who had a lot to do with NASA's moon landings when I had the pleasure of interviewing Judge Phipps for the Georgia Legal History Foundation, together with Justice John Ellington. I couldn't help but think at that time that Judge Phipps' life is a far more extraordinary example of someone who faced huge hurdles in life, but overcame them to make a real difference. I had known Herb since law school in Cleveland, Ohio, now fifty years ago. I've learned as much from Judge Phipps as anyone I've known—lessons about how one should live their life, what's important, and what we should all do every day to make the world a better and more just place.

One of the reasons I admire Judge Phipps is that I know, had I faced the obstacles he did, I would never have made it. Herb was born into the dangerous world of Jim Crow Georgia in the 1940's in rural Baker County. Baker County was so rigidly segregated that Herb was in the fifth grade before he discovered that white children went to school, too. Baker County could have been the poster child for racial injustice in America. When Herb was a little boy, the County Sheriff, Claude Screws, beat to death a friend of the Phipps family, Robert Hall, in the courthouse square. Hall's crime: the color of his skin. Screws' conduct was so outrageous even by the barbaric standard of the times that he was indicted for federal civil rights violations, then a misdemeanor. Screws ultimately prevailed in the U.S. Supreme Court,[2] went on to be a local hero among white people, and was elected to the Georgia Senate.[3]

The oppressive racism of South Georgia would stop most people in their tracks, and it did so. But Herbert Phipps was different. Even as a young boy, he was uniquely inquisitive and wondered how the world could be a better place. He listened to the radio at night to follow U.S.

*Senior counsel, Park Chesin & Walbert; Stanford University (B.S. 1967); University of Michigan (M.S. 1968); Case Western Reserve University (J.D. 1972).

and world news. He drew inspiration and hope from hearing about progress elsewhere. He also drew inspiration and strength from his family, and one day watched his father confront the Baker County Sheriff in front of the Phipps' farmhouse where Mr. Phipps was chopping wood. The sheriff wanted Mr. Phipps to lie against someone the sheriff wanted to put away, but Mr. Phipps refused. The sheriff put his hand on his gun and said, "Don't you know, N*****, I can shoot you and nothing will be done about it." Herb's dad replied, "You can do that, but not before this ax takes your head off." The sheriff turned, angry, and drove off, but Herb knew what the sheriff had said was true—he could have shot and killed his dad, and nothing would have been done about it.

Schools for African-American children in Baker County were minimal. Two grades were in the same classroom, so Herb had to sit through the exact same lessons two years in a row. The family moved to Albany later, and when Herb was in high school there, local attorney C.B. King spoke to his high school class. Mr. King was the only African-American lawyer in South Georgia at the time, and he gave a passionate plea to the students to go on to college, become lawyers, and come back home to join the fight for justice. The future Judge Phipps was struck by the idea, and the die was cast. He began to follow C.B. to courtrooms whenever he could, and he watched the flagrantly discriminatory treatment African-Americans suffered in all kinds of cases, from civil rights to criminal.

After graduating from Morehouse, Herb did not have the money to go to law school out-of-state, and the University of Georgia law school had not yet desegregated. Partly to make some money and partly to satisfy his persistent curiosity about the world, Herb lived for a while in Vietnam with a Peace Corps-type organization. With the war going on around him, he saw first-hand what was going on there beyond what was reported in the press. He next lived in Bangkok and taught English at Thailand's oldest university. When that was finished, he took the "long way" back home by traveling west and circumnavigating the rest of the globe, an educational trip unlike any other. Herb didn't have the option of traveling on his parents' money, as some college graduates might do, but he saw much more that others taking a trip through Europe would never see. He rode a bus through the Khyber Pass on a twisting dirt road where 10,000 feet below he saw the wreckage of the buses that had not made it. At the tight turns, the locals on the bus broke into a chant,

presumably praying for survival. In Kolkata, he saw women who lived on the sidewalk give birth, only to stand up and walk away from their newborns, having no ability at all to care for a baby. Carts came by in the morning to pick up the dead bodies from the day before.

Herb applied to only one law school, Case Western Reserve University in Cleveland, because that is where the African-American civil rights lawyers in the South he knew of had gone—C.B. King, Fred Gray, and others. He was a top student there and a member of the Law Review. Offered lucrative jobs up north, he stayed true to course and returned to Albany to bring home some justice where it was sorely needed. It took some convincing of Connie, his wonderful wife, but she finally agreed with an understanding that, if South Georgia proved insufferable for her, they would move. Fortunately, Connie grew to love her life there, although she never picked up fishing, which has been a love of Herb's since he was a youngster on the farm.

Judge Phipps practiced initially with C.B. King before opening his own practice. C. B. was an eloquent and courageous lawyer; nothing was too controversial for him. He never backed down, even when Herb and he were threatened. One day after a court appearance in Americus, C.B. returned to his car to find acid poured on the driver's seat. Nighttime hearings to accommodate farmers' schedules in the rural counties could be dangerous for two out-of-town, African-American lawyers. It was these experiences and the ever-present possibility of violence that led C.B. to advise Herb, "Always know more than one way out of town." It was good advice.

C.B. King gave the young Herbert Phipps other advice he never forgot about conducting his own personal and professional life in the most upright manner. "Always be on your best professional and personal behavior because you cannot fight and beg at the same time."

For years, Herb handled every kind of civil rights case from school desegregation, to employment, to jury desegregation, to voting rights, in addition to handling all variety of civil and criminal cases. It was doing voting rights cases where Herb and I collaborated. Sometimes because of the particular federal judge, we knew there was no chance of winning, no matter what we proved, but Herb was used to persistence. One of the first cases we did together was against Thomas County, and it took ten years and multiple appeals to the Fifth (and later Eleventh) Circuit to

finally get relief, but we won in the end and the county was a far better place for it.

Herb's professional life was complemented by a full family and personal life, and his interest in expanding his horizons never ceased. He and Connie are the parents of two wonderful children, Herb Junior and India. When all of our kids were young, our families got together for the Rattlesnake Roundup in Whigham. Herb and Connie took advantage of the Shakespeare festival in Alabama, and I regret we never joined them there.

The initial opportunity to have a judicial career presented a difficult question. There was a tremendous need to integrate the bench in South Georgia, but there was also a huge need for strong legal representation in the African-American community. Ultimately, C.B. and Herb decided that Herb's following the judicial path would be best, and that path, of course, culminated in Judge Phipps being Chief Judge of the Georgia Court of Appeals. At every stage, he has garnered the highest praise from colleagues, lawyers who appeared before him, and litigants and jurors as well. While Judge Phipps' success as a lawyer and a judge has been exceptional, what is even more outstanding is his unwavering commitment to justice. Judge Phipps is a passionate believer in the importance of law as a tool for good. He has spoken to innumerable groups of lawyers, students, and citizens at large. A constant theme whenever he speaks is to encourage people to never let injustice go by unaddressed.

Judge Phipps' wisdom and philosophy of lawyering was eloquently summed up when he gave the commencement address to the Case Western Reserve Law School several years ago. It was the only time in the history of the law school when the commencement speaker received a standing ovation, and his inspirational address was later published in the law review, titled *Lawyers—The Guardians of Truth and Justice*.[4] He reminded the new graduates of the words of a nineteenth century authority on legal ethics: "[N]o [person] can ever be a truly great lawyer, who is not in every sense of the word, a good [person]. A lawyer, without the most sterling integrity may shine for a while . . .; but his light will soon go out. . . ."[5] Judge Phipps added his own words to that admonition: "A lawyer is more than a person who has earned a law degree and passed a bar examination. I also believe that a truly great lawyer is one who pursues a legal career with a deep commitment to truth and justice."[6]

To those who thought the dangerous days of segregation and Judge Phipps' rough days as a young lawyer were a bygone era, he always reminds them in no uncertain terms that that is not the case. As he told the next generation of lawyers in his commencement address:

> I must disabuse you. Equal justice for all remains a promise not kept. Days of injustice that cry out for courageous lawyers await you . . . In your legal career, often you will find that justice in the most fundamental sense is being denied, yet many who have the power to do the right thing will hardly notice they are doing wrong. They will be too comfortable with whichever myths or fictions serve their purposes.
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> You will see injustice on the smallest scale—as individuals deal with one another, and on the greatest scale—as nations invade others on fabricated claims[,] and companies and governments ignore the harm they cause the environment for the sake of profit and power. You as lawyers are guardians of two sacred keys—truth and justice. This is a heavy responsibility. . . .
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> If a client rejects your advice and insists upon a corrupt or prejudiced course of action, have the courage to say, "I can no longer represent you." It has been said, "We owe our clients our utmost zeal, energy, time and talent. We do not owe them our reputations." You may earn and lose more than one fortune, but a good reputation, once lost, may never be regained. . . .
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> Lawyers must be competent, honest and courageous; it is not essential for lawyers to be popular . . . Have the courage to do the right thing while the whole world is watching. Have the character to do the right thing when no one is watching.[7]

As Judge Phipps concluded his address to the Law School graduating class, he repeated the words that had been spoken to his own Morehouse graduating class by Dr. Benjamin E. Mays in 1964: "[Y]ou will make my spirit glad if you are known in life by the quality of your work and the integrity of your character, rather than the quantity of your possessions. . . . I hope the people say in discussing you that you are both competent and honest."[8]

Judge Phipps' accomplishments as a lawyer and judge are exemplary, yet they pale in comparison to the quality of the character of the man who is Herbert E. Phipps. He has been an inspiration to many, and I have been fortunate to be his friend and colleague during these years. What good I may have in my own character is, I'm sure, a result in no small part of my association with Judge Phipps.

ENDNOTES

1. Hidden Figures (Twentieth Century Fox 2016).

2. Screws v. U.S., 325 U.S. 91 (1945).

3. See Georgia's Official Register, 1959–1960, at 344–45 (compiled by Mary Givens Bryan).

4. 58 Case W. Res. L. Rev. 483 (2008).

5. George Sharswood, An Essay on Professional Ethics 168 (5th ed., Fred B. Rothman & Co. 1993) (1896).

6. Phipps, *supra* note 4, at 483.

7. *Id.* at 486–88.

8. President's Charge of Benjamin E. Mays (1894–1984) to Morehouse College Class of 1964 (June 2, 1964), *in* The Morehouse College Bulletin (July 1964).

The Long Road from Baker County

Interview of Judge Herbert E. Phipps

May 18, 2018

Conducted by David F. Walbert and Justice John Ellington

MR. WALBERT: We're gathered here today on behalf of the Georgia Legal History Foundation and Judge John Ellington and I'm David Walbert. We're going to have the pleasure of speaking with Judge Herbert E. Phipps about his life in Georgia and his life in the law. For those of you who don't know anything about the Georgia Legal History Foundation or Judge Phipps, I'll just say a word or two. Judge Phipps grew up in Georgia, born in rural Baker County, Georgia, in deep South Georgia and ultimately became a lawyer, and probably one of the most widely respected people in the history of the state of Georgia. You don't run into anyone that knows anything about Judge Phipps personally or professionally who doesn't have complete admiration for what he stands for and the kind of person he is. As a reflection of that, I think Judge Phipps has received every available award that one can possibly get as a lawyer and a judge over the years and they're all well-deserved, and that's the man we're talking to today. So, with that, Judge, I think it would be good if we just started off chronologically. You were born in Baker County. What was it like growing up in rural Baker County back in those days?

JUDGE PHIPPS: I was, as you said, born in Baker County, Georgia, born at home in the bed I was conceived in. My parents had grown up in Baker County and their parents had grown up in Baker County. And when I was growing up in Baker County, I could see early on that things were not as good as they should have been for black people. Before I was five years old, probably around three or four, we moved on a farm that was owned by my paternal great-grandfather. He had been born a slave and had bought that farm and that was where I did my growing up, most of it, in Baker County in those years on the

farm. My father farmed there and his father farmed on that property. By then, my great-grandfather was too old and frail to do farm work.

I remember my great-grandfather, he lived till he was about 93. So, I remember him, and I was named by his wife, my paternal great-grandmother. And in those years, early on, just before we moved to my great-grandfather's place, we had spent some time on the Ichauway Plantation. My father worked for that plantation and Mr. Woodruff, and I have some memories of growing up there and running around the plantation. And my brother Joe—the one who's two years younger than I am—I can remember him running around the plantation. And one of the stories that I recall about him that was always kind of entertaining, he had the habit of taking off his clothes. You know, back then, when you're out in the country, people didn't watch the kids too closely. You just let them go out and play and after a while, when it's time for dinner or supper, you start rounding them up. Joe had the habit of taking off his clothes and you'd find him after a while and he'd be buck naked, and you'd follow him by the trail of where he left various pieces of clothing. And one day, he went missing. We went looking for him and eventually, we went to Mr. Woodruff's house—it was a big, big, nice house on the Ichauway Plantation, and back then, people didn't lock up like they do now—and we found Joe. He was sitting on the couch in the living room eating an apple, buck naked.

And I can remember my father hunted a lot, and I can remember being on that plantation, too, and one night my father went hunting and brought home a young raccoon and they can be kind of pets when they're young. So we had this raccoon, and he put a collar on him and fixed him up so it had a line, a wire line running for probably a hundred or a hundred and fifty feet in the backyard, and this young raccoon was on there. He could run back and forth, and we would feed him and play with him, and that was something that I got a lot of enjoyment out of, playing with that animal.

And I remember going to baseball games on that plantation. They had a baseball team, which was a real good team, and I remember some of the players to this day who were friends of my parents, and going to those baseball games. And one of the things about going to those games, with Mr. Woodruff's connection to Coca-Cola, there would always be a plentiful supply of Coca-Cola at the baseball games.

MR. WALBERT: Who did the teams play?

JUDGE PHIPPS: They played other teams from other places. They even played some other teams from Florida and Georgia, you know, teams around the area from other counties, other plantations. But they had an organized team and had some really, really good players and I can remember some of the players were good enough that some of the scouts would come and watch them, and some of them would get invited to tryouts and that kind of thing with major league baseball. Of course, back then—well, this was after Jackie Robinson, you know, in '47—some would get invited, but before then, they obviously would not.

MR. WALBERT: Did your folks have you working on the farm at some point?

JUDGE PHIPPS: Yes, when I was growing up, I did a lot of farm work. My father planted mainly cotton and peanuts and corn, other than vegetable gardens, and we had pigs, cows. Back then, farmers, poor farmers anyway, used mules to plow the fields and we always had a couple of mules and my grandfather, my father's father, had a horse. He'd have sometimes two horses, and he liked to ride horses. When you're a kid, you want to try to do the things your father is doing, so I'd follow my father around the fields, and he'd let me plow once I got big enough and strong enough to hold onto a plow.

MR. WALBERT: How old would you be when you're doing that?

JUDGE PHIPPS: I probably started that when I was eight or nine years old. Just big enough to hold on.

JUDGE ELLINGTON: What year were you born and who all was in your immediate family?

JUDGE PHIPPS: I was born December 20th, 1941, in Baker County and my mother had six brothers and they were all there in Baker County at that time. My father had two brothers and four sisters. And my father's sisters, except for one, had moved away from Baker County, or they did during the '40s. They moved away to New Jersey, Ohio, places like that. And I had two brothers younger than I am and a sister who was the youngest of my siblings.

JUDGE ELLINGTON: Tell me about school.

JUDGE PHIPPS: I can remember the first day that I went to school. My parents took me to school and it was a three-room school and probably the whole school was about the size of this room. We had three rooms and six grades, and that meant there were two grades in each room. And the school was a couple of miles or more from where we

lived and except when your parents took you to school, you walked to school every morning because we didn't have a bus. The white children had buses and they'd ride by on their bus going to school. The only times that we had buses was when the white school would get a new bus and they'd give us the old broken down bus, and our parents had to keep it running even then. They would have to repair it or try to keep it running.

So, from time to time, we would have a bus and we would walk out to the road. The farm was way back off the main highway, so we'd have to walk out to the highway and wait for the bus when the bus was running. And on cold days, I can remember it being very, very cold, as you can imagine, in the morning, and often my parents or my father would give us some woodchips and wood to take with us and matches to start a fire on the side of the road while we were waiting for the school bus, to try to keep your feet and hands warm. And we often did that, would just sit there and you could always find in the woods branches and things to throw on the fire to keep it going till the bus came.

But the school, as I said, was three rooms. It had no plumbing, and each room had a heater in the center of the room. When the boys got to school in the morning, they would often have to go in the woods—the school was sitting out in the woods—and cut some firewood to put in the heater. And the parents would, from time to time, furnish coal to go in the heater.

And as I said, no plumbing. There were two outhouses, one for girls, one for boys, and no water, no lunchroom. If you wanted something to eat, you had to bring it with you, and if you wanted a drink of water, there was a church a little way down the road that had a pump, an old-fashioned pump with a handle that you pumped. So if you wanted a drink of water, you had to go there to get a drink of water.

I tell folks that the "advantage" of going to that school at that time was that when you were in the first grade, you got to hear the second grade lesson all year, and when you were in the second grade, you got a review, and the same thing for third and fourth, fifth and sixth. That was about the only advantage of that school. We had very few books and the teachers would always give the books to the better students. The students who probably needed the books the most didn't get them, so that further set them back. And you had to be very careful with the books. I remember as you sweat and you have moisture on your hands, they would make us put a piece of paper between your thumb and the book

so that you wouldn't erode the pages, in order to try to preserve the book for as long as possible.

MR. WALBERT: Were those hand-me-down books from the white schools also?

JUDGE PHIPPS: They were hand-me-down books, whatever was left from the white schools. We never had enough books. Just whatever the white schools had left over, that's what we would get, and those would go to the better students. And I can remember, we used those old-fashioned blue books for writing and on the back of them was the multiplication tables. And there was one teacher in the school, second or third grade, who had you learn the multiplication tables, and if you didn't learn them—there was no DFCS to call—but she would stand in the door as you were leaving and if you had not recited whatever she told you to recite, the fives, the fours, the eights, or whatever she was on that day, if you hadn't done it, you'd get a few licks on your way out as you left. And I can remember days when, for example, I didn't remember which one, or had forgotten which one we were supposed to do that day, and with my last name beginning with "P," she'd go down the row alphabetically and by the time she got to me, I had learned the ones that I was supposed to that day.

MR. WALBERT: How high did the education go for black kids back then, Judge, in Baker County?

JUDGE PHIPPS: They had a school in Newton where you could go and graduate. When my parents were growing up, black kids couldn't graduate from high school. They could go to the eleventh grade, but if you wanted to finish high school, your parents had to send you away somewhere to get that. And as you can imagine, my parents' parents were not able to send them. So, they went to the eleventh grade and that was as far as they went, and that was about it for most of the other black people in the county.

JUDGE ELLINGTON: Where did you go after sixth grade?

JUDGE PHIPPS: After the sixth grade, there was a school in Newton. Now, this country school that I'm talking about was probably twelve or fifteen miles from Newton, which is the county seat. There was a school in Newton called East Baker High, and it was just a slight step above the country school. I can remember kids playing basketball there outdoors on a dirt court. As you can imagine in the wintertime, it got kind of cold standing out watching the basketball game. But that was

about the only sport that they had at that time because all you needed was a basketball and some goals. They didn't have the space to have a school baseball team or the equipment to have a football team.

MR. WALBERT: Judge, I remember hearing you tell the story on a prior occasion that you were a certain age before you realized that white kids even went to school because things were so segregated back then in Baker County, and you mentioned a minute ago about realizing when you were young about things not being right racially. What was your first real understanding about how bad it was in that regard?

JUDGE PHIPPS: Well, I would hear my parents talking about it and, as I said, my father's siblings had mostly moved away, but my mother had six brothers and they were young, young black men at the time I was growing up, and they were very active and getting around and I would hear them tell stories about things that happened to them or things that happened to their friends, how they would get stopped and harassed and how people would get abused and you hear about people being shot by the sheriffs or deputies and that kind of thing. So, you'd hear about that early and you knew that something was wrong when these people would do nothing and often they would get brutalized and beat up. That's how I started hearing it because they were young and they were active and, naturally, getting around, driving when they could afford a car, and they'd get stopped, pulled over all the time and arrested.

I can remember one of them when I was a kid, Gator Johnson—he eventually became the sheriff—he was a deputy for Sheriff Screws, and I can remember hearing them one day talking about a friend of theirs who had gone into Newton and parked there on the courthouse square and when they came out and were ready to leave, Gator Johnson walked over and put his foot up on the car and just stood there and he knew that they were trying to leave. They were ready to leave, but he just stood there to harass them, and that kind of thing was going on all the time.

MR. WALBERT: Of course, Claude Screws, Johnson's predecessor, was an infamous sheriff, and he was the defendant in the *Screws v. United States*[1] case in the U.S. Supreme Court.

JUDGE PHIPPS: Right.

MR. WALBERT: And I understood from earlier, Judge, that the man that Screws killed that led to the Screws' prosecution was a family friend of your folks.

JUDGE PHIPPS: His name was Robert Hall, and there's some Halls that live in Baker County now. He was a family friend, and he had been killed and brutalized and drug around the square and beat up and thrown in a jail cell where he ultimately died.

Screws and his deputies did that. There was no state prosecution, but so bad that the federal government couldn't let it go. So, they charged him with misdemeanors for the lynching, and they were tried and it was such a bad case that—it was an all-white jury because there was jury discrimination in federal and state courts even by the time I went back to practice law. But the case was so bad that an all-white jury convicted them of the misdemeanors. They appealed, and the Fifth Circuit affirmed. And in the Fifth Circuit opinion, there was a lot of detail about the facts of the case. In the U.S. Supreme Court decision written by William O. Douglas, there's not a whole lot of detail about it, but the convictions were reversed I think on the basis that the judge failed to charge the jury on something about intent or something to that effect. So, it was reversed and they had another trial, and in the second trial, they were acquitted and the people of Baker County rewarded Screws by sending him to the state senate after that. Gator Johnson became the sheriff at that time.

But you had mentioned one thing about—I was about the fourth or fifth grade when I learned that white children went to school. Obviously, at the school I attended, there were no white kids there. And growing up in Baker County, I had never seen a white school. I didn't know where it was or if there was one, and that was one reason I didn't have any idea that white kids went to school.

And one morning, I was walking to school down the highway and a young white kid came by on a scooter—it wasn't what you call a motorcycle, more of a scooter thing. He offered me a ride, and I hopped on behind him. He asked me where was I going. I said I was going to New Salem school. And I said, where are you going. He said, I'm going to school, too. And I'm thinking, damn, you're kind of old to be starting today.

(Laughter)

JUDGE PHIPPS: When we got to my school, he dropped me off and went on. That's when I figured well, there must be another school somewhere.

MR. WALBERT: So, he was about your age?

JUDGE PHIPPS: —was about my age. He was a young kid, but he was on a scooter and in the country, they let kids drive those things around.

JUDGE ELLINGTON: Tell us about going to town on the weekends and what Newton was like.

JUDGE PHIPPS: Well, there were places where black folks would hang out together. Everybody was separate, but there were things that you needed to buy. Most folks on the farm, they raised and grew whatever they were going to eat, but you'd need to go into Newton to buy flour or things that you didn't produce on the farm. And also, it was just a good way to go in to socialize, to hook up with your friends. But everything was always, always separate and you had to be careful going and coming because often the law enforcement, the deputies, they see you leaving, obviously they knew everybody or which way you're going. They would sometimes follow people and harass them along the way. And Gator Johnson and Screws and their crowd were very, very active in that regard.

I can remember one time when Gator Johnson came to our house out in the country on my great-grandfather's place. I was walking home from school and I could see a car in the yard up near the woodpile. Back then, we had a woodstove and fireplaces burning wood. I could see my father standing there talking to somebody. As I got closer, I could see that it was the sheriff's car, and it was Gator Johnson. My father, when he drove up, had been in the woodpile chopping wood, so he had an ax in his hand, and Gator was trying to get my father to do something—to be a witness against somebody, tell a lie on somebody. He was trying to set up somebody, but my father refused to cooperate with him. And as I walked up, as I got close to him, I heard Gator say to my father, "N*****, don't you know I'll shoot you," and he put his hand on his gun and I heard my father say that, "Well, if you do, I'll chop your damn head off with this ax and it'll hit the ground about the same time I do." And Gator just stood there a few seconds and then he turned and got in his car and sped away. And I often thought that if he had shot my father, nothing would have ever been done about it, if he had killed him. Fortunately, he didn't.

So, that was the kind of atmosphere that you grew up in. And growing up on my great-grandfather's farm, you were sort of isolated. My parents weren't sharecroppers. They were farming for themselves and if

you were a sharecropper, there was even more abuse because you worked like hell and the owner got most of the benefits. They usually would sell you things during the course of the year when you didn't have any money, and by the time the crops were collected and it got time to split up the funds, you owed them everything that you had, everything that you had earned. So, that was not a good life, sharecropping. But fortunately, we didn't have to deal with that aspect of it because my parents were farming for themselves.

JUDGE ELLINGTON: Tell me about healthcare and hospitals and medicine.

JUDGE PHIPPS: Well, there were no hospitals, and I don't believe there was a doctor in Baker County that I'm aware of, I ever heard of. I remember a few times that I went to a doctor over in Camilla in Mitchell County. My mother told me that one time when I was about two years old, I got sick from something and she took me to the doctor and he said, "Well, there's nothing I can do for him. He's going to die. You might as well take him on home."

MR. WALBERT: Pretty poor diagnosis.

JUDGE PHIPPS: Right. But, that was it. She took me home thinking I would die, but obviously I outlived the doctor. But healthcare, there wasn't any of that. I can remember my uncles pulling their own teeth with pliers. There were no dentists or healthcare. You just didn't do that. And back then when people had cavities, you didn't go to the dentist and get them fixed the way you can now.

I can remember kids getting sick and the parents would put together all kinds of remedies and maybe put it in a little bag and tie it around your neck and it smelled funny. And when you got sick, you didn't want to go to school with one of those things on your neck. And of course, they were selling castor oil and people thought that was a remedy for most anything. You drink a big cup full of castor oil and they thought that would take care of anything. A lot of times, kids thinking about that, they would just say, "I'm feeling better, I don't think I need anything," because nobody wanted that castor oil.

MR. WALBERT: You had plenty to eat growing up on a farm.

JUDGE PHIPPS: Yeah.

MR. WALBERT: Were your folks able to sell enough of what they raised on the farm to bring in money to get what else you needed in terms of clothes, ultimately a car and stuff like that?

JUDGE PHIPPS: They sold the crops. They would sell corn and peanuts and cotton and usually earn enough to sort of take them through the next season, but they didn't sell vegetables and things like that to anybody. Whatever we grew, we used ourselves. Whatever we had in the garden, whatever was seasonal, we were growing it to supplement our diet. They would go to the store to buy things like flour and sometimes meal and back then, lard, things to cook with. But other than that, we didn't have to buy meat, and you could go fishing and catch fish, although sometimes people would go to the fish market in Newton and buy fish.

We survived that way. We grew things. I love sweet potatoes and I can remember we'd grow them and then put them away in a little bed for supply over the winter, and you could go in there and whenever you needed them you'd get them out. They'd be packed in pine straw and that kind of stuff, and they would last through the winter. I'd walk home from school and my mother—we had a woodstove, as I said—my mother would always have some sweet potatoes already baked in that oven. And so, when I got home, I would put a sweet potato in each pocket and one in my hand and strike out across the woods, running with the dogs and after the dogs, hunting or doing whatever, or I crossed the fields to where my father was. So, we always had plenty to eat.

MR. WALBERT: How many acres was the farm?

JUDGE PHIPPS: It was about 200 acres.

MR. WALBERT: And was that what your granddad had?

JUDGE PHIPPS: Yeah.

MR. WALBERT: And had it split up or did your—

JUDGE PHIPPS: No, he had access to the whole thing, because by then, my great-grandfather couldn't farm. He was too old when I was growing up. And my father's father, my paternal grandfather, he farmed a little bit, too. By then, all of their kids were grown, as far as my father's siblings. So, he didn't do a whole lot, but he did a little farming. He would plant small crops, too, but he didn't do a whole lot. Mainly, my father had access to the whole thing. And it had ponds on it where we would—back then, when people gathered the peanut crop, they would plow them up and turn them over and then they did what you call "shaking peanuts." You'd shake the dirt out and stack them on the stacks. I don't know, John [Ellington] has probably seen that or heard of it anyway.

And I can remember my father would use those cypress poles. We'd go into the pond. We would wade into the pond and he would cut the poles and my brothers and I would drag them out to the edge of the pond, and those cypress poles were what we used in the fields to stack the peanuts on. Then you would put a cross at the bottom and you would start down there to stack them all the way up and let them dry out for the harvest. Then you would bring in the picker and it would separate the peanuts from the vines. And I can remember wading around in those ponds, and there were a lot of alligators, a lot of moccasins, but we never had any problem. I guess during the time that we were in the ponds, wading, it wasn't the mating season for the alligators, so I guess they sort of stayed away. We had no problems out of them, but we knew they were in there. You would see them, and you would hear them.

MR. WALBERT: Did you ever eat them? Did you ever hunt them?

JUDGE PHIPPS: We didn't really hunt them, but sometimes we'd eat them. I had an uncle who would kill them sometimes and we would eat some.

MR. WALBERT: Pretty decent, isn't it?

JUDGE PHIPPS: Yeah, it's fine.

JUDGE ELLINGTON: I know you like to fish today. It's been a lifelong hobby of yours. How did you get started fishing and what kind of fishing did y'all do? Pond fishing, creeks?

JUDGE PHIPPS: We fished in ponds and creeks. My paternal grandmother, she lived on the same place we did and she liked to fish. My father liked to fish. My mother and all of her brothers liked to fish and we would go fishing in the ponds and the creeks. There were creeks running through the area and we would fish there mainly for brim. In the ponds, you would sometimes catch a lot of catfish and brim, that kind of thing. I can't remember a time when I wasn't going fishing with somebody, maybe sitting on the bank or watching them fish even when I was too young to do it.

MR. WALBERT: You still fishing these days?

JUDGE PHIPPS: Yeah, we fish quite a bit. Went fishing last week.

MR. WALBERT: And is the old family farm still in the family?

JUDGE PHIPPS: No, it's not. After my great-great-grandfather passed away, they kept it a few years after that, but you know, farming was becoming so mechanized, and my father couldn't afford to buy

tractors and things like that, so you've got to find some other way to make a living. The farm had passed down to my grandmother and her sisters from their father, and they sold it to a man who owns it and I see him from time to time and he always says come on over to the place, and sometimes I'll ride through there and look at it. But the guy that owns it now is a friend of the family, and he always invited us to come over there and see the place.

MR. WALBERT: And is it being farmed now?

JUDGE PHIPPS: Yeah, I think he rents it for farming.

MR. WALBERT: What year did you leave the farm and go wherever you went?

JUDGE PHIPPS: Well, I left the farm probably around 1954.

MR. WALBERT: And did you go to Albany then or—

JUDGE PHIPPS: Well, that was when I started going to school in—well, '53 probably—in Newton and went to Newton, and then we came to Albany and that's where I finished high school, in Albany.

MR. WALBERT: And what was your dad doing after he left the farm?

JUDGE PHIPPS: Well, for a while, he had a couple of brothers and a lot of relatives in Philadelphia. He went up there and worked—if he could get a good enough job, he would have the rest of us come up. He stayed maybe almost a year but couldn't ever get the kind of job that he wanted, so he decided to come back to Albany. When he came back, initially, he was driving a truck for a company that distributed food to various supermarkets and things. After a while, he was able to get a job at the Marine base in Albany and that was where he retired, ultimately, from that job.

MR. WALBERT: So, you graduated from high school, though, in Albany?

JUDGE PHIPPS: In Albany, yeah.

MR. WALBERT: And you got involved in the Albany Movement at some time when you were there, did you not?

JUDGE PHIPPS: Yeah.

MR. WALBERT: So, how did that come about? What do you remember about all that?

JUDGE PHIPPS: Well, when I was in Albany, just to continue about what we had said about the books, when I went to school in

Albany, we still got used books. After the white kids got the new edition, we would get whatever was left over from what they were using. And the first new book that I ever had, I bought it at the bookstore when I got to Morehouse College. That was the first new edition, current edition of any textbook that I ever had.

But in Albany, the movement started around '60, '61. I finished high school in 1960 and I'd gone to Morehouse College, and by the time I got there, they had had the sit-ins in South Carolina and in North Carolina and Martin Luther King was in Alabama doing things. And there were already demonstrations and protests going on in Atlanta when I got there. Immediately when I got to college, they had a big student movement, students were picketing, protesting, sitting in, doing all kinds of things. So, I got involved in that. And then, about '61 is when they started in Albany, the Albany movement and Martin Luther King went there. And when I would go back home for the summer, I would participate in whatever was going on there. I participated mainly in voter registration, trying to get black people registered to vote.

MR. WALBERT: How did that go?

JUDGE PHIPPS: There was a lot of resistance in Albany. It just wasn't as bad as it was in the surrounding counties, Terrell County, Lee County, Worth and Baker. It was not as bad, but you just had to be persistent. A lot of black people were not used to voting because they had been denied the right to vote and they had been harassed about voting. If you registered to vote, you'd lose your job, that kind of thing. There were all kinds of intimidation and other tactics used to keep black people from registering and voting. So, you had to persuade them that it was okay and try to convince them that they could do it.

MR. WALBERT: That was a tough sell with the older people, I suspect.

JUDGE PHIPPS: Yeah, it was. It was.

JUDGE ELLINGTON: Were there any other requirements to vote, whether it was a literacy test—

JUDGE PHIPPS: Back then, the literacy test was still on. I can remember watching Donald Hollowell, C.B. King and Constance Motley try a case in the federal court in Albany in front of Judge J. Robert Elliott. They were representing two school teachers, black school teachers with master's degrees who had been denied the right to register to vote because they couldn't pass the literacy test. And the guy who was

running the voter registrar's office in Terrell County, he may have had a high school education. But anyway, the first day they went, they answered all of his questions. I think the second day they may have answered his questions, and by the third day, he had gotten somebody to help him get some questions that a Rhodes Scholar couldn't answer, that kind of thing. So, they were representing these teachers in a voting rights case because they couldn't pass the literacy test, and that was just another example of why the literacy test needed to be abolished, because they would use that to stop you, even if you were otherwise qualified. I remember seeing that judge rule against those teachers.

MR. WALBERT: You were there during that hearing?

JUDGE PHIPPS: Yeah, I watched the trial. And in '62, there was a lot of activity in Albany and a lot of protests, demonstrations and that kind of thing, and I remember when I went home for vacation or over the summer, I was working with SNCC.

JUDGE ELLINGTON: Now, tell us who SNCC is.

JUDGE PHIPPS: Student Nonviolent Coordinating Committee. They had a chapter there that was doing voter registration in Albany and surrounding areas. So, I went to their office and got involved in what they were doing. And this was a very tense, tense time, and Martin Luther King came down during that time and I was working with them. There were no jobs for young black folks. You couldn't go and get a summer job like the white kids, so you had time on your hands. And we would have encounters with the police. There was no open violence from them in Albany, but they knew who you were. That was the summer when I got arrested. I was walking home one night and went into a phone booth to make a call and that—

MR. WALBERT: That's after you'd been working on voter registration during the day?

JUDGE PHIPPS: Yeah, yeah. And they knew that I was working with SNCC and that kind of thing—in fact, they knew all of us, the cops did, because they would hang around and watch what you were doing. So, I stopped to make a phone call in a phone booth. It was dark, but when you closed the door, the light comes on and you can see whoever is in the booth. A couple of cops drove by and saw me, and they got out and came over, pushed the door open, snatched the phone out of my hand and hung it up. They arrested me and took me to jail but never booked me in. There was no paperwork or anything, no record. They

just took me in and put me in a cell with three or four other guys who were not in there for civil rights work. And this was, like, on a Monday night, and a couple of days later, Martin Luther King led a march, and they just happened to put him in the cell right next to the cell that I was in. I had a couple of conversations with him, and he found out I was a student at Morehouse College, and he had finished Morehouse College. We got to talking that way and I got to see some of his staff, some of his workers, too, and also C.B. King came down to visit him.

MR. WALBERT: Tell us who C.B. King was.

JUDGE PHIPPS: At that time, he was the only black lawyer in South Georgia. He was representing Martin Luther King and the others in the movement, and he came down to the jail to visit Martin Luther King, and I told him to make sure my parents knew where I was. I found out later, when I didn't get home that night, they called the hospital to see if I was there. They said no, and they called the jail to see if I was there and they said, no, he's not here.

But after that, I got to meet more of the folks who were on Martin Luther King's staff. He got out probably before I did because I was kept in jail till the next Monday, and that was when I was released. They just opened the door and said "go." And so, after being in jail for a week, I went home. But when I got back to school that fall, having met Martin Luther King and several of his folks, like Andy Young and Fred Bennett and others who worked with him, I got a part-time job at the SCLC after school, and I would go down and get the bus and go down Auburn Avenue and work after school. I worked with the voter registration unit. That was very, very interesting, and I got to see a lot then, see a lot of the people who were active in the movement, Dr. King's father and Jesse Hill and all of the other people who were leaders in the SCLC.

MR. WALBERT: Were many of the students from Morehouse involved in volunteering at the same time or were you unusual in that regard?

JUDGE PHIPPS: Well, I was unusual in that respect because there were plenty of other activities going, plenty of other pickets and protests and demonstrations. So, there was a lot of other things going on at that time, but as far as working down there, I was the only one from Morehouse in that voter registration office. There was one woman who was a student at Spelman. She worked there, too.

MR. WALBERT: What was your impression of Dr. King in your working with him?

JUDGE PHIPPS: He traveled a lot, and the office that I was working in was a couple of blocks from the main SCLC office, so I didn't see him all the time. But the guy that I was working with mainly, whenever Dr. King was in town, the guy would deliver things to him, pick up things, paperwork and that kind of thing, or take him different places, and I would usually go with him. I got to go with him to Dr. King's house on occasion or he would take Dr. King to such and such a place for a meeting and I would ride with him. Dr. King was very impressive. He liked to joke. He liked to tease and he was very, very easy to get to know and to talk to.

MR. WALBERT: Fun guy to be around, sounds like.

JUDGE PHIPPS: Yeah, yeah.

MR. WALBERT: As well as being a great leader.

JUDGE PHIPPS: Fun to be around.

JUDGE ELLINGTON: You went to his house several times?

JUDGE PHIPPS: I can remember one day we went by his house to deliver something to him and he was seated on the front steps of his house and two of his kids were playing in the yard. After we got there, he was ready to send them in the house to their mother and they just kept playing. They wouldn't pay him any mind and they just kept playing. Finally he said, "I can go anywhere in the world and people will follow me. I can get crowds and hundreds and thousands of people to follow me and do what I say. I come home and my own children won't even listen to me."

JUDGE ELLINGTON: Tell us about while you're in jail, the food you ate, what kind of groceries did they serve y'all?

JUDGE PHIPPS: In the jail, we had those tin plates and the food was not good, but you ate it because you had to choose between going hungry and eating. But when Martin Luther King got in that cell next to me, the police chief would allow people from the outside, some of the church folks, movement folks to bring him food from outside. And I remember the first day that happened, I had already met him and we'd been talking, and they brought him a lot of fried chicken—he would pass me chicken around. We couldn't see face-to-face, but being in the cell, he would reach out and pass chicken around to me through the bars, and that was some of the best fried chicken I've ever eaten.

JUDGE ELLINGTON: I know that Morehouse played an important role in your life. How did you even discover Morehouse? How did you find out about Morehouse? Growing up in Baker County and Albany, did you know somebody that went to Morehouse?

JUDGE PHIPPS: When I went to school in Baker County, for a while the guy who was the principal at that school had attended Morehouse. And then when I got to Albany, the principal of the high school was a Morehouse graduate. And so, that's how I heard about the school and was encouraged to apply because you couldn't attend the University of Georgia. You couldn't attend Georgia Tech or Emory or Mercer or any of those white schools. Things were still segregated, so you had to try to go to some of the state schools, Albany State, Fort Valley, Savannah or Morehouse at that time, Morris Brown or Spelman if you were a woman. Those were the choices in the state.

MR. WALBERT: Was Morehouse pretty expensive to go to at that time?

JUDGE PHIPPS: It was relatively expensive for folks—but not really expensive, because my father, he wasn't making a whole lot of money but he was able to, I guess, get loans and things. I got a little scholarship, not a full scholarship, and that helped and he was able to piece together the rest of it. I can't say it was really expensive because he was able to do it. If it had been real expensive, we wouldn't have been able to do it.

JUDGE ELLINGTON: Now, I've been over to Morehouse, and I've taught over there and I know that a Morehouse man is well-read, well-spoken, well-dressed, well-traveled and well-balanced, and I think all of that describes your life. But if you would, tell us again about what it was that caused you to go to Morehouse first and whether you applied anywhere else.

JUDGE PHIPPS: Well, as I said, the principal of my high school had graduated from Morehouse and I had had a principal earlier before high school who had graduated from Morehouse, and the high school principal's son was at Morehouse at the time I was in high school and a couple of other guys from my high school were there. When I applied to Morehouse, I applied to just one school: Morehouse. Then I was talking to my counselor about what I had done. She wanted to know what schools I had applied to and that kind of thing. When I told her that I applied to—only to Morehouse, she said, "Herb, you're a good

student and I hope you get into Morehouse, but there's a lot of competition to get into Morehouse and I think that you ought to apply to some other schools. You ought to have a back-up plan. You ought to have a back-up plan just in case you don't get into Morehouse." So, I followed her advice and I applied to Harvard University. And all my life, I've been glad that I didn't have to fall back on my back-up plan because I got into Morehouse.

JUDGE ELLINGTON: Did anybody discourage you or tell you that you they didn't think that you could make it in college?

JUDGE PHIPPS: No, I never had any kind of discouragement along that line. And the education that we got was not the best because of the resources that we had and, as I said, even in high school, the books were usually old and out of date and used and that kind of thing. But, I think the thing that helped me more than anything else when I got to college—I didn't have a strong background in mathematics, because when I got to Morehouse, the first semester I had college algebra, I had taken algebra in high school, but the college algebra was a step above what I had had in high school. And the second semester was trigonometry. I couldn't spell trigonometry. I'd never seen it in high school, but I had to deal with it. But the thing I think that helped me more than anything else, and I know that because of what I saw happen to other students, in high school I was fortunate enough to have an English teacher who was just outstanding. She was a very good teacher and I got a real good background in English. So, when I got to college, I had no trouble with English and the related courses. And a lot of my classmates who were helping me with math, they were math whizzes. They could do the math. But they flunked out because they couldn't pass the English courses. They would have A's in math. They could help me with the math, but there's no way I could help them make up the deficiencies they had in English, and a lot of good students flunked out because they didn't have that background, that basis in English that I had.

MR. WALBERT: What'd you major in?

JUDGE PHIPPS: I majored in political science and a minor in history.

MR. WALBERT: Were you thinking—you're young then, you may not be thinking about what you're going to do—but are you thinking about law or anything else at that point or . . . .

JUDGE PHIPPS: Yeah, I was thinking about law school. I started thinking about law school when I was in—probably about the ninth grade. One day they had career day and C.B. King came to the law school, and at that time, he was the only black lawyer in South Georgia and one of the few black lawyers in the state of Georgia. There weren't a whole lot. I doubt there were 15 black lawyers in the state of Georgia at that time.

JUDGE ELLINGTON: And he was from Albany?

JUDGE PHIPPS: And he was from Albany. He came to the school on career day and he talked about how he was using the law to fight racial injustice and I was very much impressed with what he had to say and what he was doing. And after that, that was when I started visiting his law office. I would go and visit him from time to time and I also started visiting the courts, watching trials. And whenever I could find out that he was trying a case, I would go and watch, and even if he was not trying a case, I would still go and watch trials. And on many, many occasions, I saw black people on trial and other than myself and maybe a family member of the defendant, there were no other blacks in the courtroom, no black judge, no black law enforcement, no black jurors, no black courthouse staff, no blacks in the clerk's office, no blacks anywhere. I saw racial slurs used against black folks by the lawyers, the judges and witnesses and whether they were law enforcement or otherwise, and nobody ever said anything about it. Of course, whenever I saw C.B. King in court, they wouldn't do that necessarily in front of him, and if they had a black witness on the stand, they would call them by their first name and he would always insist that if they called the white folks Mr. this or Mrs. that, would insist that they treat black folks the same way.

MR. WALBERT: Was he successful in that regard?

JUDGE PHIPPS: Well, in that day, when he was in court, he was. Because he would fight them all the way and start making a record if they didn't. So every time I saw him challenge them on that kind of thing, they would back off.

MR. WALBERT: Was that true outside of Dougherty County, too, in the rural counties around?

JUDGE PHIPPS: Yeah. They would say oh, okay, C.B., if you insist, that kind of thing. And they would try to play it down.

MR. WALBERT: You know, for folks that don't know C.B. King, which is most everybody, he was so articulate and made such a fantastic

presence, that must have had a real effect on you in career day to hear him. He spoke with such tremendous authority.

JUDGE PHIPPS: Yeah. He had a great voice and he was very, very intelligent and he was impressive even to those who were against him, who were on the other side. He made a very good impression but the judge and everybody else, they were as hostile as they could be, and he was filing jury challenges, discrimination challenges because blacks and women were kept off the jury rolls in proper numbers and that was just a continuous battle. And when I got back to join the practice with him, that was still a battle that we had to fight.

MR. WALBERT: That was years later, wasn't it?

JUDGE PHIPPS: Yes.

MR. WALBERT: You're talking about high school when you first see him, meet him and start going to the courtrooms, if I hear you right. Was that back in high school?

JUDGE PHIPPS: That was about the ninth grade. And when I got back in 1971, he was still the only black lawyer in South Georgia.

MR. WALBERT: To have him there, a man so strong and articulate, he must have been just an absolute ray of hope for the black community back at that time as the only person, the only person who would stand between them and injustice.

JUDGE PHIPPS: He was, and people would come from a hundred miles away, all around. People would come to Albany to try to get him to represent them. And one thing that was impressive to me about him is that I never saw him turn away somebody who had a civil rights claim, a meritorious civil rights claim because they didn't have any money, because they couldn't pay. He never turned anybody away because they couldn't pay. And as you know, having done many of them, those cases can get expensive to litigate.

MR. WALBERT: Especially in front of J. Robert Elliott.

JUDGE PHIPPS: Yeah, that's right. Expensive to litigate and often he would try to get the NAACP Legal Defense Fund involved to help and often maybe the local chapter of the NAACP or somebody to help cover the expenses. They weren't paying fees and that kind of thing, but they would help cover the expenses. But I never saw him turn anybody away because they couldn't pay him. That was impressive to me.

JUDGE ELLINGTON: Tell us about when you were working with SNCC and SCLC, integrating the Fox Theatre in downtown Atlanta.

JUDGE PHIPPS: I was at Morehouse, a Morehouse student, and as I say, there were protests, pickets going on all around the place and demonstrations and efforts to integrate various places. And often, when you were through for the day, you'd go to the SNCC office and see what they needed. They would say, well, we need some people to picket down at Rich's or we need some people to sit in over here or we need folks to do this or that. And one afternoon, about the time I walked in, a classmate of mine walked in and we said what do you need today, and they said we need somebody to go to the Fox Theatre, and they gave us the money for the tickets. They knew that we were going to return that money because we weren't going to get in. So, they gave us the money for the tickets and they gave us the money for the bus, to catch the city bus down to the Fox Theatre.

When we got to the Fox Theatre, it was in the middle of the afternoon, it must have been the first showing of the movie for that day. And there was a young white woman sitting in the ticket booth, and there was nobody else around and we walked up and she was reading. She had a book. She was obviously a student doing her homework and she was focused on that book. And I walked up and I said two tickets to whatever it was and pushed the money in. She never looked up. She gave me two tickets and took the money and we went on in. She never looked up. And we went in and when we got in, we were looking around because we didn't know whether this was a set-up or what. We didn't know whether they were coming through the back to get us or what. But we went in and watched the movie. And when it was over, we walked out and went back to Morehouse, the SNCC office there, and told them what had happened. When we described to them how it happened, this woman, when we walked up she never looked up, she never noticed us, and they said "well, somebody is going to have to go back there tomorrow because they're not integrated until they know they're integrated."

(Laughter)

MR. WALBERT: That's a funny story. And did that happen—

JUDGE PHIPPS: Yeah. They sent somebody. We didn't go back, but somebody went back and—

MR. WALBERT: That's probably, what, '63, somewhere around there—

JUDGE PHIPPS: Yeah. Yeah. '62, '63, yeah.

MR. WALBERT: –before the '64 Civil Rights Act was passed?

JUDGE PHIPPS: Yeah. And I can remember going downtown. That was when Rich's was downtown and there were a lot of drugstores and things around. There were lunch counters and that kind of thing. We'd go downtown sometime and you would walk, picketing, carrying signs, picketing and the Ku Klux Klan would send folks to march or try to intimidate you. They'd have their robes on and stuff and they'd march alongside you. They'd put one next to each of the picketers and they'd march alongside you to try to intimidate you. I saw plenty of that kind of thing.

MR. WALBERT: Did you ever get close to experiencing violence yourself personally?

JUDGE PHIPPS: Not in Atlanta when we were picketing and demonstrating. They would be around, but I never experienced anything where I felt in danger. I remember the day that John F. Kennedy was killed in Dallas in '63. I got on the bus after I finished my classes, heading down to the SCLC on Auburn Avenue, the voting office to work, and when we got downtown, that was like a hub for the buses. There were a lot of buses going different directions. And by then, there was a headline in the paper, big print headline saying that the president is dead, and I saw these white guys—bus drivers—celebrating. They were so happy that he had been shot, and they were just waving and hollering and raising the paper and that kind of thing, including the driver of the bus that I was on. And they really celebrated that. That was really something to see.

MR. WALBERT: I remember you telling me once that for a while you worked at the Labor Department after college.

JUDGE PHIPPS: Yes, I had finished college in early June of '64, and this job was a new federal program where they provided money through the state labor departments for what they call youth opportunity centers and we were training to counsel young folks, sixteen to twenty-one, and trying to help them get jobs and training and that kind of thing. And our training, prior to beginning the work, was at the University of Georgia. We went to University of Georgia and moved into a dormitory and it was during the summer months. So, other than the about thirty people that I was with, the dormitory was basically empty. They had arranged for us to have our meals in the school cafeteria. The first day that we were there, we went to the cafeteria for dinner. When we got in there, there were long rows of tables and the cafeteria was very,

very crowded with students who were there for summer school, and it just happened that I got at the front of the line as far as the group that I was with. There were only two blacks in that group that I was with, myself and a man from North Carolina. I got in the front of the line. I got my food and started looking around for a place to sit down, and I finally saw an empty space at a table that was otherwise crowded, like all of them. And I went there and sat down and when I did, all of the white students in the cafeteria got up and walked out, left their food and they didn't finish eating. And so, my group had the cafeteria to ourselves for a while. And after that, whenever we would go to the cafeteria, they would always say, "Herb, you get to the front of the line because you can get us a table." And so, that was true.

MR. WALBERT: And that was what, '64?

JUDGE PHIPPS: '64. I believe Hamilton Holmes and Charlayne Hunter had already graduated and at the time I got there, it was my understanding that there was only one black student at the University of Georgia after Hamilton Holmes and Charlayne Hunter graduated, and that was a woman who was in graduate school. So, the school had basically segregated again.

MR. WALBERT: And were you in Athens when the '64 Civil Rights Act was signed by President Johnson?

JUDGE PHIPPS: Yes, I was, and I remember that day. When I got to Athens, I guess a week or two before he signed that act and having participated in civil rights protests and demonstrations in Albany and in Atlanta, I just by myself went to several restaurants and eating places in Athens and they would not serve me. These were white establishments and they—I was turned away from all of them. They wouldn't serve me. And at that time, Athens was, I think, very tense and it was known, I believe, as the capital of the Klan in Georgia. Six months earlier, some Klan members had killed a military man, a black military man named Penn. As he drove through Athens, they followed him into an adjoining county and killed him. So, things were very tense in Athens. But I went to these restaurants, white restaurants, and they would not serve me. And on the day that Lyndon Johnson signed the Civil Rights Act of 1964, I watched that on television and I believe he made a speech after he had signed it. Johnson said that he intended to enforce this act—have the Justice Department enforce it. And the next day, I went to some of the same restaurants that had turned me away previously, and they said

come in and they would serve me. And that just shows the importance of leadership at the top. You had somebody in the White House who provided the kind of leadership that was necessary, and also that people understood that Lyndon Johnson was not playing, that he intended to enforce this act. And so, the places that wouldn't serve me the day before served me the day after.

MR. WALBERT: And what did their attitude seem to be like?

JUDGE PHIPPS: Well, at the places that I went to, nobody was hostile. There was no hostility in their voice or tone or manner. They just said come on in.

MR. WALBERT: Just from your experience in life and knowing people, do you think some of them were relieved that the law had been passed and got that issue out of their way so they didn't have to kowtow to the segregation viewpoint?

JUDGE PHIPPS: Yeah, I think so. I think many people were relieved, that that took a lot of pressure off of them because many of these folks from the personal standpoint didn't mind serving black people or integration, but they were in a society where there would be consequences if they did not play along with the Jim Crow system. They would lose their jobs, they would lose their business, and they would lose friends and that kind of thing. But the Civil Rights Act of '64 and Johnson's indication that he intended to enforce it gave them cover, and that took that pressure off them, and so-called good people could be good people without having to worry about the consequences.

MR. WALBERT: How did you folks and Dr. King and those in the movement think of Johnson, as a real leader or a guy that was doing something politically expedient? How was he viewed by you guys, you young folk in the movement?

JUDGE PHIPPS: Well, I when I was growing up down in Baker County, even when I was living on the farm, obviously we didn't have a television, but we had a radio and we took the newspaper every day. The Atlanta Constitution came in the mail every day, and we had a radio that I would listen to the news as a child on the farm down there at night. I would listen to the news and the reports, and I can remember during the Korean War—and I was very young—but I can remember them reporting about soldiers being killed and events that had happened that day, and I had followed politics and I had an understanding, as much understanding as you can have as a child growing up. I was aware of who

was president, who was governor and that kind of thing, who was in the Senate, and their attitudes. So, I can remember Lyndon Johnson when he was a senator from Texas and I remember him in the '50s, and I can remember paying attention to him and I had followed his career, obviously when he became Vice President and then President.

I always saw Lyndon Johnson as a person from the South who understood what was going on and what we were up against as far as black people trying to get equal rights in this country. He didn't grow up in a bubble like some of these folks from other places and he had had real contacts with black people other than just his chauffeur like some of the others. And so, I always had a lot of confidence in Johnson and I thought that he was really dedicated to doing the right thing and he was like some others that I had noticed in the South who had been staunch segregationists and that kind of thing. Often you could work with those people because they were honest about what had happened, what was happening, and you could have an honest conversation with them about what needed to be done. They weren't pretending that everything was all right or that they didn't understand what black people were complaining about. I think Johnson was one of those people. He had been exposed to all of the racism that everybody else had, but he hadn't participated in it the way everybody else had, and he was aware of what needed to be done. I think he understood the damage that it had done to black people and he was committed to making things better. Others that I was aware of, I think felt that way too. There are always going to be people who think that things are not moving fast enough, you're not doing enough, but I think that you have to give him credit for what he did. In my opinion, he did more for black folks than any president since Abraham Lincoln. Franklin Roosevelt was all right, but I don't think he was that good as far as civil rights were concerned.

JUDGE ELLINGTON: You mentioned that Johnson did have courage and he said we're not just going to sign this bill, we're going to enforce it.

JUDGE PHIPPS: Uh-huh.

MR. WALBERT: Talking about Lyndon Johnson, were there any people in Georgia—either local in South Georgia where you were from or statewide officers—that had that kind of leadership and courage, in your recollection? Did you feel that way about any of the white leadership or any of the white folk you had met back in those days?

JUDGE PHIPPS: No. I met a lot of white people who would tell you privately, who would whisper privately that they didn't approve of Jim Crow and the treatment that black people were receiving, but I don't remember any who had the courage to speak out openly. And the politicians, Talmadge and Russell, they were just Klan leaders as far as I'm concerned. Richard Russell, when he went into the Senate in the '30s and every time an anti-lynching bill, not a desegregation bill, but every time there was an anti-lynching bill introduced, he would kill it. He would stop it. So, he wasn't even willing to go that far. And Talmadge was the same. You know his history. And they were the reason that Kennedy appointed all these racist federal judges in the South, because at that time, you know the influence that senators have on who gets the judgeships. And they, along with folks like Stennis in Mississippi and the senators from Alabama, South Carolina, and all the other places where there were Democratic senators, they got all these racist judges appointed, including J. Robert Elliott in Georgia.

The Fifth Circuit had done a lot to move things forward in the South during the '50s, with Judge Tuttle and the other judges on the Fifth Circuit. But these judges that Kennedy appointed, they put the brakes on things in a lot of ways. They slowed things down. It was tougher to fight because any momentum that you had, even though when you got to the Fifth Circuit, they might reverse them—I remember there was one time when C.B. King said that he went to the Fifth Circuit nineteen times on J. Robert Elliott and he was reversed eighteen times. So, those were the kind of judges that were appointed because of Russell and Talmadge and Stennis and the rest of them that really helped put the brakes on and slow things down tremendously.

JUDGE ELLINGTON: What about local judges? When you were following C.B. around, did you see any overt discrimination from trial judges in courthouses?

JUDGE PHIPPS: I saw it everywhere. Everywhere. I never saw one that didn't condone discrimination. I saw the "N" word used against blacks in the courtroom as witnesses and other things, and by lawyers, judges, witnesses, everybody, and I never saw a judge who said don't do that in my courtroom, who chastised a lawyer for using the "N" word. I never saw one do it, and they were hostile to C.B. King when he was in court, as hostile as they could be. But the thing about him, though, was he would never back down and he knew how to make a record, because that was his only hope. He knew that no matter what they did, if he had

a record, he could show it to somebody higher than they were. And I can remember when I went to court one day with him, he was representing some civil rights protesters and there were dozens of them in jail and they were charged with all kinds of crimes that were not even relevant to a peaceful protest, and I think some of them were even charged with insurrection, which at that time, was a capital offense in Georgia. And he had filed a motion to dismiss those charges or set bail, and after hearing the evidence, the judge told the lawyers—the district attorney who was prosecuting these folks and the lawyers—come to his chambers. And I was not a lawyer at that time. I was a student, but I got up and followed them into the chambers. And when we got in the chambers away from the crowded courtroom, the courtroom was packed, standing room only because this issue had raised strong feelings on both sides in the community.

MR. WALBERT: What county were you in on this?

JUDGE PHIPPS: Sumter. Americus. And away from the crowded courtroom and away from the media and away from the court reporter, the judge said in the privacy of his chambers to the lawyers, "I know that these charges should be dismissed," and then he said, "but I'm not going to do that." And that shocked me when the judge said I know that these charges don't have the evidence to support them and I know that they should be dismissed, but I'm not going to do that. And the next thing he said was, "I'm not going to do that because I have to live in this little town," and he repeated, "Because I have to live in this little town." And C.B. pleaded with him to do the right thing because obviously he knew the right thing, but he wouldn't do it because he had to live in that little town. And he got up and went back out to the courtroom and announced his decision, and some of those people remained in jail for weeks, and probably months.

MR. WALBERT: How did that make you feel about being a lawyer? Was that discouraging or did that just make you want to be a lawyer more and fight more?

JUDGE PHIPPS: That didn't discourage me. It made me feel bad, but it didn't discourage me because I could see that, as I've said before, that the law was a tool, like a hammer or some other tool that could be used to help people or to hurt people. It could be used to change the system or to keep the system, and that made me more determined to become a lawyer because I could see that if we had lawyers who would

stand up to those judges and even if we had judges in those positions—of course, there were no black judges in Georgia at that time—but I could see that there was a need for judges with the integrity and the courage to stand up and do the right thing, no matter what people thought in their little towns. So, I was more determined. C.B. King, when he had spoken to my class at high school, he had said that he needed help. He was the only one, the only black lawyer in South Georgia, and he needed help and I could see that he needed help. So, I was more determined than ever to get a legal education and come back and do what I could to help, and that's what I did. I didn't go to law school right out of college because I couldn't have gone to Georgia—I guess if that had been an option, being right here, I could have done that, being a state school—but I didn't have the money to go to law school, so that's why I got a job. I had to start working after college.

MR. WALBERT: You mentioned that C.B. was really big on making a record because he could show it to somebody above, and I'm a little surprised by that. Was the Georgia appellate system a place where you'd go with a bad prosecution and get relief, or was it strictly that he'd then have to do a habeas later on in federal court? When you say he could show it to somebody above, what did you mean by that?

JUDGE PHIPPS: He knew that he was not going to get any relief in the Georgia appellate court system. The Georgia appellate courts, Court of Appeals, the Supreme Court, they were all white judges and they were not going to be any place where you could go for relief. But he needed a record in case circumstances arose where, as you said, you could go to federal court in a habeas and you could show that record that you had built in the state trial court. And I think that C.B. King knew—even though he knew that there was not going to be any relief in the state court system, he knew the importance of a record and he was going to do that whether it ever was any benefit or not because that's what you have to do and that's what needed to be done. Often judges would try to stop him from making the record, but when you build a record, often they'll back off some of that extreme conduct and you'd get a better outcome for your client than you would have gotten if you had not insisted on building a record.

MR. WALBERT: You were talking about then, instead of going right to law school, you went and worked for the Labor Department.

JUDGE PHIPPS: Yeah. I went to the Labor Department and, as I said, there were only two blacks in my class, so when we came to the Labor Department, it was myself and about five or six young white women who were also just out of college. Some had gone to Emory or Agnes Scott or Valdosta, places like that. They were just out of college, about my age. None of them had participated in civil rights demonstrations or anything at their schools. But on my first day on the job, they were taking me around and introducing me to the various folks who were working there, and as we went about, we'd get to a desk that would be empty and they'd say, "That's Nick's desk. He's suffering from lung cancer. He thinks he's coming back, but we don't think he's going to make it back." And we'd get to another desk, and they'd say, "That's Tom's. He died from lung cancer about six months ago." And as we made the rounds, there were about five or six desks that were empty and the person who had worked at those desks was either out dying or already dead from lung cancer. And I had started smoking my last couple of years in college and I loved the taste of tobacco, enjoyed smoking, and I had bought a new pack of cigarettes on the way to work that morning. They were in my shirt pocket. When I got back to my desk, I took that unopened pack of cigarettes out and threw it in the trash can, and I haven't smoked a cigarette since.

MR. WALBERT: You got a pretty good education that morning.

JUDGE PHIPPS: Yeah. And I tell you something else, too, about that experience. When we got back to the Labor Department, there was one black guy working in that office at that time, in that office, and he would always bring his lunch. They had a cafeteria upstairs and he would bring his lunch and he would walk out every day at lunch time and go down—at that time, there were more barbershops downtown, some black-owned barbershops and that kind of thing in the area. He'd go down and maybe go to a barbershop somewhere and eat his lunch. And there was a restroom up front for the people coming in, the public. There were restrooms up there, and he would use that restroom, but I would use the one that the other workers were using. And I remember one day, some of the young women who had been hired at the same time I had, they said, "Herb, let's go to lunch. Want to go to lunch?" I said "yeah" and went up to the cafeteria in the building. I had no idea the cafeteria was even there. The guys showing me around, they had never told me about the cafeteria, you see. And we went in there, and I believe there were two or three of the young white women and myself.

We went in there and when we got back downstairs to the Labor Department, they knew about it and they jumped all over those women, and those women told them to go to hell. After that, we had another point where they had an office down on Marietta Street, a labor office, a branch office, and there was a diner across the street that was segregated still, too. And we went over there. I went over there with some of them and we did that kind of thing. These women had enough guts at that point—they didn't care what these guys said because I guess whether they worked or not, didn't matter to them—I'm sure their families would have taken care of them. But they were a good group of people and at that point, they had not been exposed to that kind of thing before. That's why I mean so many people live their lives in a bubble. They're not affected by these things. They're not touched by them and they don't see them and they may see something in the paper or on the news from time to time, but they're not really touched by it. It doesn't affect them, and then when they come face to face with it, they see somebody or you start working with somebody, become friends with somebody who's a peer and you see how they're treated, then they start thinking about it and they start wanting to do something about it.

When I was growing up in Baker County and in Dougherty County, one of the most painful things about growing up in that Jim Crow society, segregated society is that obviously, all the white people were not in the Klan. All of them were not committing violent acts and that kind of thing. But I call it the "so-called good people," and the so-called good people said nothing. They stood by silently and indifferently and didn't say or do anything against what they knew to be wrong, and that, to me, was painful because they'd pull you aside and express their disapproval to this or that, kind of a custom or practice or whatever, but that didn't do me any good, didn't do anybody any good.

I was always disappointed in people who lacked the courage to stand up for what they believed in because they were afraid that they would lose a friend. Some of them didn't want their friends to know they felt a certain way. They might lose some money. Somebody might not come to their business. Or if they were politicians, they might lose votes. Nobody had the courage to stand up and do what was right. And that was painful, and that's still painful today because that's kind of what we see in our society today, from the bottom to the top, people who don't have the courage to stand up for what's right.

MR. WALBERT: So, you go through college and work to make some money, and then I think some of the most interesting stuff I ever heard anybody do, where you ended up in Bangkok.

JUDGE PHIPPS: Right, right.

MR. WALBERT: What was all that about, what were you doing?

JUDGE PHIPPS: Well, the Vietnam war was going on at that time and I wanted to—I had studied the history and stuff in college—you would study about all these wars and I always wondered what it's like to be in a place where a war is going on, and I wanted to go. During the time that I was in college, I had gotten a deferment, student deferments and that kind of thing from being drafted, and I wanted to go and there was an organization, sort of a Peace Corps-type organization that sent people to Vietnam and maybe a few other places. I thought about the Peace Corps, but the Peace Corps didn't send people where there was a war going on or any kind of conflict. So, I hooked up with this organization and went first to the Philippines for two or three weeks—we studied a little bit about Asian agriculture, rice growing, and that kind of thing and got to participate in it, some planting rice and that kind of thing. I left there and flew from Manila to Tokyo for a couple of days and then to Saigon.

MR. WALBERT: What year would this have been?

JUDGE PHIPPS: I got out of college in '64, but I had worked a couple of years with the Labor Department here in Atlanta—so, it was about '66 or so when I headed over there. And in Nha Trang, the building where we were staying and studying was about two to three stories and had a flat top and you could sit up there, and we would sit up there and eat and drink. We could see and hear the war going on from there because there was a military base, a U.S. military base maybe a mile or so away, and there was a sort of a ring of mountains around the back of the base and the Viet Cong would try to come over those mountains and lob things into the base. You'd hear shooting and you'd see the planes dropping bombs on them, that kind of thing. So, you could sit up there and watch that and that's what a war is. But the thing that was most interesting was that while this war is going on all around, at night you might be able to see the fire from some of the guns, it was that close. You can hear the shooting. And that's what it's like to be in a war situation, because ordinary people are trying to do ordinary things. They're trying to go to work. They're trying to send their kids to school.

All of this is going on in that environment, and that was what was so interesting to me.

MR. WALBERT: I'm curious, what exactly was it that motivated you to do that? I've never known anyone else that did that.

JUDGE PHIPPS: Well, I wanted to see the world. I wanted to see what was out there, how other people lived. And as I said, at that time there was a war in Vietnam. I wanted to see that and I just wanted to go to all of these places that I had read about and heard about, and I didn't have the money to just buy a ticket and visit all these places, so I had to figure out another way to go. And that was it. It was just—all my life, I had wanted to travel and not just for the sake of taking a vacation, but I just wanted to see how other people lived.

MR. WALBERT: Student of the world, really.

JUDGE PHIPPS: Yeah. When I left Vietnam, we went across Cambodia into Thailand and I was able to hook up with a teaching job at Thammasat University in Thailand. I believe it's the oldest university in Thailand. I was teaching English to Thai students, and I taught part-time at Chulalongkorn, another university in Thailand. Sometimes when a professor or teacher would be out or have to be out, I would go by there for a day or two, to teach some classes. And I had an interesting experience. I had some Thai medical students, helped them with their English, and obviously, you know I don't know anything about science or medical school, but these students needed to improve their English because it's my understanding that some of the literature or much of the text and literature that they were studying was in English. So, they needed help in that regard. That was an interesting experience, too. I got to be friends with some of those Thai medical students.

MR. WALBERT: How long were you in Thailand?

JUDGE PHIPPS: About ten months probably.

JUDGE ELLINGTON: What were the living conditions? Was there electricity?

JUDGE PHIPPS: In Thailand?

JUDGE ELLINGTON: Yeah. Running water, electricity?

JUDGE PHIPPS: Yes, but you couldn't drink the water. We boiled our water while we were there. We would boil water by the potful and put it in the refrigerator and we also had some pills. I don't know what the name of it was, big white pills you would drop in a glass of water and they would purify it. I always had a jar of them everywhere you went

because back then, they were about like we are here now. You couldn't drink the water.

I lived in an apartment and the cost of living over there is so cheap that we even paid a guy to clean our apartment. He kept it clean and that kind of thing.

And it was interesting teaching because the Thai people are my favorite people that I've run into all over the world. They're just so, so nice. They've got their share of bad people like every society, but generally, Thais are so friendly and so, so nice and always greet you with a smile. I enjoyed that time very, very much. And while I was there, we would go up to Laos once a month—to Vientiane, Laos—because in order to renew your visa, you just had to cross the river, the Mekong River. There was a point where you'd cross the river and if you would do that, you could turn around and come right back. But we'd usually go up and stay two or three days and come back.

I remember one time, the guy that I was traveling with, we went up to Vientiane and having gone up there so many times, we got to know a woman who owned sort of a restaurant bar-type place that we liked to go to. She was from North Vietnam originally, but she had come and settled down there. We liked to go there and you'd walk in and you didn't know who these other people were. And this guy that I was traveling with, he drank a little too much one night and I'm sitting at the bar talking to this woman who owned the place and another person, and he wanders away and next thing I know, a fight had broken out. And you heard the yelling from these folks, and they were not our friends. And obviously, they could look at him—he was from Dublin, Ireland—and tell that he wasn't a Laotian or Thai, and the same with me. But if we hadn't developed a relationship with those women, they would have probably killed him in there that night.

MR. WALBERT: Was traveling in Asia the first time in your life where being black was not an issue? Was that the case?

JUDGE PHIPPS: Yeah. That was interesting because it's just a different feel because you don't feel that kind of discrimination. People obviously can look at you and tell you are not native—you're not Thai and that kind of thing—but if anything, that makes them curious and want to talk with you and see where you're from and that kind of thing. So, that was an interesting experience, to be in a place that was not white-dominated and Christian.

JUDGE ELLINGTON: Were you able to actually use it to your advantage in going from Thailand to Paris? Tell us about that trip.

JUDGE PHIPPS: Once I left Thailand, went through Burma—Myanmar now; had an interesting experience in Rangoon. There was a hotel called The Strand and it had been there when the British were still in that part of the world and I guess they had built the hotel. I recall it being five or six stories tall, a pretty big building with a lot of rooms and there were probably twenty-five or thirty people staying in the hotel, it appeared to us. We were traveling and we didn't have on suits or coats or ties or anything, but that first night when we got ready to go to dinner in the restaurant, they told us we had to have a coat and tie. Even though the British were long gone, they were still handling things the same way as far as the rules of the place and the restaurant and that kind of thing. That was just very interesting, that they had hung on to those ways and I don't know whether the government was paying them or whoever, because they didn't appear to be making enough money privately to pay them. But that was interesting.

I left there and eventually got to Calcutta, India, which is now Kolkata I think is what they're calling it now. That was quite an experience, just walking the streets there and seeing the poverty and people dying of starvation and people with all kinds of diseases, leprosy and that kind of thing. On one occasion, one night I was walking down the street in Calcutta and it was raining hard, sort of the monsoon. It was really raining. And I saw a woman. She had just had a baby right there on the streets by herself, and I don't know how she cut the cord, but she got up and walked away and left the baby there. And I stood there. It was raining. The baby was laying there crying and people were just walking by as if nothing had happened. I stood there for a few minutes, looking, watching and thinking about that and what to do, and eventually I walked away. And within two blocks, I saw another one, another child.

MR. WALBERT: Same thing.

JUDGE PHIPPS: Same thing: had been born on the streets and just left. And that's just amazing to see that kind of stuff and to see the level of poverty and homelessness, and I believe they had trucks come around in the mornings and pick up dead bodies because the people were dying on the streets and that kind of thing.

MR. WALBERT: People just lived on a chunk of sidewalk, I guess.

JUDGE PHIPPS: Yeah.

MR. WALBERT: How did that affect you?

JUDGE PHIPPS: Well, obviously it makes you understand what poverty does to people, that most of the people in the world, all they need is enough to eat, decent clothing, a decent place to stay, and an education. And when you see people who don't have any of that, it's just amazing to witness that because it appears so unnecessary; it's not something that has to be that way. This world could do better than that by people. People don't have to live that way or be that way.

And I can remember in India, too, not long after I got there, somebody said, "if you're in a taxi and they hit a man, a person, don't worry about it. But if he hits a cow, jump out and run, because the cow is sacred," that kind of thing. Just like here in this country, religion does a lot of harm to people. It screws people up and people get some crazy ideas for religious reasons.

JUDGE ELLINGTON: In fifty years, have you been back to Thailand?

JUDGE PHIPPS: I went back last November. I took my wife. I finally convinced her to go back with me last November and we went at the end of October and we stayed two weeks in Bangkok. We didn't travel outside of Bangkok. Bangkok has grown a lot since I was there. When I was there, it was about probably a place of maybe 3 million. Now it's over 10 million, and Metro Bangkok is probably 15 million. My wife had been to Mexico, but other than that, it was the first time that she had been to a country that was not white and Christian. I wanted her to see a place where somebody else was in charge, whether it was another religion, that kind of thing. And like I said, I love the Thais and had a great time there, and we had a great time there and it was interesting for my wife, too, because she saw a different way of life. It's almost like an alternate universe. It's just a different world from what we have here. I thought she needed to see that.

MR. WALBERT: How did Thailand look to you now compared to fifty years ago? Was it just bigger and more people and they were the same or had it fundamentally changed?

JUDGE PHIPPS: Well, it has changed in the sense that there are skyscrapers all over the place. A lot of things have been built up and also there is an invasion of McDonald's and all of our fast food-type stuff there and obviously, that was not there before. But as you go around the city, you see Thais living basically the way they were living when I was

there. When we were there, I read or maybe was told that many, many Thais don't have a kitchen in their home because there's so much food on the streets—little places where people cook on the streets are all over Bangkok. So, you wouldn't need a kitchen at home when you can just go out and buy something off the streets. And that was the same as it was when I was there.

MR. WALBERT: So, these are guys that are cooking and selling?

JUDGE PHIPPS: They're cooking and selling it.

JUDGE ELLINGTON: Tailgate all over town.

JUDGE PHIPPS: Big, 10 million people tailgates, and they got nice restaurants and that kind of thing, but the average Thai can't afford to eat at those places.

JUDGE ELLINGTON: Well, now, Judge Phipps, it's a long way from Thailand to Paris and a long way from Paris to law school. Planes, trains, automobiles, how did you get from Thailand to Paris?

JUDGE PHIPPS: I had a short trip on a plane because at one point you couldn't safely go on the ground from Thailand through Burma, so we had to fly into Rangoon and fly out. But when we got to India, after that it was on the ground the rest of the way. Except for that short bounce over Burma into and back out of it, it was on the ground all the way to Paris, and then Paris to London eventually.

India has a lot of trains and there are so many people in India. I can remember going to the train station in Calcutta and there may be 25,000 people there and they're not going anywhere. They're coming in to get out of the rain or the sun. They're coming in for the shelter. And when you get on the train, if you could afford it, you'd buy a private place and a guy would come in and he'd take a key and he'd let you in. Then he'd shut the door because if you were on the train without that, it just wasn't as safe. Because of the pickpockets and all that kind of stuff, you wouldn't have anything by the time you got to where you were going. And you couldn't blame them. These folks are hungry. They're trying to survive.

And we have a friend now who has a son who's in New Delhi. His job sent him there last week and he's been sick as a dog ever since he hit the ground. He had his mama ask me how did I do it. How did I avoid getting sick? There are a lot of tricks that you learn. It's basically don't eat anything that ain't smoking. And don't drink any water. You would think now that with all the bottled water, it would be different. I know in

Thailand, they had a lot of bottled water. But otherwise, you better be prepared, like I had those big pills.

But that's the way we traveled, on the ground through India and Pakistan and on buses some of the way. And I can remember going through places in Pakistan where—the guy that I was traveling with was Irish—we'd get to different little towns and they would maybe stop and get something to eat. They would tell him it's not safe for you to get off here, we'll have to bring you something. A lot of us think that those folks just got pissed off at us in the last few years. It's been like that since when I was over there in the '60s. But that was interesting, going through Pakistan and on buses. And one part of the trip, we got a ride for maybe a hundred miles or more with an Englishman and his wife. They had been in India. He had worked in India with the English government when England was running India, and they had made a lot of friends. Every two years he and his wife would drive from London to India, and a lot of people don't realize you can do that. They had a sort of an SUV-type thing, bigger than an SUV.

JUDGE ELLINGTON: RV?

JUDGE PHIPPS: You know what I'm talking about. The big things. They had one of those. We bumped into them somewhere in Pakistan and we rode with them for a good while and they were on their way back to England. He said when they would come down, they would usually stay six months and head back.

MR. WALBERT: Herb, were you working at any of these times, getting any jobs, making some money during the course of this trip or after you stopped teaching?

JUDGE PHIPPS: There were no jobs between Thailand and the time I got to Paris. And we went to Afghanistan, Iran—but mainly buses in Iran and Afghanistan. And I can remember coming up through the Khyber Pass and you look down and it looks like a mile drop down there and you see buses or trucks that have run off the road, and the road is narrow and you're working your way up and you're just hoping the brakes don't fail on that damn thing. And the bus is loaded with native people, and when you're in that kind of environment, you don't want to do anything to offend people. Sometimes you don't know what to do. And every time the bus would move, they would go into a chant, like some kind of prayer. Or every time we'd have some close call on something, they would go into a chant or the prayer. So, obviously, I

didn't know the prayer or know the chant or the language, so I couldn't. So, you'd just sit there and try to be respectful. But that was interesting, all the way.

And we'd go in places to eat. Along the way, you would meet people who would be interested in talking with you. And I remember in Afghanistan, we met a man who said, "I'll take you all to dinner tonight." He told us where to meet him, at a restaurant, and we did and he brought his wife and his mother with him and they were Muslim. He took us over to a corner of the restaurant over there and sat us at a table and took his wife and mother at a table over on the other side, and he would go between the tables.

MR. WALBERT: Was that a religious separation or gender separation?

JUDGE PHIPPS: I think maybe the religion had something to do with that.

JUDGE ELLINGTON: Did you do any work in Paris before you came home?

JUDGE PHIPPS: Let me tell you one other thing about Iran. We were in a town one night. I think we came out of Afghanistan into Iran, but anyway, we got there late in the day. And so, we got up the next morning. We wanted to know where is the restroom, where is the place we can wash up, and the guy pointed "out there." There were canals in this big city. It was a big, big city, a couple hundred thousand people, I believe. At a certain time in the morning, they would turn on the water and the water would run through the system of canals. People knew how long that it would be on. They would scoop up water to save for the day for the cooking and the washing or whatever they were going to do that day, and you would look up and you'd see a guy there brushing his teeth right there in the canal. So, I didn't brush my teeth that day, and I didn't wash off that day.

But eventually, we got through Afghanistan. And if our government had asked me before they went over there and got tied up in this war, I would have told them not to go because you're not going to whip these folks. You can see from their attitude, that was just not a place to be, trying to change the way they live. I don't know how long they'd been living that way, probably for hundreds of years or maybe thousands of years, and they're not going to change just because we show up talking

the kind of talk that we're talking because that's not what they're interested in or what they want to hear.

But ultimately, we went on to Greece—Turkey and Greece. And I had seen some of the Turkish soldiers in Vietnam. The Turkish soldiers and the South Korean soldiers had reputations for being really, really tough, tough soldiers in Vietnam. And so, we got to Turkey, at the border. You go through these borders where they check you. But the guy that I was with, they checked him a lot closer than they checked me, going through his stuff. I knew that he didn't have anything, but I was hoping they weren't going to plant anything on him. That was a frightening time. Fortunately, we made it through and got into Istanbul. And from Istanbul, we caught the Orient Express all the way to Germany, and that was an interesting thing because you see a lot of Turkish people on there going to Germany to work. A lot of them were headed to Germany to look for jobs and you'd go through all those countries between Turkey and Germany and we spent a few days in Munich, and then went on to Paris, and that's where I stayed for about four months: in Paris. In fact, I applied to law school from Paris. While I was in Paris, I still had it in my mind about going to law school. Back then, you couldn't print an application off-line on the computer, so I had to write them and have them send me the applications and everything.

MR. WALBERT: Was Paris still part of seeing the world to learn or were you in Paris just for fun at that point?

JUDGE PHIPPS: There wasn't any fun because my money was getting low and it wasn't like I could call home and say, "hey, send me $500." My parents were struggling trying to get my brothers and sisters educated, so I couldn't bother them. So, eventually in Paris, one thing I did, I went to the Sorbonne. I did a lot of traveling, walking around Paris, and I was at the Sorbonne one day and I saw this announcement on the bulletin board about they wanted people to serve as models for artists. They weren't looking for beautiful people. I figured, well, if they're letting them advertise here at the Sorbonne, then maybe it's not somebody going to lure you somewhere and kill you. So, I did that a couple of days. Went to this studio where there were artists. I don't know why they had to advertise for them, but they did.

And then I ran across a guy one day. He told me he was about to leave Paris and he asked me how long I planned to stay and I told him indefinitely. And he said, "what are you doing every day?" I told him I

didn't have a job, didn't have anything. He said, "Well, you might want my job. I sell the New York Herald Tribune, the Paris edition"—international edition, I guess—and he said, "Come on. I'll take you down and introduce you to the guy." And he introduced me to the guy and the guy agreed to let me do it.

So, I started selling papers on the streets of Paris, and that's when I realized that newspapers are interested in circulation. The little money you pay to buy the paper, that's all right, but that's not what they're interested in. They're interested in circulation because the greater the circulation, the more they're going to charge for advertising. So, the guy told me, when you sell the papers, I believe it was seventy-five percent that the seller kept and the rest would go to the paper. He said, "Now, if you sell all of your papers, you keep a hundred percent of the money." So, it didn't take me long to figure that out.

(Laughter)

MR. WALBERT: That's great.

JUDGE PHIPPS: Depending on what the weather looks like and that kind of thing, whether it was going to rain or snow or what, if I got a hundred papers, I may sell seventy-five of them, and it'd start raining or start snowing. I'd start passing out papers to people.

MR. WALBERT: Discount.

JUDGE PHIPPS: Yeah, because if they didn't want to buy one, take it. Have a paper, that kind of thing. And get rid of all of them so that when I went back, they wouldn't ask you for any money because like I said, they were interested in circulation. They probably knew that the sellers caught on to that.

MR. WALBERT: Right.

JUDGE PHIPPS: Yeah. They knew that. They knew what was going on. But I'd go back. "I sold everything today."

MR. WALBERT: Yeah.

JUDGE PHIPPS: So, I kept all the money. But to tell you, the interesting experience, talking about more money—now, you've been to Paris, both of you, so I don't know whether you know where the American Express office is in Paris. Have you been to that?

MR. WALBERT: I don't recall that.

JUDGE PHIPPS: The American Express office in Paris right now today is where it was when I was there in the '60s, the same place. I think

they moved the front door from the front around to the side sort of. But it's in the exact same location where it was. And I would walk by there pretty frequently. I got low on money and I was thinking, "what am I going to do. What am I going to do?"

And so, for some reason, I still don't know why—I had never had an American Express card, had never applied for an American Express card. I had no relationship with American Express. But for some reason, something told me to go into that office. I went in and there was a young receptionist out front, and I said, "I'd like to see the manager." She said, "just a minute," and a couple of minutes later, she came back and said "come with me" and took me into the manager's office. At that time, I was in my early twenties and he looked like he may have been thirty or a little older, and I explained my situation to him. And as I said, I had never had an American Express card, had never even applied for one. No relationship. And he sat there and we talked and he listened to my story and then he said, "just a minute." He got up and went to another room. Then he came back and took out a piece of paper about the size of what we call now those post-it things, about two inches square, and he started writing something on it. And he said, "Here's $200. Whenever you're able to pay it back, go into any bank and show them this and they'll take it and we'll get it." I took that money and put that piece of paper in my wallet and I left. I can't figure out today why he did that. And when I did pay the money back, I went in the bank and showed them that and they took the money. But that was just amazing to me that he did that.

MR. WALBERT: I'd like to hear if you try that today at the same place and see what would happen.

JUDGE PHIPPS: Right. They'd call the cops probably if I tried that today.

MR. WALBERT: Judge, you were talking about applying to law school while you were still in Paris and they used something called "mail," I think, back in those days, not email.

JUDGE PHIPPS: Right.

MR. WALBERT: Why did you pick Case Western Reserve as the school you applied to and ultimately went to?

JUDGE PHIPPS: Well, I knew C.B. King had attended Case Western Reserve. Over the years since I had met him in high school and talking with him—and I had met a few other lawyers or been told about

other black lawyers who had gone to Case Western Reserve, folks like Fred Gray, Jim Willis in Cleveland, and some others that he named—and in my mind at that time, I was thinking Case Western Reserve was where you went if you wanted to be a civil rights lawyer. That's what I wanted to do, and that was the reason I applied. And I'm sure the reason I got in and got the assistance that I got was because of C.B. King. When I applied, I notified him and he sent a letter in support of my application. And so, I felt pretty confident that I would get in there. That's where I wanted to go because I knew the kind of lawyer he was and I figured if they can train him to be the way he is—he seemed so knowledgeable, more knowledgeable than most other folks that I had seen as judges and lawyers in the courts—and so I figured I couldn't do myself any harm by attending the same school he attended.

When I got to Case Western Reserve, I was invited to be on the admissions committee, and when you get on the admissions committee—I forget who it was, but one of the other folks, maybe it was Dean Toepfer—said to me, "since you're on the admissions committee, would you like to see your file when you applied?" I said, "yeah, I'm in now, so might as well look at it." Of course, the law school requested from Morehouse College my transcript, and when they requested that, then the folks at Morehouse knew I had applied to that law school. What surprised me was to see a letter in there from Dean Brazeal at Morehouse recommending me. I had not asked him for a letter of recommendation. I had not written anybody at Morehouse asking for a recommendation, but there was a letter in there that he had sent, and I'm sure that didn't hurt either.

MR. WALBERT: That's a good story.

JUDGE PHIPPS: Yeah.

MR. WALBERT: So, you did great there academically. You were on the Law Review. Everybody thought the world of you in law school. Was law school what you had hoped it to be or was it disappointing?

JUDGE PHIPPS: Well, unlike many, I enjoyed law school. I met some very good people there. I met you there and I met several other people who became good friends there, and I got to know some of the professors pretty well, like Gabinet and Coffee and Katz and a few of the others. So, I had a good experience. I enjoyed it. It was tough, and I expected it to be tough, so that was no surprise. But after a while, it's like learning a new language. After a while, you begin to pick up on it and it

becomes a little easier as you go. And so, I quickly got into the swing, and I knew that I had to succeed. So, I did whatever it took. I had friends who would say, "well, they're having homecoming at my college next weekend, I think I'm going to homecoming." I never did anything like that because I couldn't afford to give up a weekend because I knew that if you got behind by a few days or whatever, sometimes you may never catch up, depending on the kind of a student you were. So, I worked hard and I enjoyed it.

JUDGE ELLINGTON: How'd you like that weather in Cleveland?

JUDGE PHIPPS: I had never experienced that kind of weather before, and it wasn't as bad as it would have been if I had not known that after three years I was coming back to Georgia.

MR. WALBERT: It's like going to Alaska for three years.

JUDGE PHIPPS: Yeah, right. So, I put up with the weather and it wasn't bad. Like anything else, if you dress properly, it won't be a problem.

MR. WALBERT: Where'd you live while you were there?

JUDGE PHIPPS: I lived with a cousin of mine, a distant cousin. At the time I came to law school, he was probably seventy years old. In fact, he was a cousin of my paternal grandmother, lived on Columbia Avenue I believe.

MR. WALBERT: Pretty close to the law school?

JUDGE PHIPPS: It was about three or four miles from the law school.

MR. WALBERT: And what'd you take, a bus or how you'd—

JUDGE PHIPPS: Yeah. But it wasn't difficult. It was back into a community away from the main road. I forget the name of that main road, and I had to walk two or three blocks to the bus stop and after I got to the bus stop, that was it. I'd come down and then just down the hill to the school.

MR. WALBERT: And I take it you were pretty much decided throughout law school you were going back to Albany.

JUDGE PHIPPS: I knew that all the while. That was the reason I was going to law school and that was the reason I had wanted to be a lawyer: to go back to South Georgia and deal with the conditions that I had experienced and seen others experience down there. I had offers in

Cleveland—law firms that some of the professors were connected with. Was I interested in maybe joining their firm and that kind of thing? And I was not. I had some feelers from Atlanta, people in Atlanta, but I wasn't interested in anything but South Georgia. I wanted to go back. I can't call it—revenge wouldn't be the right word, but—

MR. WALBERT: Justice.

JUDGE PHIPPS: Yeah, but justice. I wanted to go back and try to inflict justice on some of those people, help my people gain justice and do something about those conditions. That was the reason I went. Because when I was growing up, as I said, my parents and grandparents and relatives and uncles and aunts and neighbors and all the other people that I saw growing up, had been deprived and denied the opportunity to get an education. They were just as smart or smarter than I was, but they didn't have an opportunity. My parents went to school. Eleventh grade was the highest they could go and their parents were too poor to send them away to try to get that last grade. And I saw that over and over, from really, really intelligent, hard-working people who had nothing, had no opportunity to get an education. And I kind of felt guilty—or maybe guilty is not the right word. But I felt that since I did have that opportunity—my parents were still poor—but they impressed on me, my brothers and sister, the importance of education. They did everything that they could to support and encourage us, and I felt that I owed it to them and I owed it to all of the other black people in South Georgia, relatives and friends. Since I had an opportunity to get an education that would enable me to do something to help improve their conditions, I felt like I had an obligation to do that. And it wasn't any burden on me. It wasn't painful to me that I was saying, "well, I got to give up this in Cleveland or Atlanta or somewhere else to do that and I'll just make the sacrifice." It wasn't that kind of a burden. It was because I wanted to do it.

MR. WALBERT: It was really a privilege to be able to do that, isn't it?

JUDGE PHIPPS: Right. Yeah. That was the reason.

MR. WALBERT: So, in 1971, you came back to Albany after law school.

JUDGE PHIPPS: Right.

MR. WALBERT: And my recollection is you, C.B. and then Tom Jackson up in Macon were it for black lawyers—

JUDGE PHIPPS: Right.

MR. WALBERT: —in South Georgia—

JUDGE PHIPPS: Right.

MR. WALBERT: —at that time. So, you were the third one?

JUDGE PHIPPS: Right, right. Tom Jackson was in Macon, which is basically the middle of the state; but deeper than that, C.B. was the only one. And Tom Jackson, we did a lot of work with Tom Jackson. He was a great lawyer, too, and he did a lot of work in Macon, a lot of civil rights work in Macon.

MR. WALBERT: What did you jump into then when you came down in 1971, what kind of cases did you start doing? Everything?

JUDGE PHIPPS: Well, yeah. I took the bar exam immediately. I left law school as soon as I finished my exams to come to Georgia to prepare. There was a course at the University of Georgia given by professors at the University of Georgia—I believe it was a two- or three-week course—in preparation for the bar exam.

MR. WALBERT: So, that was the summer of '71, right after school you did that?

JUDGE PHIPPS: That bar review course was right after law school. I finished in June and came down, and that review course was in June and the bar exam was either late that June or early July, but I believe it was late June. I got the results in October, late October. The letter saying that I had passed the bar came in the mail on a Saturday, and I was sworn in on that next Monday, which was November 1st, 1971.

MR. WALBERT: So, you get sworn in superior court in Dougherty County—

JUDGE PHIPPS: In Dougherty County. Sworn in superior court in Dougherty County and I believe I may have gone to the U.S. District Court the same day to get sworn in there. When I left school, I didn't have the money to get home or take the bar exam. It didn't cost as much as bar preparation courses cost now. It was a few hundred dollars, but the school gave me a loan, the money to get home to take the bar exam.

MR. WALBERT: You mean the law school?

JUDGE PHIPPS: Yeah, the law school gave me the money to get home and take the bar exam. And I did. I went up to Athens, took that course, and passed the bar. Richard Sinkfield was there at the same time

and we studied together. I don't remember any other black students being there.

JUDGE ELLINGTON: When you got home, C.B. gave you a lot of different opportunities, a lot of different kind of cases. He sent you up, I think to Columbus, outside of Columbus to interview a guy in jail that was charged with murder.

JUDGE PHIPPS: Yes.

JUDGE ELLINGTON: How long had you been practicing law when you went up there and what was that case about?

JUDGE PHIPPS: By that time, I had passed the bar but I hadn't been practicing long. I was basically doing research and working on reading records and things like that until I passed the bar, but I would follow C.B. around to court. And once I passed the bar and got my bar card, I could get into the jails. Somebody would call and said my son or my relative or whoever is in jail in such and such a place, go see him. C.B. often would send me to do the first interview because he'd be in court somewhere. But anyway, we got a call from the family of a guy who was in jail in Buena Vista, Georgia, Marion County. He was charged with murder, and C.B. King sent me to see him. This happened over the weekend and that Monday when I got to the office, he told me to go to Buena Vista to talk with this guy. And this guy, I forget his name, but he was known as Curley and he had less hair than I have. But everybody called him Curley. I'll never forget that. So, I went there and they brought him down and I started talking, introduced myself and told him I was working with C.B. King and he asked me, "how long you been a lawyer?" And I told him that I was freshly admitted to the bar. We started talking and talking and after a while, he said, "I'm not worried about a thing." I said, "what do you mean, why is that?" He said, "I killed him, but they don't have but one witness," and then he leaned over towards me and he said, "Anybody who knows a little law knows that it takes two witnesses to convict a man of murder." So, I'm feeling like, did I miss something in law school? I couldn't let on that I didn't know that. I had to play along. He leaned over and he looks at me, he says, "Anybody who knows a little law like you got, knows that it takes two witnesses to convict a man of murder." So, I said okay. I finished up the interview—

(Laughter)

JUDGE PHIPPS: –and went back to the office, and I started looking in the books; what the hell is this?

MR. WALBERT: Couldn't find the two-witness rule?

JUDGE PHIPPS: Still looking for the two-witness rule! But let me tell you something else interesting about that. In researching that, I found out that in England, 500 years ago, they did require two witnesses to convict a man of murder. So, I don't know how in the hell Curley came up with that.

MR. WALBERT: Unbelievable.

JUDGE PHIPPS: Yeah.

JUDGE ELLINGTON: Anybody that knows just a little law–

JUDGE PHIPPS: He said anybody that knows just a little law knows.

(Laugher)

MR. WALBERT: See, Herb, you were too honest. You should have said to the guy, "I've been going to court for fifteen years." You just shouldn't have told him you were in ninth grade when you were doing it.

(Laughter)

MR. WALBERT: That's a great story. In that first couple of years, were you working on mostly criminal stuff or working on the civil rights cases that were already in the office that were ongoing or what was most of your time spent on?

JUDGE PHIPPS: I was doing some of all of it, on the civil rights stuff, you know people would come in and want complaints filed. We'd agree to get involved in a case or a motion needed to be prepared. For example, in the school cases, there was always a motion for further relief. There was something going on in the school desegregation case that we needed to get back into court on. And C.B. would assign me to draft those kinds of things. And because he had been doing it so long, there was always a file that I could refer to and see previous motions and that kind of thing. So, I had a good guide. I could track what had been done previously in those kinds of motions or if there was a complaint. Some of the motions we filed over and over, like a motion to challenge the jury list. We filed those in civil and criminal cases. I would do things like that.

MR. WALBERT: Were you getting relief in the state courts on it or were you having to go to federal court to get real relief on the jury list question?

JUDGE PHIPPS: On the jury issues?

MR. WALBERT: Yeah.

JUDGE PHIPPS: No relief in the state courts. They were always denied—denied the motion—but that's what I meant about building a record. I remember a case down in Mitchell County where he sent me to represent two young black men who had been charged with armed robbery and I filed a motion to challenge the array of grand and traverse jurors and held a hearing. And you know you have to question the jury commissioners and all of this stuff. We went through all of that and built a record on the jury composition of the jury list. And we would always do our research, so we knew who was on the jury list. Back then, things were segregated. If there were a few women on the list, all the white women would have "Mrs." next to their name; the black women wouldn't.

And there was so much residential segregation that you could look at the maps and the streets and you could tell who was black and who was white from that. So, we would always know. And we, of course, used the census report to know what the population makeup of the county was. I did that in a case in Mitchell County. And after that case was over, I talked to C.B. and we decided to file a complaint in the U.S. District Court.

MR. WALBERT: Was Robert E. Lee Culpepper the superior court judge?

JUDGE PHIPPS: Robert E. Lee Culpepper was the judge who had denied my motion and Robert E. Lee Culpepper was the only superior court judge in that circuit at that time. After that case was over, I talked to C.B. about filing a federal suit, and I did and attached the transcripts—after we got the transcripts of that motion—to the federal complaint. When they answered, I filed a motion for summary judgment and Wilbur Owens granted the motion.

Now, think about all the time that I had spent preparing the motion, holding the hearing—those hearings often took just about all day because they would have so many jury commissioners. They'd have seven or eight or more jury commissioners that you'd have to question. And I had prepared all the work. You know what you'd have to do in those cases.

And I filed a motion for attorney's fees after that. But Wilbur Owens denied attorney's fees, and his reason was "this was too easy."

(Laughter)

MR. WALBERT: That's a first.

JUDGE PHIPPS: "This was too easy."

MR. WALBERT: The County's defense was that our original defense was so frivolous you shouldn't get fees. Crazy.

JUDGE PHIPPS: Right. This was too easy. And we took him to the Fifth Circuit. And this was the first case that I had seen where at that time they not only reversed him, they set the fees and they set the fees much higher than he would have set them. After that, whenever I applied for fees, I would always refer to that Eleventh Circuit case. I believe at that time they gave me $90 an hour, which was pretty good in those days.

MR. WALBERT: Right.

JUDGE PHIPPS: Ninety dollars an hour. In fact, after that case was published, I got calls from a lawyer in California and one in Chicago asking me how was I able to get the federal circuit court to set my attorney's fees.

MR. WALBERT: That's great. Well, like you say, that's the threshold, too, because that's the amount of fees you get in a simple, easy case.

JUDGE PHIPPS: Right.

MR. WALBERT: That's the minimum you can ever get.

JUDGE PHIPPS: That's right.

MR. WALBERT: So from then on, it's just going up.

JUDGE PHIPPS: Right. This was a case where Wilbur said this was too easy, and they still said I was entitled to $90. After that I always got more than that in every case.

MR. WALBERT: That's great.

JUDGE PHIPPS: That was good. Because Wilbur, if he had set them, he'd have probably given me $40 an hour.

MR. WALBERT: And cut your hours in half.

JUDGE PHIPPS: Yeah. Right.

MR. WALBERT: He did not like attorney's fees, in my experience. But it's awful the way the U.S. Supreme Court has gutted the attorney's fees law since then because when Congress passed the fee

law, it was so crystal clear that it was supposed to be very favorable to the plaintiff's case. And every little rule the Supreme Court has come up with now to just gut that, which kills the ability of lawyers to do it.

JUDGE PHIPPS: Right.

MR. WALBERT: Of course, they know exactly what they're doing on the Supreme Court. They're trying to stop civil rights cases.

JUDGE PHIPPS: That's right.

MR. WALBERT: I guess a lot of those bad Supreme Court cases were probably after you started judging rather than practicing law, but—

JUDGE PHIPPS: Right.

MR. WALBERT: —you kept up with it, I'm sure.

JUDGE PHIPPS: Yeah. It's bad.

MR. WALBERT: You know, Judge, when I was doing civil rights cases, I had the distinct perception that who the particular federal judge was in that area would change the behavior of the county officials in that jurisdiction.

JUDGE PHIPPS: Yeah.

MR. WALBERT: Thinking of Jack Kennedy's appointment down there in the middle district, who was notoriously bad in civil rights cases—

JUDGE PHIPPS: Yeah.

MR. WALBERT: —and some counties in the middle district were in his division and then Wilbur Owens had other counties. And it seemed to be that you got noticeably different behavior out of people depending on who the federal judge was for that county.

JUDGE PHIPPS: Yeah.

MR. WALBERT: Sheriffs and deputies would be more on their guard in terms of just arbitrarily whipping people.

JUDGE PHIPPS: Right.

MR. WALBERT: Do you find that to be true?

JUDGE PHIPPS: Oh, yeah. Yeah, that was absolutely true. And as you mentioned, the judge that was appointed in, I believe '60, '61 probably, the one that you're thinking about, J. Robert Elliott—those racist, Klan types, they loved him because anything with any hint of civil rights, he was going to rule against the victims and for the perpetrators. That was true as long as he was on the bench, any case that he had, they had that feeling. When I was growing up, I would go to court and watch

trials, and I saw him make those kinds of rulings against civil rights plaintiffs. When I begin to practice law, I practiced in front of him and practiced also in front of Wilbur Owens.

MR. WALBERT: Are there a couple of particular cases of yours that would be good for people to hear about that especially meant a lot to you in terms of what they did for people?

JUDGE PHIPPS: Well, one case was Johnson versus the City of Albany. That was an employment discrimination case, and what made that case so important was that until we filed that case and got the relief—Wilbur Owens was the judge who tried that case—everything in Albany and Dougherty County, as far as employment, county and city employment was segregated and basically very few blacks in any position. At that time, there may be just three or four, very few blacks in law enforcement.

And this case started with sanitation workers. There was a guy named Johnny Johnson, he was the lead plaintiff. And Johnny Johnson came to our office one day and started talking about the conditions in the sanitation department. Blacks could hang off the back of the trucks picking up garbage cans and dumping it into the truck, but they didn't even allow blacks to drive a truck. All the drivers were white. And when they reported to work in the morning, they had a room that was set up with coffee and doughnuts and snacks and things like that, but that was for the white workers—the drivers and white workers. The blacks weren't allowed in that room. And Johnny Johnson came to us and said that he was just tired of that, just tired of putting up with that. And I can remember C.B. said to him, "Are there any others down there that feel the same way you do about it?" He said, "Oh, yeah, plenty of them." C.B. said, "Well, do you think they'd be interested in joining you?" He said, "I'm sure they will." And C.B. said, "If they're interested, tell them to come here, come to the office." And I can remember when I got to the office at 8:30 the next morning, there were about twenty or twenty-five black men sitting on the steps and standing around. Those were the guys and that was the beginning.

MR. WALBERT: This is mid '70s now.

JUDGE PHIPPS: This is about '73, '74, in there. I had just been back a couple of years, two or three years. But anyway, these guys were ready to go, and we put that case together and we tried that case. I can remember in the utilities department, there were no black workers, no

black linemen. And I can remember the guy who was the head of that department was a German guy. He still had a thick German accent. And we had him on the witness stand and C.B. King asked him, he said, "why are there no blacks?"—linemen or whatever that job position was—and he said, "Well, black men are afraid to climb poles." That was his answer right there in court. And like I said, Wilbur Owens was the judge. And not only those awful conditions with the sanitation workers, but in every other department, it was the same kind of treatment. If they had any, there may be one or a token number of blacks.

Wilbur Owens had grown up in Albany, so he knew what he was dealing with. And after we tried that case, it took maybe a couple of weeks to try that case. Wilbur Owens prepared an order that required the city to file reports monthly with him, us, and the NAACP defense fund that helped us finance the suit, laying out the employment status with the city of Albany for every hiring they made and every termination or whatever. And every time they hired a white person, they had to hire a black one. He did that.

And they hated him in Albany. He was hated in Albany after that. They didn't like him too much because of what he had done in the school desegregation case. That's why I was talking about people who if they can, they will try to put pressure on you, even the judge, if you're living in that community. But they hated Wilbur Owens in Albany after that. But he required them to do those reports and that reporting continued until late in the '80s, almost fifteen years. It really did.

That case did more than anything else to integrate the workforce in the city of Albany and Dougherty County because when the county saw what had happened with that litigation, they got right, too. And since then, we've had probably three or four black police chiefs, blacks head of the Board of Education, blacks head of the personnel, city personnel office, blacks over water, gas and light, blacks over transportation, city—all of those things were integrated as a result of that case and I'm sure it had some ripple effect in the surrounding counties, too.

MR. WALBERT: What do you think made Wilbur Owens right on these kind of issues?

JUDGE PHIPPS: I think that he just had enough, he had grown up in that environment, but when it came to being a judge, he was able to sort of rise above that and try to do what was right. And he did that in more cases than that one. And I think he just had a certain pride, too,

that he knew what these folks were doing, and he knew it wasn't right. He knew what the law was and he had enough self-respect that he just wasn't going to let them come into court and think that because they knew him or he was from Albany or whatever, he wasn't going to do the right thing.

JUDGE ELLINGTON: Well, even though he's a federal judge, lifetime appointment, it still took a lot of personal courage, though, for him to do that.

JUDGE PHIPPS: Yeah, it did take a lot of courage for him to do that because people always talk about federal judges having a lifetime appointment and that frees them from the political pressure, but that's bull because I know very few federal judges who are not influenced by the politics that got them on the bench. That's why you can look at the U.S. Supreme Court and predict the outcome of cases because you know what they're going to do. You can look at the Fifth Circuit. You can look at the various circuit courts and you know exactly what's going to happen because most judges don't leave their politics behind, and that's unfortunate. That's really unfortunate.

I can remember another case, show you how Wilbur Owens did—I had a case where a young boy in middle school down in Early County was kicked out of school. This was, like, in October. He was kicked out for the rest of the year. And his parents came to our office and I prepared a complaint and a motion and filed it in federal court, and I managed to get Wilbur Owens' office to schedule a hearing the next day on this because I wanted to get the boy back in school right away. And so, I got those folks served down in Early County. At that time, Bill Stone's daddy was the school board's attorney. We got the hearing and we were supposed to be in Macon the next day because that's where Wilbur was at that time. So, we went up there and I put on our case.

And what had happened, this was in the biology class and when they got to the chapter on reproduction, this little boy passed a note to a white girl and the note read, "Have you ever had sex?" And that was the note. And some way—maybe the teacher saw it or whatever—but anyway, as a result of that, he was expelled from school for the rest of the year, and this was in October. The chairman of the school board got up and explained why they had a rule or why they kicked him out and that kind of thing.

And I never will forget, Wilbur Owens said, "Am I understanding, this was in the biology class, right?" And the chairman said, "Yes, sir." And Owens said, "They were studying reproduction, right?" Yeah. And then Owens says, "Maybe he shouldn't have passed that note, but isn't this something that you think about when you're talking about reproduction? And he asked in the note, have you ever had sex?" He said, "You're teaching biology and reproduction, so why is this an expellable offense?" Owens leaned over to the principal of the school at that point, and he said, "What time does school open tomorrow morning?" He said, 8:15. Owens said, "When the doors open, this boy better be back in school," and that was the last we heard of that case. But that was the kind of guy he was. He'd give you hell sometimes if you caught him in the wrong mood. He could be tough. He could be tough, but on those kind of issues, he was—

MR. WALBERT: No nonsense.

JUDGE PHIPPS: That's right.

MR. WALBERT: Well, it sounds like you're talking about going down to practice law and bring some justice back to South Georgia, and it sounds from the way you talk about your cases, you feel pretty good about your experience in practicing law—

JUDGE PHIPPS: Uh-huh.

MR. WALBERT: —in terms of what you had hoped to accomplish and representing people and a lot of good things, or was there a lot of frustration, too, where things—

JUDGE PHIPPS: Yeah.

MR. WALBERT: —couldn't be done?

JUDGE PHIPPS: Right, right. But let me mention one other thing about the cases that brought me satisfaction. In addition to that Johnson versus City of Albany case, the other cases that brought me the most satisfaction were when we'd go into those places and file those jury discrimination motions, and sometimes the judges would clean up the jury list. Now and then, you'd find a judge who might redo the jury list as a result of that, but usually they didn't and we would take those cases into federal court. And most of those circuits were five, six counties or more. So, even if you got it done right in one county, you got the other rest of the circuit that's messed up. Filing those suits gave me a great deal of satisfaction because of the results that we got, and because I could see in communities where there had been jury discrimination—black people

kept off the jury list. In most of those counties, black people are either a majority or a large part of the population. When they started serving on juries, back then, for example in Dougherty County, the grand jury picked the school board members. Grand juries inspect public properties. You know all the things that grand juries do.

And when white lawyers and white people started seeing black people on juries that they had to appeal to because whether they were the defense or the plaintiff side or whether in a criminal case, whichever side you were on, then they start treating black people better in the community. And to me, there was a ripple effect. When you got the jury list properly composed, it had a ripple effect throughout the community about how black people were treated in that community because it gave black people some power that they really didn't know they had. Nobody could think of, well, the right to be a juror and how does that give me any power, but the cumulative effect of black people being on juries, it even changed the way white lawyers treated people in court. They would show more respect to black witnesses and black defendants in court because black people are on the jury. And so, those kinds of cases gave me a lot of satisfaction.

We did many, dozens of those cases, and in every case that we did, whenever there was discrimination against blacks, there was always discrimination against white women. There was not one of those cases where white women were properly represented on the grand jury list or the traverse jury list. So, when we filed those claims, we filed not only a race claim but a gender claim. 1972 was the first time a white woman had ever served on a grand jury in Albany, and that happened because of a jury discrimination suit we filed in Albany. Those cases gave me a tremendous amount of satisfaction.

JUDGE ELLINGTON: Well, it's kind of like grand circulation of waters.

JUDGE PHIPPS: Right, right.

JUDGE ELLINGTON: Ripple effect.

JUDGE PHIPPS: Yeah. You could sometimes do a little thing and it'll make a lot of difference. I remember a case I had over in Cook County, a murder case in Cook County, Georgia, Adel. I went over there and the jury list was just atrocious. Cook County has a large black population, but there was just only a token number of blacks on the jury list, the trial jury. The grand jury was messed up too. I filed those motions

and H.W. Lott was the superior court judge at that time. The trial was going to start that Monday and on Friday, I got a call. The secretary said, attorney Phipps, Judge Lott is on the phone and wants to talk with you. I didn't know what it was. I picked up the phone and Judge Lott said, "Herbert, how many blacks you want on that jury?" I said, "Judge, I just want to be able to pick a jury from a list that's representative of the population in the county." I said, "That's what I want. I'm not asking you for any certain number of black people on the jury. I just want to be able to pick from a list that's constitutionally drawn." He hung up and when I got there that Monday morning, I could hardly find a place to park. They had subpoenaed black folks from all over Cook County. I don't think they were on the voters list even.

(Laughter)

JUDGE PHIPPS: He had brought them in from everywhere.

MR. WALBERT: Over the weekend?

JUDGE PHIPPS: Yeah, yeah. Over the weekend, I guess they had—I'm not saying they had redone the entire list—

MR. WALBERT: Right, right.

JUDGE PHIPPS: —but they probably looked at the voters list and said we're going to get some blacks down here for jury duty, and these folks probably hadn't been on the list but they were there that morning, that Monday morning. And we ended up picking a jury. I think the jury probably had maybe seven blacks and five whites on it. I believe the population of the county was majority black at that time. But we got that jury. To show you what an impact that had on that county, that was back in the '70s. When I was on the Court of Appeals in Atlanta, and I got appointed in '99, I still got calls from folks in Cook County who remembered that case and wanted to ask me about certain things, as if I could give them legal advice. I couldn't, but they were calling as a result of that case, having questions about things going on in the community. And from then until I stopped practicing law, I continued to get clients from that county because of that case, because it had done so much for the community. After that case, they did revise the jury list because I was getting ready to file a federal case over there. They revised the list in that county, and it made a lot of difference for black folks over there.

MR. WALBERT: When you and C.B. were talking about filing a lawsuit against the superior court judge in federal court, did y'all worry

about how he was going to take that out on you in court later, or was that not a factor?

JUDGE PHIPPS: They couldn't have treated us any worse.

MR. WALBERT: I was wondering.

JUDGE PHIPPS: It couldn't have got any worse than it was.

MR. WALBERT: Right.

JUDGE PHIPPS: So, we weren't losing anything.

MR. WALBERT: Judge, do you think we're better or worse today with people living in a bubble, and people who, as you say, understand what's wrong not having the courage to do something about it?

JUDGE PHIPPS: I think we're about where we were. I don't think we've made much of a change on that. And the reason that we haven't made much of a change is that so many of the people who are in a position to speak up and say something and call these people out, won't do it. That's why every opportunity I get, whether I'm speaking to a white group or black group or a mixed group, I talk about those things. And I know it makes people uncomfortable, but I do it anyway because it's important for people to get up off their butts and stand up and speak out.

JUDGE ELLINGTON: Do you think we're still re-digging old wells?

JUDGE PHIPPS: Yeah. That's part of what we're doing. Some time ago, I made a talk and I talked about re-digging old wells. I'm not a Bible scholar or anything or any religious person, but there's a part in the Bible where they talk about re-digging old wells, things that have been accomplished and people come along and destroy it. It's like with this Trump administration. We're going to have to re-dig a lot of wells that had been dug. We're going to have to redo a lot of things that had been done because Trump and his justice department are turning back the clock, in many ways quietly. We read about it and hear about all the Stormy Daniels crap and all the Russian stuff, but while we're reading about that, they're doing everything they can to hinder voting rights and to take us back on that, take us back on education, in every area, in housing, everything where we had made some gains, they're turning the clock back. People see that and don't have the guts to speak out against it. The members of Congress and other leaders, they just watch it happen. That's why I like to speak to young lawyers because we need to encourage folks, to try to put a spark in them. We need lawyers who will

deal with that kind of stuff. And I think that in my experience growing up, if it had not been for lawyers, we wouldn't have made the progress that we made. We needed Martin Luther King and we needed the people who would lead the protests and demonstrations, but they needed lawyers, and it was the lawyers that complemented what they were doing. Like I mentioned seeing the voting rights case litigated and people were protesting, SNCC and everybody else protesting and trying to register people to vote. But until we had lawyers who would file those cases and litigate those cases and bring to the attention of everybody how evil that was and how awful it was to have that kind of a literacy test to keep people from voting—and I think that the lawyers, like C.B. King and Hollowell and Jack Greenberg and Elaine Jones and David Walbert and all kinds of other people, Thurgood Marshall. A lot of people don't realize how much work Thurgood Marshall did before he ever got on the Supreme Court, how much work he did in the South as a lawyer in Georgia, South Carolina, Florida, Alabama, Mississippi. Thurgood Marshall risked his life for years litigating cases and fighting for equal rights for black people. Charles Hamilton Houston, all those folks, all those lawyers, they are the reason that we made the progress and we still need lawyers. We still need lawyers who are committed to that. That's one thing, as I mentioned earlier, about C.B. King: he never turned anybody away who was being mistreated. Even though he had a family to support—five children and bills like everybody else—he would sacrifice in order to help people who were being mistreated.

MR. WALBERT: How did he handle the criminal caseload in that regard, Herb? Because he must have had an incredible number of people who were coming through being unfairly prosecuted. He couldn't have taken all those cases.

JUDGE PHIPPS: No, you couldn't. You couldn't take them all. There's a limit on what you can do. Otherwise, you're going to end up not being effective. But he would take them as much as he could. And often, I can't tell you how many times I saw this happen, when he got involved in a case, the case would go away. They would never call it for trial. I can remember in Baker County, we tried a speeding case for a week, and that broke them up because it costs money to operate a court. And in those little rural places, by law, they're required to have two terms a year, and they planned to railroad all the criminal cases through and do the civil stuff usually in one week. If you tie them up the way he did, the way he could do, whether it was a week or two or three days, and

you're throwing them off balance. You're making them spend money. And I can remember doing things like that. We would go to various places in these rural counties and whether our client was charged with a misdemeanor or a major felony, it was a fight. We would challenge the array of grand jurors and traverse jurors in felony cases and challenge the jurors on the list in the misdemeanor cases. And once we did that, the next term, when we got a case in that county, they'd call up and offer you a deal you couldn't refuse because they didn't want a fight. I can remember clients coming to the office and I can remember people walking in. A guy came in one time and he said, "Mr. King, I need you for my lawyer because you're the last man they want to see down there."

(Laughter)

MR. WALBERT: You know, I remember C.B.'s office, a solid brick building. Was that by design and intent, to have a brick building so it was safe?

JUDGE PHIPPS: Yeah, that was, because there were a lot of threats. Often, we would go into these rural counties back then when I first started, and I'm sure it was even worse when he was down there alone, they would have court at night or on Saturdays—even been to court on Sunday. They would do that because all these farmers and folks would be out in the fields, and they would have court at night. And often, black people would get together and give us an escort out of town till we got a safe distance away and they were sure that nobody was following us.

I did a commencement address over at Andrew College in Cuthbert on this past Saturday and I was talking to people over there who remembered C.B. King and us coming over there, and they mentioned a court reporter named Inez Wolfe. Wherever we went, as I told you, C.B. insisted on having a record. It might be at a municipal court of Preston, Georgia, or Westin or Ludowici or Arlington or wherever it was, we had a court reporter. Never went anywhere without a court reporter because we had to have a record. And all the court reporters were white, just like everybody else, mainly white men, and Inez Wolfe was a white woman and she went with us, and at night. She didn't care where it was or was it night or on Saturday. She would go because the men reporters wouldn't go. I guess they didn't want to be associated with us. When we took a court reporter, it's not like when you go into superior court and there's a court reporter there, furnished by

the court or provided by the court. When we would go to these places, we would be bringing a reporter with us. The prosecution wouldn't have a reporter there. So, when the court reporter would show up, they would know that the court reporter was there with us. In many of these rural backward places, they thought this white woman was from our office, and so they would get all hostile towards her. There were times when they would follow her out of town and try to intimidate her and harass her, too. It got where her husband would go with her so she'd have some protection because she would always meet us there. She wouldn't ride with us. But they were still hostile in those rural places. And there were many times we had, as I said, escorts out of town.

JUDGE ELLINGTON: Well, let's jump from law practice a little bit to the judge world, and I know that you and Judge Malone were very close. Tell us, first, how did you become friends with him, know Judge Malone, and then how did that help you later in the courthouse?

JUDGE PHIPPS: Well, Judge Malone, Tommy Malone's father, he was a judge of the municipal court in Albany for many years, and when they changed it to the state court of Dougherty County, he became judge of the state court of Dougherty County. And also, he was the judge of the magistrate court. He appointed the magistrates, the state court judge did. And in 1980, C.B. and I had done a few cases with Tommy and gotten to know him.

And in 1980, Judge Malone offered me a magistrate's position. It was a part-time judicial position in Dougherty County. And we talked about it, and C.B. and I agreed to take it. He knew it was going to take me away from the practice to some extent and create some conflicts here and there, but we agreed to take it because we said that this is what we've been fighting for: opportunities. And at that time, we knew that there was no other black lawyer in Albany that they were going to appoint to that. So, we decided to take it, and I did.

And it was a great, great experience because you not only did the magistrate court work; when the state court was in session, the magistrates tried jury trials in the state court, misdemeanor criminal cases and civil cases that were filed in the state court. So, I got a lot of experience as a trial judge there because of the state court connection. Judge Malone, by that time, he was well into his seventies and he was glad to have somebody to try a lot of those cases.

JUDGE ELLINGTON: All right. You're part-time judging with Judge Malone, doing magistrate work—doing complaints, doing civil hearings, what were you doing?

JUDGE PHIPPS: We were trying cases in state court, as I said, criminal misdemeanors and civil cases. And then as a magistrate, a lot of what a magistrate does, these small claims, you try those cases. And a big part of what a magistrate does is sign warrants—search warrants and arrest warrants. There's a guy now, I believe he's a chief magistrate over in Lee County, but at that time he was on the Albany police force, and he was in the drug unit, task force. And he used to come to me all the time for search warrants. We had three magistrates and we rotated. But whenever I was on duty, I got a lot of them. I'm sure the others did, too. And I saw him not long ago and he said, "I'm so glad that I had the experience of dealing with you when you were a magistrate." He said, "Because a lot of those judges, we could just throw anything in front of them and they would sign it." He said, "You wouldn't sign a warrant unless you went through it, asked questions about it." And he said that a lot of times the police get irritated with that, get pissed off about that. He said, "But you were doing the right thing. You were doing the right thing. You were making sure that we had what we needed to get a search warrant."

And he said that, "When I became a magistrate, I tried to follow that kind of example." He said, "That made me a better policeman and it made me, I think, a better magistrate." You know you like to hear things like that because there you're signing search warrants at three o'clock in the morning—sometimes they do that, two or three o'clock in the morning—they wake you up and have a search warrant, and a lot of folks, when you wake them up, they're pissed off. They didn't want to get up anyway. They might go ahead and just sign it. But I would question them about it and read through it and make sure that it was saying what it ought to say.

JUDGE ELLINGTON: Well now, Governor Miller appointed you to the Superior Court of Dougherty County. How many counties were in that circuit at that time?

JUDGE PHIPPS: Dougherty is a one-county circuit.

JUDGE ELLINGTON: And what year was that?

JUDGE PHIPPS: That was in 1995.

JUDGE ELLINGTON: Who were some of the other judges in that circuit?

JUDGE PHIPPS: Asa Kelly was still there and Lauren Gray was there. Asa Kelly had been appointed by Lester Maddox. Prior to him taking the bench, I believe Albany was in the same circuit as Camilla. I believe it's the South Georgia circuit. Dougherty County was in that same circuit.

But I heard that Judge Kelly, and I believe he may have told me this, he told Lester Maddox he wouldn't take the appointment then unless they made Dougherty County a one-county circuit because he didn't want to be traveling around those five or six counties, and that's what they did in the '60s. They made Dougherty a one-county circuit, and he became judge and he was there until I was on the bench. In fact, when his health got bad, he started a death penalty case and he was two or three days in it, I had to take over because he got sick and couldn't continue.

I'd always had a good experience with him, with Asa Kelly. He was always a decent guy, and same with C.B. You didn't have to worry about him trying to do you in as some judges did. They would just prosecute us sitting on the bench if it was a criminal case, or they were after you and doing everything they can to undermine your case. But he would never do that. He'd always treated everybody with respect and you never worried about having a case in front of him.

JUDGE ELLINGTON: What year did you become superior court judge?

JUDGE PHIPPS: '95. That was Zell Miller. And then I was there four years before coming to the Court of Appeals, '99. Now, prior to that I had been between the magistrate and state court. In '89, I was appointed to juvenile court judge for Dougherty County. And at that time, I became only the second black juvenile court judge in Georgia. The other one was Romae Powell here in Atlanta. At that time the chief superior court judge made the appointment to juvenile court and Judge Kelly got rid of a guy who had been a juvenile court judge, I believe for twenty-some years, and appointed me juvenile court judge.

MR. WALBERT: Were you still practicing and juvenile court judging at that time, both of them?

JUDGE PHIPPS: Yeah, it was a part-time position at that time. Now it's full-time in Dougherty County, but then it was still a part-time position.

MR. WALBERT: You talk about taking over that case for Asa Kelly when he wasn't well in the death penalty case. How many death penalty cases have you either been the trial lawyer in, or were you the judge on in your career?

JUDGE PHIPPS: I remember one case C.B. and I tried where they were seeking the death penalty, and we got an acquittal. And that's hard to do in a death case because they usually—if they do it right—have a pretty strong case. But in the other cases—

MR. WALBERT: Patterson—

JUDGE PHIPPS: —it may start out with that. Patterson wasn't a death case. He was convicted, but it was not a death case. He got a life sentence. That case that I was telling you about with Judge Kelly started out as a death penalty case, then the state backed off and decided that they were going to seek just a regular murder conviction with a life sentence. But as a superior court judge, I tried two death penalty cases that went on to the death penalty. The death penalty was imposed. And I think when I tried the first of those cases, that was the first time that the death penalty had been imposed in Dougherty County since the '40s.

When I went on the bench, everybody knew the kind of practice that I'd had, the civil rights stuff, black people knew it in Dougherty County, Albany, white people knew it. I think that one reason that there had not been a death penalty imposed in Dougherty County over those years is because people just didn't trust that people were going to get really a fair trial that you should get in any case, and especially if you could receive the death penalty. It should be that way in every case. The first defendant, the first guy that tried to the death penalty was a white defendant, and I think that everybody knew that I was not going to preside over a case where somebody didn't get a fair trial. If the DA tried something that wasn't appropriate, I wasn't going to allow it and wouldn't, and same thing with the defense. But I don't know whether that was the first case in Georgia where a black judge had presided over a case where a white defendant got the death penalty. I think it probably was. Probably was. And then right after that, almost back to back, a month or two apart, I tried the second one, and that defendant was black. And in the first case, the white defendant, the victim was white, too. It was an awful case. And in the second case, the defendant was black and the victim was black. And I think that, like I said, that the jurors awarded

the death penalty in those cases maybe because they knew that I was not going to preside over any crap.

I may be wrong, but I kind of felt that way. In both cases, the jurors were sort of even, seven blacks or five whites or six-six, that kind of thing, and they were representative jurors representing the community and both guys were sentenced, and one of them was executed. The other one, on habeas, I believe his death sentence was set aside because his lawyers had failed to introduce a piece of evidence that, on habeas, the court thought should have been introduced. On the penalty phase, they failed to introduce it. Now, on the other guy, he was executed about a year ago in, I believe '17 or '16.

MR. WALBERT: Was the DA not bringing death penalty cases in those prior years or were they bringing them and the juries were not imposing them?

JUDGE PHIPPS: Sometimes they would bring them and they wouldn't get imposed, and then sometimes they would back off. After starting off with the death penalty case, you know how when everybody is all excited about a case and something happens, they may say we're going to do the death penalty in this case and then after they get into it, they would back off. It had been tried in Dougherty County, but it hadn't succeeded.

MR. WALBERT: How'd you like trial judge versus court of appeals judge and all the years you spent up here in Atlanta on the Court of Appeals? They're different experiences. Did you enjoy them equally or would you say if I had to do one for the next ten years, here's the one I'd rather do?

JUDGE PHIPPS: I enjoyed both of them. There's a lot more pressure on a trial court judge because you've got a calendar. For example, in Dougherty County or wherever you are, the cases are distributed among the judges and you don't want your cases to back up. Some judges will let cases back up, but you want to keep cases moving. You want to keep the post-trial stuff moving, like motions for new trial and things like that. That backs up on a lot of cases.

While being on the court of appeals, I've seen criminal cases where there was no ruling on a motion for a new trial for fourteen years or so. And at one point when Alan Blackburn was on the court, before he retired, he and I started keeping a record because we were going to maybe write an article or something about it. And at the time he retired,

we had accumulated, just between the two of us—that's not counting what went before the other judges on panels that we were not involved in—just on our panels, we had almost thirty cases where there were at least six years between the the filing of a motion for new trial and a hearing on the motion. At least six years, and there were several with seven, eight, ten, twelve, and the most I've seen was fourteen. But that's ridiculous. To me, that's the trial judge's fault. That's the district attorney's fault because the case is not over until you dispose of the post-trial stuff as far as I'm concerned. And that's the lawyer's fault. Often the lawyer that represents a criminal defendant at trial is not going to be the appellate lawyer and the lawyer may file a notice of appeal just to keep the time from running out for a motion for a new trial and then steps away. But somebody's not paying attention to let that case just sit there.

But anyway, a trial judge has a lot more pressure because you've got to manage jurors. You've got to manage your calendar and you got a lot of things to do. You've got folks walking in every day. Lawyers want hearings and hearing motions and that kind of thing. Whereas on the appellate court, if you get a good staff, you just work on the cases. You've got deadlines. You've got the term rules. But it's a lot easier to manage your workload and your time. And as an appellate judge, for example, I could be down in Albany and still do my work because they can fax or email or whatever, telephone.

I can get a call if some emergency comes up. But a trial judge, you can't do that. You've got to be at the courthouse. I know a lot of judges over the years who didn't spend as much time as they should have at the courthouse, and it shows in the quality of their work and what goes on. So, the appellate is the one I would prefer if I had to choose. But I enjoyed both of them. Yeah, I didn't mind. And I have a lot of judges complain about trying domestic cases. That never bothered me. I just liked to watch lawyers try cases. I didn't care whether it was two folks fighting in a divorce case or whether it was fighting in a big tort case. It was a trial.

JUDGE ELLINGTON: Now, Judge Phipps, we've still got some ground to cover with your judge world, but I know that you have been very involved in community service, particularly in the Albany area. You're on the bank board. You're on the hospital board. I know you encourage younger lawyers to stay involved in their local community. Tell us a little bit about how rewarding or demanding it is to manage life outside the law.

JUDGE PHIPPS: I'm not on the board at the hospital. I've been on the bank board and many, many other boards down in South Georgia and otherwise. But I have a great friend who says that everybody should have a life outside the law. Get a life outside the law. That's what John Ellington tells lawyers when he speaks with them, and I remember, there's one firm in town, a big firm that he went to and spoke one day to the new associates and talked to them about getting a life outside the law, and the next week, three lawyers quit.

JUDGE ELLINGTON: Had an impact.

JUDGE PHIPPS: It did. Three lawyers quit. But I've always maintained an active life outside of the law because growing up in the woods in South Georgia as I did, I always enjoyed hunting, fishing, being outdoors, and I love animals and crops and things. This time of year, I get a lot of joy out of driving down the highways and seeing the cornfields, the little corn coming up about that high, or the peanut fields or the cotton fields. To me, that's a beautiful sight, to see those things coming out of the ground that way every year and to see the beautiful pecan orchards and that kind of thing. So, I've always had an active life. My wife and I, we'd always take the kids down to Florida to the beach so they could do fishing and crabbing and things like that. And even in Albany, my son and I, when he was old enough, I started taking him hunting and fishing and he still loves it—hunting and fishing. And my daughter, India, when she was growing up, she would go fishing. She likes fishing. And I have a granddaughter now, Zoë, who's six years old and she can't wait. She keeps asking me about taking her fishing, and I'm going to take her fishing sometime soon. I bought her a reel and a little tackle box.

MR. WALBERT: That's great.

JUDGE PHIPPS: A reel and rod, and so we're going to have to take her fishing sometime soon.

MR. WALBERT: I don't see Connie doing this, though. Have you ever gotten Connie out there doing fishing?

JUDGE PHIPPS: No. Connie loves to eat fish, but she doesn't want to go fishing. She grew up in Atlanta—her father was in the military, so they lived in different places. She lived in Texas, Alabama, Florida. But she was born in Atlanta. Now, she would maybe do a little fishing. We would go down to Panama City. From the dock, she'd watch the kids fish.

MR. WALBERT: She's a city girl, isn't she?

JUDGE PHIPPS: Right. Yeah.

MR. WALBERT: But she lived in Albany with you all those years and loved it.

JUDGE PHIPPS: When we got married, she had some doubts about going to Albany, but now if she comes to Atlanta for two days, she can't wait to get back to Albany.

MR. WALBERT: I think one of the things you've always been is a real mentor and an inspiration to young people and lawyers of all ages, and I've heard you speak about that and it's so inspirational about the kind of things that one should focus on in life. What do you tell the young people in terms of what are the rules they should follow to keep their life meaningful and fulfilling?

JUDGE PHIPPS: I tell them that, especially young lawyers, I tell them that unless you're going to use the law to help people, you're wasting a legal education. And I tell them that it doesn't matter what area of law practice you go into, whether you practice in criminal law, civil law, whether you're representing large corporations, whatever you're doing in the legal profession, you're going to run across times when you're going to see people mistreated or see somebody about to mistreat people, whether it's in your law firm or in the clients that you're representing. I tell them you have an obligation to speak up and say, "that's not right, you shouldn't do that." You have to have enough guts to say, "well, if you insist on doing that," especially if it's something that's unethical or illegal or immoral, "you just need to find you another lawyer, but I'm not going to represent you." You can't let clients determine what kind of person you are or what you focus on.

I've had young lawyers say to me, well, I'm working at such-and-such a law firm. There are 300 lawyers there. What can I do? And I said, when you're sitting in a meeting with the partners or whatever and something is being discussed and you don't feel right about it or you know that what they're talking about doing is not right, you need to speak up. You don't have but one vote. You can't make them change, but you need to speak up. They need to know. I said, "I can't sleep with myself when I go home at night if I know that I didn't let people know that I didn't like what they were doing." And if I didn't treat people right in court or if I didn't insist on people being treated right, then I couldn't

feel good about myself personally. So, I do that for my benefit as well as everybody else's benefit.

And I've had young lawyers come back and tell me from time to time—lawyers who are obviously not doing civil rights work—that after hearing you speak about that, "I've started speaking up. I've started expressing myself on those things." And it makes a difference. So, it makes a difference in the way I feel about myself. And so sometimes, it'll make a difference in how those folks act. They will change their behavior. They'll modify it in a positive way. And so, that's what I tell folks. As a judge, they asked me about how can you preside over this case or that case or this person is an awful person, did an awful thing and that kind of stuff. I always tell them I have a rule. I always try to treat people better than they deserve, and that's based on my measurement, you see. And so, when I treat them better than I think they deserve, then I'm allowing for the fact that I may be erring on the side of mistreating folks. But if I try to treat them better than they deserve, I can feel good about that.

If I'm sitting on a case and after everything is said and done, I'm thinking, well, I ought to sentence this person to seven years, I might sentence them to five because some of that sentence may be based on some prejudices and biases that I have. So, I'm going to cut you some slack and do you a little better than you deserve. Also, I always think about the fact that there's a thin line between me and the people who are standing in front of me. There's a thin line between where I sit on the bench and the people who are standing before me looking for justice. I can think back across my life when there were so many times when I could have taken a wrong turn or made a mistake and been right where they are. You have to always remember that. Those are the kind of things that I try to impress on young people, that you got to do what's right. I always tell them you got to have enough courage to do right when the whole world is watching and enough character to do right when nobody is watching. And I tell them that story about the judge who said, "I got to live in this little town." His little town was watching and he couldn't stand it. He didn't have the courage to do what was right, even though he knew what the right thing was. He didn't have the courage to do it because his little town was watching him. So, I try to impress on folks the importance of speaking up and the dangers and the harm and the hurt that can be done by silence and indifference.

I grew up in a Jim Crow world that would have changed long before it did if good people had been willing to speak out and stand up and had not been sort of living in a bubble, as we say, indifferent to it. And that was a painful thing because you know that if these people would just say something, it would make a difference. They wouldn't have to fight anybody. They wouldn't have to do anything, but just say something. If people would just do that, and that's still the case. We can see that in our government and in our society from the top to the bottom, a lot of bad things go on because the people who wouldn't do those things don't have the courage to speak out against them and stand up. And so, that's what I try to encourage folks to do.

The best piece of advice that I got when I became a judge was at a reception for me. There was a lawyer who had been practicing law for about forty years, and his father was a judge and his father was still on the bench, and his brother was a lawyer and a part-time judge. And this old lawyer—at that time, I was much younger then—he pulled me aside and he said, "Herb, I think you're going to make a fine judge, but there's just one thing that I need to tell you," and he said, "Herb, 'judges get their asses kissed a lot,'" and he said, "don't you ever mistake ass kissing for respect." I've never forgotten that. That's so important because judges do get their butts kissed a lot. There are so many judges that you and I know who mistake that for respect, but it's not. I think that those are the kinds of things that you have to remember. And I remember reading somewhere there was a Frenchman, I believe it's Montesquieu or somebody who said that through the courthouse runs the sewer of society, so that, in the courthouse, you might see anything. You're going to see people from the worst to the best, and he went on to say that you got to be able to treat everybody who comes through there the same way, to treat everybody with respect, no matter who they are or where they're from or what their race or gender or color or what they have done. You have to be able to treat the worst renegade the way you would treat the local preacher if he came to town. Of course, the preacher may be the worst renegade. So, that's the kind of way I try to approach it.

MR. WALBERT: Judge, you gave the commencement address to your law school in 2007 and it was entitled "The Guardians of Truth and Justice," subsequently republished in the Law Review. I know from people that I talked to afterwards, it was a uniquely acclaimed and admired address and got a reception from the faculty, from the alumni, from the students, unlike any address that had ever been delivered

before. Just wildly acclaimed, and it's a beautiful talk. It encapsulates a lot of what you just said about being a mentor to young lawyers and so on. How do you think we're doing as a society and a legal society as being guardians of truth and justice? Do you think we're carrying on the flame, are we weakening, or how are we doing these days? You feeling good about it or worried?

JUDGE PHIPPS: I'm kind of worried about it now because I think that we're taking a step back in the sense that we're standing by and allowing things to happen in our country that should not be happening. We're allowing people to do and say things without challenging them, and that's unfortunate. I can think of things that happened fifty, sixty years ago that were sort of dying out that are being brought back to the surface, the kind of hatred. People are not treating each other as well as they used to. I see and hear examples now where people's racist attitude are coming to the surface again. And people are being treated worse than they had been because those people who were maybe getting over that kind of racism and that kind of mistreatment are being encouraged that that's the way to act, that's the way to treat people. That's why I say we're going to have to re-dig old wells and redo some of the things that we've done before.

I heard a speech by Vernon Jordan that he delivered some time ago where he said we have been here before. We have been here before. And that's what I'm talking about, the kind of things that we are seeing now that we thought were behind us and we're having to relitigate those issues. Look at when the Voting Rights Act was signed in 1965. We thought that by now, there wouldn't be any issues about people being mistreated when it comes to exercising the right to vote, but that's not true. In June 2013, the U.S. Supreme Court gutted the Voting Rights Act and all kinds of other stuff has happened to make it difficult for people to vote, and there are all kinds of things that are happening. I heard the other day the schools in New York City are the most segregated in the United States. So, it's not just down south. It's up north and everywhere. Like C.B. used to say, it's down South, up South, and out South. It's all South.

And so, we still got a lot of work to do and we're taking some steps back. We've been pushed back, but unless we stand up—and that's why I believe so much in lawyers because lawyers can make a difference. Lawyers can change this stuff. But we got to have lawyers who are committed to doing that and lawyers who see the need to do that. Our

society has gotten to a point now where you can sort of go through life or go through the profession claiming you don't see it or pretending not to see it. It's impossible for me to understand how anybody cannot see it, but I guess there are people who do. And I'm not just talking about white lawyers. I'm talking about black lawyers, too. We've got responsibilities on both sides.

When I speak a lot of times, young white lawyers come up and tell me how they're inspired; they hadn't been thinking about that, those terms, because they grew up in a world where that was not a concern. They weren't affected by prejudice and racism and that kind of mistreatment. They hadn't thought about it really. And so, they said that I put it on their minds and they're thinking about it and hopefully as they go through their careers, they intend to try to be somebody who tries to do something, something for it and something about it. And so, that's something that's very, very important to me.

I had a woman in Albany stop me the other day. I didn't even recognize her, but she says that I talked to her son for about thirty minutes maybe fifteen years ago. This is a white woman—fifteen years ago, and she says that made a big impression on him and he's practicing law now. He went to law school and said he's trying to do what he can. He's remembered what I told him and he's trying to do his share. So, hopefully, he'll do something. That will stick with him and he will make a positive impact. One person can't do everything, but all of us have the responsibility to accept a share of the load and try to help make things better. I'm not saying that everybody can do it all, but if everybody chipped in, it would make a big difference.

JUDGE ELLINGTON: Now, I don't have any other questions, but I made a few notes while we were talking and I will suggest to you that it's a long way from Baker County, Georgia to Morehouse, to Thailand, to Paris, then to law school at Case Western and to Chief Judge of the Court of Appeals of Georgia. But I suggest to you that Judge Phipps has made the journey with class, with hard work, courage, integrity and excellence, and I know that Georgia is a better place because Herb Phipps was here.

MR. WALBERT: And I'd second that motion. Like I said at the very beginning, I don't know anyone that has the universal respect and admiration by all of his peers and the people who have known him over the years or heard him speak. You've touched so many people through

your law practice, what you talked about with the jury cases, individuals. I remember that young woman who died so tragically that you were mentoring down there, that we helped get into law school, and then—she was going to be one of the greatest lawyers we ever had in Georgia, in my opinion—and then she died of some terrible congenital disease. But you've touched so many people like that. So, I want to, number one, thank you so much for your time here today and number two, thank you for all that you've done and the inspirational words you've given us here today. I'm sure people are going to take a lot from them when they listen to this in the future. So, thank you.

JUDGE PHIPPS: Thank you. Can I say one other thing? I mentioned earlier that C.B. King came to my school when I was in the ninth grade on career day, and that was the first time that I had ever seen a black lawyer and I talked about how inspirational he was in talking about how he was using the law to fight racial injustice. And in Albany before I came to the Court of Appeals, at the time I came up here, there were probably thirty-some—I forget, maybe thirty-five or thirty-six public schools in Albany and three or four private schools in Albany, plus there was Darton College and Albany State University. And I had spoken at every school in Dougherty County, including the private schools—the private, mostly white schools, and all of the public schools from the lowest grades to high school, and Albany State and Darton College. And often I run into people who say, "my daughter heard you speak at her school" and she is now doing this or doing that, "and she said that that was a big inspiration to her," or "my son is now a lawyer and says that he heard you and he was inspired," and that happens all the time. I remember one young woman, who practices now in Columbus, Georgia. I spoke to her middle school class one day, not the whole several hundred of them, but just her classroom. Her teacher invited me into the classroom and I spoke to her class. And her mother, every time her mother sees me, she tells me that was what inspired her daughter to want to be a lawyer and now she's a lawyer and she's doing very well and doing what she can to help folks, too.

The point I wanted to make is that it's important for us to take advantage of opportunities to speak to young people because you never know when you're going to touch one of them or make an impression that will be lasting. And that's so, so important. We have an obligation to do that. And there are a lot of young kids who would never think of doing some of the things that they would think about if you would go in

and speak to them and give them the inspiration and encouragement. So, that was one other thing that I wanted to emphasize: the importance of going to schools and going to places and speaking to young folks.

ENDNOTE

1. 140 F.2d 662 (5th Cir. 1944), *rev'd on other grounds*, 325 U.S. 91 (1945).