

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

INTERVIEWEE: McNeill Smith

INTERVIEWER: Eugene E. Pfaff

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[Begin Tape 1, Side A]

EUGENE PFAFF: Our interviewee today is State Senator McNeill Smith. Born in Rowland, in Robeson County in North Carolina, in 1918. Senator Smith is the son of Dr. John McNeill Smith and Roberta Olivia Andrew Smith.

Senator Smith graduated from the University of North Carolina at Chapel Hill [UNC] in 1938, where he was a member of Phi Beta Kappa, Delta Kappa Epsilon fraternity, Golden Fleece, and the Order of the Grail. Upon graduation from UNC, Senator Smith received a law degree from Columbia University Law School in 1941.

Prior to serving in the United States Navy during the Second World War, he worked for the prestigious Elihu Root, Grenville Clark [Root, Clark, Buckner & Ballantine] law firm in New York. Senator Smith began his law practice in Greensboro in 1945.

Senator Smith married the former Louise Huske Jordan in 1941, and they have four children: Louise Jordan (Mrs. David Nichols); Anne Talbott Smith (Mrs. Joseph Cole); John McNeill Smith III; and Eleanor Huske Smith.

I'd like to welcome you to the Greensboro Public Library Oral History program, Senator Smith. I'd like to begin by asking you what memories you have of your years at Chapel Hill?

MCNEILL SMITH: Well, I have a flood of memories. And the most important experience, I suppose, was working on the *Daily Tarheel*, and ultimately, in my senior year, being the editor of the *Tarheel*. But the *Tarheel* was the one thing at that time which seemed to reach all the faculty and all the students, and in our view on the paper held the, held the university together. I'm sure that wasn't so, but--now you have radio and T.V. stations and other student activities that may serve that purpose. But the *Tarheel*, which went to everybody everyday, except Monday morning, was a kind of unifying force.

EP: If I understand, you had the reputation of being--prodding the students to look at world and international events, particularly what was going on in Europe at that time, in your position in--

MS: Well, it was a--there was a great deal of interest among the students in world affairs. And I think Dr. Frank Graham [president of UNC] encouraged this, and so did a number of other faculty members.

And the students were expressing that interest in terms of wanting to get a bonus paid to them before the next world war, so they could enjoy the bonus before the war instead of after it. That was a typical student attitude, I suppose. But we had a lot of meetings with Duke [University] and various other places in the state. And we--this was a big trumpeted call.

EP: I also understand that you were a delegate to the Student Seminar for World Peace in Geneva in 1937. Could you describe what that was all about?

MS: Well, Sir Norman Angell had won the Nobel Prize on the basis of some investigation and a book that he wrote called *The Great Illusion*. And it was his view that no country profited by war. In the earlier days, it was thought that if you were successful in war, you got a lot of booty out of it. And his work tended to show that really you got a lot of problems and a lot of responsibilities even if you won.

So Norman Angell ran this seminar, which had about thirty or thirty-five students in it from all over the world. And I made a lot of friendships there which have lasted a long time. One of the students was Walter Rostow, who later was chief advisor to President [Lyndon] Johnson, lived in the White House, probably got blamed a great deal for the Johnson policy in Vietnam, so much so that the faculty at MIT [Massachusetts Institute of Technology] wouldn't take him back after the Johnson administration ended. He is now teaching at [the University of] Texas. Walter Rostow married one of the girls that was on the seminar that summer. He didn't marry her that summer, but she later became Mrs. Rostow.

Another member of that seminar is the Gallup of Canada. That is, he runs a public opinion poll comparable to the Gallup poll. Some of the others became lawyers. I continuously heard from some of the others in foreign countries. I remember a friend in Turkey entertained my daughter when she went on a trip several years ago. So that friendship from the student seminar in Geneva in 1937 has continued.

EP: What influenced you to enter the legal profession?

MS: Oh, I was given a scholarship. There's no question about it. I, I had thought about working for the *Raleigh News and Observer* as a reporter, or in the alternative, working

as an intern for the editors of one of the papers, a Pulitzer Prize winner and storywriter whom I'd heard speak at Chapel Hill.

And then one day, one of the professors came by and said, "How would you like to have a scholarship to Columbia Law School? We've usually been able to get one of our students to fill that post." And somebody who was ahead of me was going to graduate. And I said, "Well, I'd be very interested in it." For a boy growing up in Rowland in Robeson County and never getting much further than Chapel Hill all their life--I'd visited some in Baltimore, where my mother's family had some connections--I thought maybe New York would be a good experience.

So I took the scholarship. And once, once you got to law school and managed to survive the first year, then you got a vested interest in finishing, which I went on and did.

EP: I'd like to turn, if I may, now to your coming to Chapel Hill--to Greensboro, rather, in 1945. How did that situation come about?

MS: Well, Mr. Julius Smith, who's no kin to me--in fact, I'd never heard of him or any person in Greensboro, I suppose. I had heard of Ed Hudgins. Ed Hudgins had been a Rhodes Scholar at Chapel Hill and a member of the Golden Fleece, and had come and talked to our group one time. I think Ed Hudgins was the only one from Greensboro, only lawyer, certainly, that I knew about.

But newly into my military service, when I got back from China and Burma, the second overseas assignment that I had, I had a little leave that had built up. And I went around different parts of North Carolina looking for a job--Charlotte, Raleigh, Lumberton, Greensboro, some other places. And Mr. Smith, who was referred to me, and I was referred to him, by Judge Parker in Lumberton--Mr. Smith was looking for someone else to join his firm. There had been some cut-off of personnel, reduction in force, in his firm during the war. Arthur Cooke[?] was away and Joe[?] Chapman was away, and the staff of lawyers were very few in number.

So he offered me two hundred dollars a month. That was the best offer I found anywhere in North Carolina. And in Charlotte, for example, not only was I offered less money, but I was told that I would have to sign a contract not to represent any of the clients of the firm if ever I was fired or disassociated from the firm. And I said, well, that was quite a compliment that I could take the clients. But I was, I was puzzled by it. Now that wasn't brought up in Greensboro.

Another thing, it seemed to me that the firms in Greensboro, all the firms in Greensboro, seemed to be larger and have better furniture at that time [laughs] than they had in Charlotte. Now it's changed a lot. Charlotte's got some opulent law firms now.

And Judge Parker, who had been a friend of mine for many years, Judge John Jay Parker on the Fourth Circuit, Chief Judge of the Fourth Circuit, had asked me before the war if I'd be his law clerk. And when I got this offer to work with Root, Clark, Buckner,

and Ballantine firm in New York, he urged me to take it. He said, "If you can work in the same building with Grenville Clark, it'd be well worth it." And, furthermore, I told Judge Parker I had a low draft number and was going to be called up pretty soon. And it would be hard on him if I started out his law clerk and then have to quit right after I started. He said, "You go and do that."

And then after, after I'd been in the service four years, I talked to him about where to locate. And he thought that Greensboro was a better place to locate than Charlotte, because in Charlotte they were very Scotch Presbyterian and didn't believe in paying lawyers right.

EP: [laughs] I think it was to Greensboro's benefit that you came here.

MS: Well, I don't know. But I've enjoyed it. Greensboro's been wonderful to me. It really has.

EP: What was your participation in the World Federalist Movement and the American Freedom Association?

MS: Well, the purpose of the student seminar in 1937 had been to try to agree on some policy for structuring the relations between nations so it could prevent another war. You know, obviously we hadn't succeeded in that, because World War II had come along. But it was an interesting experience in exploring the possibilities of what was then called collective security. All the good nations would band together to move collectively against some aggressive nation. That was the theory.

Well, at the end of the war, and particularly after the dropping of the atomic bomb, a lot of us still in touch with each other thought that you really needed something more like a government for the world community, limited with--with very limited powers, but sufficient powers to deal with violence at the world level. In other words, we wanted to extend the federal principle to the world level.

In the United States, we have state and local governments and they deal with most problems. But then there are certain powers that are delegated to the national government to deal with relations between states and between citizens of different states. And we thought we ought to extend that federal principle to the world level. Otherwise, separate sovereign nations were going to inevitably collide, and there would be another world war, particularly with atomic bombs, which would be very disastrous for the human race.

And that was the general thinking of a lot of people that had been connected with the promotion of the United Nations and the promotion of selective security before and during the war. We suddenly realized that really, the United Nations, as it was constituted, wasn't a government for the world. It did not embody the federal principle, and that it would have to be revised and changed if it were to serve a peacekeeping role.

So there was a group called World Federalists, United States of America--World Federalists USA--which had some interested persons in many states and had the strong backing of some of the magazine editors. Then there was another group called Americans United for World Government, which had a chapter at Chapel Hill. And Professor Henry Brandis, who later became a law student there, was very prominent in that group. And then there was another group that centered largely out of University of Chicago, which was calling for a World Constitution Convention. This was 1946, end of '45 and the beginning of '46.

Interestingly enough, Mr. Clark, Grenville Clark, had called a conference at Dublin, New Hampshire, his home. Clark is the same one that was the partner in the law firm in New York that Judge Parker said I ought to do anything to work in the same building with. And the Dublin Declaration was a very interesting document, and some day, I think, will be remembered, because it was a pioneer call for bringing law and order to the world community. You can't have law without government.

And the old--I remember we had a little syllogism that said, "There can be no peace without justice, no justice without law, and no law without government to make and enforce the law." And that was the logic by which you got to the call for revising the United Nations and making it more nearly like a federal world government.

Well, these different organizations were promoting their different views toward somewhat similar goals. And it was decided by some of us that we ought to have a meeting to try to see if we couldn't get them all together in one large organization. And the place that was picked was Asheville, North Carolina. And the date was February 22, George Washington's birthday, 1947. And that was a really, a great convention.

You know, Asheville had many good hotels. And there were people from all over the country, mainly Chicago and the Midwest, and New England and New York, and the Southeast. And Robert Lee Humber was there. And Humber had been a Rhodes Scholar from Wake Forest [University], had lived in Paris and practiced law there, and had been run out by the Nazis in 1940. And he had gone to various legislatures in this country, I believe twenty-five or twenty-six, and gotten them to pass resolutions. North Carolina was the first saying that--and this was in March of 1941, before we even got in the war--saying that this war was going to not solve anything, and that there would be continued rivalry between nations and that we had to move towards a federal world government, or world federation, as we called it. And North Carolina was the first legislative body anywhere in the world--in the world--to adopt that point of view by passing a resolution.

I bragged about that some time ago to one of the members of that 1941 General Assembly, [Greensboro attorney] Beverly Moore. And he said, "Well, don't get too cocky, because that same session of the legislature also passed a resolution which made the caterpillar the state worm of North Carolina."

Any rate, we had the meeting in Asheville. Mayne Albright, who later was to run for governor and who was going to help make Kerr Scott the next governor, was there

and was the first presiding officer of that convention to bring the world federation groups together. And something called United World Federalists, the UWF, came out of the Asheville meeting. But it was a North Carolina location for this union of the federalist groups.

And for several years thereafter, we had chapters in the major cities in North Carolina. I suppose we had maybe three or four thousand members in the state. We had a full-time executive secretary or director that moved around in any number of programs. We printed some literature. We got up a petition of North Carolina leaders, which were sent to our senators in the United States Senate. I remember--and still have it hanging on my wall. It's the best collection of names I've ever seen in one place at one time. I mean, all the members of the council of state, all the federal judges in the state, leaders of the banking industry and labor groups, agricultural groups, famous preachers, famous industrialists, like Spencer Love of Greensboro. We had all sorts of blue ribbon names on this petition.

And I remember [North Carolina] Senator [Clyde] Hoey made quite a speech on the floor. Of course, it may not have been the biggest thing that ever happened, but to us here in North Carolina it seemed to be an important event.

And then, as you know, the Korean War broke out. And at first it was thought that the United Nations was performing its peacekeeping function by being the policeman in Korea. But as that war soured, a lot of people got the idea that the United Nations was not our best hope, and we ought to abandon it and leave it alone and go our separate independent way as a nation, and we have done that to a large extent. President Carter has been talking about trying to revive the United Nations as a force for peace, a force for law and order in the world.

And I'll never forget that Judge Parker, who was one of our early advisory board members for World Federalists in North Carolina, wrote me finally after Korea. and he says, "You're being too critical of the United Nations, trying to change it. You ought to go along with it." This was, at the time it was very popular, at the time of the Korean War. And I wrote back, and I said, "Fine. If you don't want to be on the advisory board, that's understandable. But the critics are really trying to save the organization, because it's too weak. It can't do anything."

It's like what George Washington called the old Articles of Confederation before our country. He called it a rope of sand, it won't hold nobody. And that's turned out, I think, to be the case. And it's a right funny thing that those who were the most critical of the original United Nations, saying it was going to get into trouble and needs to be changed, now appear to be its last surviving supporters and friends, trying to save it still.

And there were many, many people who were enthusiastic about it in the late forties and early fifties, very early fifties, who were kind of fair-weather friends. They said, you know, beat the drum, the United Nations is great. But then when they got into difficulties with it, they would be willing to abandon it and have abandoned it.

Basically, though, the problems of organizing the world community so that it can live under a regime of law are still with us. And I think maybe the younger generations coming through--students--basically realize that we've got to establish adequate institutions at the world level if we are to solve problems through law rather than through anarchy.

EP: Well, your participation in these two movements indicates your support of civil rights, whether it be on an international, national, or local scale. And I'd like to discuss your other activities--

MS: I think it indicates a consistent recognition that human beings really can't be expected to live together in close contact without fighting unless they live under law. Law is a great invention of the human race. And we have recognized that, so that at the local level if somebody says, you know, "Everybody in Greensboro is so good and we all speak the same language--we don't need any government. We don't need any police. We don't need any courts. Let's just do away with it and live together here in peace." You think we would? You'd think that person was crazy. You'd run him out of town on a rail as being nuts.

And I suppose the same thing would be true if you wanted to disband the government of North Carolina and rely on the goodwill of everybody, or the United States of America. But when it comes to the world community, which now is closer than ever before, because of advances in transportation and communication, the idea that it--this large group of even more diverse people can live together without fighting, not necessarily this year or next year, but somewhere down the road, is a kind of an idealistic dream. And I'm much more practical and conservative than to believe in that kind of dream. I think we've got to keep working towards extending the rule of law.

EP: Well, within that context of rule of law, I'd like to turn it now to your involvement in civil rights activities here in North Carolina. I'm speaking specifically of the Junius Scales case [*Scales v. US*, 1960], and the Speaker Ban Law of 1963. I was wondering if you could discuss each in terms of what were the issues and your involvement in these issues.

MS: Well, they're different cases, of course. Basically, I'm convinced that to protect and defend the Constitution is the most conservative issue, most conservative posture that one can take, because what you're trying to do is conserve values and conserve procedures for protecting values.

In the *Scales* case, of course, that was a, a criminal charge, a very serious one, against a man from Greensboro who had grown up here in the most affluent circumstances. His family, his father in particular, had been a very big leader in the First

Presbyterian Church and in the development of Irving Park. The young man's name was Irving Scales, same name as the park where there were the most fashionable houses in Greensboro are located.

His father had also developed Starmount and Hamilton Lakes [communities] and was the principal promoter of the Pilot Life Insurance Company. Of course, during the Depression, many of those ventures fell on hard times, and the family had moved to Carrboro [North Carolina]. His father had retired. And Scales grew up in his college days in, in Carrboro and was an open member of the Communist Party and was the chairman as the, you know, publicized as the chairman of the Communist Party in North Carolina/South Carolina. There were a lot of letters to the editors of the North Carolina newspapers signing his name that way.

Well, in the mid-fifties, the Justice Department brought a number of prosecutions there. The big Communist case, which was against [Eugene] Dennis and others who were said to have been the top officers in the party. And they were charged with organizing a party to advocate violent overthrow of the government of the United States and of advocating overthrow.

However, there was another provision of the Smith Act, which was an act of Congress passed in about 1940 which made it a crime to be a member of a group that advocated violent overthrow. And no one had been tried under the membership clause. And Scales was indicted for being a member of the Communist Party, the charge being that that was a group which advocated violent overthrow of the government.

And it raised a very interesting constitutional question, because he was not charged with advocating violent overthrow. He was not charged with organizing a party to advocate violent overthrow. He was charged with being a member of a group that advocated violent overthrow.

And he was tried in Greensboro. And in the first trial, which lasted about two weeks, he was defended by a lawyer from Washington named David Rein. And I was not in that case in any way. Like everybody else, I read about it in the paper. And he was convicted by a jury and sentenced to, I believe, to six years in prison.

And he appealed the case. And when it reached the Supreme Court, the government confessed error and asked that it be returned. And the error that the government confessed was that it had not permitted David Rein, Scales' attorney, to see the FBI reports made by FBI agents who had been working as informers and who had supplied information to the government used in the trial. Some of these people testified in the trial, one in particular, a man who is now a lawyer in Charlotte, named Ralph Clontz.

So the case came back in late '57, I guess it was, early '58. And the question was, would the government try him again? And at one point it looked like they wouldn't. But then the government decided they would prosecute Scales again for being a member of a group that vio[lently]--that advocated, or was said to advocate violent overthrow of the government.

And Scales' lawyer in the Supreme Court had been Telford Taylor, who had been our chief [United States] prosecutor at Nuremberg, a very fine constitutional lawyer. And Scales was looking for some local counsel, because Taylor had never tried a jury case, and he thought this would be tried to a jury. So I was asked if I would appear with Telford Taylor in the trial of the case in the U.S. District Court in Greensboro. And I agreed to do so, and I made my arrangements. I talked to Scales and I talked to his mother. And just--we reached an agreement about fees, and it was a regular case. It was not an elaborate fee, but it was a substantial one, and Taylor and I were to divide it.

And then we got started. And I spent a month, I guess, trying to read an enormous mass of materials, because apparently the government's theory was that it could prove the nature of the Communist Party and that Scales had already admitted being an officer and a member of it, so once they could prove the nature of the party, then they thought they would be able to convict him.

Our argument proffers that the charge did not rise to the dignity of a crime, because it didn't charge him with doing anything. It charged him with believing or knowing. And as one of the fourteenth century cases says, "No man should be convicted of what he thinks, because not even the devil knows what a man thinks," you know. That's one of the earliest cases we cited. And incidentally, that quotation appeared in the Supreme Court opinion.

So we fou[ght]--argued from the beginning that the statute was faulty, because it did not define a crime within the constitutional limits of the authority of Congress. And then we started in with the trial, and the trial lasted three weeks or more. And the first ten days the defendant's name, Scales' name, wasn't mentioned. All of the evidence was about what happened many years ago in Seattle or Cincinnati or New York or some place else. Many people were mentioned as prominent members of the Communist Party who had believed or said different things, many of them when Scales was a mere child.

I kept thinking that if you were to be tried, for example, to be a member of a Methodist church, and they had evidence used against you that various bishops advocated violent overthrow of the United States government, namely they supported the Confederacy against the United States in the Civil War, you'd be up against a somewhat similar problem, because you were dealing with evidence about events, about an organization long ago and far away that did not really zero-in on the defendant Scales.

But then the government began to shift the case, and they brought Clontz forward. And Clontz--the lawyer from Charlotte--had been a student at Duke. And he had sent a postcard to Scales in Carrboro and said he'd like to learn more about the Communist Party. Scales sent him a shoebox full of pamphlets and invited him to come have supper. And Clontz testified that he went to have supper, and it was either on that first meeting with Scales or the second one that he quoted Scales as saying that, "Force was the only answer," in which--

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

MS: “--force was the only answer,” in which Clontz understood to mean that the only way Communism was going to be, become the system or the government of the United States was through force. And that was one of the pieces of evidence against Scales. Our argument to the court was that that was, at best, some kind of prediction, you know, like someday California’s going to fall into the sea--which it might, but it’s hardly advocating that, or at any particular time.

And then Clontz testified that Scales had offered to send him as a student to some school in New York, and Clontz was working for the FBI all this time. And Clontz accepted the invitation and went to New York. And he would come back occasionally to Carrboro and tell Scales what he had been taught. He kept his notebook. So the government was using Clontz as a conduit to prove that Scales not only was an admitted member of the Communist Party, but that he was getting coached every week or two or every month or two by Clontz as to what Clontz was being taught at some school in New York. And that, I suppose, was a good bit of the case against Scales.

There were one or two other episodes. Some physics teacher said that he went to a rally at Walnut Cove [North Carolina], in which they had a birthday cake with a red star on it. And that while they were having their recess in some kind of general discussion, Scales said that if you were ever in a picket line and somebody attacked you and you had nothing but a sharp pencil to defend yourself, if you would jab the pencil right here in the little hole in your neck--in the person’s neck that was attacking you--that you could, you could really hurt him or even kill him.

And the papers came out the next day, “Communists Teach Killing,” which was a little bit of a stretch by the newspaper headline-writers, because they’d indicated that Scales was teaching that you could overthrow the United States Government with pencils, which is hardly believable.

At any rate, the case went to the jury and the jury stayed out about two hours and found him guilty of a, of a crime of being a knowing member of a group which advocated violent overthrow. And I remember at both appeals--that is at the Court of Appeals and at the Supreme Court--they would sort of err on the part of the court.

It’s, you know, how, why do we have this case? Because everybody knows the Communist Party advocates violent overthrow. Why do we have to prove that? And secondly, the man admits he is a Communist. Why do you have to have a trial about it? Well, of course, the Supreme Court said you had to have a trial, I suppose, and they affirmed the conviction five to four. But no one else has since been tried under the membership clause.

EP: And you also helped argue with--for the Supreme Court?

MS: Yes, I helped on the brief and was there. The actual oral argument was handled by Taylor. And I remember that on the morning of the argument, he said if we can get [Felix] Frankfurter on our side, we'll win the case. And Frankfurter is going to ask about a case that came up at the end World War--oh, at the end of, between World War I and World War II--called Whitney against California [*Whitney v. California*, 1927].

So we went over to the Supreme Court Library and took a look at that case again. And sure enough, Frankfurter asked a lot of questions about the Whitney Case. And Frankfurter decided against us, and we lost five to four. If he had been with us, we wouldn't have won.

EP: That sounds like a very close decision, so apparently--

MS: Well, the closeness was on whether or not there was a crime charge. You know it's the most unusual thing to charge a person not with doing something, but with being something, a sort of status offense. And for whatever reason, whether it's the difficulty of proof or the cost of proof, the department--or the doubts about the wisdom of it--the Justice Department really never has tried anymore cases on that theory.

EP: Do you think this is part of the hysteria against Communism that produced the McCarthy Era and was a temporary aberration?

MS: Well, I'm sure it was a part of it. It was very easy to get a lot of people excited about what was thought to be a network of evil spies that were going to commit treason and overthrow the government. Scales' evidence, although the government spent a lot of money and produced a lot of paperwork, really didn't show many people involved.

My recollection, as far as North Carolina, was just a pitiful number of folks. And the membership fee was fifty cents, and Scales paid the fifty cents many times to get people to be willing to say that they would be a member. And at one point they passed the hat to see if they couldn't get a little money collected for something, and one of the contributors was Ralph Clontz himself, who was the FBI informer. And I asked him on cross examination if he put in a reimbursement bid and he said he did. So the government itself was reimbursing the people who were putting the money into this collection plate.

It had a sort of an unreal atmosphere about it. I remember one woman who testified against Clontz--I mean against Scales--didn't really know Scales, but she was testifying about a Communist underground, that she had gone underground. And so she was asked on cross examination what she did. Well, she went to a rooming house and lived under an assumed name. Well, okay. What did you actually do during the period that you were living under the assumed name? Well, she was just waiting until she could be of some service of whatever. How long did you wait? Weeks and weeks and weeks. What happened to your family? Well, she'd already left her husband and I think she was

looking for a reason to go. Well, did you do anything during the time that you were underground? And she said, "Yes." And we said, "What?" And she said she knitted a-- she'd crocheted a bedspread.

I mean you get a sort of un[real]--I remember that day Taylor said to me or I said to him, "Let's go out and feel a tree." It was a very unreal experience.

EP: In connection with--moving on, if I may--the Speaker Ban Law of 1963 also dealt with Communists, specifically Communist speakers on state supported institutions. Could you discuss what issues were involved there?

MS: Yeah. I said that was a, that was a different case, and it was an entirely different issue it seems to me. Incidentally, last Friday night I went to the performance of the Leningrad Symphony and they got a long, long standing ovation. The crowd demanded encore. And then they went over to Elliot Hall [at The University of North Carolina at Greensboro, UNCG] and had a little reception, and the conductor made a little speech and it was translated. And the mayor of Greensboro, Jim Melvin, made a little speech and welcomed the Leningrad Symphony. Eight years ago that would have been illegal in North Carolina, because of the Speaker Ban Law.

The Speaker Ban Law was passed on the last day of the session of 1963. It was during the month of a second wave of demonstrations on behalf of blacks to be given service in the movies, and in the sit-down restaurants, and in the hotels and motels. And there were demonstrations in most of the cities in North Carolina. The legislature was meeting in Raleigh and got--a number of the members apparently got terribly upset about the picketing and the demands for service at the cafeterias in Raleigh, and they hit some of the motels in the Raleigh area.

At any rate, this bill was introduced on the next to the last day, and a motion was made to suspend the rule so that it could be acted on and read three times in each house without going through committee and without going through the usual rules which would allow--would give more time for consideration. And the bill said that no person could be allowed to speak on any campus of any university or college financed by the state who was either a member--a known Communist, or a person known to have advocated violent overthrow of the government, or who had pled the Fifth Amendment in any security hearing. Those were the three classes. And if a person fell with any of those classes then he was banned or barred from speaking on any campus.

Well, the president of the university and the chancellor and the other officers from the different parts of the university didn't know about it until it was too late. The bill was a law. And of course, it raised a furor in the state. There was a lot of debate. People were debating, you know, how the state had no business furnishing a platform for these kinds of people to speak. And others were saying that this violated North Carolina's finest and earliest tradition of the open forum, that schools of all places were places where different

ideas ought to be discussed, and if we were afraid to listen then we were afraid to be Americans, and that we were no longer the land of the brave and the home of the free--the land of the free and the home of the brave.

Any rate, there was so much discussion that a special session of the legislature was--no, first there was the commission. Charlie Myers from Burlington Industries in Greensboro was on the commission. Archie Davis [Greensboro architect] was on the commission. Robert Morgan, now the United States Senator, was on the commission. [inaudible] Medford, the father of Jim Medford, the lawyer in Greensboro, the district attorney of the Western District of North Carolina, was on the commission.

And the commission met and it was a highly charged atmosphere. "Don't change the law, it's a good law." Others were saying, "We should repeal it, it's a bad law." And the commission finally recommended that the legislature not change the ban as such and not change the clarifications, but leave it to the chancellors of each campus to decide what exceptions could be made. That was about the way it was phrased.

And the legislature met in a special session in December 1965, I believe, and reenacted the commission's recommendation. And it had kept the ban for those three classes of speakers unless they'd gotten some special permission from the chancellors on each campus. Well, in January of 1966, students, of Chapel Hill in particular, decided that they would invite Frank Wilkinson, who had pled the Fifth Amendment in some security matter or in some case and now--and then a security battle--he had pled the Fifth Amendment. So he was clearly one in one of the classes. And they were going to invite Herbert Aptheker, who was the editor of a magazine that was avowedly an expression of the Communist point-of-view from a theoretical economic standpoint. He was their most literate editor, many people thought, and a known Communist, so that he was in another class of the three classes of cabined speakers.

And these students of Chapel Hill included the president of the student body, the head of the paper, the president of the Carolina Forum, the Carolina Political Union, the president of the YMCA, a young lady who was president of the YWCA. Altogether there were about six campus leaders. And they filed their regular request for space to be assigned that wouldn't conflict with some other speech. They went through the regular process at Chapel Hill for notifying those who maintained the buildings that there would be a program.

And incidentally the same two speakers were invited to come to Duke at the same time, but on the next night, in each case. So that gave an interesting parallel. You had speakers coming to Chapel Hill, and speeches were scheduled, as I remember, for sometime in February or early March.

Well, the chancellor, as I recall it, did not disapprove. He was willing to let them go. He may have made a suggestion or two about there being a panel so that there could be some criticism or some critique of the speeches. But then, as I recall it, the governor called the trustees together, or the trustees were having a regular meeting, and he said,

“This won’t do. The people of the state are not ready for this. We just had a session of legislature to modify the law slightly, and now these students at Chapel Hill are really throwing down the gauntlet and daring the, the chancellors to deny them the right to bring these speakers to Chapel Hill.”

Somewhere in the course of it the chancellor resigned and a new chancellor was appointed, [Joseph] Carlyle Sitterson. The speakers were told they shouldn’t come, but they came anyway, and in each instance--well, the campus police, I know in one instance, ushered--told the man he couldn’t speak and took him off the campus. And he spoke on the street in Chapel Hill outside the wall. And he had, you know, one or two thousand, maybe more, students down there in the streets listening to him speak.

Reason why I say that’s important is because the same speaker came back a few years later, after we had our lawsuit and the law had been declared unconstitutional. Nobody even knew he came. He had a very small attendance. But the controversy about his speech really rolled the crowd out.

Okay, the other one was also ushered off of campus, and he spoke in a local church. So both speakers were denied the right to speak, and the students who invited them were denied the right to hear, unless they went somewhere else, unless they went to the church or went--left the campus.

And these students came to me and asked me if I would file a lawsuit to have the law declared unconstitutional, because it denied the speakers the right to speak and it denied them the right to listen and it treated them differently--both speakers and the students--from other speakers and the same groups of students who would be hearing all sorts of speakers on other subjects. In other words, here were three classes of speakers and three classes of listeners to speakers who were singled out and cabined and set aside and required to jump through the hoops and do other things that other students and other speakers were not required to do.

So we filed a lawsuit in the name of these students and the speakers in the United State District Court for the Middle District of North Carolina. Chapel Hill is in the Middle District. We filed it here in Greensboro. And it took a year and a half or two years for the evidence to be developed and presented to the court. We had a number of motions in the meantime. I know the state took the position that the students had no standing, because all they were were listeners and the speaker ban was to ban speakers. If you weren’t a speaker, then you didn’t have any standing to raise the question. Of course, we came back and said that listening is just as important as speaking, and you can’t--there’s no speech unless there’s a hearer, and there’s no hearer unless there’s a speech. And I think we got over that hurdle. But that’s an illustration.

There were two or three other, other motions. I know the state took the position that the federal court sought not to consider whether this was a violation of the United States Constitution, but ought to leave it to the state courts and the state. And until the

state courts interpreted the act, the federal court should abstain. The federal court did not abstain.

And I know when the panel of three judges were assigned, there was a lot of expressed disappointment among those advocates of the open forum idea. They thought the panel was very tough. The chief judge was to be [Clement F.] Haynsworth, later to be nominated by Nixon to the Supreme Court. The nomination was defeated in the senate. But he was chief judge of the court circuit and he was going to be the chief judge of the three judge panel. The other two judges were Judge Stanley from Greensboro and Judge Butler from down in Clemmons, North Carolina. And people said, "That's a tough panel. We'll never win. Too bad we didn't get [Jesse Spencer] Bell or [James Braxton] Craven." But both of them, for one reason or another, were not assigned, and one of them had spoken out on the subject and said he was disqualified.

So we went into the trial before these three tough judges. Well, I was, I was so pleased that the opinion was unanimous that the law was invalid. And the state never appealed. So we won the case. And to this day, to my knowledge, there has been no one upset. And there's been a little debate about it and the whole thing, which seemed like a terrible burden and albatross on everybody had been lifted as a result of that court decision.

And I'll say this. During the years 1966 and '67, while the case was pending, all the politicians could say with grace and aptness [was] that they shouldn't comment, because the case was in the courts. And that let them off the hook even, even before the decision. The thing was taken out of the political arena.

EP: I was wondering if, Senator Smith, if you could summarize for us, in the few minutes that we have left, the lasting result of these two cases, theoretically and perhaps specifically for North Carolina.

MS: Well, as far as the Speaker Ban case is concerned--of course, you always have to be vigilant about efforts to throttle a speech. There are many people who want to do good, who think that they can just shut up other people and good will follow. The argument that I thought was most effective--and I tried to close the argument to the federal court in the Speaker Ban case--was that in North Carolina, going way, way back, and certainly going back to the turn of this century, we had a tradition of an open forum, and particularly at Chapel Hill. And that is that the key to learning was to listen, and to listen to many different points of views. And that what we were trying, on behalf of the student leaders in the Speaker Ban case, was not to copy something from the University of California or from Harvard or Yale or Columbia or anywhere else. We were trying to maintain the tradition which had been a North Carolina tradition of the open forum.

And I cited to the court the instance when shortly after the turn of the century, when the United States Senator from North Carolina was named Marion Butler--I was

not inadvertent to the fact that Judge Butler was in the same family. But Butler, Marion Butler, the senator of North Carolina, had been a Democrat, and a Republican, and a Populist or a Fusionist, which was a kind of a combination of the Populist and the Republican. And he was very unpopular after the election of 1900, but he was still the United States Senator on a six year term.

And he was invited to Chapel Hill to speak. And the president of the university and a number of others said that the students had made a mistake and that he should not come and Senator Butler ought to be dis-invited. And the student leaders said absolutely not. He's coming and we're going to hear him. And he did come and they did hear him. And the leaders of the students were at that time Walter Stacey, who later became Chief Justice of North Carolina; John J. Parker, who later became Chief Judge of the Fourth Circuit and held the very chair that Haynsworth was sitting in at this trial; and Frank Graham, who was later the president of the university.

And my argument was that the students whom I represented in this case were in that tradition, and that they had come to court because they believed in the Constitution and they believed in the law and they believed in the tradition of North Carolina. And they were not out committing violent acts or lying down in the street or, or what do you call it--trashing the place. They were appealing to the law and they were relying on the law. And I thought the law would protect them, which it did, and we won the case.

Now I think if that point of view can be maintained, North Carolina will continue to be an open and progressive place and will fulfill its best possibility. That's why the case was symbolic to me. And those who wanted to practice repression were those on the other side.

And I'll never forget that the chancellor and the president of the university seemed very relieved when the case was decided the way it was. They were in--on the spot. And some of my closest friends came to me and said, you know, "You have sued the university, and the university's been good to you! Why do you want to sue the university?" I said, "I want to help the university, because it's got an albatross around its neck, and the state has got an albatross around its neck. And it's our duty to bring this to the court's attention and get rid of it, in the name of freeing the university." And I have never lost a moment's sleep because we were on the right side and the open outcome was good for the state and a very conservative one.

EP: Well, apparently that was born out by the fact that--was it not at the next session there was--or a special session was called in to refute the Speaker Ban law, was it not?

MS: No. The ban was declared unconstitutional by the court, and that took it off the book.

EP: Oh, I see.

MS: No, there was no legislative action. And that's one reason why we have the three branches of government. We got the court with the basic constitution to try to protect us against momentary excesses of the, of the legislative branch.

EP: Well, Senator Smith, I want to thank you for coming and talking to us, and discussing your participation in these very momentous events not only for the local history of Greensboro but--and North Carolina, but nationally as a whole.

MS: Well, I've enjoyed being here. There's a lot of other things. I had to make a living all during this time and Greensboro, as I've said, has been mighty good to me in that connection and others, too. And I've appreciated the chance to run for office in more recent years and to be in the legislature. You know, I did not run for anything until after the decision of the Speaker Ban case.

EP: I hope that we can get to discuss that at a later time.

MS: Thanks.

EP: This has been a segment of the Greensboro Public Library Oral History Project. It was filmed in the library on March 7, 1977.

[End of Interview]