



## A Month in Mississippi

My 1966 Immersion in Civil Rights

By Carl R. Neil

The view from 37,000 feet on the flight from Seattle to Chicago on a cold and clear February day in 1966 was spectacular. The sections and even quarter-sections of Midwest farmland were clearly demarcated. Boundaries laid out by 19th century surveyors will probably remain for centuries.

Looking out the plane's window put off for a while thinking about what lay ahead when the flight from Chicago arrived in Jackson, Miss. But it remained on my mind. Was it asking for trouble to leave my wife and three young kids in Portland to volunteer for a month as a "civil rights lawyer" in the racial turmoil of 1966 Mississippi?

I reflected on how I got into this situation. My lawyer friend Don Marmaduke was responsible. "Carl," said Don when he had called a few weeks ago, "I hope you can take some time away from your office and go down to Mississippi. Negroes are being jailed on trumped-up criminal charges, beaten up, sometimes killed, and fired from their jobs if they try to register to vote or send their kids to white schools. Local lawyers won't defend them for fear of being boycotted by their clients and ostracized by their friends. The Lawyers Committee for Civil Rights has an office in Jackson staffed by a couple of full-time lawyers and a few volunteers who go down there for a month or so from all over the country. I went down last fall and was appalled by the violence against anyone — black or white — identified as trying to help Negroes exercise ordinary civil rights like voting. Could you go for a month?"

I had anticipated that the senior partners in my then seven-lawyer firm might not be pleased about a junior partner in its modest practice being away for a month, and even less enthused about keeping me on the payroll while I was gone. To my surprise, however, my proposal for a month's paid leave to work as a volunteer lawyer in Mississippi was quickly approved. My most active senior partner, Dennis Lindsay, even insisted that I take with me a ream of firm

stationery and lots of stamped envelopes so I could report regularly to the firm on what happened in Mississippi.

As the plane approached Jackson after dark, I was apprehensive. The Lawyers Committee was unable to say exactly who would meet me at the Jackson airport. "Don't worry," I was told, "we'll have someone there." As I got off the plane and entered the terminal, I heard a short, pudgy white man in a distinctly Southern accent asking several passengers "are y'all a law-yuh from Portland?"

I had expected to be met by a lawyer from outside the South. I had heard stories about white racists tricking civil rightsers from the North to go to some remote area where they might be beaten up or killed. Was the guy looking for the Portland lawyer the bait for a trap?

Since no one else was apparently there to meet me, I figured I had to take a chance on this guy. "I'm the lawyer from Portland you're looking for." To my relief, the pudgy man turned out to be Roy Self, a Southern Baptist minister and native of Mississippi who had been run out of a small-town church in Yazoo City for urging his congregation to protest Negroes being beaten up when they tried to register to vote. He had become an all-purpose assistant and handyman for the Lawyers Committee.

As I retrieved my luggage, Roy told me about how lawyers working with the committee moved around. They used rented cars, so that license plates could not be traced to the committee. On the drive into Jackson, Roy insisted that I drive the rented car in which he had come to pick me up, probably to assess my driving skills. As I got into the car, Roy gave me my first bit of advice: Always start the car with the door open. If a bomb has been planted in the car, the blast will cause less injury if you're blown out the door.

Roy's warning added to my apprehension from reading on the flight William Bradford Huie's book *Three Lives For Mississippi*. The disappearance of Schwerner, Chaney and Goodman had not been solved yet, but Huie said it was a work of a mob, assisted by a rural Mississippi deputy sheriff. "Not to worry," said Roy, "no civil rights law-yuh has been killed in Mississippi yet."

On the drive in to Jackson, I stopped the car at a railroad grade crossing with a clearly posted square stop sign. Roy was aghast. "What are y'all doin'? Y'all will get us rear-ended!" "But Roy," I said, "that's a stop sign. Don't we risk some cop arresting us for a traffic violation if we ignore it?" "Naw," said Roy, "that sign's shaped diff' runt than a reg'lar stop sign. It's put there to protect the railroad from liability if the train hits a car at the crossin.' Ever'one 'round here knows cars don't stop at those signs — jes buses and trucks. And they have signs on their back-ends that they stop at railroad crossin's."

This was the first example of the many instances I learned of the difference in Mississippi between law and actual practice in the community. I heard of many more such situations in my month there. Among them: Mississippi by state law was dry, but hard liquor was openly sold all over the state, and never prosecuted. It was a serious offense, however, to sell an alcoholic beverage without paying the Mississippi Illegal Sales Tax and affixing to the bottle a stamp certifying to payment of it.

Moreover, the Mississippi judicial system was years behind the law and legal systems in most of the country. One example of that was the continued practice of Mississippi justices of the peace being compensated by a percentage of the fines they imposed, which had been held unconstitutional in the 1920s by a decision of the U.S. Supreme Court. During my month in Mississippi, the legislature was in session. A bill was proposed to put the justices of the peace on salaries and to require them to have at least a high school education. A lobbyist for the justices of the peace told the legislature that his clients had no opposition to going on salary, but strongly opposed the requirement of a high school education.

Roy directed me to a rented two-bedroom duplex in a black residential section of Jackson, where volunteer lawyers were housed. The next day I began a month of seven-days-a-week legal work, often eight to 10 hours a day, at the committee's office on Farish Street, the main drag of Jackson's black business section. I expected to be sent out to defend blacks in criminal cases in outlying counties, like my friend Don Marmaduke. Instead, the committee's two full-time lawyers from California and a prominent Wall Street firm told me it was time for the committee to start bringing damage actions against public officials under 42 USC § 1983 for depriving constitutional rights. Of course there was no hope of winning a jury verdict for any plaintiff in such a case. Negroes were never summoned for jury duty, since they were not on lists of registered voters from which jurors were chosen. Moreover, the taint of a plaintiff's involvement in "civil rights" activity would lead automatically to a verdict for public official defendants.

No, I was told, the committee wasn't expecting to win jury verdicts. Filing civil lawsuits to recover damages for the most egregious violations of rights by police, sheriffs, jail personnel and county and city councils who employed them would force these people to incur big legal bills defending themselves. Moreover, Mississippi law required almost all public officials to post a surety bond. When claims were made in civil rights damage actions against sureties on these bonds, as well as against the public officials, the premiums charged for the bonds would increase radically. All of this, the committee hoped, would have a deterrent effect on at least the most abusive misconduct of law enforcement and other public officials.

Another factor was the ability to bring damage actions alleging violation of § 1983 in a U.S. district court, instead of a

Mississippi court. The lifetime tenure of federal judges made them less subject to community pressure. If evidence of a killing or assault was overwhelming, it was even possible that a federal judge would find the defendants liable and award damages as a matter of law, thereby taking those cases away from a jury.

Since I had several years of civil litigation experience, including some cases as an ACLU volunteer attorney in Portland, I and one of the full-time lawyers decided that I was a good choice to start preparing § 1983 lawsuits asking for damages for some of the most egregious violations. My first assignment was a case involving over 150 demonstrators in Natchez who were arrested in October 1965 for marching on city streets without a permit, to protest denials of various rights, including registration to vote. That number of arrestees far exceeded the capacity of the city jail. The option of allowing them to post bail was rejected. Instead, the arrestees were bused over 200 miles to the Mississippi State Penitentiary in Parchman. There, they were held for up to five days until the NAACP was allowed to post bail for them in the Natchez Municipal Court.

Many of the arrestees transported to Parchman were teenagers, some as young as 13. They also included several pregnant women. The treatment at Parchman described in their written statements was shocking. Males were required to remain naked for over a day. Females were permitted to wear only their underwear, and had to endure the jeers and taunts of leering prison personnel. All arrestees were required to take a laxative, which caused abnormally frequent defecation, but adequate supplies of toilet paper were not made available. Several persons were crowded into two-person cells, and most had to sleep on damp concrete floors while cell windows were left open and fans turned on, with the apparent intent of making prisoners sick. Drinking cups and soap were not supplied. Two women suffered miscarriages.

When the NAACP finally managed to post bail, the city of Natchez and state of Mississippi refused to provide bus transportation back to Natchez, so the NAACP arranged for that transportation. The court complaint I drafted asked for \$5,000 in damages for pain and suffering for each arrestee, an average of \$100 for medical expenses, plus \$8.35 as bus fare from Parchman back to Natchez for each of the prisoners. It took me over two weeks to draft and file the complaint in court. Aside from getting written statements from each of the prisoners about what happened to them, care had to be taken to obtain a written consent from each of them to being named as a plaintiff in the case. Lawyers for civil rights claimants in the past had sometimes been charged with the criminal offense of champerty for "stirring up" and filing cases in court without such written statements and consents of plaintiffs. Plaintiffs in the past, under community pressures, had sometimes denied that they had authorized the filing of such lawsuits on their behalf.

Fortunately for the plaintiffs, I was able to file the lawsuit in the U.S. District Court for the Northern District of Mississippi, which sat in Greenville, rather than in the Southern District sitting in Jackson. Much of the harm described in the complaint had occurred in Parchman, within the Northern District. Filing there avoided a notoriously biased judge who presided in the Southern District. The complaint named as defendants the mayor of Natchez, police officers and firemen of Natchez who were involved in arresting and jailing the marchers, the superintendent of the Mississippi State Police and the state police officers involved in arresting and transporting arrestees to Parchman, the superintendent of state prisons and members of the state prison board, the state prison doctor, and corporate surety companies which had issued bonds to many of the defendants as a requirement of their holding office. The complaint alleged violations of two U.S. Constitutional rights of the prisoners under the 14th Amendment, which were the right to be free from summary punishment without a court conviction, as part of the right to due process of law, and the right to be free from cruel and unusual punishment.

Before filing the case in court, Roy and I drove down to Natchez to check the status of the illegal parading charges against the people who had been arrested and hauled off to Parchman four months before. I drove while Roy watched for any police cars as we passed through towns on the way. Roy said local police were always looking for suspicious cars that might be carrying FBI agents or, worse yet, civil rights activists or their lawyers. When we arrived at the municipal court clerk's office in Natchez, I let Roy and his Mississippi accent do the talking. The clerk cordially went to retrieve the first few of the files Roy requested to see, apparently sensing no concern about the man in a suit who was accompanying Roy. When the clerk returned with the files, however, he was sullen, and he made it clear that he was letting Roy and me view the files only because he had no choice. Roy and I, the clerk now surmised, were either FBI investigators or civil rights lawyers — both groups being anathema to local Mississippi court officials. Roy and I examined the files under the scrutiny of the clerk and found that nothing had been done to pursue or drop the charges in the four months since the arrests had occurred. Apparently, arresting and making life painful for the marchers was the goal. That did not require spending public money to pursue the charges to convictions.

The next day, Roy and I drove to Greenville to file the complaint in court, and arranged for the defendants to be served with the complaint and a summons. A couple days later, one of the openly racist Jackson newspapers published an article about the filing of the case and actually described somewhat fairly what the complaint alleged, the defendants named and the amount of damages requested.

There was nothing further I could do on the Natchez marcher's case in the short period I was in Mississippi. Three years later, I learned that the case had gone to trial and resulted in the expected jury verdict for the defendants. The federal judge had refused to take the case from the jury and grant judgment to the plaintiffs as a matter of law, notwithstanding the overwhelming proof of wrongdoing by several of the defendants. Two years later, however, the

U.S. Court of Appeals reversed the trial judge, and directed entry of judgment for the plaintiffs against some of the defendants, and remanded the case for determination of damages.<sup>1</sup> Thus, it took six years after the filing of the complaint, but the goals of the lawyers who filed it in 1966 were achieved. The district court ordered the public officials held liable to pay damages to the people they had abused, and all of the defendants spent a lot of money in legal fees to defend themselves.

After the Natchez marcher's case was filed, the two full-time lawyers at the Lawyers Committee asked me to investigate further and file a damages lawsuit on behalf of a 14-year old boy who had been shot and blinded by a county prison "trustee" while serving a county jail term for a minor shoplifting conviction. The case did not involve any civil rights activity by the victim, but no Mississippi lawyers would represent a poor black kid suing county jail administrators. The case starkly illustrated the plight of impoverished blacks' inability to access the remedial justice system open to whites. It was felt that the Lawyers Committee could take a significant step forward through poor blacks asking for justice for wrongs done against them by local government personnel if an egregious case like this led the way.

The boy's name was Arthur. He lived with his parents in Itta Bena, a small town in northern Mississippi near Greenwood. His family had no telephone, so I drove up from Jackson to visit Arthur, keeping the usual lookout for police and others with bad intentions, as advised by Roy. I went without Roy on this trip, so I was on my own to find Arthur's house, which had no street address. Itta Bena's small population was almost entirely black, and everyone knew of Arthur's shooting, so I expected no difficulty in finding Arthur's house.

I drove into Itta Bena and started asking people for directions to Arthur's home. The first few people I asked professed total ignorance, or not to understand my distinctly non-local patois. I tried a new approach. I identified myself as a "civil rights lawyer from Jackson" before asking for directions. This produced immediate success — "Oh, *dat* Aw-thah! Sho', I'll take y'all there."

The shack of Arthur's family was three blocks away, and lacked electricity or running water. Arthur, now 15, sat every day in total darkness with his disfigured face and white cane, with only a cat for company during the day. He could not attend school because there was no local program for blind children, and the Mississippi State School for the Blind admitted only whites.

It was painful to be told by Arthur the full story of what happened. He had been arrested in Greenwood for shoplifting \$2.11 worth of groceries. He pled guilty to the charge and was sentenced to 90 days in the county jail by the municipal court. The case was not handled through a juvenile court, even though the Mississippi Code clearly required that procedure for a 14-year old defendant. Nor was he sent to any juvenile facility to serve the sentence, as required by Mississippi law. Instead, he was incarcerated with the general county jail population, which included a number of hardened adult criminals.

Mississippi statutes required counties to put prisoners to work on either a county farm or county roads. Like other Mississippi counties, LeFlore County's board of supervisors approved the county jail superintendent placing groups of prisoners on roadwork crews under the supervision of an armed fellow prisoner "trustee." The trustee in charge of Arthur's gang was armed with a shotgun. Trustees were typically chosen from the meanest and strongest prisoners, to intimidate weaker inmates. The practice was a carryover from pre-Civil War plantation work procedures imposed on slaves.

One day during a brief rest period, Arthur had not moved fast enough when the armed trustee ordered him to fetch him some water. The trustee fired the shotgun into Arthur's head and face from a short distance away, leaving Arthur blind and with brain damage. The trustee claimed the gun had accidentally discharged when he had pointed it at Arthur to emphasize his order.

Since the county did not want to pay for medical treatment of Arthur, it released him early from his jail sentence so his family could take care of him. The idea of compensating Arthur for the grievous injury inflicted on him by a prisoner entrusted with a shotgun by the county jail superintendent with no instructions or training on how to use it did not enter the minds of county officials.

Here again, Arthur's case could be filed under § 1983 in the federal court for the Northern District of Mississippi, since LeFlore County lay in that District. I drafted a complaint alleging that the jail superintendent and the county board supervisors were responsible for the trustee's cruelty and were liable for violating Arthur's constitutional right to be free from cruel and unusual punishment. No jury, even in the Northern District of Mississippi, was likely to return a verdict against the defendants and award Arthur damages. But this case was so egregious and Arthur's injuries so awful that the judge might rule for Arthur as a matter of law. If so, the legal expenses of defending Arthur's case might ameliorate the treatment of other poor black juvenile prisoners.

I was able to file the complaint in the court before I had to return home. Three years later I had the satisfaction of hearing that the federal trial judge in 1969 had, indeed, ruled the evidence so overwhelming against the jail superintendent as to require judgment for Arthur as a matter of law, although he held the board of supervisor defendants not liable. He also awarded Arthur \$85,000 in damages. Two years later in 1971, the Court of Appeals affirmed the trial court ruling finding the jail superintendent liable, but held that \$85,000 was inadequate damages for

a 14-year old boy who had been blinded, maimed and disabled for life. The case was remanded to the trial court to award a greater amount of damages.<sup>2</sup>

So, here it was, the end of the month, and time to fly back to Portland from the miserable conditions of Mississippi. I wondered if my month of volunteer work amounted to anything but a drop of rainfall on parched earth. I cheered myself up by thinking what I would do when I got back to my office. What about persuading some other lawyers to go down and try the Natchez marchers' case and Arthur's case, and argue any appeals? Frank Pozzi, as a leading personal injury lawyer, would be terrific for Arthur's case, and Bernie Jolles would be great for the Natchez marchers' lawsuit. Both, along with Don Wilson and John Haugh in Arthur's case, agreed to handle the trials and appeals in the two cases.

But those trials and appeals would be years in the future. What about now? I remembered Don Marmaduke's call that got me involved with Mississippi. The next day, my first back in my office, I called up my friend Pat Hurley, later a Multnomah County Circuit Court judge. "Hey, Pat, it's Carl. I'm just back from a month in Mississippi. I'm calling to ask you to take some time away from your office and go down to Mississippi for a month or so. Negroes are being jailed on trumped up charges, beaten up, sometimes killed and fired from their jobs...." Pat Hurley and many other Oregon lawyers in the following years worked as volunteer lawyers on Lawyers Committee cases in Mississippi. Larry Aschenbrenner served for several years as full-time general counsel for the committee in its Jackson office. The Lawyers Committee is still functioning in Jackson and elsewhere.

#### Endnotes

1. *Anderson v. Nosser*, 456 F.2d 835 (5th Cir. 1972), on appeal from 302 F.Supp 972 (ND Miss. 1969).
2. *Roberts v. Williams*, 456 F.2d 819 (5th Cir. 1971), modifying 438 F.2d 183 (5th Cir. 1971).

#### ABOUT THE AUTHOR

*Carl Neil is a partner in the Portland firm of Lindsay, Hart, Neil & Weigler, where he has a practice centered primarily on maritime and carriage of goods matters, as well as commercial litigation and contract preparation. He has served as counsel in litigation of business matters for almost 50 years and an arbitrator for more than 35 years. He argued two cases before the U.S. Supreme Court and received the Multnomah Bar Association's most prestigious recognition, the Professionalism Award, in 2007. He has maintained an active pro bono practice in Portland as a Legal Aid attorney and continues to teach admiralty for Northwestern College of Law at Lewis & Clark College. Neil served as president of the Oregon State Bar from 1976-77.*

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