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### Session VI: W.J. Michael Cody; Burch, Porter & Johnson (Memphis): Dr. King's Lawyer in Memphis (1968)

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**NORTHWESTERN LAW JOURNAL OF LAW AND SOCIAL POLICY  
EIGHTH ANNUAL SYMPOSIUM**

**MARTIN LUTHER KING’S LAWYERS: FROM  
MONTGOMERY TO THE MARCH ON  
WASHINGTON TO MEMPHIS: A  
SYMPOSIUM COMMEMORATING THE  
CONTRIBUTIONS OF DR. MARTIN LUTHER  
KING’S LAWYERS**

TRANSCRIPT OF PROCEEDINGS held at Northwestern University School of Law, Thorne Auditorium, 375 East Chicago Avenue, Chicago, Illinois, on the 31st day of October, A.D. 2014, at 2:00 p.m.

MR. LEN RUBINOWITZ, Professor and Faculty Advisor to the Journal of Law and Social Policy; MR. W. J. MICHAEL CODY; Burch, Porter & Johnson (Memphis).

REPORTED BY: PATRICIA ANN LAMBROS, C.S.R. No. 84-1790.

PROFESSOR RUBINOWITZ: While the Gils and that young law student are leaving the stage—she’s getting younger every day—we’re now about to go back South. We’ve been in Chicago, the Chicago Freedom Movement, 1965 through ‘67.

In 1968, you all know about Memphis and Dr. King going to Memphis in support of the sanitation workers were on strike. And we have from that time and place, Mike Cody, who was part of the pro bono team, another pro bono team, that went to court on behalf of Dr. King and the strikers. And he’s going to talk about that experience. Mike, come on up.

MR. CODY: Let me get hooked up here. Just one minute. Can everybody hear me all right, all the way in the back? If this thing falls out of my ear, I’ll just talk into it, talk loud.

**SESSION VI: W. J. MICHAEL CODY; BURCH, PORTER & JOHNSON  
(MEMPHIS): DR. KING’S LAWYER IN MEMPHIS (1968)**

MR. CODY: Let me give a little background first, if I can, about sort of why, in 1968, a young lawyer like me, who had only been out of law school five or six years, would get a call to help Dr. King in Memphis. And what I’ll hope to make clear in this is I had done little or nothing to be the recipient of that call, that would deserve a call like that, but that I had sense enough quickly to realize that it was above my pay grade and to get a real lawyer to step in to do the heavy lifting.

Like so many of the other old-timers, I was born in Memphis in 1936, lived there all my life for the most part. You've heard described this morning the lockdown, segregated system that we had, particularly there in the South. Obviously, you'd have to assume my parents were segregationists. I never heard my mother or my father or my grandmother, grandfather, ever say anything ugly or mean about anyone of a different color, but obviously, they were part of a segregated system, as was I. Everyone was on both sides of the color line because that's what the system was.

And frankly, it wasn't until 1957 when, along with a Northwestern professor, Marshall Shapo, I went to the University of Michigan in Ann Arbor to be part of a National Student Association meeting. It was only then in 1957 that I ever had an opportunity to be in a room with another peer student of a different color. The segregated line in Memphis was absolute.

In 1961, I graduated the University of Virginia, and happily there in the fall of the last year, accepted a great job at a big Philadelphia law firm. It's now called the Dechert firm. It was the biggest firm in Philadelphia. And they were going to pay me \$800 a month, which I guarantee you is a lot of money for a young law student to go. And so, I came back to Memphis, very happy and pleased with my situation, and sat down with a lawyer in Memphis who I had a lot of respect for in order, basically, to brag about my good fortune.

And let me get back. How do I move it to—maybe I'll just holler at you, and you can move it. Okay. That's Lucius Burch. He's the guy. And he sat down with me at dinner and said, "That's wonderful, but you don't want to go back. You don't want to go to Philadelphia. You want to come back here to Memphis because that's where you're from. And we need lawyers." He was involved in the civil rights movement, although he was a very, very established establishment lawyer. And he said, "Come to work with me. And I'll do better than the Philadelphia firm. I'll pay you \$300 a month, not \$800, but I'm going to give you half of all the fees you get." Well, of course, it was five or six years before I ever had the first fee, so it wasn't that good a deal, but I never regretted that.

And he was a great man. The reason I'm here today is he's not living anymore. But I came back to Memphis in 1962 through '68. And in that time, we worked together with leadership of the NAACP and ministers and others on desegregation throughout the Memphis community, things that happened in all the rest of the South, but in Memphis, it was a lockdown situation. Blacks couldn't go to the parks. They couldn't go to the libraries. They couldn't go to the zoo. As a matter of fact, if I walked to the Memphis Zoo on Tuesday, there would be a big sign that said, "No whites allowed." Of course, that meant every other day, there were no blacks allowed. And department stores would allow blacks to shop, but they wouldn't let them have jobs there. Black women could buy dresses or hats, but they couldn't try them on before they paid for them.

And so, we began to work in all of those areas, me, as a young lawyer, and this guy as the real lawyer. And I would do little things that seemed silly, but they turned out to be important. People have talked about SNCC and voter registration. You know, Memphis is really the capital of Mississippi. It's not really Tennessee, it's kind of Mississippi. And when the freedom summers and the programs were going on, kids would come down from Chicago or Connecticut or New York or Massachusetts in their cars. And we'd have to swap out. We'd have to take a Memphis car with a Tennessee

plate and a Memphis County plate on it. And we'd give them that car to drive down to Kosciusko, Mississippi, or wherever, to work on voter registration. And we'd keep the Connecticut car there in Memphis while they were there because, as many of you remember, in the 1960s, '62, '63, '64, it was dangerous to do that kind of work in Mississippi, whatever your color was. And so, those kinds of events happened in my life during that period of time.

And as a result, we've heard about the Inc. Fund, which was an active NAACP organization in desegregation efforts, school desegregation and so forth, but the ACLU was also active. So in the course of my work, I became the chairman of the local West Tennessee ACLU. And then, the New York people decided they needed some southern faces on the New York Board, and so, I was chosen to be on the New York ACLU National Board, which will give you kind of an idea, a preview, of how this whole thing played out.

Now, I'm going to focus on, really, two days, April 3 and April 4. April 4, 1968, of course, is the day Dr. King was killed. And in 1968, we had what we called a sanitation strike. Until they started writing about it, nobody ever called a sanitation worker in Memphis a sanitation worker. He was a garbage worker, garbage man. And it started out in 1968, strictly as a labor dispute. It was a wildcat strike in the sense that it was a local that set it off.

As a matter of fact, you mentioned Jerry Wurf. Jerry Wurf says he was all upset when they went out on strike because they went out in the middle of the winter. And he said, "You don't go on a garbage strike in the middle of the winter. You go in the summer where the garbage is going to pile up, and people are going to be smelling it. And that's when you go out on strike." And so, it was strictly a local effort. But the men couldn't stand it any longer.

And I won't give you all the grievances, but as a labor dispute, here is a couple that will give you a flavor. There was a policy there in Memphis that if it was raining too hard to pick up garbage, and the men were out there getting ready to get in the trucks, or waiting to see what the weather was going to do and they had to cancel the pickup day, the people that were the supervisors and drove the trucks who were all white got paid for the day. The garbage workers, who were going to pick up the garbage, missed the day and didn't get paid for the day.

But on one of those rainy days but not too rainy to work, misty rain, like we have in the South a lot, there were two men who were having their lunch. And they were sitting on the back edge of the garbage truck, having their lunch, trying to get a little relief from the sprinkle or whatever. And while they were in there, someone in the truck accidentally hit the compactor. It came down, crushed, and killed both of those men. And they learned, of course, that those men, their families, they had no benefits, they had no insurance, they had nothing.

And try to remember back, those of us who today put our garbage in little plastic sacks and tie it up neatly and put it in a big buggy and push it out to the street, and the garbage truck comes and hooks onto it, puts it in and goes. That wasn't like it happened in 1968. A garbage man in Memphis had to go back to the alley or go back to your backyard, go through your garbage can, pick up the garbage, put it in a galvanized tin tub, put that up on his shoulder, and walk it out to the street and dump it in the garbage truck. So at the end of the day, these men who were paid \$100 a week had to ride home on the

bus in stinky clothes where the garbage had fallen all over them. They had no uniforms. They had no way to wash up or anything else. And later on, the signs that reflected the strike said, "I am a man."

So it started out as a labor dispute, but it quickly got into a community dispute. And ministers came into it. So daily, there were marches up and down the street with placards and signs, but it was going nowhere. The city took the position that municipal workers couldn't strike. It was, in fact, against state law to call a strike if you were in a municipal position like that. The union was talking about a memorandum of understanding, that we could work around that. But the Mayor and the City Council refused to negotiate or have anything to do with it, so the strike was going nowhere.

Jim Lawson, who has been mentioned several times earlier today, was a local minister in Memphis who had gone to India, trained with Gandhi, and worked with all the city and operations, the kids in Nashville and North Carolina. He was a pastor in Memphis. And he called Dr. King and said, "Dr. King, we need you here in Memphis. We have got to get a successful resolution of this garbage strike. It's just got to happen."

King was inclined to come, but his helpers, his advisors, Andy Young, Abernathy, they were single-focused on one thing: in the summer going to Washington for the Poor People's March. They were going to bring people from all over the country, in wagons and whatever. And they would camp out on the mall to identify with poverty until Congress did something about economic equality. And King argued against what Andy—and they said, "This is too important. We don't have time." He said, "If we can't go to Memphis and have a successful non-violent demonstration that gets results for the poorest people that live in Memphis, what chance are we going to have with the march in Washington?" And so, he came.

The first time that he came was in the month of March. And he flew in late. Jim Lawson and local people that organized the march, it started out off of the area near what we call Beale and Main Street there in Memphis. And King came from the airport right into the march. They put him in the front. And the march started. And the marchers, many of them had wooden placards. And on those placards, it would have the sign, you know, "Recognize the Union" or whatever they were, "I am a Man," whatever the sign was.

Well, there were a group of young kids in Memphis at that time who were more "Black Power" people than they were SCLC people. And their idea was King was history. The whole non-violent business didn't work anymore. It's not going to work. Rap Brown, Stokely Carmichael, "Black Power," that's the way of the future. And King is a relic. And they got mad because King would not work with them unless they denounced violence, which they weren't willing to do. So some of these kids, as the march turned the corner, they tore the cardboard placards off the sticks and began breaking out windows along the route there in stores. Looting began. The police overreacted with tear gas. People were killed. The march went into disorder. And King was removed by Jim Lawson and others to a place of safety out of the really riot that took place.

So King, when he got back to the hotel, said to the media, "I'm coming back to Memphis. I'm going to lead a march. It's going to be my march. I'm going to organize it. It's going to be safe. And we're going to win this issue. We're going to win this strike." Well, when the city attorneys' office found out what King had in mind, it was a no-

brainer. They immediately went to the federal court and said, “Look, Judge, we just had a march. People were killed. Disorder. Property damage. And if King comes back, it will happen again.” And so, the federal judge gave a temporary restraining order, prohibiting King from coming back to Memphis and lead the march.

Well, King, in typical fashion as has happened so many times—and I’m going to read you what he said in a speech there in Memphis—he said, “Look, I don’t care about any injunction. An injunction is not going to bother me. We’re going to march anyway. I’m coming back.” Well, that was fine and good, except for the folks that were in New York, Greenberg, and the ACLU.

They were most disturbed because this isn’t a chancellor down in Selma, Alabama, or it’s not in some local court in Mississippi or whatever. This is a federal district court judge. And if King marches in violation of the federal injunction, then in their eyes, that will diminish the ability to have the federal court protect the movement as it had done throughout the history of civil rights. And so, even though King didn’t seem concerned, the ACLU and other lawyer types were very concerned about it.

So about 10:30 in the morning on April 3, I’m sitting in my office as a young lawyer. And I’ve had nothing to do with the strike itself. I didn’t represent the union or any involvement in that at all. And the phone rings. And it’s Mel Wolf with the ACLU, legal director in New York, and Chuck Morgan, who heads the Atlanta ACLU office. And they say, “Mike, we want you to represent us and Dr. King to get this injunction lifted because we don’t want him to march in violation of this federal injunction.” It’s kind of like people would pick a lawyer out of the phone book today. I was the only one they knew in Memphis, so that’s why I told you, it’s kind of, you know, a roll of the dice. We know one lawyer. Let’s call him.

So I quickly said, “Of course. Yes.” And then, I maybe took two steps and realized, wait a minute. That’s a little bit above my pay grade. But this guy, who is the best lawyer in Memphis, who got me not to go to Philadelphia for a lot of money, but to come to Memphis, he’s the ticket. So I walk across the hall to Lucius Burch, who was like a father to me, I might add. I would do anything he asked me to do. I said, “Mr. Burch, Dr. King needs a lawyer here to get an injunction lifted. And I’ve told him you’ll do it.”

Well, what was crazy, I thought he would just say, “sure.” I mean he’s got me down here. I mean, you know, this is what we’re supposed to be doing, but he is having a little hesitation. He says, “Well, I want two things to happen: one, I want us to be invited. I want to be retained, even though we’re not going to charge any money. I don’t want it to look like we’re volunteering to do this. I want something in writing. Secondly, I want to sit down with Dr. King. And I want him to convince me that this march is important enough for us to do it.”

Well, I got on the phone as quickly as I could. Let me get back to that telegram. The telegram, this is a telegram that comes. It actually gets to us as we’re going to court on the morning of the 4th, the day Dr. King is killed. But it’s asking us—it’s from the ACLU, asking us to represent Dr. King in federal court the next day.

So the next item was—this is the Lorraine Motel. Abernathy and King shared a room there. That’s Abernathy going in first, King, and then, Jim Lawson who figures prominently in everything that I know in this scene. And you’ll see Dr. King has just been served down in the parking lot by the U.S. Marshal with the injunction. And so, he

is going in there. That's about 3:30 or 4:00 on April 3. And so, we come in a minute or two later because arrangements had been made.

Dr. King is just coming to Memphis. So we go in the room. And there are probably—let's see—there is five lawyers. And we're on one little—there is twin beds there in Abernathy's and King's room with kind of a coffee table sort of thing between them. So the lawyers are all sitting on this bed. And over here on the other bed, you got Andy Young and Dr. King and Jesse Jackson, and Jim Lawson, we're sort of knee-to-knee there.

And I remember—I don't know why I remember this—Ralph Abernathy had gotten some chicken. And he was standing up behind the front row there, eating, while we were talking. And so, for about an hour, an hour and a half, Lucius Burch, my mentor, quizzed Dr. King about the importance. And I won't go into all the details, but King felt like it was crucial that this work.

We didn't want Dr. King to have to go to court himself. He designated Andy Young and Jim Lawson to be our spokesmen, our witnesses, the next morning. And so, we worked through that. And after that meeting was over, Lucius and some of the other lawyers went back to the office to prepare an answer to the injunction and to get ready. And my job was to interview Andy Young and Jim Lawson and get them ready to be our witnesses, what the questions were going to be and how we were going to do that.

And in the course of that afternoon and into the evening—this is April 3—Dr. King is to make a speech at Mason Temple. And he is exhausted. He has been traveling. He has got a bad cold. And he says to Dr. Abernathy, "Go over and make that speech. I just can't handle it. I'm too tired." And so, Abernathy goes over there. Sometime later in the evening, not very long, Abernathy calls back to the room and says, "Dr. King, this isn't my crowd. These people expect you. It's a packed house. Labor unions, sanitation workers, their families, ministers, they're there. They expect to hear from you. And you've got to come."

I'll never forget going over there to that church. Here is Dr. King. He hadn't planned to make this speech. He didn't want to make this speech. He hadn't got the first written out anything, although later, I do know he had a note card which he had used earlier of similar themes. And he went over to the church. And Abernathy was introducing him as we came in. And some of us just sat over on the side of the podium there. And Dr. King was behind the pulpit when Abernathy introduced him. It was a very eerie kind of day.

It was in April, of course. And there had been tornadoes all through Oklahoma and Arkansas. There had been some deaths over there. It was a warm, muggy night. They had to open windows in the top of the church. And even though there wasn't air conditioning, there is a big ceiling fan. And it was just going "clack, clack, clack" as it revolved around there. And Dr. King got up and made what, as all of us know, was the last speech of his life.

And here is what he had to say about the injunction that we were concerned about. He said, "Now, about injunctions, we have an injunction. And we're going into court tomorrow morning to fight this illegal, unconstitutional injunction. All we say to America is be true to what you say on paper. If I lived in China or even Russia or any totalitarian country, maybe I could understand the denial of certain basic First Amendment privileges because they haven't committed themselves to that over there. But somewhere, I have

read of the freedom of assembly. Somewhere, I read of the freedom of the press. Somewhere, I read that the greatness of America is the right to protest. So just as I say, we aren't going to let any injunction turn us around. We're going on."

And as he moved toward the end of his speech, it's the only time that I can remember in my life that the emotion in the room, whether it was from the storm or the feeling that Dr. King was giving, your hair would stand up on the back of your head. It was an incredible, emotional experience, hearing him. And as you know, he finished that speech with these short words. "Well, I don't know what will happen now. We've got some difficult days ahead. But it doesn't matter with me now. Because I've been to the mountaintop. And I don't mind. Like anybody, I would like to live a long life. Longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over. And I've seen the promised land. I may not get there with you. But I want you to know tonight that we, as a people, will get to the promised land."

And with that, looking at it from the side, anybody who has been to a beach and seen these big beach toys that you have a little plug in, it's as if when he sat down, someone had just taken that plug out, and every force in his life had just gone out with that speech.

The next morning, at 9:30, the lawyers, we were over in court. You get one more. This is us going to court the next morning. This is Jim Lawson, one of our witnesses, the local minister. Andy Young, who most all of you know. For you young people, Andy was the most articulate young man in those days. And he became United States Ambassador to the U.N. and Mayor of Atlanta. The real lawyer is the guy with the hat. That's Mr. Burch, and one of my young friends. But I want you to look, my role was to carry the books and the umbrellas. So I think I get "A" for my job.

So we were there in court all day long, 9:30 until about 4:30 in the afternoon. By the time that the hearing was over, our main point was we had copied an injunction from Frank Johnson, a federal judge down South, who handled a lot of these cases about how to handle marches. And we had proposed that to the judge, things like you'll only have six abreast. You'll have room on the outside of the march. You'll have constant communication with the police. There won't be any wooden sticks on the signs. We'll have marshals with the band on it. And so, we had proposed that it would be so much safer and better for the City of Memphis if Dr. King and SCLC and professional people did this march than having local Memphis people do the march and have Dr. King be sitting in jail with the marshal putting him in there.

So by the end of the day, I think the city almost agreed that they'd be better off if Dr. King was going to lead the march if he insisted on doing it. And so, at 4:30, the judge called us back in his chambers, said, "I'm going to allow the march to proceed. Y'all go draw up an order, and I'll sign it."

The next morning, which would be April 5, so at that time, Jim Lawson had to make a speech out at one of the colleges, trying to drum up support for the march. And so, Andy Young didn't have a car to get back to the Lorraine Motel. And again, for you young people up at the back, in those days, you couldn't text Dr. King and say, "We've been successful," or you couldn't call him on his cell phone. Andy had to go down there back to the Lorraine Motel and tell him what happened.



So we went. I took Andy. I went back and got my car at the office, took Andy down to the Lorraine Motel. And before I could get back to my office, get my papers, and head home, Dr. King had been shot there on the balcony where he was getting ready to go to dinner with Billy Kyles and Andy and Dr. Hooks and some others.

Have I got three more minutes, three minutes? You're not going to be late. I've got to get you out of here. One more thing that kind of just shows how naive I was at the time. I got home. I heard on the radio my client has been shot.

First of all, it didn't say "killed." They didn't want to say Dr. King had been killed, although he was dead immediately. They took him to St. Joseph Hospital. And as I go in the house, what do you do? You've just gotten out of court. You've got a successful result for your client. Now, your client has been shot. And so, I was getting ready to call Mr. Burch as I always did whenever I called anybody.

And I ran in the house. And we had one of these swinging doors between the dining room and the kitchen. And the kitchen had the phone in it. So I threw the door open. My son, who was two years old at the time—he's forty-eight now, I guess—he was walking toward it. The door hit him in the face, knocked his baby teeth out. And I'm sitting there, holding ice on his mouth when the phone rings.

It's the Chief of Police. And he said, "We've got a real problem down here. Things are breaking loose. People know Dr. King has been killed. There are a lot of people up in the strike headquarters, Clayborn Temple. And young people have got paving stones, and they're throwing them out at the police. Can you go down there? Can we take you down there? And you can find Jim Lawson and let Jim Lawson peacefully talk these kids out of it because if the police go in there with tear gas, we're going to have a bad situation. We've already got a bad situation."

So the police come out to my house, two of them in the front, the driver and a passenger. They put me in the back seat, blue light, siren, go down back to where all the disorder is, and pull up to a stop. The guy, the passenger, gets out. He opens my door. And I get out. He shuts my door. And I step back a little bit. And he gets back in the car. And he shuts his door. And they drive off. I guess they figured they'd done all they had been asked to do, and that is to get me down there. And I look around. And it's the second mistake I've made.

Liquor stores were being broken into. Things were on fire. There were firemen with hoses, spraying it out. People were looting things. And I'm looking around. There is nobody that looks like me anywhere in the whole area. But luckily, I found a newspaper reporter I knew who found Jim Lawson. And Jim talked the kids out. And that worked fine.

After Dr. King was killed, we had the march. We had it under the same restrictions that the Court had allowed us to do. This is the march as it began to get organized. You'll see this is me over here in the light coat. And you can see the marshal band on the arms. That's part of one of the things that we should do. And then, the march begins. And here is Jim Lawson right here on the front, Dr. Spock, Harry Belafonte, Dr. King's daughters, his sons, Ms. King, Abernathy, Andy Young over there, and others. And it was a silent, peaceful march. And that's sort of the end of my two-day story.

And I wasn't really much of a lawyer, but I was a witness to it. And I know you're not supposed to be political at these things, but when I heard Dr. King say in that last speech I heard at the Mason Temple that, "I may not make it there with you. I've

Vol. 10:3]

been to the mountaintop. And I've seen the promised land. I may not make it there with you, but we, as a people, will make it." And then, I fast-forward to six years ago. And I look at Obama being sworn in as President of the United States. I sort of said to myself, Dr. King knew what he was talking about when he said that that day. Thank you very much. (Applause.)

PROFESSOR RUBINOWITZ: Thank you, Mike. (Short pause.)