

Fortieth Anniversary of the Lawyers' Committee for Civil Rights Under Law (Part II)

by Clarence M. Dunnville, Jr.

Editor's note: This is the second installment in a series that began in the June/July issue of Virginia Lawyer.

Forty years ago, 244 of the most prominent and distinguished lawyers from throughout the nation attended the June 1963 meeting called by President John F. Kennedy that resulted in establishment of the Lawyers' Committee for Civil Rights Under Law. Among them was Virginia's Lewis F. Powell, Jr., then a senior partner in the Richmond-based law firm of Hunton, Williams, Gay, Powell and Gibson.¹

It must be remembered that in the summer of 1963, Virginia was still embroiled in massive resistance challenging school integration in disregard of the Supreme Court's decision.² The Prince Edward County schools were still closed. Segregationists were in firm and total control of the Commonwealth and the local governments of Virginia, and every aspect of Virginia society was segregated. Further, there was violence perpetrated against black people working for civil rights in Virginia during that time frame. For example, on September 20, 1962, less than a year earlier, shots had been fired into the home of Edgar Ausberry, a NAACP official who lived in Strasburg, Virginia. The shots went through a kitchen window where children were doing their homework. Luckily, no one was injured.³

In the summer of 1963, shortly after formation of the Lawyers' Committee, the committee was requested to arrange for legal representation of a young black Harvard law student interning with the civil rights law firm Tucker and Marsh in Richmond, Virginia.⁴ The law student, Fred Wallace, had traveled to Farmville, Virginia, on a Sunday afternoon intending to visit one of the firm's clients who had been arrested that day for being involved in a civil rights demonstration.⁵

Wallace was intercepted by a deputy sheriff in the courthouse and taken to the sheriff's office. He found himself on the floor of the sheriff's office, after being accosted by several deputies. In the scuffle, one of the deputies suffered a bruised shin and his finger was injured slightly. Senator Henry L. Marsh III, the junior partner of the firm at that time, recalled in a recent interview that he was on Reserve duty that day, and he received an urgent call at his Reserve meeting that Wallace was in jail. He traveled to Farmville and obtained Wallace's release. Notwithstanding Wallace's being accosted by the law enforcement officials, the commonwealth's attorney charged Wallace with malicious wounding.⁶

The dean of the Harvard Law School, Erwin N. Griswold, who was a board member of the Lawyers' Committee, asked the committee to find a white lawyer to associate with S.W. Tucker in the defense of the Harvard law student. George E. Allen, Sr., readily undertook the preparation on a pro bono basis.⁷

Justice Powell was very courageous to play a part in the founding of the Lawyers' Committee in view of the racial climate in Virginia at the time. He was the only Virginia lawyer from a major law firm to attend the meeting with President Kennedy.

The summer of 1963 was a historic period in the struggle for civil rights. A few days after President Kennedy met with the founding lawyers of the Lawyers' Committee, he sent his civil rights bill to Congress.

In late August of 1963, I was among the two hundred thousand persons who

participated in the March on Washington for jobs and freedom, and to show support for the enactment of a civil rights bill. At the time, I was living in New York City and was relatively comfortable as an assistant United States attorney for the Southern District of New York, but I was very angry about the racism that permeated the nation, and particularly the deprivation of constitutional rights in the South, and wanted to be a part of the civil rights struggle.

Over the next few years, like many Americans, both black and white, I watched with horror on television the images of civil rights workers being attacked by dogs and with clubs and fire hoses. Although the Civil Rights Act was enacted in 1964, and the Voting Rights Act was passed in August 1965, black citizens in Mississippi, throughout the decade, were deprived of the right to vote by intimidation. Further, atrocities against black people in Mississippi continued unabated and conditions did not improve for a number of years thereafter.

I grew up in Roanoke, Virginia, and was aware of numerous heinous acts against "Negroes," as we were then called. I remember the night when I was nine years old and a rock wrapped in paper with the words "nigger" on it, had been thrown through our living room window. Daddy had taken his pistol from a locked cabinet and waited in the darkened living room. We could hear the men outside cursing us. They soon drove away.

In another incident, hooded Klansman burned a cross on a neighborhood lawn. The neighbor shot one of the men. I was too young to completely understand it all, but I do remember that the black family

moved away and that their house was vacant for a long time.

I attended a segregated school system in Roanoke, and I was subjected to discrimination based on race on a daily basis. I applied for admission to the University of Virginia Law School, but was not admitted because at the time they did not accept blacks, so I went to law school in New York and vowed at the time never to return to Virginia.

I naturally empathized with the young civil rights workers, who were mostly my age and were being beaten and brutalized because they were attempting to obtain compliance with the constitutional rights of black citizens. I determined that I would become involved in the struggle.

In October 1967, I took a leave of absence from my position as a litigation attorney with AT&T in New York to volunteer with the Lawyers' Committee for Civil Rights Under Law's Mississippi project.

I recall that it was a cold fall Sunday in New York. I read the *New York Times* that morning, had lunch with my wife of four months, and packed my bags during the early afternoon. I pretended to my wife that I was not worried, but I was very concerned, and also apprehensive as to how I would survive without receiving a paycheck for a number of months.

As I packed my bags that afternoon, I reflected on the many atrocities that had occurred in Mississippi, including the riot caused when James Meredith entered "Old Miss," and the brutal shooting of Medgar Evers. No one had been convicted for these crimes as of that time, or for the murders of civil rights workers Michael Schwerner, Andrew Goodman and James Cheyney a few years earlier.⁸

I was aware that civil rights lawyers who had gone to Mississippi earlier that very same year to assist with voter registration, had been beaten by mobs and injured. I was in a solemn and melancholy mood as I shared what I thought could be my last Sunday lunch with my wife.

Although I was anxious about my personal safety, I was hopeful and optimistic

that I could make a small difference in representing the unrepresented civil rights workers and help to bring about social change.

I arrived in Jackson, Mississippi, late that Sunday evening. I was met by a fellow volunteer attorney, who drove me to the residence in the Jackson black community where I would stay during my tenure.

The next morning, I arrived at the Lawyers' Committee office where I met Dennison Ray, the fearless head of the office who, prior to joining the Lawyers' Committee, had been a litigator with the New York City law firm of Cravath, Swain and Moore.

In addition to Ray, there was Bernie Bergeson, a young lawyer from the West Coast, and Jonathan Shapiro, plus several volunteer attorneys. This small band of attorneys saved the entire state.

The caseload was overwhelming. The office handled jury discrimination cases, served as a community law office for voter registration cases and individual black Mississippi citizens deprived of their civil rights, worked on major civil rights reform legislation, and served as legal counsel to civil rights workers. The committee also began filing damage suits against the Klan and individual defendants and law enforcement for beatings and killings of black citizens. The lawyers did not have investigators but were required to do their

Many crimes against black citizens were never reported because residents were fearful of the consequences.

own investigating and legal research. The only support staff consisted of several office secretaries.

The cases were from the entire state, and it was necessary for the few lawyers to drive from Jackson. Mississippi is a large state, and driving across it can take nearly

a day. In those days, being lynched by a white mob was a realistic possibility, and certainly was for me as a young black man. In 1966, one year earlier, Ben Chester White had been brutally lynched by the Klan.⁹

During my orientation, I was told that if I was ever stopped for any reason by law enforcement or by the Klan, the best way to stay alive was to show no fear. One defensive measure I followed was to never stop when traveling across the state. So, I always drove the committee's 1967 Kaiser Jeep Wagoneer with a full tank and an extra can of gas, and never drove above the speed limit. I also always carried enough food for the entire day, so that I would not have to stop, regardless of the distance, until I reached my destination.

Civil rights workers and local black citizens who tried to vote, or were merely considered too "uppity," were often attacked during that period. In one case I worked on, members of the Klan had "shot up" a black family's home in a small town near Memphis, Tennessee. Many crimes against black citizens were never reported because residents were fearful of the consequences.

White Mississippi lawyers put their "heads in the sand" and appeared to be totally oblivious to the egregious and unlawful acts against black citizens. The clerks of court for Hinds County (Jackson) threw the papers at me whenever I found it nec-

essary to file papers or look at a court file. State court judges, and even one judge of the U.S. District Court for the Southern District of Mississippi, were extremely racist.

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In order to appease Senator Eastland of Mississippi, who was then the chairman of the Senate Judiciary Committee, President Kennedy had appointed William Harold Cox, Senator Eastland's roommate at "Old Miss," to the federal district court in Mississippi. Judge Cox was President Kennedy's first appointment in 1961. Although Judge Cox asserted that he would uphold the federal laws, and took the oath of office that he would do so, once on the court, he did everything within his power to preclude all efforts to enforce the civil rights on Negroes.

Several examples of his racial animus are below. In Late 1962, the U. S. Department of Justice, in a voter registration case before Judge Cox, brought in two elderly black men to testify about how the county's white voter registrar for Clarke County, Mississippi, had denied them the chance to register.

Judge Cox, without having any evidence of untruthfulness, decided that the elderly black men had lied about their attempted registration and demanded that the government charge them with having committed perjury in federal court. When the government refused, Judge Cox persuaded a prominent white lawyer to go to a Clarke County grand jury and have the two black men, one a prominent minister, indicted by the county for having committed perjury in federal court, and to have them imprisoned. The Justice Department appealed to the Fifth Circuit and was able to have the Clarke County action stopped and the men released from jail.

Several years later, at Judge Cox's request, a federal grand jury heard testimony from the Clarke County attorney who Judge Cox had used to bring the state court action. After the grand jury heard the testimony, Judge Cox instructed the United States Attorney to sign an indictment against the two elderly black men. The United States Attorney refused. Judge Cox then had the United States Attorney and Deputy Attorney general Katzenbach cited for contempt of court.¹⁰

In another voter registration case in 1964, Cox referred to black witnesses as chimpanzees. This action was instrumental in the unsuccessful efforts by Senator Jacob Javits of New York and Congressman Peter Rodino of New Jersey seeking the impeachment of Judge Cox.¹¹

An example of the attitude of the organized bar is confirmed by my experience with the Bar Association of Gulfport, on the Gulf of Mexico near Louisiana. The Lawyers' Committee received a complaint that a white merchant in Gulfport was preying on black citizens by obtaining unlawful judgments and then garnishing their wages. I was assigned to attempt to get the local bar association to obtain representation for the black citizens. I made an appointment with the local bar association president and briefly described the problem and asked for an appointment. He agreed to see me on a Friday morning. I left Jackson at 5 A.M. to drive to Gulfport, and arrived there early in the morning. Upon arriving at the lawyer's office, his receptionist acknowledged that he was present. He kept me waiting most of the day. Finally, in the late afternoon, I was ushered into his office. He met with me for less than five minutes and refused to become involved in any way or to seek the assistance of other lawyers.

In late 1967, law enforcement officials attempted to close Tougaloo College because the students and faculty were actively engaged in civil rights activities. One Friday evening, Dennison Ray, received an urgent call that the state officials were attempting to close the college.

Tougaloo College of Tougaloo, Mississippi, is a historical black college. It was a center of civil rights activism. It was not dependent on the state for funding, so state officials were totally frustrated that they were unable to control the college or its students.

We traveled to Tougaloo where we met with the president of the college and mapped a strategy. When the state learned that the Lawyers' Committee was prepared to proceed with litigation, the state backed down, the college remained open, and its students and faculty continued in the civil rights struggle.

One of my most unusual experiences involved the prosecution of a young white man. In all likelihood, I was the first black prosecutor of a white person in Mississippi history.

One Saturday morning in early December 1967, black citizens of Woodville, Mississippi, a small town near the Louisiana border, held a civil rights march through the center of the town. The group began at a local church and marched along the main street for several blocks. Upon reaching an intersection, they began crossing when the light turned green in their favor. When the light changed, some marchers, including a young boy about ten years old, were still crossing the street.

A young white male driving a pickup truck had stopped at the intersection of the light when it turned red against him while the marchers were crossing. When it turned green for him, although the marchers were still in the intersection, he sped through the line of marchers, hitting and seriously injuring the young boy. The black citizens were outraged, and the parents sought to take out a warrant against the white man for felonious assault. The local law enforcement officials refused to permit the family to take out the warrant, or to prosecute the case, and his parents turned to the Lawyers' Committee. The law enforcement officials refused to take any action, but there was such an outcry from the black community that the law enforcement officials told the Lawyers' Committee that it would be permitted to prosecute the white man in the local Mississippi court if it supplied one of its lawyers as prosecutor.

I was assigned the case. The matter was set for a hearing in the local state court one afternoon at 1 P.M. I traveled to Woodville and met that morning with the witnesses in a local black-owned restaurant a few blocks from the courthouse that morning. When I arrived, the restaurant was completely packed, and the crowd spilled over to the sidewalk. At 12:30 P.M., I left the restaurant for court, followed by what appeared to me to be every black citizen in the town. The entourage proceeded to the courthouse and the black citizens filled all of the seats in the main

room of the courthouse and the balcony. Shortly before 1 P.M., the defendant arrived with his lawyer and several members of his family.

We sat there for nearly two hours. Finally, at 3 P.M., I noticed a pickup truck with a gun rack pulling up near the courthouse and observed an obese white man with a cowboy hat and blue jeans leaving the vehicle. I was surprised he was the judge. He put his feet on the bench, and directed that the case begin. I called my witnesses, who explained what had happened and the extent of the serious injuries to the boy. After establishing the deliberate nature of the defendant's act and the injuries sustained, I rested. The defendant's lawyer then called the defendant. On cross-examination by me, he admitted that his action had been intentional and showed no remorse. When my cross-examination was finished, he stepped down. The judge then immediately dismissed the case.

It was not surprising to me or the local black citizens that the case was dismissed. However, the feeling was that we had brought the defendant before the bar of justice, and even though justice was not done, the defendant had been required to publicly account for his action. This was a small but important victory for the black citizens. And it made a difference in that it had been established, at least in that small town, that white citizens could not attack black citizens with complete impunity. They would be held accountable and brought to justice, even if justice was denied.

In many communities at that time, black citizens were required by custom to walk in the street near the curb and were not allowed on the sidewalk. In one case that I handled a young black man was hurrying to work at a fast food restaurant, determined to walk on the sidewalk instead of the street next to the curb.

A white man was sitting on his porch, with his shotgun nearby. When he observed the young black man walking on the sidewalk, without warning, he picked up the shotgun and fired at the young black man, seriously injuring him. When questioned as to why he had shot the man, he stated



In Washington, D.C., in June for the fortieth anniversary of the Lawyers' Committee for Civil Rights Under Law were: Top row (l-r) Sen. Edward M. Kennedy; Earl G. Graves, Sr., *Black Enterprise Magazine*; Franklin D. Raines, Fannie Mae; Barbara R. Anwine, Lawyers' Committee for Civil Rights Under Law; Paul C. Saunders, Cravath Swine & Moore, L.L.P.; Marc C. Fleischaker, Arent Fox Kintner Plotkin & Kahn; and Gary T. Johnson, Jones Day. Bottom row (l-r) Nichols deB. Katzenbach; Stuart D. Meiklejohn, Sullivan & Cromwell; Norman Redlich, Wachtell, Lipton, Rosen & Katz; and Steven S Reinemund, Pepsico. (Photo courtesy of the Lawyers' Committee.)

that "the nigger was walking on the sidewalk instead of the street where he belonged."

I drafted a complaint seeking tort compensation and punitive damages. The Lawyers' Committee and the Department of Justice had begun to file civil damage suits against perpetrators of acts of violence against black citizens with considerable success, and although my tour of duty expired before the case came to trial, I felt confident that the victim would be successful.

In another case that I handled, the Lawyers' Committee was consulted on a case where on a Saturday night, a deputy sheriff had arrested and jailed an eighty-two-year-old black man who was driving on the highway, and falsely charged him with driving while intoxicated—charging him a \$100 fine that the officer pocketed. He was given a crude handwritten receipt for the payment of the "fine." The man was very upset by the experience, and his granddaughter consulted the Lawyers' Committee. She supplied the "receipt" signed by the arresting official.

On Friday morning, I drove from Jackson to Marks, Mississippi to investigate. I



Clarence M. Dunnaville, Jr., and Nichols deB. Katzenbach

arrived in Marks at about noon. The sheriff's office was closed. I asked at the nearby gas station if the attendant knew where the deputy was who signed the receipt. Surprisingly, he indicated that the deputy was in the gas station. I went in the station, and there I observed a large, red-faced middle aged man sitting alone at a card table drinking bourbon, and I noticed a shotgun in the corner. The officer was wearing hunting clothing, with an orange iridescent cap. I told him I was investigating an arrest that he had made of the eighty-two-year-old gentleman where he had been charged a "fine." I showed him

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a copy of the receipt. He initially appeared surprised because I was a black man, but he started to answer my questions.

Suddenly, as if awakening from a deep sleep, he stood up and picked up the shotgun and pointed it at my head. He asked, "Nigger, where are you from?"

I told him that I was a lawyer from Washington. He responded, looking me in the eye, "You had better get out of here and go back to Washington before I shoot your head off." I, of course, was petrified. In our orientation, we had been told to never show fear if confronted by a law enforcement official. Thinking of that, I reached in my pocket and pulled out a cigar which had been given to me by someone who had a new baby, and I asked the deputy if he had a match. He was speechless and turned purple. He waved the shotgun in my direction and then pulled it close to his face as if to shoot. I slowly walked out of the gas station and entered the Jeep Wagoneer and drove very slowly back to Jackson. I expected at any moment to be stopped and lynched.

The Lawyers' Committee did not let the matter end. We prepared a civil complaint and sent it to the sheriff. He sent a check to the Lawyers' Committee a few weeks thereafter, refunding the entire "fine" to the elderly gentleman.

I have included a few examples of my experiences that occurred thirty-six years ago. Bringing white perpetrators of violence against black people to justice was an important new phenomenon in Mississippi in those days. The Lawyers' Committee played a significant role in bringing about this change, and even though white perpetrators were almost always exonerated in criminal cases, they slowly realized that not only would they be prosecuted, but they would also be sued for civil damages for their actions. I am proud that I was able to play a small role in this effort. On June 19, 2003, at the fortieth anniversary of the Lawyers' Committee for Civil Rights Under Law celebration, held in Washington, D.C., I was honored, with other volunteers, for our modest contribution to the struggle for civil rights during the turbulent historical era of the 1960s. 52

Clarence M. Dunnville, Jr., is an attorney in private practice in Richmond. He is admitted to practice in Virginia, New York and New Jersey. A native of Roanoke, Virginia, Dunnville is a graduate of Morgan State University in Baltimore and Saint John's University School of Law.

Dunnville served as a voluntary attorney with the Lawyers Committee for Civil Rights Under Law in the Mississippi project in the late 1960s and is a member of the committee's board of governors. A former assistant U.S. attorney for the Southern District of New York and corporate counsel for AT&T, where he practiced corporate and international law, he has participated in numerous national and international conferences and seminars on various legal topics. In January 1999, he participated on a panel of lawyers and judges from France, the United States, Cote d'Ivoire and Senegal on constitutional law in Abidjan, Cote d'Ivoire (Ivory Coast) Africa. In October 2000, he served as professional in residence at Washington and Lee School of Law.

Dunnville is a member of the Old Dominion Bar Association, the Bench Bar Committee of the Virginia State Bar and the board of governors of the Senior Lawyers Conference of the Virginia State Bar. He is a member of the Nominating Committee of the Bar Association of the City of Richmond. He was recently named by the governor to serve on the Waste Management Board.

Endnotes:

- 1 For a listing of names and states of the lawyers who attended the June 1963 White House meeting, see Connell, Ann Garity, *The Lawyers' Committee for Civil Rights Under Law, the Making of a Public Interest Law Group*, Chicago, Illinois, 2003. Appendix B, p.255, *et.seg.*
- 2 *Brown v. Board of Education of Topeka*, 347 U.S., 483,98 L.Ed.973, 74 Sup.Ct.686 (1954).
- 3 See Kilby, James Wilson and Robb, Patricia Kilby, *The Kilby Legacy*, Kilby Publications 1999, p.209.
- 4 Oliver W. Hill, Jr., at the time was serving as an official in the Kennedy Administration, and S.W. Tucker and Henry L. Marsh III were the name partners of the firm, which became Hill, Tucker and Marsh when Mr. Hill returned to Richmond.
- 5 Connell *Id.* at pp. 111,113.
- 6 Interview with Senator Henry L. Marsh III, September 3, 2003.
- 7 The case was removed to the United States District Court for the Eastern District of Virginia, but was remanded to the Circuit Court of Prince Edward County. The remand issue eventually reached the U.S. Supreme Court, *Wallace v. Virginia*, 397 F 2d 105, affd 384 U.S. 891, 86 S. Ct. 1996, 16 L.Ed 2d 996 (1966)
- 8 In 1965, 18 white men, including a sheriff, a deputy sheriff and police patrolmen, were indicted on federal conspiracy charges in connection with the 1964 Schwerner, Goodman and Cheyney murders. The defendants were charged with depriving the victims of life or liberty without due process by persons acting under color of state law. The indictment alleged, and it was proven at trial, that the victims were released from jail by the deputy sheriff, who intercepted them and drove them to a remote location where they were beaten and killed by a mob, which included the law enforcement officials. The victims were then buried with a bulldozer. The United States District Court for the Southern District of Mississippi dismissed the indictment against all defendants except the sheriff, deputy sheriff and patrolman.
- 9 Clarence Avants was acquitted on murder charges by a state court jury in October 1967, while I was in Mississippi. In March 2003, he was convicted on federal charges for murder, it having been determined that the murder occurred on federal property, making it a federal offense. He is presently serving a life sentence.
- 10 Minor, Bill, the *Clarion Ledger*, Jackson, Miss., December 1, 2002. "James Meredith's First Ole Miss Roommate Saw Many Obstacles" interview with Jerry Stern, former U.S. Justice Department civil rights attorney.
- 11 Judge Cox is reported to have made these remarks in a voter registration case prosecuted in Judge Cox's court by John Doar, assistant attorney general for civil rights, in March 1964. Biography of Judge William Harold Cox <http://www.law.umkc.edu/faculty/projects/ftrials/price&bowers/Cox.htm>.