

King at the Mountain Top: The Representation of Dr. Martin Luther King, Jr., Memphis, April 3–4 1968

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Something is happening in Memphis, something is happening in our world.

—Dr. Martin Luther King, Jr.¹

This Article reflects my memory of my firm's involvement in the events of April 3 and 4, 1968, when Dr. Martin Luther King, Jr. was assassinated here in Memphis. Our firm, Burch Porter & Johnson, along with the Ratner, Sugarmon firm provided legal representation for Dr. King on this occasion.

There were six lawyers involved in the legal representation of Dr. King and the other named defendants. Lucius E. Burch, Jr., was the senior partner in our firm, and David Caywood, Charles Newman, and I were all young lawyers here. I had served as President of the West Tennessee Chapter of the American Civil Liberties Union in 1966 and was succeeded in that position in 1968 by David Caywood. Louis Lucas was a former Justice Department attorney who was then practicing law in Memphis with the Ratner, Sugarmon firm. He was white, and one of his partners, who was also involved, was a black attorney Walter Bailey. At the court appearance on the motion, our firm and the Ratner, Sugarmon firm

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1. Dr. Martin Luther King, Jr., Speech in Support of the Striking Sanitation Workers Delivered at Mason Temple in Memphis, Tennessee: "I Have Been to the Mountaintop" (April 3, 1968), available at <http://www.afscme.org/about/1549.cfm>.

represented Dr. King. The presiding Federal District Court Judge, Bailey Brown, had been a partner in my firm when the firm's name was Burch, Porter, Johnson & Brown. I began my practice here in 1961 and moved into Judge Brown's office when he was appointed to the bench by President John Kennedy. On the other side of the table for the City of Memphis were City Attorney Frank Gianotti and Assistant City Attorneys James Manire and Frierson Graves.

I had been practicing law for less than seven years in April of 1968. Lucius Burch was the senior partner in our office and one of the most experienced and well-respected trial lawyers in the region and a man of significant stature. In the Spring of 1968, Memphis was involved in a very emotional strike by its sanitation workers. They enlisted the help of the Southern Christian Leadership Conference and the American Federation of State, County, and Municipal Employees Union in their cause. On March 28, Dr. King came to Memphis to lead a march in support of the sanitation workers. The Reverend James Lawson of Centenary Methodist Church was the local leader for the march.

As that march approached Main and Beale, a number of young people stripped the placards from the sticks they were carrying and began to smash windows in the stores on Beale. The police reacted with tear gas and mace, as well as force. The march disintegrated into a riot with significant property damage and injuries to a number of people. Dr. King was quickly removed to a place of safety, and the march leaders were embarrassed and discouraged. Against the advice of some of his advisors, Dr. King announced to the press that he would return to Memphis to lead another march in support of the sanitation workers and that it would be conducted in a non-violent and orderly fashion.

When the City of Memphis learned of King's intention to return, it went to Federal Court and obtained a temporary restraining order to enjoin the march in light of the previous march's disruption and violence. At that point, I received a call from Mel Wulf, General Counsel of the American Civil Liberties Union in New York City. In my early years as a lawyer here in Memphis, in addition to serving as President of the West Tennessee Chapter of the American Civil Liberties Union, I was also a member of the National Board of the American Civil Liberties Union. Mel Wulf asked me if our firm would represent Dr. King in an effort to lift the injunction and allow the march to proceed. The American Civil Liberties Union was interested in obtaining this order from

the court even though Dr. King had indicated to the press that the march would take place with or without the injunction in force.

The importance of this injunction was that it was issued by a federal judge and not some local circuit judge or chancellor in rural Alabama or Mississippi. For years the Federal Courts had guaranteed the successes of the Civil Rights workers throughout the South, and if King marched in the face of this type of injunction, it would dilute the protection given by the Federal Courts.

At the same time Jerry Wurf, head of AFSCME, contacted David Caywood regarding our firm's involvement. David and I responded to both that if we were to be successful, we would have to enlist the experience and prestige of Lucius Burch as the principal spokesman for Dr. King in the courtroom. I talked with Mr. Burch about his willingness to become involved. He said he would consider it on two conditions: (1) that he receive a formal request from the American Civil Liberties Union to take on the representation of Dr. King, and (2) that Dr. King meet with him personally and satisfy him that the march was essential and important to Dr. King and the civil rights movement. Mr. Burch wanted to make sure that the engagement was properly established even though we were handling the matter on a pro bono basis. He also wanted to be sure that this matter was of the utmost importance to Dr. King and the movement because he realized that our representation would not be popular in Memphis and that the firm might expect to lose substantial business if the engagement was undertaken.

I communicated this to Mel Wulf, and Mr. Burch received the attached telegram from Charles Morgan, Jr., the Director of the Southern Regional Office of the American Civil Liberties Union in Atlanta. I assume that Morgan cleared the conditions of the representation with Dr. King because arrangements were made for us to meet with Dr. King at the Lorraine Motel on April 3, the day of Dr. King's emotional speech at the Mason Temple and the day before our court appearance on April 4. It was on the evening of April 4 that Dr. King was assassinated.

The six lawyers met in the late afternoon with Dr. King and his aids, including Andy Young, Ralph Abernathy, Jesse Jackson, and James Lawson. The meeting took place in the room adjacent

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<p>The above rates apply to the above service. All other rates apply to the above service. The above rates apply to the above service.</p>		
<p>2000 EST 4PM 4 00 STATION MEMPHIS 10000 4 1000 00 20 00 STATION ATLANTA GA 3 LUCIUS BURCH ESQUIRE 120 NORTH COURT NYC C/O MELVIN L. HULF 100 3 AVE NYC</p> <p>YOU ARE HEREBY REQUESTED TO ENTER THE OFFICES OF DR MARTIN LUTHER KING JR AND OTHERS IN SECURING FOR THEM THEIR CONSTITUTIONAL RIGHTS IN COURT ACTION PENDING AGAINST THEM IN MEMPHIS. YOU ARE AUTHORIZED TO SIGN BY NAME AND THE NAME OF HIS SELF BY COUNCIL IN THE PROCEEDINGS. WE REQUEST THAT YOU INDEAR THIS CASE ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION AND ITS SOUTHERN REGIONAL OFFICE SINCERELY CHARLES WALKER JR AS HIS SOUTHERN REGIONAL OFFICE AMERICAN CIVIL LIBERTIES UNION ATLANTA.</p>		

Telegram requesting representation of Dr. King.

to the one where Dr. King and Abernathy were registered. The lawyers sat knee-to-knee with King and his aids in the small room, and Lucius Burch and Dr. King proceeded to discuss the importance of the march going forward and that the garbage workers be supported in their cause. King quickly convinced the lawyers that it was critical and designated Andy Young and James Lawson to be our witnesses in Federal Court at 9:30 the next morning.

After we met with Dr. King at the Lorraine Motel, the lawyers went back to our office and worked until 3:00 a.m. the next morning preparing the papers for the court. While my memory is fuzzy, I apparently left the office sometime in the late evening and went to the Mason Temple. Whether I went there to talk further to Reverend Lawson and Andy Young or for some other reason, I cannot remember, but I will never forget Dr. King's speech that night, the last night of his life.

That evening tornadoes had been reported in Oklahoma and Arkansas, and it was already stormy and raining in Memphis. The church was packed with sanitation workers and their families. It was hot and muggy in the room as people in wet clothes crowded together. Windows at the top of the church were opened to allow air in and this caused a big ceiling fan to slowly move and revolve with a regular click-clacking sound.

So by the time Dr. King rose to speak, the electricity in the room, whether from emotion or the weather conditions, could be felt by all of us there. And by the time Dr. King finished speaking,

everyone in the church knew that something of special significance had happened in that room that night.

Dr. King had not planned to speak and consequently had no notes whatsoever. It was a long and beautiful speech, and I remember most these selected parts because they discussed the plight of the sanitation workers, the need for the march to take place on their behalf, and the eerie premonition that Dr. King felt about the nearness of his own death:

Now we're going to march again, and we've got to march again, in order to put the issue where it is supposed to be. And force everybody to see that there are thirteen hundred of God's children here suffering, sometimes going hungry, going through dark and dreary nights wondering how this thing is going to come out. That's the issue. And we've got to say to the nation: we know it's coming out. For when people get caught up with that which is right and they are willing to sacrifice for it, there is no stopping point short of victory.

....

... Now we've got to go on to Memphis just like that. I call upon you to be with us Monday. 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 said 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 hadn't committed themselves to that over there. But somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of the press. Somewhere I read that the greatness of America is the right to protest for right. And so just as I say, we aren't going to let any injunction turn us around. We are going on.

....

... Now, let me say as I move to my conclusion that we've got to give ourselves to this struggle until the end. Nothing would be more tragic than to stop at this point, in Memphis. We've got to see it through. And when we have our march, you need to be there. Be concerned about your brother. You may not be on strike. But either we go up together, or we go down together.

....

... That's the question before you tonight. Not, "If I stop to help the sanitation workers, what will happen to all of the hours that I usually spend in my office every day and every week as a pastor?" The question is not, "If I stop to help this man in need, what will happen to me?" "If I do not stop to help the sanitation workers, what will happen to them?" That's the question.

Let us rise up tonight with a greater readiness. Let us stand with a greater determination. And let us move on in these powerful days, these days of challenge to make America what it ought to be. We have an opportunity to make America a better nation. And I want to thank God, once more, for allowing me to be here with you.

....

... And they were telling me, now it doesn't matter now. It really doesn't matter what happens now. I left Atlanta this morning, and as we got started on the plane, there were six of us, the pilot said over the public address system, "We are sorry for the delay, but we have Dr. Martin Luther King on the plane. And to be sure that all of the bags were checked, and to be sure that nothing would be wrong with the plane, we had to check out every-

thing carefully. And we've had the plane protected and guarded all night."

And then I got to Memphis. And some began to say the threats, or talk about the threats that were out. What would happen to me from some of our sick white brothers?

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 mountain-top. 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 I'm happy, tonight. I'm not worried about anything. I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord.²

The hearing in Federal Court began the next morning at 9:30 a.m. and lasted until late in the afternoon. At the end of the day the judge called us into his chambers and announced that the march could go forward on April 5 with the restrictions we had suggested to ensure that it would be orderly and nonviolent.

2. King, *supra* note 1.



Dr. King's attorneys going to Federal Court for the injunction hearing on April 4, 1968. From left to right: Jim Lawson, Andrew Young, Lucius Burch, Charlie Newman, and Mike Cody.

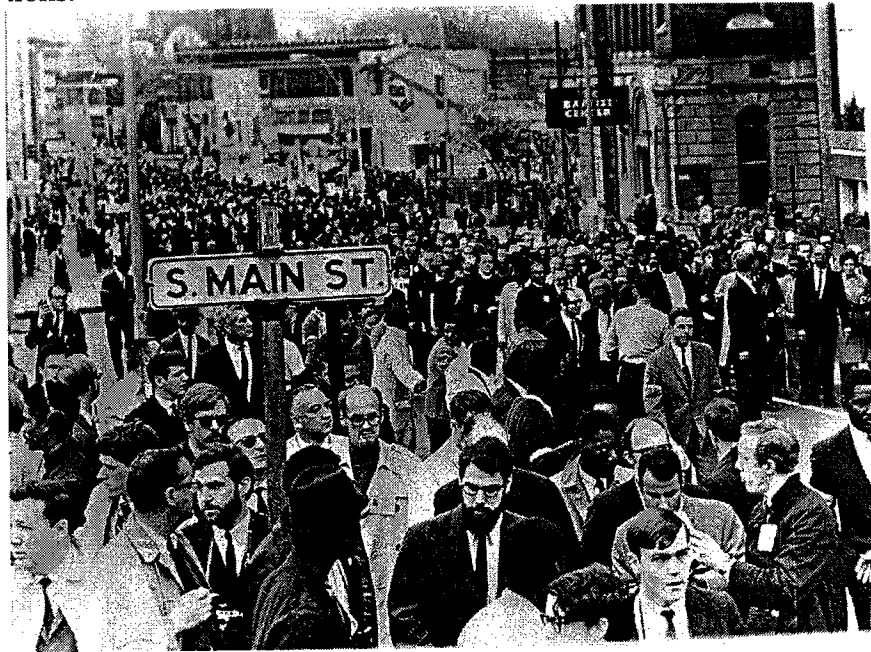
After the hearing in court on April 4, I drove one of our two major witnesses, Reverend Andrew Young, back to the Lorraine Motel and dropped him off.³ I had not had time to drive to my home, which was only five or six miles from the Lorraine Motel, before I heard on the radio that Dr. King had been shot. Later that evening, I received a call from the Chief of Police asking me to assist the police in trying to defuse a problem at Clayborn Temple, one of the sanitation workers' headquarters. Apparently, a group of young people had barricaded themselves in the church and were throwing rocks out at the police. The police were going to forcibly enter the area and the Chief of Police wanted me to locate Reverend James Lawson to see if he could prevail upon the young people to come out of the church and avoid potential confrontation with the police.

The police car came to my home, picked me up, and drove with sirens blaring and lights blinking straight to the Clayborn Temple. There the police car door was opened, and I stepped out.

3. Andrew Young later became Mayor of Atlanta and the United States Representative to the United Nations.

I heard the door close, looked around, and the police car left. Then and there I quickly surveyed the aftermath of the shooting and the conditions in Memphis. Rioting had started, stores were being broken into, fires were everywhere, and looting was occurring. I was probably about as frightened as I have ever been in my life. Very fortunately I found a newspaper reporter, Clark Porteous, who helped me locate Reverend Lawson. Lawson negotiated the situation, the young people left the church, and the police went on to other areas of trouble. Lawson then arranged for me to somehow get home.

These were sad and exciting times here in Memphis, and, even though I am beginning to forget the facts, I still feel the emotions.



The march following Dr. King's death. Mike Cody appears in the midst.