WHAT HAPPENS TO A BLACK MAN SHOT BY POLICE?

By **Peter H. Wolf**

Too often, he dies. We've seen it with shocking repetitiveness lately. An entire movement -- Black Lives Matter -- has grown up about it. The advent of police body cams and witness cell phone videos has made it impossible to ignore. That technology has also made it appear it's a recent phenomenon. It's not.

Sometimes -- probably more often -- the black man lives. We hear much less about the survivors. I have a story to tell about one. Exactly half a century ago this past June 6th he was shot by police right here in Washington, D.C. His name is Marvin Vincent. I had the honor to represent him in his resulting civil lawsuit against the police and the District of Columbia.

The story is worth telling because of what he went through, and what he still endures physically and mentally -- how it embittered him and changed his personality. It is also bears recounting because of the racism, not only in the shooting itself, but how the trial, I later learned, was affected by that all-to-enduring blight. How many other survivors have been similarly transformed?

The best way for me to describe the shooting is to relate, word for word, my opening statement to Marvin's jury on March 29, 1976 in the Superior Court of the District of Columbia. That was almost eight years after the shooting itself, but that delay is also part of the story.

You already know, ladies and gentlemen of the jury, something about this case from your selection this morning. I now can tell you in more detail what the plaintiff's evidence will show. That way, when you hear the evidence in bits and pieces from individual witnesses, you'll know how they fit together.

Plaintiff Marvin Vincent intends to prove the following:

Prior to June 6, 1968 -- two months after the tragic April riots in Washington, D.C. after the assassination of Dr. Martin Luther King, Jr. -- Marvin Vincent was a normal, healthy young man 32 years of age. He was a carpenter with the National Capital Housing Authority earning $264 every two weeks, or

$6,864 per year. He had been working there since 1963. He had had no trouble with the law up to that time.

Then came the fateful night for Marvin Vincent of June 6. It was the same day Robert F. Kennedy died after being shot the day before, and at the time of the Poor Peoples Campaign in Washington.

After midnight Mr. Vincent was standing by his motorcycle at 49th Place and Hayes Street, N.E. He was talking to a friend, Olivia Richardson, just after they had finished a ride. A police scout car driven by Albert W. Folkman approached. His partner, William B. Caton, was in the passenger seat. They shined their light on Mr. Vincent and Miss Richardson and asked who owned the motorcycle? Mr. Vincent replied he was the owner. The officers stated it had no license tag. Mr. Vincent pointed east down Hayes Street to his residence about a block away and said his permit and registration were at his house.

They ordered him to get into the scout car to go to No. 14 Precinct with them. Mr. Vincent protested that his cycle would be left unprotected and could he wheel it home? They said no. Then he asked if he could wheel it to Miss Richardson's house just down 49th Place? No. Instead they ordered him to ride the motorcycle to the precinct and they would follow behind. Miss Richardson went home, and the procession started even though Mr. Vincent's proof of ownership was a block away. You will see the precise route Mr. Vincent followed and photographs of part of it.

At 49th and Deane Avenue, N.E., some even more alarming and unreasonable conduct by these officers occurred. Mr. Vincent stopped at a red light before turning left to go to the precinct. The scout car pulled up beside him and to his right, and the driver, Officer Folkman, pulled out his service revolver, laid it on the seat beside him, patted it, and said to Mr. Vincent, "You know what happens if you try something funny," or words to that effect.

You will hear testimony that never had either officer placed Mr. Vincent under arrest or told him he violated any law.

Mr. Vincent will tell you the precise thoughts and fears that went through his mind -- how he thought he'd never reach the precinct alive or what would happen to him if or when he got there. Place yourselves back to 1968 -- eight years ago -- to remember those days.

Mr. Vincent panicked. A few blocks later he made a sudden right turn and attempted to escape on his motorcycle. The scout car followed, and shots immediately rang out. The chase continued with more shooting. At one point the scout car driver sought to run down Mr. Vincent on his speeding cycle and force him off the road.

Mr. Vincent headed back to his home, where he had lived with family all his life. On 50th Street between Dean Avenue and Hayes Street a bullet struck him in the left hip. He continued across some railroad tracks that run parallel to Hayes Street and turned along the street heading toward 5019 where he knew his brother Simon was. He turned across the railroad tracks, hit an old railroad tie on the other side, and lost control of his cycle.

He struggled up, ran to his brother's house, and into a small entryway to a basement apartment. He pounded on his brother's door yelling for him to let him in when Officer Caton pushed his way between the door and Mr. Vincent and hurled him against the wall of the entryway. Seconds later Officer Folkman came and shot Mr. Vincent in his right ankle. Mr. Vincent fell to the ground and Officer Caton then shot him in the stomach, kicked him in the mouth, and hit him on the head with his pistol. Officer Folkman also kicked Mr. Vincent in his head.

That final shot that hit Mr. Vincent in the stomach was seen by Simon Vincent from inside the door Marvin Vincent had been pounding on. He will testify to you about it.

Mr. Vincent was taken to D.C. General Hospital where he spent 18 days after surgery at a cost of $1,089. He was in excruciating pain and the medical records will be introduced into evidence. His stomach was punctured, his liver lacerated, his ankle broken by one bullet, and his hip broken by the first shot to hit him. One of those three shots that found their mark in Mr. Vincent's body was fired by a small derringer pistol Officer Folkman had bought during the April riots and was carrying in his pocket loaded with 22 magnum ammunition.

You will hear evidence of defendants Folkman and Caton themselves confirming much of this incident but adding things like one was trying to signal the other by shooting his gun, they can't remember when the service revolver was removed from the holster, they didn't know whose gun it was that was going off, shooting Mr. Vincent was accidental, et cetera.

You will have before you the D.C. Police Manual regulation that states an officer may use his service revolver only to defend himself from death or serious injury; to defend another unlawfully attacked from death or serious injury; or to effect arrest or prevent escape for a felony.

You will hear that, to add insult to injury, Marvin Vincent was charged with two felony counts of assaulting each police officer, that those charges were dismissed at preliminary hearing on July 18, 1968 because no officer showed up to testify, and that the police immediately got a warrant for his re-arrest. This time Officer Caton testified on July 22 and Mr. Vincent was held for action of the grand jury because Officer Caton swore that Mr. Vincent attacked him *in the entryway to 5019 Hayes Street, N.E. But the grand jury refused to indict Mr. Vincent when the whole story of what happened was presented to them, including the testimony of Mr. Vincent himself. Forty-seven traffic violation charges from the incident were also eventually dropped.*

Mr. Vincent has never been able to work since that fateful day and is on public welfare today for disability. His ankle required two more operations to remove bullet fragments in January 1969 and March 1970. Those bills totaled $1,719.

You will see Mr. Vincent's scars and disfigurements.

You will hear his friends and family state how he has changed since this incident -- become a bitter man, always must use a cane, cannot enjoy the kinds of recreation he once knew and loved, still suffers pain, and still has bullet fragments in his body.

And yes, you will hear that in 1971 Mr. Vincent was convicted of armed robbery and spent four years at Lorton, released last October 30.

From the time of the incident in 1968 until he went to Lorton he lost over $20,000 in wages. His medical problems continue, and you will hear how his main recurrent problem is not Mr. Vincent's right ankle where he was shot, but nerve root atrophy of his left leg caused by inoperable bullet fragments still lodged in his spine. You will see how he uses his cane more for his left leg than his right, though both legs will never be the same again.

Within the last two months you will hear how, out of desperation, Mr. Vincent has sought and obtained acupuncture

treatments for his pain and how they have helped and how much they have cost.

Finally, ladies and gentlemen, you may hear testimony of the dangerous propensities of these policemen and plaintiff's claim, therefore, that the defendant District of Columbia did not adequately train, supervise, discipline, and control these two defendants Folkman and Caton.

Because they did their damage to Mr. Vincent in the course of their duties as Metropolitan Police Officers, we shall ask you to award Mr. Vincent a substantial sum of money against the D.C. Government and the individual officers in accordance with his Honor's instruction to you. We shall ask you to award punitive damages for their reckless, wanton, outrageous conduct. We shall ask you to award compensatory damages for Mr. Vincent's past injuries, pain, suffering, mental anguish, lost wages, crippling, and disfigurement; and we shall ask you to award him compensatory damages for his future pain, suffering, mental anguish, lost income, crippling, and disfigurement for a man with a life expectancy of 28½ years beyond today.

At the close of all the evidence, we shall ask you to (1) find in the plaintiff's favor against all defendants; (2) having done that, find for him and in his favor a substantial sum of money which will never restore his body or his mind, but will provide him with just compensation as the only means available to make him whole.

Yes, Marvin Vincent was black; Folkman and Caton were white. Folkman was age 24 at the time of the shooting, Caton 28, Marvin 32. The jury rendered a verdict in Marvin’s favor against all three defendants -- Folkman, Caton, and the District of Columbia as their employer -- on Day 10 of the trial, Friday, April 9, after two hours and forty minutes of deliberation: $129,000 compensatory damages jointly and severally against all three, plus $500 punitive damages against each individual officer.

That, in 2018 after inflation, would be almost $570,000, or 4.4 times as much. The ridiculously low 1960s medical bills and salary I recited as damages would also be comparably greater. Jury verdicts of this sort -- even settlements short of trial -- have tended considerably higher 42 years later. They run into seven figures, not just six.

As news of the trial and verdict spread and was published in *The Washington Post* and the *Afro-American*, it was good to

have colleagues and court personnel bump into me and say, "I hear you won a big one!" Trial lawyers often reflect there's the case you plan to try, the case you tried, and the case you wish you had tried. I had few regrets with this one. Lawyers also say, "Gimme the facts; I'll worry about the law later." The facts were clearly with us.

But why did it take eight years to get to trial? Was there an appeal? Did we collect the judgment? If so, how? When? From whom? What happened with Marvin Vincent along an arduous legal path that turned out not to conclude until 1982 -- after another six and a half years, a total more than 14 years after the shooting itself? How did Marvin's changed personality affect what transpired? What does it all say about black lives and police, particularly for those who survive?

Answers to these questions are provided, at least partially, when I sort through Marvin's case files I retained all these years -- copies of court filings, letters, witness statements, exhibits, trial notes, legal research, log notes. They stack up seven inches high. Interestingly, there were several more cases beyond the 1968 police shooting, including even a case where Marvin sued *me*.

As I recite events, put yourself in Marvin's shoes. Yes, we start with a horrible, physically and mentally damaging armed police rampage against him. But imagine adding straws, one by one, by the further affronts I'll describe, some from external causes, and some of Marvin's own making. It's fair to surmise that even those in the latter category were symptomatic of the progression of delays, outcomes, manipulations, and perceived insults this surviving black man was forced to endure. When does the camel's back finally break?

Straws: Recited in my opening statement to the jury, Marvin was charged with felonies for allegedly assaulting policemen Folkman and Caton! Even though dismissed for failure of either officer to show up to testify at the July preliminary hearing (scheduled so late because Marvin was in the hospital 18 days), Marvin was unceremoniously re-arrested, then held for action of the grand jury after Caton swore at a second preliminary hearing that a wounded Mr. Vincent attacked *him* in the entryway to 5019 Hayes Street, N.E.

Marvin's then-attorney (I did not meet Marvin until 1972), John Karr, wrote a letter in September to the Assistant United States Attorney prosecuting these trumped up felony charges. John urged that Folkman and Caton be indicted if the grand jury

found their shooting of Marvin was not justified. He said Marvin himself (he was released on bond) would be available to testify before the grand jury.

That is a very unusual step -- to offer to have the accused testify before a grand jury. He thereby waives his Fifth Amendment right not to testify against himself. If the grand jury does indict, anything the defendant says before the grand jury can be used against him at a later trial.

The grand jury did "ignore" (drop) the criminal case against Marvin. But, not surprisingly, (**straw:**) Folkman and Caton were not indicted. Prosecutors are just too frequently reliant upon police as investigators and witnesses to prosecute them except upon the most egregious circumstances. They also know that juries are reluctant to convict. It's a sad byproduct of our rampant gun culture that, while not a factor in Marvin's case, juries are all to hesitant to second-guess police testimony that "we thought he was armed."

Quoting an August 12, 2017 *Washington Post* editorial about another unarmed motorcyclist shot by police -- 49 years later -- "no District police officer has *ever* been the subject of criminal charges for a fatal shooting in the line of duty" (emphasis supplied).

John Karr sent another letter in September to the then Corporation Counsel (the D.C. Government's lawyer, now called the Attorney General). That office served as prosecutor before the Police Trial Board, and the Chief of Police had charged Folkman and Caton with unauthorized use of their revolvers. John asked that other charges be included, namely, willfully maltreating and using unnecessary violence against Mr. Vincent -- assaults with deadly weapons and assaults with intent to kill -- and with conduct unbecoming an officer.

I know little about that proceeding except that, not surprisingly, (**straws:**) no charges were added and Folkman and Caton were totally cleared in February 1969. That is what we've come to expect, as we have learned from many publicized police shootings of suspects throughout the United States: Trial Boards, or similar adjudicatory bodies elsewhere, are comprised of -- you guessed it -- other police officers -- the proverbial fox guarding the chicken coop.

In the spring of 1969 suit about Marvin's shooting was filed in the United States District Court for the District of Columbia. Marvin, through Attorney John Porter (John Karr had to

withdraw as Marvin's attorney because of an ethical conflict of interest with another client), asked for compensatory damages of $1 million and punitive damages of $500,000. An attorney always asks for the maximum conceivable damages because, if a jury should return a verdict greater than what was asked for in the civil complaint, the attorney runs into a legal hassle when the other side argues that that's all the plaintiff should get.

The grounds were that Folkman and Caton, as employees of the District of Columbia, had committed assault and battery against Marvin, willfully shot him without justification, and used excessive force; that the District of Columbia had not trained and supervised them properly; and that under federal law all had also deprived Marvin of his civil rights while they were acting under a "statute, ordinance, regulation, custom, or usage, of any State or Territory." This quoted statutory language from the 1871 Civil Rights Act gave the federal court jurisdiction over claims otherwise entertained only in a state (or District of Columbia) court.

The **straws** continued to pile on, however, during the pendency of this main 1968 shooting case. Marvin had been an able-bodied wage earner; now he was disabled and in constant pain; he needed income. He went on welfare; he had time on his hands; he and his whole neighborhood were constantly harassed by police. He had become a hostile man and was well into "Black Power" and the hatred of anything to do with the law that comes with that mindset.

(**Straw:**) In October 1970 police obtained a search warrant for Marvin's apartment at 5015 Hayes Street, N.E. It was based on an informant's police-supervised "buy" of marijuana from "Marvin the Grass Man." He had started using marijuana for his pain. They executed the warrant at 6:30 a.m. on Saturday, October 10. Nine police officers were all dressed in plain clothes, even ratty clothes by some witnesses' accounts. There was a dispute among police witnesses and lay witness occupants, including children, elsewhere in the building whether the police announced their authority and purpose at Marvin's apartment door as they were required by law to do; after all, everyone had been asleep.

They eventually tried to force Marvin's door open with a sledge hammer. When that failed they sent outside for a battering ram and used it successfully. Marvin shot at the intruders, wounding one officer. As you can imagine, he was not too trustful after his June 6, 1968 shooting. The police retreated. They fired their pistols and shotguns elsewhere into

the building, called for backup, lobbed teargas inside, and did considerable damage to the entire building owned by Marvin's mother. Chief of Police Jerry Wilson even came on the scene.

Marvin was finally arrested, and 12 days later a grand jury returned an 11-count indictment against him charging various counts of assault on three police officers while armed, plus two counts of unlawful carrying a firearm. Marvin was acquitted by a jury of all charges on April 12, 1973.

In May 1973 I sued police and the District in the United States District Court for the District of Columbia on his behalf plus seven other occupants of the building. We claimed negligent supervision and execution of the search warrant including "the indiscriminate and careless use of firearms and teargas which rendered the entire premises uninhabitable and threatened the lives and/or property of all the plaintiffs." We sought damages of $25,000 for each of eight plaintiffs, total $200,000.

This incident may have been the reason Attorney Porter was later ready to give up Marvin's 1968 shooting case. There is a one-year statute of limitations in D.C. for intentional misdeeds (which can merit punitive damages) -- (**straw:**) he missed it. There's a three-year limitation for negligence; our suit could only be for negligence, and therefore had to be filed before October 10, 1973.

There was, however, evidence Marvin realized that it was police at his door and he delayed answering to get and load his gun and fire away. Selling marijuana -- the reason for the search warrant -- would not look too good to a jury, to say the least. The case for his neighbors, however, remained strong.

Recall from my opening statement that Marvin spent four years incarcerated for an armed robbery. It was allegedly committed on March 24, 1971. I know little about the case except that it was some sort of harassment of a juvenile by Marvin that got out of hand. (**Straw:**) He was convicted by a jury after a four-day trial in September of that year and immediately incarcerated in D.C. Jail pending sentencing. He eventually served his four-year sentence at Lorton and was released in October 1975.

On November 5, 1971 there was a riot at the jail that led to many more **straws**, some external, some caused by Marvin himself. Marvin claimed he was maliciously fire hosed, knocked down, and thrown down a flight of stairs, injuring his back. They then placed him in a cell in the "Penthouse" section (a

form of solitary confinement) with another inmate, Abraham Wright. Officials knew, Marvin claimed, that Wright suffered from fits and attacks upon others (he had a history of epilepsy, I later found); yet they took away his medicine that prevented his seizures. Marvin claimed he was attacked that evening by Mr. Wright, injuring his knee. Marvin was kept in the Penthouse for 15 to 20 days and denied any medical treatment except to be given crutches on November 7.

In January 1972 he was examined at the Jail Hospital, told he had torn cartilage in his knee that might require surgery, and would be referred to an orthopedic surgeon later. He was sent to the Lorton Correctional Complex to serve his sentence. His condition there was so bad that in April and July 1972 he was sent by court order to D.C. General Hospital for examinations and treatment, but nothing was done.

I sued on his behalf in November 1972 just before the one-year statute of limitations would expire, and without yet having a retainer agreement signed by Marvin. My recollection is that Marvin insisted we file this suit if he was going to sign with us for the 1968 case. I demanded $200,000 compensatory damages and $100,000 punitive damages for Marvin against the defendants.

My associate and I discovered evidence that Marvin had a lot to do with the jail riot in the first place -- setting fires, stopping up the plumbing, and so on. We also talked to Abraham Wright and he didn't back up Marvin's story at all. He said they had a fight, nothing to do with a seizure. We had filed the case just within the statute of limitations, without time to investigate as much as we would have liked.

By late 1972, when Marvin signed contingent fee retainer agreements with me, summarizing, he had three civil suits pending against D.C. and police in the U.S. District Court; his 1968 criminal case had been ignored by the grand jury; his 1970 criminal case from the raid at his home had resulted in his acquittal; he was serving time at Lorton for a 1971 robbery; Folkman and Caton never had charges brought against them, and they had been exonerated by the Police Trial Board. Marvin himself was an angry, hostile, imprisoned, hurting man.

What lawyers call "discovery" took place in all three cases, though most of it had already been completed by Attorney Porter in the 1968 shooting case. Discovery is very important in a civil trial, and cases are often won, lost, or settled by what is discovered by both sides before trial. People had their

depositions taken (answering questions before a notary public, a court reporter, and the lawyers, but with no judge present), and there were other discovery procedures.

The 1968 shooting had been assigned to U.S. District Judge Oliver Gasch. After most of the discovery had occurred, in 1971 he delayed Marvin's case (**straw**) to await the outcome of a case before the Supreme Court of the United States where the issue was whether the District of Columbia qualified as a "State or Territory" under the Civil Rights Act quoted above. He didn't want to risk trying the case based on a false premise.

It was during that stay (it lasted almost two years) that Marvin (**straw**) fired Attorney Porter who had succeeded John Karr, but John referred Marvin to me.

In January 1973 the Supreme Court unanimously ruled that D.C. was not a qualifying "State or Territory" (*D.C. v. Carter*). There was no longer any federal court jurisdiction over Marvin's civil cases.

Accordingly, on February 12, 1973, Judge Gasch certified (transferred, as the law provided) Marvin's case to the Superior Court of the District of Columbia, where the whole case in the federal court, from its beginning through the certification, continued right on (it didn't have to start over) in the local District of Columbia court system. Civil rights violations were out of the case, but all the other aspects of the original complaint were quite alive. The two other civil cases were eventually similarly certified.

That was not the end of the legal delays, however. In Superior Court, trial of Marvin's case was again stayed (**straw**) to await a pending appellate decision in the District of Columbia Court of Appeals: whether the D.C. Government could be held responsible for the *intentional* torts (wrongful acts) of its police officers within the scope of their employment, as opposed to their mere negligent acts. It was decided in October 1973 that the District *was* responsible (*Wade v. D.C.*), but only after eight *more* months had passed.

Marvin's 1968 shooting case, clearly alleging intentional torts, could proceed at last. A trial date had been set in January 1974. For various reasons many further continuances occurred.

Chief among those reasons was conflicting availability dates of a multitude of busy trial lawyers. The Corporation

Counsel's Office was not representing Folkman and Caton because that office had prosecuted them before the Police Trial Board; it was a conflict of interest to represent them in their civil case. They had to hire their own lawyer, with the help of the police union. Unlike the impression given by TV legal programs, lawyers work on many more than one or two cases at a time. (In calendar 1973, for example, the last year for which I have complete records, I had income to my practice from 102 separate clients.)

I had hired a law student, Don Kolner, to be my secretary in 1970. I elevated him to law clerk, then to an associate in my office when he graduated, and to partner in January 1974. (His name has been changed for reasons that will become apparent.) We thus had four lawyers in the scheduling mix.

We learned our office building on Fifth Street, N.W. was scheduled to be torn down. Practitioners who appeared almost daily in the D.C. courts were called "Fifth Streeters." I was one quite literally. We had to move, and after hunting around, Wolf & Kolner relocated to a much more modern building in April 1974, but still within walking distance of the courts. The search and the move were time-consuming and not a small project.

One case complicated my life considerably. In August 1973 Superior Court Judge Leonard Braman appointed me one of ten counsel in the Hanafi Black Muslim murder case. Five defendants were apprehended for trial, and Judge Braman appointed me one of two counsel for John Clark, the ring leader.

I was thoroughly involved in this defense from then on. When we argued evidentiary motions and the trial took place I was in court almost every day, all day, from February 11 to May 17, 1974, more than three months, with the office search and move in the middle of it. It was early 1974 that I told my partner, Don, that he would have to bear pretty much sole responsibility to prepare and try Marvin's case. (John Clark, by the way, was convicted and received seven consecutive life sentences; it was affirmed on appeal.)

Through all this Don and I were not unwilling to postpone Marvin's case ourselves since he was serving time for robbery at Lorton from 1971 until his scheduled release in October 1975. It wouldn't have looked good to the jury to have him guarded by U.S. Marshals or correctional officers, and we would have to pay considerable money for their cost.

Don (with me, as I was able) prepared Marvin’s case. We interviewed witnesses, subpoenaed, and stroked them; we obtained and readied documentary evidence; we anticipated and did necessary legal research; we moved mountains for our doctor to review Marvin's medical records and to have him examined, all while he was incarcerated at Lorton Reformatory; we worked out continuances with the other lawyers' and our own trial schedules.

Friday, March 26, 1976 is seared on my brain. Trial was finally scheduled to begin. At about 5 a.m. that morning I was awakened by a phone call from Don.

"Peter," he said, "I just can't do this." His voice was quivering. "I’ve been up all night, couldn't sleep. I don’t think I’ll ever be able to try this case."

*Holy s**t!* I thought to myself, wide awake by this time. I could tell there was nothing I could say to change things.

Even though I had not prepared the case, I answered Don that I'd be at the court Assignment Office that morning and I'd take over with his help. Fortunately, the Assistant Corporation Counsel representing the District of Columbia, Folkman's and Caton's lawyer, and the just-assigned Judge George Revercomb, were inclined to wait till the following Monday. Needless to say, I was too, though I never let on.

I later learned that Don had a complicated personal life. I never had a clue he relied on alcohol to get through the day. In retrospect I also realize he was more of a "transactional" lawyer -- better at or more inclined toward estate planning, contracts, other office work -- as opposed to a courtroom lawyer. He gladly used to take wills and estate planning stuff I disliked. I should have realized all this sooner.

Furthermore, the pressure of a contingent fee trial is enormous -- if you lose, you get absolutely nothing for all your work; indeed, you may not even recover a lot of expenses incurred along the way during trial preparation. I think this had a lot to do with Don’s 5 a.m. panic.

I had a weekend to prepare. That's when I wrote out and practiced the opening statement to the jury at the beginning of this narrative. The witnesses had been subpoenaed and everyone was ready to begin Monday.

The District of Columbia was represented by Assistant Corporation Counsel, Ted Murray (his name has been changed). Attorney Julian Tepper separately represented Folkman and Caton. Don assisted me by taking notes. It's awfully hard to do when you're also questioning witnesses. He questioned a few witnesses himself, and generally acted as "second chair."

On Monday, March 29, 1976 our assigned courtroom was at the west end of the cavernous Pension Building, now the National Building Museum, where Superior Court was located at the time during construction of its new courthouse. We selected the jury. Then I gave my opening statement. The witnesses we called to testify were for one or both of two purposes -- to say what they saw happen and prove liability (legal responsibility), and to prove damages (financial losses, including pain and suffering) -- past, present, and future -- to Marvin from what happened. We proved well, I think, what I said I would in my opening statement to the jury.

The most important witness was Marvin himself, hobbling to the witness stand with his cane. He would have been my last witness, but we had to interrupt his testimony twice with other witnesses. You usually call the plaintiff to the witness stand near the end of your case because he or she is present and hears all the other witnesses testify first. That way Marvin could account for any discrepancies or nuances from the previous testimony. Ordinary non-party witnesses are usually excluded from the courtroom until they testify -- it's called a "rule on witnesses." That way they must testify based on their own recollections, not having heard what anyone else has testified. But a party -- plaintiff or defendant -- has a right to be present throughout the trial and has the advantage of having heard previous witnesses. That was true of Folkman and Caton as well -- they, too, were present for the whole trial.

Marvin was on the witness stand for my direct examination for one whole day beginning before lunch on Day 3. His testimony was interrupted after lunch to call his treating physician. Judges and lawyers always try to accommodate doctors' schedules -- they dislike the legal system enough as it is. In addition, Marvin’s friend Olivia Richardson had failed to show up pursuant to our subpoena. The judge honored our request to have her arrested and directed the marshal's warrant squad to pick her up at 7:00 a.m. on the morning of Day 4, and she began her brief testimony the morning of Day 5. That's what subpoenas are for. Lawyers can compel somebody to testify whether they want to or not, and there can be severe consequences for failure to appear.

Marvin's testimony resumed the morning of Day 5, and he spent about three days on the stand into the next week including my direct examination, cross-examination by two lawyers, my redirect, and yes, some re-cross. He did well, as we expected after much preparation time with him over the months before and during overnight recesses in the trial itself.

A feature of a civil trial, as opposed to criminal, is that the Fifth Amendment privilege not to testify against oneself is treated differently. In a criminal trial, if a defendant "takes the Fifth," it can't even be mentioned and used against him. In a civil trial it *can* be used against him. Police officers who won't say what happened can be fired -- there's no Fifth Amendment privilege to retain one's law enforcement job; the Amendment only applies in a criminal prosecution.

In a civil context such as Marvin's, the defendant officers Caton and Folkman had to testify to their versions of what happened -- to their superior officers, before the Police Trial Board, in any depositions taken of them and in other discovery before the civil trial, and in the trial itself -- or suffer the consequence of being fired. That doesn't mean they told the truth, but sadly that's not unusual for many witnesses.

After all our witnesses had completed their testimony, we read both Folkman's and Caton's entire depositions to the jury. I read out loud to the jury the questions from the deposition transcript, and Don read the answers. We obviously thought their testimony of "accidental" shooting, shooting to "signal" each other, and other statements were conspicuously untruthful and helpful to our case; indeed, we hoped they'd visibly squirm before the jury. I think they did. We also read to the jury portions of the Police Manual on when use of a firearm was permissible. And we recited the stipulation (agreement among counsel) of Marvin's 28½-year life expectancy.

At the end of the plaintiff's case in a civil trial (or the end of the government's case in a criminal trial) there are always motions made by the defendant or defendants to the judge arguing, among other (often technical) things, that the court should enter a "directed verdict" against the plaintiff. That means ruling that no reasonable juror could find in the plaintiff's favor based on the evidence. Our case was no different and these motions were argued by all counsel before lunch on Day 8, and denied, as expected, by Judge Revercomb after a brief recess.

After the luncheon recess, Julian Tepper made his opening statement and called Officer Caton as his first witness. My cross-examination began at the end of that Day 8, and Officer Folkman was called as Tepper's second witness after lunch the next day. I wish I had adequate notes, or a transcript to quote my cross-examination, but I don't. Assistant Corporation Counsel Murray presented no additional testimony. More motions and rulings, and discussion of jury instructions continued until Day 10, the last day, a Friday. My summation lasted about an hour, then Mr. Tepper argued, then Mr. Murray.

I argued in rebuttal about ten minutes. The plaintiff, who has the burden of proof by a preponderance of the evidence, always has the last word. I remember part of it well. Mr. Murray, the District's lawyer, had argued repeatedly Mr. Wolf said this, Mr. Wolf said that. I reminded the jury the case wasn't about me, it was about Marvin Vincent -- what he did and why, what he experienced, what the police did, and how Marvin suffered and would continue to suffer for the rest of his life.

Jury instructions take up a lot of time. Their content must be argued before summations (the attorneys have a right to know what the judge will instruct before they argue the case to the jury). Then the judge must deliver them orally to the jury; and finally, objections must be entertained afterward.

The jury retired to deliberate at 3:42. The judge told them he'd let them deliberate until 5:00 before sending them home if necessary. At 5:00 he started to call the jury in, but they said they wanted five more minutes (a weekend was coming up). This wait turned out to be much more than five minutes. For us lawyers it was even more agonizing than usual -- you're too tense, worn out, anticipatory, to do anything substantive when the jury is deliberating. You fiddle with your files, talk nervously, and pace about. At 6:23 the jury came in with the wonderful $130,000 plaintiff's verdict.

I had to wing it here and there during two weeks of trial, but at the end I thought I had answered for myself an eternal question within the legal profession: Is a good trial lawyer born or made? I allowed myself the thought my emergency performance had demonstrated the former. And I don't think any straws were added to Marvin's burden.

Many people -- even law students if they've ever thought about it -- assume you step up to a pay window somewhere and get paid the verdict sums you read about in the newspapers or in all your case studies. Marvin may have

thought the same. Not so. You often must *collect* a judgment, and they teach little about it in national law schools. It can be time consuming, arduous, expensive, technical, and sometimes impossible from the judgment-proof defendant who has no money.

Settlement can and must be considered at any point along the way, just as before a case even goes to trial. Marvin's case had no realistic possibility of settlement before trial. He wanted the vindication of a trial, and too much was at stake for the defendants to offer anything reasonable as a settlement.

We first dealt with technical issues of court costs, winning defense motions for a new trial, and getting the piece of paper called the Judgment right so that it properly included the correct date from which the interest ran. Then the settlement discussions with the District of Columbia began in earnest beginning in June 1976, three months after the verdict.

A losing governmental defendant (or an insurance company, as is often the case in civil litigation) has a big weapon after judgment -- the threat of appeal. It can swallow additional years, uncertainty, lawyers' fees, and costs to those already suffered before trial. The government can offer a settlement significantly lower than the judgment, knowing it's probably worth the plaintiff's consideration in lieu of these appeal factors. A winning plaintiff like Marvin (**straw**) is strongly forced to consider settlement for less than the verdict, and that's where we spent most of our time in the next five months.

Through it all there may have existed the heaviest **straw** of all, and I knew nothing about it. I first learned it 40 years later when I talked to Marvin over the telephone in 2016. I hadn't talked to him since an actual physical confrontation we had in 1979 I'll describe below.

While writing about this case, I tried to contact him. I knew he had moved to Sulphur, Louisiana in 1978. I looked online and found a listing that appeared to be his. On March 20, 2016 I called the number listed, but it had been disconnected. I wrote a letter to the address given. A month later I got a phone call from Marvin.

I asked, "What took you so long to call me?" He said he was busy. I asked, "Doing what?" He said, "Surviving." He has 160 acres there, does some farming, is looking to lease the property. He has never married, and has several cousins living with him. He still has the bullet fragments in him, and says he

got prostate cancer from Agent Orange in the military before his cases began.

He told me the **straw** I'd never heard before. Sometime after the verdict in 1976 a young black woman who had been on the jury visited him and apologized for not giving him more. She said another female juror, whom they had elected foreperson, was a white racist, and her husband owned several businesses in Washington. During deliberations, this woman had said Marvin "didn't deserve a dime," and that's why they only gave him $130,000. Again, *holy s**t!* Marvin thought he should have gotten a $2- or $2½-million verdict for our 1968 case.

It would have been an uphill legal battle to do anything about it. (First you must know about it, not learn 40 years later!) It's long been the law that you can't legally probe a jury's deliberations. This heavy bar was only last year opened a crack by the U.S. Supreme Court in a criminal case where a juror expressed racial bias during deliberations (*Peña-Rodriguez* v. *Colorado*). Marvin's jury was selected before the days of jury consultants. If true, what we thought was a fantastic verdict might have been much more.

How much did this weigh in Marvin's attitude and behavior during our collection efforts?

There are few technical collection problems with a governmental defendant such as the District of Columbia. It's not judgment proof; there's no need to levy on its property to get paid. It was the "deep pocket" in our case. We pretty much assumed we would not be able to collect the rather large judgment against the individual defendants Folkman and Caton.

Much of our discussion was intense, because after those motions for new trial are denied, appealing defendants (appellants) face very time sensitive deadlines. An appeal must be filed within 30 days, and some of the deadlines to perfect it are expensive. That was true both for the District of Columbia and for the individual defendants, who hoped to ride along with the District in any appeal.

There are some things in a winning plaintiff's favor for an appeal. Interest runs on the judgment from the day the jury renders it, so the judgment amount grows. Appeals cost the appellant money in appellate court fees and the cost of buying a transcript of the trial, in this case a long trial and therefore an expensive transcript exceeding $3,000. The appeal itself can be difficult as the appellant must convince at least two out of

three Court of Appeals judges that serious *legal* error was committed by the trial judge in the way the trial was conducted; you can't reargue the *facts* that the jury may have explicitly or implicitly found in favor of the plaintiff and/or against a losing defendant.

On the other hand, the District of Columbia government as a defendant (as in Marvin's case) need not pay any appellate court fees and is subject to a lower rate of judgment interest than a non-government defendant (in our case 4 percent, as opposed to 6 percent for Folkman and Caton). It has a division of lawyers in the office who handle nothing but appeals; time is not of the essence for them, as it may be for a long-ago-injured plaintiff.

Marvin had a standard contingent fee agreement with us. It specified that we were paid from any judgment we collected one-third of that amount, plus expenses. If we lost, Marvin owed us nothing -- our fee was contingent upon our winning and collecting what we won.

But if there was an appeal, our portion went up to 50 percent, plus expenses incurred on the appeal. An appeal could thus be costly (**straw**) to Marvin, and in time and effort by us, his lawyers, though that's why we're paid in the first place. And if we lost the appeal, once again, Marvin owed us nothing.

I used to say to potential clients about a contingent fee contract, *first*, I don't take a case on a contingent fee basis (as opposed to hourly billing) unless it's a sure winner. Reason: I'm a lawyer, not a gambler. *Second*, it enables you, the litigant, to go forward with your case rather than not pursuing it because of the expense. And *third*, the more I win for you, the more I win for me, and that is incentive I'd like working for me if I were a client.

An appeal, then, is a tough delay and financial hit for the client, and we had no control over its happening or not, even though we were confident of prevailing eventually.

Post-trial matters with the District of Columbia were further complicated by the two other cases Marvin had pending against D.C. (**Straw**:) The government wanted both dropped as a condition of any settlement of the 1968 police shooting case without an appeal.

There were discussions, discussions, discussions with the District of Columbia about settlement in lieu of appeal. I have 15 legal size, single spaced pages of log notes of various

deliberations, offers, counteroffers -- among Marvin, Don, the Corporation Counsel's Office, with the seven other clients in the 1970 raid on Hayes Street, and with additional lawyers Marvin consulted, apparently because he didn't trust me or the system. They start June 16, 1976 and end December 7, 1976.

The back and forth is interminable. I'll try giving at least a flavor of these six months by merely listing factors that had to be considered by both sides, all in 1976:

● Notices of appeal were filed by the defendants on June 7, just within the required 30 days after Judge Revercomb denied their motions for a new trial. That meant they had time limits to comply with -- designation of the record on appeal, and showing they had purchased the $3,000 transcript, chief among them.

● A new Corporation Counsel, John Risher, took office early in 1976. The Civil Division Chief, John Earnest, said to me, "He hasn't been there and lost as often as his predecessors"; hence his low, hard-nosed settlement offers contrary to the Division Chief's own recommendations.

● An initial offer by that new official was $85,000 for *all three cases* for *all* plaintiffs, a mere two-thirds of our verdict.

● Our feeling was the defendants wouldn't prevail on appeal. Even if they did, all the Court of Appeals could do was order a new trial, and we could win a still higher verdict upon retrial. I said I wouldn't recommend that settlement to my client, and he wouldn't take it if I did. He, Don, and I rejected the offer.

● Interest on the $129,000 judgment against the District of Columbia was $14.14 *per day*, and $21.37 per day against the individual officers.

● Our client, Marvin, was from time to time unreasonable. At one point he wanted $200,000 and said, "I've waited eight years; a few more won't hurt." He later wanted $125,000 with future medical care for life. (Had the camel's back broken? Or was it just getting close?) Another time he said to us, "Why didn't *you* appeal?" He wanted vindication -- understandable, but unrealistic.

● All the neighbors except Marvin agreed to accept, if offered, $5,000 for their total share of the damages from the 1970 police raid.

● The case was assigned to a new Assistant Corporation Counsel for the appeal; he knew little about the case. Trial counsel Ted Murray had been hospitalized for exhaustion.

● Should a settlement with the District encompass a settlement with the individual officers Folkman and Caton too? We concluded, "No way!"

● In the 1971 jail riot case D.C. won a dismissal for technical reasons on September 28. Now there were only two cases in the settlement mix.

● We were now racking up fees to our client (at $50 per hour; $250 per hour is low today) for the time appeal matters were taking, mainly opposing requests for more time the defendants were making to both the trial court and the appellate court. Marvin would be responsible because the case *had* been appealed, even if we didn't go all the way to 50 percent. But he wanted us to cut even our one-third contingent fee.

Finally, in October Marvin agreed to accept $114,000 and drop *his* claim in the remaining 1970 teargas case; the other plaintiffs could still proceed. It took a while, but the Corporation Counsel came around, releases were signed, dismissals were filed in court, and we received the check on November 18 payable to Marvin.

But then Marvin wouldn't sign the check for us to deposit in our escrow account. He was consulting with other lawyers, which turned out to be a good thing, because they understood the situation after talking to us, and someone other than us ended up telling him the exact same things we were. Eventually he signed the check on December 7, 1976 and we deposited it. He lost about $300 bank interest from his delay, but it did not seem to be another **straw** for him.

We waived $1,485 in fees we had clearly spent on appellate matters, deducted our one-third contingent fee ($38,000), plus expenses of $542.83 over four years in three cases, and paid Marvin $75,157.17 on December 10. We kept $300 in escrow for future expenses in defending the appeal of Folkman and Caton and in trying to collect the balance of the judgment against them.

$75,000 was a lot of money in 1976. You always wonder what the client will do with such a sum; they seldom seek your advice. We did advise Marvin to report his changed circumstances to the welfare authorities so he wouldn't be charged with welfare fraud.

Thus ends the District of Columbia's part in the saga of Marvin Vincent except for the 1970 civil case. We settled that for the seven remaining plaintiffs for $5,500 in May 1977.

We were through with the deep pocketed District of Columbia. Did Folkman and Caton have anything in their pockets? They still had appeals underway. But there was nothing to prevent our going after them (no stay on collection had been asked for or granted) for the rest of the judgment and accumulating interest, now totaling over $20,000 above the $114,000 the District had settled for.

There's a nagging question here. How does a lawyer feel about legally going after an individual defendant to pay a judgment, potentially causing severe financial distress, even ruination?

In 1974 I won a $13,000 jury verdict for a client punched out by his boss in an elevator. I collected some of it from the company both worked for, but I gave up on the rest from the individual defendant boss. My client fired me, got another attorney, and collected all the rest of the judgment. I've never forgotten it.

The long and the short of it is you, as a lawyer, should do your damndest to collect every penny. You owe it to your client. If you weren't planning to be tenacious about it, perhaps you shouldn't have filed suit in the first place. And there's an ethical component: you *must* do your utmost to represent your client. If you don't, you can be in trouble with the attorney disciplinary system.

Folkman and Caton were still D.C. government employees, and you can't garnish government wages except for child support. We began discussions with Julian Tepper, their lawyer. The Police Association had been paying the officers' legal bills; it was ticked off at D.C. for abandoning them with its settlement; they'd pursue their appeal and pay Julian for it if we didn't settle. Julian didn't particularly want to appeal, but he'd have to satisfy the Association, a regular client of his firm. He was under the gun: the expensive transcript had to be ordered by December 16, or the appeal would be forfeited. It later was.

We began -- as said above about the District of Columbia -- settlement and other discussions, discussions, discussions (23 more pages of notes). But we really couldn't engage in them meaningfully without knowing Folkman's and Caton's assets, if any.

The law provides some assistance here. It's known as "oral examination" of a judgment debtor. The judgment creditor (plaintiff Marvin Vincent with us as his attorneys) may subpoena the debtor to appear before a judge, be put under oath, and required to answer questions about his assets.

We subpoenaed Caton for an oral examination on January 27, 1977. As is customary, the judge put Caton under oath and sent us to another room in the courthouse to conduct the examination; if he refused to answer something, we could march him back before the judge and compel him to answer on the witness stand. We had to do just that when Caton admitted owning land in Hampshire County, West Virginia, but refused to say who the two other owners were or what he had paid for it.

It turns out it was wooded land on the side of a mountain with no improvements except an old barn, chicken coop, and outhouse. He said he bought it in 1966 for $6,000, it was fully paid for, and he owned it jointly with his 11- and 9-year-old sons. A lawyer friend I bumped into the next day had a country place in Hampshire County. She said it would be worth three times what he paid for it in 1966. She offered to go to the county courthouse and look it up for me. My partner, Don, did it himself, though, a week later. And our current law clerk visited there too and hired a lawyer on our behalf on March 28 in Romney, W.Va., the nearest big town to Caton's property.

The lawyer in West Virginia was Royce Saville. He would have to sue in the state court to get us a judgment in West Virginia based on giving "full faith and credit" (U.S. Constitution, Article IV) on our judgment in D.C. Then he'd file a creditor's suit to levy on the real property and sell it on the courthouse steps. We retained him for $50 an hour, promised to send him a "triple seal" of our judgment to sue on, and agreed to provide him any legal briefing he might need. (A triple seal is a certified true copy of the Superior Court judgment with a raised court seal on it, then a certification from the Clerk of Court that it was authentic (another seal), and a certification from the Chief Judge that the Clerk of Court really was the Clerk of Court (the third seal)).

Meanwhile we had arranged to see Folkman informally for oral examination in our office. Folkman appeared without counsel, as had Caton for his court oral examination. Julian told us he was no longer in the case as the Police Association constitution said they could pay attorneys to represent their police members but could not contribute to a settlement. Folkman had no assets we could touch.

Things continued regarding Caton in West Virginia, however, though they were slow. The judge was not too bright, said Saville, riding circuit in other counties so not always there, and inclined to let things schlep along. He said he'd gotten that judge reversed several times in the West Virginia Supreme Court. The judge would be impressed with a U.S. Code citation enforcing full faith and credit, but "nobody around here has a copy." Ah, the pre-internet travails of a country law practice. Judgment was granted, though, in June 1978. Now a second suit had to be filed to levy on the land.

In February 1978 I got a call from an attorney Folkman and Caton had consulted. He said he would file suit against Julian Tepper, their former attorney, and D.C. -- Tepper for legal malpractice for letting their appeal time run out and for not filing a claim for indemnity against D.C. He would sue D.C. for settling and leaving their employees, who he said had been acting within the scope of their employment, out on a limb. I told him I thought the latter was nonsense, and on the former pointed out he'd have to prove that the appeal would have succeeded. He also asked if we could hold off in West Virginia for a while. I said, no, Marvin wouldn't let us. I never heard from him again.

We were contacted by *another* attorney for Folkman and Caton, this time for more settlement discussions. But we were in the driver's seat, and the result was -- quite a surprise -- that Caton walked into our office on September 28, 1978 with a bank check for $12,000. I think he got some of it from Folkman.

We had to convince Marvin, who had moved to Louisiana in March, that a judgment debtor had a right to pay off even part of any judgment (Marvin wanted all or nothing), if only to reduce the accruing judgment interest. On October 26 we finally received the check back in the mail from Marvin, properly endorsed (though it needed my signature too), and we deposited it. We took our third and paid Marvin $7,739.26 on October 31 after deducting the expenses, including what we had had to pay Attorney Saville.

A *third* attorney got in the picture for Folkman and Caton in November 1978. He wanted to avoid the sale of Caton's land set for December 16; he and they were working diligently to come up with the final total owed. They did. On December 7 they presented Mr. Saville with two bank checks, payable to Royce Saville and Marvin Vincent, one for $6,000 and another for $4,723.85 -- the entire balance, with interest, owed by Caton. Mr. Saville mailed them to us, with his signed endorsements, his final bill, and a release of Caton for Marvin to sign.

Case over? Not so fast. We had a resentful Marvin still to deal with. With the difficulty we had been having with him, we were not about to mail him the checks -- he could endorse them, disappear, and we'd never be able to pay Saville or see our third. So we mailed him *copies* of the checks, a thorough explanation, and the release to be signed and notarized before the checks could be negotiated.

Sure enough, in a phone call on December 19, 1978 Marvin wanted just what we expected. It sounded like he was in a phone booth. He said he hadn't got any mailing from us -- Christmas time? I think Marvin was just somewhere other than Louisiana and hadn't picked up any mail. We should mail him the checks and he would send us what we and Saville were owed. I said, "No dice," since we had promised Mr. Saville we would not negotiate the checks until the release was signed. "Trust is a two-way street," Marvin said. I told him to call back tomorrow. We heard nothing, until...

January 9, 1979 was another thoroughly memorable day for me. It shows how far downward our relationship with Marvin had progressed. He was in our office at 3:00 when I returned from a late lunch. He said he never got our mailing. I called Don into my office. We made him copies of everything. He asked, "Why haven't you mailed the checks to me and then let me pay you?" I explained again our ethical obligation to be sure the release was signed and our cooperating attorney in West Virginia paid before the checks were negotiated. I handed him the original checks to show they were bank checks and good as gold. (It was my sad mistake giving him actual physical custody!)

He indicated his unhappiness at having to sign the release first, but I think the real reason he was unhappy was having to pay Saville, and Wolf & Kolner. He started to fold up the papers. I said warily, "Don't do that. Do you want to go next door to the notary with me?" He said he would and we started out our office door into the hallway, Marvin still carrying all the

papers and the two checks. In the hall he lagged behind, stopped, and said, in a slow, measured, deep voice, "I tell you what I think I'm going to do. I'm going to cash these checks."

Have you ever wondered what you would do in a real emergency? At least one where almost $4,100 of hard-earned fee and unreimbursed expenses you needed to help support your family seemed about to disappear? How quickly would you think? Would you do the right thing? What were you willing to risk? For myself, I found out that day.

In one big swoop, I snatched all the papers from Marvin's hand, including the checks, and ran for our office door. He grabbed me from behind and there was some scuffling; I managed to avoid his cane. I yelled for Don. Marvin let go and I ran into our office, into my office inside, slammed the checks into the bottom drawer of a file cabinet, and locked the cabinet. The papers had been a little ruffled, but nothing torn.

Marvin followed. I sat down at my desk and said, "You're making me mad." He replied, "You're making *me* mad!" He picked up the remaining papers, said, "I'm going to do what I have to do," and left. It had been a vigorous half hour.

I called Royce Saville the next day and explained what had happened. He understood and said, "I guess that happens in a big city practice."

On January 11 Marvin telephoned to say he'd be by to sign those checks, "but that's all I'm signing" -- he wasn't signing the release until he had the cash in his hand. I said he wasn't signing the checks then and hung up.

On February 26, 1979, having heard nothing for a month and a half, Don and I began drafting a civil complaint to sue Marvin.

His daughter, Stephanie Greene (now a successful real estate agent in the Washington area), came to our office on February 28. "Marvin has been calling me and calling me," she said. "He wants me to talk to you to see if some different arrangement about the checks can be made." I laboriously explained everything, showed her copies of previous statements proving how Marvin had received almost $83,000 from us, showed her our retainer agreement, said we no longer believed Marvin, and thought he was trying to avoid paying our one-third. I asked her, "What do you think his trouble is?" She said he kept saying (**straw**) he was "tired of Wolf & Kolner dealing with all the

finances and his getting in on the tail end." I said if Marvin thought we were cheating him, he ought to tell us how or why, and he had no basis for it based on our past payments to him. I even showed her how we had waived our $1,485 fees for appeal time.

In March she told me she had written Marvin a rather bitter letter after seeing me. She got a letter back from him saying he was sorry he involved her in his affairs; he'll take care of it in his own way.

My notes end. I had been asked to apply as a Superior Court Judge in late 1976. I went on the bench on May 11, 1979 after the U.S. Senate required me to dissolve my law partnership. I don't know how Don handled it from there. I see only a July 31, 1979 letter in my old files by Don to the Circuit Court in Hampshire County, W.Va. saying the judgment there had been "paid and satisfied in full."

Exactly three years later I received in chambers a summons and complaint titled "Marvin Vincent v. John Karr, Peter Wolf, and Donald Kolner." I'm sure the reader is interested in one more lawsuit; I promise it's the last. It had been filed in Superior Court (my own court). Don was listed, "address presently unknown."

It was filed by Attorney Morton Matthew (his name has been changed), one of the most colorfully inept attorneys ever to practice law in the District of Columbia, but with a reputation, among some, as a black attorney champion of the oppressed. He passed on to his reward several years ago. (Sadly, John Karr, a marvelous lawyer, died in 2016 while I was writing this.) Mr. Matthew was an attorney who not only filed barely literate pleadings, but when asked his authority for this or that legal proposition would authoritatively state, "The United States Constitution, Your Honor." Yet we judges learned there was sometimes a kernel of substance buried deep in his scattered writing or rhetoric -- his very vagueness would preserve a point for appeal.

Since it was a conflict of interest for one of my own colleagues to handle the case, the Chief Judge of Superior Court had to arrange for it to be assigned to a judge of the District of Columbia Court of Appeals. A former judge of Superior Court, James Belson, got the case.

The complaint alleged we had obtained $6,645.48 in monies that belonged to Marvin and refused to deliver it to him unless

he signed a release of liability form that would unethically excuse Don and me of any claims past, present or future that Marvin might assert against us. It further claimed that I, not Marvin, had endorsed and deposited the two checks. Finally, it claimed I had settled and compromised the $130,000 verdict and two other suits without Marvin's permission. This was, allegedly, legal malpractice done with malice. Mr. Matthew sought $1 million compensatory damages and $10 million punitive damages.

I realized that my former partner, Don, had probably signed Marvin's name and deposited the checks in his new (after our partnership had dissolved) escrow account. He tendered Marvin the $6,645.48 he was owed, but Marvin still refused to sign the West Virginia lawyer's (Mr. Saville's) required release. In September 1980, John Karr, representing Don in winding up his law practice (Don was hospitalized in Massachusetts) had tendered the money, but added to the release "all claims you assert, past, present or future against the law firm of Wolf & Kolner, or against Peter H. Wolf or Donald Kolner."

John notified the court that he represented us and moved to deposit the $6,645 with the court (that amount was never contested as owed to Marvin Vincent); Judge Belson granted it. The judge then entertained cross-motions for summary judgment.

Summary judgment can be granted when there is no dispute of material facts and one side is entitled to judgment on those facts as a matter of law -- there's no point in a fact-finding trial because there is nothing factual in dispute. Marvin and his attorney Matthew presented no sworn affidavits asserting their version of the facts; we asserted our version, and our facts were thus conceded to be true. Judge Belson granted our motion on December 2, 1982 in a careful, thorough, eight-page opinion. That was his nature, but I know he, too, was well acquainted with the diligence one needed to exercise when Mr. Matthew was counsel. Matthew filed a notice of appeal, but it went nowhere. I guess Marvin finally got his check, four years late (**straw**), unless it was used up by any fees he owed Morton Matthew.

I've here recounted eight separate court cases where Marvin was a party, including the 1968 main police shooting of him and its aftermath. They were in three court systems and two states (counting D.C. as a state), three were criminal. Only the big case and two of the criminal cases went to trial, where witnesses actually testified. That's not unusual; courts do many things short of trial. This story is a

cross-section of the complexity of a trial lawyer's life, and the litigants he or she represents.

Some readers may have a lurking question about what generated this whole tale: Why do blacks so frequently flee the police, as Marvin did on his motorcycle? A recent book answers this better than Marvin ever did over ten years with me. Benjamin Watson, a black, long-time pro football tight end who has played with the New England Patriots, Cleveland Browns, and New Orleans Saints, writes in *Under Our Skin, Getting Real About Race* (2015):

> White people have no idea of the fear that black people feel toward the police. I cannot say that strongly enough, loudly enough, or forcefully enough. I believe it is a huge point of division between black people and white people. Black people have little expectation of being treated fairly by police in any situation. We have a high expectation of being demeaned, abused, and possibly treated violently in any encounter with law enforcement. We have a history that supports this, news headlines that shout this, and personal experiences that confirm this.

It’s a small step to understand that this fearful mistrust can readily carry over to anybody and everybody involved in the justice system, even one’s own lawyers. It may seem misplaced to a white -- and if I may say so, conscientious -- justice participant like me. Yet passive delay by Marvin, and antipathy toward Don and me as his lawyers, may have been the only instruments at his disposal to assert an elusive, even subconscious, power to fight back.

Marvin is still a bitter man. He's now in his eighties; we were both born in 1935. That bitterness certainly showed itself toward me as his lawyer. Our 2016 phone conversation seemed to evidence some dissipation of it. We were rather cordial. Later conversations we’ve had about this chronicle, however, demonstrate that he basically does not trust me, maybe he never did. What I’ve written here is a matter of public record, and any attorney-client privilege was long ago waived by Marvin’s 1982 lawsuit against Karr, Wolf, and Kolner.

Our justice system is imperfect. We lawyers are often pushing the boundaries, hopefully to make it better. But don't give us credit for more than we deserve -- we're usually just trying to do our job for our client and earn a living. Eleven other jurors imperfectly went along with the angry racist forewoman (all hurrying to be done before the weekend). Marvin, and eventually I, would never even have known if that young woman juror hadn't sought Marvin out and told him.

Our adversarial legal system depends on people -- litigants, lawyers, witnesses, experts, insurance adjusters, judges, politicians who write laws -- and on procedures and decided law, both statutory and decisional. People are very imperfect. They can forget, be lazy, mistaken, incompetent, slow, expensive, biased, and they often flat-out lie. The legal process and laws of evidence, heavily based upon the foundational right of cross-examination to expose the truth, are designed to cut through these constants, but it can be time consuming, difficult, expensive, and sometimes impossible for all but the crystal-clear cases. It often seems like a crap shoot.

And the TIME it all takes. Some delays were due to Marvin, some to us, his busy lawyers, some to equally busy lawyers on the other side, and some to the court system. But delay is frequent, and it seems interminable. The more complicated the case, the more likely there will be delay.

Marvin delayed payment of substantial sums to us and to him -- three times. It cost him real money in lost interest in his own funds. Bank account interest was significant in those days. This journal repeatedly shows the difficulties lawyers sometimes have dealing with their own clients. It is one of the most frustrating experiences a lawyer has -- when a client won't do what is clearly in his or her own best interest or doesn’t communicate. Every lawyer has experienced it, but that makes it no less frustrating.

Don Kolner and I worked hard to get the most we could for Marvin; we thought we had done well, and we believe we were fair in what we charged him. But what must it have looked like from his point of view? Money cannot make one whole; it is merely the only common denominator to do the next best thing, and Marvin believes he did not get enough, and he's probably right. That explains, perhaps, much of his conduct toward us after the verdict. There will always be bullet fragments in Marvin. Racism was the root of the events giving rise to his lawsuit in the first place, and racism played a part in the verdict. Assuming we can never eliminate it, we *can* do more, we *must* do more, at least to marginalize it.

Worse still, Marvin had essentially been shot and victimized, not for being a danger to anyone, but -- this is my theory -- for simply not following policemen's baseless orders 50 years ago (in lieu of a traffic ticket!). That (again, in my view) is the same trivial reason all those black lives have been

snuffed out by police, as many of us have belatedly become aware in this video and media age.

Marvin's life was not snuffed out by death, but he became forever crippled. For every gun death in this country there are two or three times as many who don't die -- they're injured, many profoundly. Marvin was one.

On June 6, 2016, I got another phone call from Marvin. He asked me if the date meant anything to me. It didn't. After a painful silence, he reminded me it was the day he had been shot -- 48 years ago. I told him there were a lot of cases over the dam for me since then, both as a lawyer and as a judge, so please forgive me. I hope he did. I'm glad he thought of me.

I've here recounted cases and a client unforgettable for me as a trial lawyer. I've described Marvin as prickly and troublesome from time to time, and probably no reader would accuse me of being modest. But how indelible it all was, and still is, for my client, Marvin Vincent, a survivor. Little wonder. Thanks to him for stirring me to tell his saga.