

MEMORANDUM

April 9, 1976

TO: Roy Wilkins, Executive Director
FROM: Nathaniel R. Jones, General Counsel
RE: Moody vs. NAACP/ Second Circuit Court, Hinds County, Raymond, Mississippi

This will summarize all the facts in the case as of this date. From the development of the facts, it is plain that the court's overall thrust from the beginning has been to obstruct our nationwide effort by striking at our financial capability.

On December 14, 1974, James Carl Stokes was arrested, allegedly for speeding, by State Highway Patrolman Robert Moody as he drove his automobile near Utica, Mississippi. Stokes was threatened with a 357 Magnum pistol, pistol-whipped with the weapon, and kicked after he was felled to the ground. After being placed in the patrol car, Stokes was struck again.

Moody charged Stokes with reckless driving and resisting arrest. Stokes filed charges of brutality against Moody. Unfortunately, both sets of charges were filed in the same court, that of Justice of the Peace F. O. Patterson, in Jackson, Mississippi.

The Justice of the Peace went to the patrolman's house and informed him that he was sorry that this had happened and that he would "take care of it."

The Justice of the Peace found the victim guilty on two of the charges brought by the highway patrolman. Because of Justice Patterson's obvious prejudice in favor of Patrolman Moody, the defendant on the advice of NAACP counsel Fred Banks dropped the charge of police brutality against Moody.

In the period between the arrest and the trial, public statements attributing police brutality to Patrolman Moody and calling for his suspension had been made by Dr. Emmett Burns, NAACP State Field Director, and Reverend L.L. Brown, President of the Utica County Branch. Thirty days after Stokes was convicted on January 8, 1975, Dr. Burns, Rev. Brown, Stokes himself, and the NAACP were sued by Patrolman Moody for libel and slander.

The matter ultimately proceeded to trial in February of this year in Raymond, Mississippi before a jury and Hinds County Circuit Judge Leon Hendricks. The trial lasted a week. After deliberating less than one hour, the jury on February 21, 1976, acquitted Dr. Burns, Rev. Brown, and Mr. Stokes -- but returned a judgment solely against the NAACP in the amount of \$240,000.

On April 5, we filed a notice of appeal. To do so, we have had to post a bond of \$262,500.

In our opinion there are numerous grounds for appeal. I will list them below:

1. The whole lawsuit is a violation of our First Amendment rights to freedom of

speech. The law of both the State of Mississippi and the United States guarantees freedom of speech and press, and prohibits "public officials," including highway patrolmen, from recovering damages for a defamatory falsehood relating to their official conduct unless they can prove that the statement was made with actual malice; that is, with knowledge that it was false or with reckless disregard of whether it was false or not. The evidence at the trial indicated that what our people said about Patrolman Moody was true, and that even if it had not been true, they believed it to be true. Certainly, there was no showing of malice.

Neither was any evidence presented of monetary loss to Patrolman Moody. In fact, the Judge wouldn't allow our questions concerning his income. This judgment is not, therefore, based on any evidence of loss.

2. The obviously biased Judge refused to permit any evidence about the character of Moody, his record as a highway patrolman, and his propensity for committing violent acts against blacks. Since Moody sued us for defamation of his character, we felt that certainly his character was an issue in this case and should be subject to question. However, the Court would not allow any kind of evidence of this nature to be provided for the jury.

There were numerous witnesses prepared to testify as to Moody's propensity for violence and, similarly, documents designed to prove the same were offered to and rejected by the Court. Moreover, there was a tone given to the proceedings by the Judge himself that practically guaranteed the outcome.

3. At the end of the trial the jury found against the NAACP only, and did not award any damages against the other three individual defendants-- our Field Director, Dr. Burns; our Branch President in Utica, Rev. Brown; or the victim of the beating, Mr. Stokes. The jury must have found that Burns and Brown were our agents. We question whether you can find a liability on the part of the principal without finding also against the agent. Certainly this is an indication that the whole lawsuit is for the purpose of harassing the NAACP.

4. The very size of the \$262,500 bond, which is larger than the judgment itself, is actually designed to prevent us from filing an appeal from the judgment. This is another of the prior restraints on our First Amendment rights which are really the effect of this entire lawsuit.

5. There are a number of errors in the record made by the Judge in his various rulings on what was proper evidence and what was not; but these are technical issues that can only be discussed when the transcript has been completed and re-read.

As soon as the trial is transcribed, we will proceed to prepare and file our brief. An effort is being made to obtain amici briefs in support of our position on appeal.