

Q&A With Michael Cavanaugh
Longtime Personal and Corporate Attorney for Jerry O’Keefe
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Tell me a few words about your early days: where you were born, what your parents did, which college you attended, etc.

I was born in Biloxi in 1949. I am a descendant of Irish immigrants. My father and my uncle went to school in Biloxi with Jerry O’Keefe and his brother John, and they were childhood friends. I went to grammar and high school in Biloxi with several of Jerry’s children. I went to college at the University of Southern Mississippi and law school at Mississippi College where I graduated in 1976 and took and passed the bar exam.



What motivated you to go into law?

I worked as a bellhop and also in seafood factories shoveling shrimp out of the hold of shrimp boats, and I decided that is not what I wanted to do. I chose to be a lawyer because I thought I could be successful at it.

Where are you living and what are you doing currently?

I am living in Biloxi, semi-retired working on two or three items, (mostly gaming) at a time.

How did you first come to work with Jerry O’Keefe? What was your impression of him?

My father and my uncle William were good friends with Jerry. Jerry and my father played high school football together. In an audio recording later in life, Jerry said he considered my uncle William as his best friend growing up. Jerry was an extremely loyal person and, being friends with my family, it was natural that he would help me when I started out. Shortly out of law school he hired me to start doing work for him, as well as the city of Biloxi, since he was Mayor at the time. He also appointed me as a city judge. My impression was that he could not be intimidated. He was willing to do the right thing regardless of the consequences. He always wanted to know what the down side risk was to every decision so he could evaluate the risks to any decision.

Were there early indications to you that Jerry was willing to confront people?

If the confrontation was warranted yes. He confronted the Ku Klux Klan over marching in Biloxi. If he observed someone doing something he had a particular disdain for, such as racism, he would confront them. That is why the scene in the movie where the Allred character is referring to the black waiter as “son” is so offensive to me. There is no way Jerry O’Keefe would have simply sat there and done nothing.

What was your first involvement in the dispute?

When the original suit was filed by Paul Minor. I may have been on that pleading as well but I don’t remember.

One of the dramatic issues in the movie is about how serious the case could have been for Jerry’s personal finances. What is your view on that?

The truth is that the original breach of contract case over Wright & Ferguson was never in jeopardy of being lost. It was as rock solid as could be.

In the early days of the dispute, there was a huge amount of jockeying with the Reimanns and the Loewen Group. Tell me about that.

Jerry was willing to do the right thing regardless of the consequences. He also wanted to understand the risks.

When Loewen bought funeral homes they — and the local operators — tried to keep it secret and claim “we brought on a partner,” or “it’s just succession planning,” when the simple truth was that the local operator sold. So Bradford-O’Keefe got into an advertising war over being locally owned in contrast to the Riemanns’ firm, which had been purchased by Loewen.

Loewen knew they would lose the Wright & Ferguson case [about breaching a contract for the sale of O’Keefe’s burial insurance policies]. So they came up with a plan to settle through a business arrangement that would have Loewen acquire some funeral homes—their core business—and Jerry would acquire an insurance company. It was at this point that Allred got involved since he was an insurance and contract expert. When Jerry met with John Turner, the Loewen executive working on the issue, he told Turner that if they let the Riemanns get involved, the Riemanns would kill the deal. Turner promised that wouldn’t happen.

When the Riemanns learned about the deal, as predicted, they went ballistic and flew up to Vancouver to confront and threaten Ray Loewen. It was very emotional. At that point Loewen decided it would be better to breach his word with Jerry than risk the wrath of the Riemanns.

This was coupled with the fact that this was the same time Jerry’s insurance company, Gulf National Life, was having issues with the Mississippi Insurance Department. It is our understanding that Ray Loewen figured he could drag the dispute out, we would lose to the insurance department, and his dilemma would be solved. In reality, this is the type of activity that enraged the jury.

You went to Florida to meet Willie Gary in person. What was your first impression of him?

Yes, Hal Dockins and I went down and met with him and his partner Bob Parenti. The first evening was more social when we went to his house, and we talked a little about the case, but I didn't feel he was sold on it. He told us to come back the next morning. When we did, he had Bob Parenti there also, and Bob was very enthusiastic. I remember him telling Willie "you can do this," and as we kicked around the theme of the case, Willie broke into a closing argument. I was impressed at how quickly he broke down a complicated business case into a "lying, cheating, stealing" case that jurors could get excited about.

What are your most vivid memories of the negotiations before the case? How many offers to settle did Jerry make?

I don't remember how many. I remember the last one. Hal and I went to meet with the Loewen Group in Cincinnati. They had one of their Jackson lawyers and some senior executives there. My instructions were to get enough so that the cash to GNL would be enough to cover the regulatory issue. We tried all we could, but no luck. What we didn't know was that their plan

was to wait us out, expecting that the insurance department would take over GNL and their worries would be over. The final comment from their side was that if they took that offer back to Vancouver they would be fired. I think Jerry's offer was \$4M.

I don't remember how many settlement offers Jerry made. I remember the last one before the trial. I think it was \$4 million.

Going into trial, did you think your side would win?

Absolutely. The Wright & Ferguson breach was clear as a bell.

The anti-trust element wound up being a significant issue in the mind of the jury. Did that surprise you as the case unfolded?

Not really. When the settlement broke down, Mike Allred came up with all the various theories of recovery. That is when Paul Minor bailed out telling me "I just don't get it". Mike knew we could piece together several causes of action in an amended complaint and that each count would be a pool of damages.

It was a long case, what would you say were the key turning points?

The key turning points really weren't presented in the movie, leaving audiences wondering exactly why Jerry won. For example, John Turner, the Loewen executive who negotiated the settlement agreement, wrote our team a letter describing the role the Riemanns had played in persuading Ray Loewen to renege on the settlement agreement he'd fashioned with Jerry. The Turner letter gave us a road map to what actually happened between Loewen and Riemann.

Ray Loewen did not show up at the trial until several weeks in. The jurors told us after the trial that they felt insulted that Loewen didn't think enough of them and the process to even show up. Additionally, the Loewen Group's primary financial expert was disqualified for violating the [sequestration] rule, which bars witnesses from talking with one another about an ongoing case, and the jurors were able to watch him leave the courthouse.

I think the Loewen failure to use the best two lawyers they had, Blackmon and Johnson, was a

key mistake The jurors felt they were used as “tokens”, and it angered them.

The testimony of Lorraine McGrath was another key factor. She was the employee who testified about how companies acquired by Loewen ramped up pricing in areas where there was no competition. Bottom line, though, I never felt it “turned”. I always felt we would win, the only issue was how much.

A lot has been written about the how the Loewen team—and Ray Loewen in particular—miscalculated before and during the trial. How do you think they miscalculated?

Their case was centered on a complex business evaluation, internal rate of return, and actuarial valuations. We tried a “lying, cheating and stealing” case. By the time they figured out what we were doing, it was too late. My take is that they went into it playing by the Marquess of Queensbury rules, and we went into a knife fight.

Do you remember where you were and your reaction when news of the \$500 million verdict was announced?

I was sitting at the end of the counsel table next to Hal Dockins and directly across from Ray Loewen. I had a sheet of paper with all the counts listed and a place to put the amounts. After the first two, I saw Ray go white and his eyes glazed over, I had a hard time adding up all the amounts. Actually, the first verdict was \$260M.

Loewen went into the case playing by the Marquess of Queensbury rules. We went into it ready for a knife fight.

The film portrays how a strong friendship developed between your Jerry and Willie Gary. Was that in keeping with what you witnessed?

Actually, no. Jerry was extremely thankful and appreciative of Willie and what he accomplished. At the same time, he resented being used by Willie after the trial for self-promotion. Jerry was particularly upset when Willie would falsely claim Jerry was a descendant of slave owners and how ironic that was because Willie was the descendant of slaves. It wasn’t true, and Jerry called him out on that.

The film has a number of messages and themes. What is the one lesson or message you believe is the most important? What would you like viewers to take away?

The movie does not really capture what happened in the case. I think the movie does disservice to the true case. I would like the audience to take away that what’s depicted in the movie isn’t true.

There were a number of misleading statements and scenes in the film. Which you do you think are most problematic for you, Jerry, or the plaintiffs generally.

There are inaccuracies at every point in the movie, almost too many to catalog. Neither Jerry nor the funeral home were ever broke. Jerry did not take money out of the company. Jerry and Hal did not go watch Willie try a case in Florida. Willie did not get a \$75 million judgment for a derelict in Florida. The lawyers on our team in the Loewen case were not at odds with each other,

and Willie's partners did not walk out. The lead Loewen lawyer was not a woman. Allred did not leave the case, nor did he testify. Jerry's testimony was not problematic. There was no settlement discussion during the trial. Jerry did not turn down a \$75 million offer. Jerry did not cry on the courthouse steps.

If you could recast one or two things about the overall theme of the movie, what would they be?

I would make it more accurate, stay close to the accurate New Yorker article, like it was supposed to be.

Did the trial and outcome change your view of Jerry -- his willingness to take a bold stance, to fight?

No, I had been representing him almost 20 years at that point, so I had no doubt he would fight.

Is there anything we have not covered—funny or poignant things you saw or heard?

Hundreds actually, far too many to list.

Final thoughts?

I regret the movie strayed from reality. I assure everyone the true story is much, much more interesting.