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## Bus Ride to Justice: A Conversation with Fred Gray

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# BUS RIDE TO JUSTICE: A CONVERSATION WITH FRED GRAY<sup>†</sup>

INTRODUCTION BY JONATHAN L. ENTIN<sup>‡</sup>

In the fall of 1951, Fred Gray, an African American from Montgomery, Alabama, enrolled in what was then called the Western Reserve University School of Law. His goal was to become a lawyer and return home to destroy everything segregated he could find.<sup>1</sup>

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<sup>†</sup> Fred D. Gray, Esq., Senior Partner at Gray, Langford, Sapp, McGowan, Gray, Gray, & Nathanson; National Bar Association, President; Alabama State Bar Association, President (2002–2003); Macon County Bar Association, President; National Bar Association of County Civil Attorneys, President (1982–1983); Member of the Board of Trustees of Case Western Reserve University, Faulkner University, and the Alabama Department of Archives and History; Recipient of the American Bar Association's "Spirit of Excellence Award," Harvard University Law School's "Charles Hamilton Houston Medallion," American Bar Association's "Thurgood Marshall Award," the Federal Bar Association's "Sarah T. Hughes Civil Rights Award," the National Bar Association's "C. Frances Stradford Award," and the Minority Caucus of the Association of Trial Lawyers of America's "Soaring Eagles Award;" Author of *FRED D. GRAY, THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY AND BEYOND* (1998) and *FRED D. GRAY, BUS RIDE TO JUSTICE: CHANGING THE SYSTEM BY THE SYSTEM* (1995).

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- Existing legal doctrine would have made it easy for him to sue his way into the all-white University of Alabama law school. The Supreme Court had made clear that states with all-white law schools had to provide substantially equal law schools for African Americans, and the Court had taken a rigorous approach to the definition of substantial equality of racially separate law schools. *See Sweatt v. Painter*, 339 U.S. 629 (1950) (requiring the admission of an African-American applicant to the previously all-white University of Texas Law School because the newly created law school at what was then known as Texas State University for Negroes was not substantially equal to the University of Texas Law School); *Sipuel v. Bd. of Regents*, 332 U.S. 631 (1948) (requiring Oklahoma authorities to provide an African-American applicant an opportunity for a legal education that was substantially equal to that afforded to whites).

Some of the financial arrangements under which Mr. Gray attended law school also were vulnerable to legal challenge. The State of Alabama offered to reimburse him for some of his expenses at the out-of-state school. The Supreme Court had invalidated a similar arrangement in Missouri more than a dozen years earlier. *See Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (holding that the state's provision of financial assistance for African-American law students attending out-of-

Not long after he graduated from this law school and opened a law office back home, Rosa Parks was arrested for refusing to give up her seat on a Montgomery bus to a white man. Fred Gray, who had not yet reached his twenty-fifth birthday, was Rosa Parks's lawyer. Mrs. Parks's arrest led to the 381-day Montgomery bus boycott, which was coordinated by the Montgomery Improvement Association (MIA). Fred Gray was the lawyer for that organization. The MIA's most prominent leader was a previously unknown young minister named Martin Luther King Jr. Fred Gray was Dr. King's lawyer. Mr. Gray filed the lawsuit in which the Supreme Court vindicated the boycott by striking down Montgomery's bus-segregation ordinance.

The bus case, *Gayle v. Browder*,<sup>2</sup> was one of four landmark Supreme Court cases in which he played a prominent role. In addition, Mr. Gray was part of the legal team in *NAACP v. Alabama ex rel. Patterson*,<sup>3</sup> an important freedom-of-association case that protected organizational membership lists from disclosure to hostile government officials; he argued *Gomillion v. Lightfoot*,<sup>4</sup> the Tuskegee gerrymandering case that helped to lay the groundwork for the reapportionment revolution that began with *Baker v. Carr*;<sup>5</sup> and he represented the black ministers who were sued in *New York Times Co. v. Sullivan*,<sup>6</sup> the landmark case that applied the First Amendment to the law of defamation in order to protect robust political debate.

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state schools did not satisfy the state's obligation to provide substantially equal educational opportunities within its own borders).

Mr. Gray was convinced that, had he pursued the litigation option at that time, segregationists would have found some pretext to prevent him from completing law school at the University of Alabama. His suspicions were vindicated by the experience of the first African-American student at the university. Autherine Lucy was admitted pursuant to a court order but subsequently was expelled after segregationists rioted against her presence on campus. *See United States v. Alabama*, 628 F. Supp. 1137, 1141–42 (N.D. Ala. 1985), *rev'd on other grounds*, 828 F.2d 1532 (11th Cir. 1987); E. CULPEPPER CLARK, *THE SCHOOLHOUSE DOOR: SEGREGATION'S LAST STAND AT THE UNIVERSITY OF ALABAMA* 53–104 (1993).

Fittingly, Fred Gray was one of the lawyers for Vivian Malone and James Hood, who did desegregate the University of Alabama in 1963. *See id.* at 177.

2. 352 U.S. 903 (1956) (per curiam), *aff'g* 142 F. Supp. 707 (M.D. Ala. 1956) (three-judge court).
3. 357 U.S. 449 (1958).
4. 364 U.S. 339 (1960).
5. 369 U.S. 186 (1962); *see generally* Symposium, *Baker v. Carr After 50 Years: Appraising the Reapportionment Revolution*, 62 CASE W. RES. L. REV. 941 (2012) (presenting various legal and social science articles discussing the implications of this landmark decision).
6. 376 U.S. 254 (1964).

These cases occurred during Fred Gray's first decade as a lawyer, but they are only highlights of his extraordinary six-decade career in the law. He has been involved in almost every major civil rights case in Alabama since he became a lawyer, representing freedom riders,<sup>7</sup> sit-in demonstrators,<sup>8</sup> and students seeking to desegregate public schools, colleges, and universities throughout the state.<sup>9</sup> He also filed the federal lawsuit that led to protection for the Selma-Montgomery march,<sup>10</sup> which helped to secure passage of the Voting Rights Act of 1965,<sup>11</sup> and later litigated important cases under that statute. Moreover, Fred Gray was one of the first two African Americans elected to the Alabama legislature after Reconstruction. Last but by no means least, he represented the victims of the infamous Tuskegee syphilis experiment, obtaining a financial settlement as well as a formal apology from the President of the United States.<sup>12</sup>

This is the briefest possible summary of the remarkable career of one of the great members of the American legal profession and an unsung hero of the civil rights movement. Two decades ago, Fred Gray published a memoir, *Bus Ride to Justice*.<sup>13</sup> I reviewed the memoir in the *Journal of Legal Education*.<sup>14</sup> Last year, he brought out an updated edition that added some reflections on his earlier activities and incorporated more recent developments, including his election as the first black president of the Alabama State Bar Association, his

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7. *E.g.*, *Abernathy v. State*, 155 So. 2d 586 (Ala. Ct. App. 1962), *cert. denied*, 155 So. 2d 592 (Ala. 1963), *rev'd per curiam sub nom.* *Abernathy v. Alabama*, 380 U.S. 447 (1965).
  8. *E.g.*, *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961).
  9. *E.g.*, *McCorvey v. Lucy*, 328 F.2d 892 (5th Cir. 1964); *Franklin v. Parker*, 223 F. Supp. 724 (M.D. Ala. 1963), *aff'd per curiam as modified*, 331 F.2d 841 (5th Cir. 1964); *Lee v. Macon Cnty. Bd. of Educ.*, 221 F. Supp. 297 (M.D. Ala. 1963), *supplemented*, 231 F. Supp. 743 (M.D. Ala. 1964) (three-judge court).
  10. *Williams v. Wallace*, 240 F. Supp. 100 (M.D. Ala. 1965).
  11. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1973-1973bb-1 (2006)).
  12. *See generally* JAMES H. JONES, *BAD BLOOD: THE TUSKEGEE SYPHILIS EXPERIMENT* (new and expanded ed. 1993) (tracing the history of the Tuskegee Study and discussing its origins in race relations); SUSAN M. REVERBY, *EXAMINING TUSKEGEE: THE INFAMOUS SYPHILIS STUDY AND ITS LEGACY* (2009) (focusing on the consequences and repercussions of the study in the United States); *see also* FRED D. GRAY, *THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY AND BEYOND* (1998) (describing, first-hand, events surrounding the Tuskegee Study).
  13. FRED D. GRAY, *BUS RIDE TO JUSTICE: CHANGING THE SYSTEM BY THE SYSTEM* (1995).
  14. Jonathan L. Entin, Book Review, 48 J. LEGAL EDUC. 153 (1998).

receipt of the American Bar Association's Thurgood Marshall Award, his continuing involvement in civil rights litigation, and his founding of the Tuskegee Human and Civil Rights Multicultural Center, which chronicles the contributions of the diverse population of the local area and of the American Southeast to the development of our nation.<sup>15</sup>

The editors of the *Case Western Reserve Law Review* responded to my query about reviewing the revised edition by proposing instead that I interview Mr. Gray. On October 30, 2013, he and I spoke before a packed house at the law school. What follows is a very lightly edited version of our conversation. It has been one of the highlights of my academic career and one of the greatest honors of my life to count Fred Gray as a friend. Our conversation will introduce you to a legendary civil rights lawyer, but please read *Bus Ride to Justice* to understand how much Fred Gray exemplifies Justice Holmes's admonition to "live greatly in the law."<sup>16</sup>

#### AN INTERVIEW WITH FRED GRAY\*

DEAN ENTIN: Fred, welcome back. It is a pleasure to have you here. It is a pleasure to see you again. Let us start at the beginning. You originally planned to be a minister. How did you decided to become a lawyer?

MR. GRAY: Before I answer your question, let me first express to the Dean my appreciation for the remarks he made, to you and to the law school and to BLSA, the Black Law Students Association, and to the Law Review for making this trip possible. To all of you students I just want to say to you that over sixty years ago I sat where you are sitting—not in this building but in the old building on Adelbert.<sup>17</sup> I had no idea that I would ever be coming back to this institution under these circumstances. I say that to you because you sit and you listen now and wonder what is going to happen in your lives. I hope

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15. FRED D. GRAY, *BUS RIDE TO JUSTICE: CHANGING THE SYSTEM BY THE SYSTEM* (rev. ed. 2013).

16. Oliver Wendell Holmes, *The Profession of the Law*, in *COLLECTED LEGAL PAPERS* 29, 30 (1920).

\* Herein is presented a transcript of an interview that took place on October 30, 2013, at Case Western Reserve School of Law. The law school hosted Fred Gray to discuss (and sign copies of) the new edition of his memoir at a program titled "*Bus Ride to Justice: A Conversation with Legendary Civil Rights Lawyer Fred Gray '54.*" Jonathan Entin, the Associate Dean for Academic Affairs, conducted the interview.

17. The Case Western Reserve University School of Law was previously located at 2145 Adelbert Road in Cleveland, Ohio. At that time, the school was named the Franklin Thomas Backus School of Law. *University Archives: Adelbert Road, 2145*, CASE WESTERN RESERVE U., <http://www.case.edu/its/archives/Buildings/adl2145.htm> (last visited May 16, 2014).

that my coming to this university and the story of my life will help you as you try to determine what you are going to do with your own career.

It is good to see Attorney Harper and my friend Charles Chambliss. He is a young man who is originally from Macon County, Alabama, and who worked with us a great deal down there. He came back to Cleveland about two or three weeks ago. He called me the other day, and I told him I was going to be here. He is here, and I am happy to see them both. I am also happy to see each of you.

Having said that, I will now, Professor Entin, try to answer your question. Sometimes when you are trying a case and you are asked a question—if you are fortunate enough to get a judge who will let you make a speech—you go ahead and make your speech. It may have an effect on the jury if it does not have an effect on the judge.

I was born in Montgomery, Alabama, in the cradle of the Confederacy, in the middle of the Depression in 1930. I was the youngest of five children, and my father died when I was two. My mother had little formal education, only to about a fifth- or sixth-grade level. But she told us, the five of us, that we could be anything we wanted to be if we did three things. First, keep Christ first in our lives. Second, stay in school and get a good education. And third, stay out of trouble; do not get involved in the criminal justice system. I tried to do that, and I tried to instill those principles into my four children. I hope I did that, and I hope that their children will also be so inspired.

When I was coming along in Alabama in the 1940s as a teenager, there was probably only—you would not know this, but your parents would know it—about two professions that a black, African-American boy could look forward to as being a well-respected professional. You probably could guess both. One option was to be a teacher. And the other one would be a preacher.

And if you taught or you were a preacher, it was in a segregated system. If you were black, you preached to black people in a black church. If you were a black teacher, you taught black children in a black school. I decided I was going to be both. When I was growing up, my mother said I used to baptize cats and dogs.

We had a Church-of-Christ-related school up in Nashville that was a boarding school. When I was twelve years old, I went up to that school to learn how to be a preacher, and apparently I did pretty good because the president of the school—one of our old evangelists—would go around and raise funds at churches across the country. He decided one way of raising funds and soliciting students was to take students along one or two students with him to serve as boy preachers. Those boy preachers would preach ahead of him. He would tell the audience, “This is the type of boys that we produce at the Nashville Christian Institute. You send your son to us and we will send him back a good man.”

That is what I did. I was one of his first boy preachers. Throughout the Southeast, from Texas to Florida—all around—we recruited students and raised money for the school.

I finished there in 1948, went back to Montgomery, and enrolled at Alabama State College. Actually the name of it then was Alabama State College for Negroes,<sup>18</sup> the historical black school in Montgomery. I lived on the west side of town. Alabama State was located, and still is, on the east side of town. I had to use the public transportation system from as little as twice a day to as many as eight times a day. I saw many of our people mistreated on the buses. Sometimes when white people would come on and the bus would become full, they would take a black man's money at the front door and direct him to go in the back door. Sometimes the bus driver—I would not say he intentionally did it—would close the doors and drive away before a person could get in the back door. Everything at that time was completely segregated.

We had a family friend whose name was E.D. Nixon. He was a Pullman car porter by profession. He had been president of the State Conference of Branches in the State of Alabama for the NAACP. He had also been the president of the Montgomery branch of the NAACP.<sup>19</sup> If a person of color had any racial problems, he or she would usually contact E.D. Nixon. I had seen him try to help our people, but he was having difficulty finding lawyers.

If a person of color had a cause of action against a white person, there was almost no justice to be received. One of the problems was that there were no black lawyers and white lawyers would be afraid to accept those kinds of cases. I made a personal, secret commitment while I was a junior at Alabama State that I was going to finish at State and that I was going to go to somebody's law school, someplace. At that time the State of Alabama, along with all the other Southern states, would pay a portion of tuition and room and board for blacks to attend an out-of-state school if the course of study was only offered at the historically white schools—Auburn University or the University of Alabama—and not offered at Alabama State, Alabama A&M, or

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18. The name of the school was changed from State Teachers College to Alabama State College for Negroes in 1946, then to Alabama State College in 1954, and finally to Alabama State University in 1969. Levi Watkins Learning Center, *Archives and Special Collections: The Different Names of Alabama State University*, ALABAMA STATE U., <http://www.lib.alasu.edu/archives/research/history/eightnames.html> (last visited May 16, 2014).

19. For additional information concerning E.D. Nixon and these organizations, see *Biographical Sketch: E.D. Nixon*, LEVI WATKINS LEARNING CENTER DIGITAL LIBRARY, <http://www.lib.alasu.edu/lwlc dig itallib/nixon/bio.html> (last visited May 16, 2014) and *Our Mission*, ALABAMA NAACP, [http://www.naacpalabama.org/page/mission\\_state ment.html](http://www.naacpalabama.org/page/mission_state ment.html) (last visited May 16, 2014).

Tuskegee, the historically black schools in Alabama. I decided I was going to go to somebody's law school, finish law school, return to Alabama, pass the bar exam, become a lawyer, and destroy everything segregated I could find.

Now, for a black boy in his upper teens to even think about that in Alabama was almost unheard of in the 1940s and 1950s. Nevertheless, that's the commitment I made to myself. And, when I graduated from Alabama State in May of 1951, I enrolled in Western Reserve University Law School on September 21, 1951. Then, I finished law school in June of 1954.<sup>20</sup>

On my way back to Alabama, I stopped by Columbus and took the Ohio Bar exam, just in case. A month later I took the Alabama Bar exam. In the latter part of August 1954, I was advised that I had successfully passed both bar exams the first time. I was admitted to the Ohio Supreme Court on August 26, 1954, and to the Alabama Supreme Court on September 7, 1954. I was now a lawyer and ready to begin destroying everything segregated I could find. I hope I answered your question. It is a long answer.

DEAN ENTIN: It is a terrific answer. First of all, what led you to this law school?

MR. GRAY: Well, there were several things. I wanted to go to a good small law school, and I received information about a number of law schools, including this one. In addition to that, I had to also go to a school where I could find some work because we did not have any student loans at that time. I knew I was not smart enough to get an academic scholarship to any law school, and I realized that I had to support myself—my mother was not able to do it.

In the early 1950s, the Cleveland Illuminating Company used to have a slogan, saying, "Cleveland was the best location in the nation."<sup>21</sup> If you wanted to find a job, particularly if you were a person of color—whether it was part-time or full-time—you could usually get one in Cleveland.

Plus, there were a lot of Alabamians who had migrated from Alabama and were living in Cleveland. Many of them had written home to inform their relatives that they all had jobs. I had some relatives here at that time. In addition to that, unlike now, all of the classes were between 8:30 in the morning and 12:20 in the afternoon at that time. I felt that would give me enough time. I could find a job and work a few hours. At the same time, I would be able to keep up

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20. It was not until 1967 that the Case Institute of Technology and Western Reserve University merged to establish Case Western Reserve University. *University Archives: The Schools of CWRU*, CASE WESTERN RESERVE U., <http://www.case.edu/its/archives/Units/schools.htm> (last visited May 16, 2014).

21. For a discussion on the history of this slogan, see CAROL POH MILLER, *CLEVELAND: A CONCISE HISTORY, 1796–1996*, at 149–50 (1997).



with my school work. I made the selection to attend this law school, and I am glad I did.

DEAN ENTIN: You mentioned that Alabama was willing to reimburse you for some of your expenses. The Supreme Court had struck down a similar arrangement in Missouri about twelve or fourteen years before you started law school.<sup>22</sup> Did you ever think about challenging the Alabama policy?

MR. GRAY: I did not. I did not want to challenge anything until I became a lawyer. I had enough sense to believe if I were to have attempted to challenge anything—about segregation or anything else—before I became a lawyer, then I probably would never have become one.

So, a little black boy from Montgomery who had no criminal record decided to go away to law school. They probably felt that I could come back and handle some wills and some estates. They likely believed that I would simply represent some black folks in criminal matters and would not upset the apple cart. I did not want to give them any excuse for believing anything to the contrary.

DEAN ENTIN: I assume that you did some of those wills and criminal cases along the way, but your first really big client, really prominent client, was Rosa Parks. But, as you said, the conditions of the buses had gone back many years. Rosa Parks was not the first person to challenge the bus segregation ordinance. Do you want to talk a little bit about Claudette Colvin?

MR. GRAY: Yes. Actually, the bus problem in Montgomery was a problem with which all black people were familiar because we did not have automobiles. For the most part, very few people had automobiles in those days. We all used the public transportation system. So either we had experienced problems, had seen other people have problems, or knew a person who had problems. I think there were people who wanted to do some things about it.

There was one man who had an altercation on a bus, and as a result of that altercation, he was killed. There had been any number of people who were arrested for refusing to give up their seat to a white person. Under the ordinance of the City of Montgomery, the bus drivers had police power.<sup>23</sup> They could actually arrest you for the purpose of enforcing segregation or any other offense on the bus. Mrs. Parks, of course, had been in Montgomery for a long time. I did represent her, but there were many other persons who had been arrested under similar circumstances. Some of them we knew about and some we did not know about.

There was a young lady, Claudette Colvin, who was a fifteen-year-old girl who lived in the northeast part of Montgomery and, like

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22. See *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

23. MONTGOMERY, ALA., CODE ch. 6, § 11 (1952).

all black children who lived in that area, she had to use the public transportation system. Where they lived there was only a small pocket of black kids, and it was surrounded by white communities. They had to use the bus to go downtown, transfer to another bus, and go on the other side of town where the black high school was located. Claudette Colvin was one of those students.

On March 2, 1955, nine months before Rosa Parks did what she did, Claudette was coming home from school. After transferring downtown, she sat in a seat on a bus that she had sat in before. The difference was, on that particular day, more white people were on the bus than usual. The first ten seats—there were two seats on each side of the bus and the two front ones—were always reserved for whites, whether they came or not. The other seats were kind of a fluid situation. Blacks could sit there, but if the bus driver would ask you to move, then you would have to stand up and let the white person take your seat.

Claudette was sitting in a seat, not in one of the ones traditionally reserved for whites, but one that she had sat in before. White persons came on, and the bus driver asked her to move. She refused. She told them that she had paid her money. She had a teacher whose name was Mrs. Norris, who had been teaching civics and had told them about their constitutional rights, and she did not get up. The bus driver called the police. The police asked her to get up. She would not get up, and they literally drug Claudette off the bus because she would not walk. She was arrested. Her parents called E.D. Nixon. E.D. Nixon called me, and the parents retained me for the purpose of representing Claudette.

She was charged with being a delinquent. She was tried before Judge Hill in the Juvenile Court of Montgomery County. I filed motions in that court—the first motions I ever filed—challenging the constitutionality of any statute or any ordinance forcing Claudette to give up her seat; my motions said, in effect, that the State was not concerned about Claudette being a delinquent. The State was concerned about enforcing segregation laws and that those laws were unconstitutional under the *Brown vs. Board of Education*<sup>24</sup> case, which had just been ruled on almost a year earlier in May 1954.

The court, of course, did not listen to my argument—or he listened to it, then declared her to be a delinquent—and placed Claudette on unsupervised probation. I was a little disappointed on the one hand. On the other hand, I really did not expect the judge, under the circumstances, to find her not guilty.

Jo Ann Robinson, who was a teacher at Alabama State had a bad personal experience on a bus back in 1949. She was then chair of the

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24. 347 U.S. 483 (1954).

Women's Political Counsel. It was an organization of black professional women, most of who were teachers at Alabama State or public school teachers. They were concerned about all the problems that our people were having, including the problems on the buses. Jo Ann then became very active in Claudette's case, and, of course, E.D. Nixon was already involved because her parents had contacted him before contacting me. So, the three of us—E.D. Nixon, Jo Ann Robinson, and Fred Gray—were *very* interested in trying to solve the problems on the buses.

In Alabama there was an anti-boycott statute. So, instead, we thought about the possibility of trying to just stay off of the buses. The results, of course, would have been the same.

Additionally, I wanted to go ahead and file a lawsuit in federal court, but our community was not quite ready. The officials in Montgomery said at the time that they were sorry about what happened to Claudette and that the situation would not happen again. We did not do anything about Claudette's case at that time. But it did give moral courage to Mrs. Parks and others of us. Claudette had also attended some of Mrs. Parks's youth classes. Mrs. Parks was the director of the youth activities of the Montgomery branch of the NAACP, as well as secretary of the branch. We—Jo Ann, E.D. Nixon, and Fred Gray—began to be sure that whenever the opportunity presented itself again, we would be ready. What happened to Claudette would not go unattended in the future.

DEAN ENTIN: Which led to Mrs. Parks not giving up her seat, as you said, nine months later. You represented her in her trial, and there was also going to be a protest that was supposed to be, originally, just one day, if I could remember correctly.

MR. GRAY: Here is what happened. Of course, Mrs. Parks lived about three blocks from the church I attended in Montgomery. I was a member of the Montgomery branch of the NAACP and very active because I was interested in civil rights activities. Mrs. Parks was very interested in the youth, she was very interested in civil rights, and she became very interested in my career as a lawyer. She worked in a department store in downtown Montgomery that was located a block and a half from where my office was located. So from the time I started practicing until the day of her arrest, almost every workday—and that was five days a week—during her lunch period, she would bring her little lunch to my office. We would sit down, share our lunch, and talk. We talked about conditions on the buses. We talked about the conditions of young people generally. We talked about the whole racial problem and how it could be solved. We also talked about how a person should conduct themselves in the event they ever had an opportunity to challenge the laws or in the event they were asked to give up their seats on the buses.

As a result of our conferences, Mrs. Parks was very much familiar with what to do if she were requested to give up her seat on a bus.

We had even talked on the day of her arrest. I was the last person she had seen before her arrest that had anything to do with civil rights. She also knew that I was going to be out of town that afternoon. It just happened that when she went home that day, the opportunity presented itself. She was sitting, not in one of the reserved seats, but in one of the others. She refused to get up to give her seat. When I returned from out of town, I had messages from her, from my secretary, and from everybody telling me that Mrs. Parks had been arrested.

I returned Mrs. Parks's call, and she asked me to come to her house. I went over and talked with her. She told me what had taken place. This was on Thursday evening, December 1, 1955. She retained me to represent her. The trial was going to be the following Monday, December 5, 1955, in the Recorder's Court of the City of Montgomery. I told her I would be happy to represent her and that she should not worry about it. We would be ready for her trial on Monday.

I left her house and went to Mr. E.D. Nixon's house, which was not very far. We discussed her case. He already knew about it, and he knew about Claudette's case. He had gotten me involved in that one. He was the one who went and actually signed the bond for Mrs. Parks to get out of jail. I told him then that if we were going to ever do anything about the buses, the time to do it is now. I knew he was ready for that, and he said, "Well, fine." Now, Mr. Nixon was not a person who did a lot of planning. He was a person of action. So I told him that I was going to go and talk to Mrs. Robinson because she was interested in Claudette's case, and she had had a bad experience on the buses.

I left E.D. Nixon's house, drove across town to Mrs. Robinson's house, and got there about nine o'clock in the evening. From nine o'clock in the evening on December 1st until the early hours of December 2nd, we sat in her living room and planned the details for what became the Montgomery Bus Boycott.

There were several things we considered. First, if we were ever going to solve the bus problems in Montgomery, then right then was the time to do it. Second, I felt that we were going to ultimately have to file a federal lawsuit in order to do it because the State courts in Alabama were not going to rule in our favor. I just knew that. I also realized that it took a long time for lawsuits to be completed—to initially get through the District Court and then to get a definitive decision in the U.S. Supreme Court. So the question we needed to answer was, What are we going to do in the meantime? Jo Ann suggested that we should stay off of the buses until we could return on a non-segregated basis. But she anticipated that such a plan was going to take planning, money, a lot of work, and time.

We decided to tell the people on the day of Mrs. Parks's trial, December 5th, to stay off of the buses—at least for one day—as a

protest. Jo Ann agreed that this plan was fine. She knew that our plan was going to require a lot of meetings, but she told me that when she and I finished our meeting, she was going to go and draft leaflets that would say, "Another black woman has been arrested. Her trial is going to be on Monday, the 5th of December. Stay off of the buses in protest, and there will be a mass meeting at Holt Street Baptist Church on December 5th at 7 p.m." She did not know whether all those things could happen, and neither did I, but those were our plans.

Then the question became, if we are going to do that, how are we going to get the message out? It was already Friday morning, and we were talking about protest on Monday. Our answer was to work with the preachers. We realized that the black preachers talk to more black people on Sunday mornings than anybody else. So we had to get the cooperation of the black preachers. I did not think that would be a problem; after all, we knew all the preachers. I was confident that we could get them to cooperate with our plans.

But there were some other things that we needed to do. The question is going to come up: "Why are we staying off of the bus?" We needed a spokesman. But who would be the best option to serve as the spokesman? That was a real challenge because, under normal circumstances, the spokesman would have been E.D. Nixon. E.D. Nixon was not a formally educated man, but he was *Mr. Civil Rights* and he had a lot of people following him.

But there was also another black leader in Montgomery named Rufus Lewis. Rufus Lewis was only concerned with one area of civil rights—getting people registered to vote and getting people elected to public office. If you have that kind of problem, he would be interested in it. If it is any other kind of problem, he simple was not interested. He owned a nightclub named the Citizens' Club. In order to get in to the Citizens' Club, you had to be a registered voter. In the end, we decided that we needed both Mr. Nixon's supporters and Mr. Lewis's supporters. If either one of them was appointed the spokesman, we could have lost the other's supporters. So, we thought that we should choose another person to be the spokesman. Then we could give good supporting roles to both Mr. Nixon and Mr. Lewis.

After considering our options, Jo Ann said, "I will tell you, Fred, who we should get to be the spokesman. My pastor, Martin Luther King Jr., has not been here long. He is the pastor of Dexter Avenue Baptist Church. As you know, Dexter Avenue Baptist Church is the last church that you would expect a boycott to start because it was the elite black people who worshipped there." Most of the people who worshipped there had jobs with the state, the city, or the county. Their positions were vulnerable, and they were not going to do anything that was going to interfere with them. But, she insisted: "Dr. King is an excellent speaker, and he will be able to move people with words." I had met Dr. King but did not know him like she did. I

told her that if she thought he'd be a good spokesman, then I would be happy with him.

Having settled on a spokesman, I suggested the two key roles for the other two men. E.D. Nixon was a Pullman car porter. The Pullman Car Porter's Union was needed to raise some money. Mr. Nixon needed to be the Treasurer. He knew A. Philip Randolph, the black labor leader in New York, who was president of the Pullman Car Porter Union. If E.D. Nixon was Treasurer, then that meant Mr. Randolph would help to raise money. Jo Ann agreed with this line of thinking.

Now what were we going to do with Rufus Lewis, and the Citizens' Club? At that point, I remembered that Mr. Lewis's wife, Jewel, who was part of the Clayton family, was co-owner of the largest funeral home in Montgomery. Ross-Clayton Funeral Home was the largest then in Montgomery, and it is still the largest now. They had automobiles. We would need them to get people from one place to another place. We needed to have a transportation system. So we decided to make Mr. Lewis the chairman of the transportation committee. He would get his wife to use all the cars from the funeral home. They would also get other funeral homes to use their cars. So, we had our transportation system.

The only other thing left was that we needed a lawyer. The young lawyer, who just finished Western Reserve University, fresh out of law school, would be the lawyer. We decided that Jo Ann could not let it be known that she was doing all of this at the time because she worked for a state institution. If her role got out, they would have fired her. Well, she got fired anyway, but it was much later.

I had been a member of the Bar for just a little over a year, and if my involvement became known, they would probably accuse me of stirring up litigation. They might have disbarred me before I could even get started.

So what we had to do was plant the seeds of the plans that we had in other individuals' minds and let those individuals be the ones to get the message to other individuals. Just let it spread. Jo Ann said, "I am going to go on and make these leaflets and get them out."

Mrs. Parks's case was tried on December 5th, 1955. She was convicted. We again raised constitutional issues. We appealed to the Circuit Court of Montgomery County. When they had the official meeting, Martin Luther King Jr. was selected to be the spokesman at a portion of the meeting. At the time they elected him, he was not present. Rufus Lewis was selected chairman of the transportation committee. E.D. Nixon was selected Treasurer. Fred Gray was selected as the lawyer for the movement. That is what happened when the official meeting occurred.

The official meeting took place that afternoon at Mount Zion A.M.E Zion Church. Those officials I just told you about were selected officially in that meeting. They had the mass meeting at 7:00

p.m., at Holt Street Baptist Church. Dr. Martin Luther King was introduced to the City of Montgomery, the State of Alabama, the nation, and the world. The rest of it is history.

DEAN ENTIN: You mentioned that you didn't want to get into trouble with the Bar before you got established. What kind of dangers did you face? After all, there was plenty of violence and retaliation against people who were involved in the movement.

MR. GRAY: It is difficult when you look back over sixty years ago. It is one thing to look at it now, and it is another thing to have lived it on a day-to-day basis. What happened was we had a real problem with the buses. And what I did was to solve the problem confronting us with the buses. Initially, we had all kinds of problems. And, of course, there were problems that developed later on as things progressed.

When we started the bus boycott, I wanted to be very careful to be sure that what I did was ethically correct. That way, the Bar would have no excuse to bring any disciplinary action against me. No matter how important, I could not let this interfere with accomplishing my goal of destroying everything segregated I could find.

As time passed, we had various and sundry things develop. It did get to be difficult. There were complaints, later on, filed. And I will take this opportunity to say to you, once you become lawyers, try to conduct yourself in a way that no complaints are filed against you. But if they are, be sure you do what is ethically correct. Respond to all the complaints, and get a good lawyer to help you in the meantime. Most of the time if you are right, you will come out all right.

DEAN ENTIN: You were a young man during the period when young men were subject to the draft. I think you had a little trouble with your draft board. Is that correct?

MR. GRAY: Yes, that's true. As I indicated earlier, I was a minister long before I knew anything about being a lawyer. When I came of age to register, I registered like everybody else, including indicating my religious activities. And during the whole time that I was doing the work, even with the Montgomery Bus Boycott, I was also serving as a minister of the Newtown Church of Christ, a church located in a ghetto area of the City of Montgomery. I still attend that church quite frequently. But I was expecting, at some point along the way, that they might have my draft board change my classification from a minister's classification. But I was doing religious work. When I was here in school, I became the assistant minister of what was then the East 100th St. Church of Christ—now it is the University Church of Christ located at Chester and 89th, right in the University Circle. I was assistant minister of that church when it was on East 100th Street. Every time the draft board required me to make a submission of my work, I told them the religious work I was doing. They were

perfectly satisfied with it. They were satisfied with it until I filed the lawsuit challenging segregation<sup>25</sup> and became involved in the bus boycott.

There was a news reporter who found out about my draft status and wrote stories about it. My draft board saw these stories and then immediately reclassified me from 4-D,<sup>26</sup> which was a minister's classification, to 1-A.<sup>27</sup> I would not have minded going into service, except that this reclassification had been for the purpose of stopping my activities with the Montgomery bus boycott. So, I appealed the decision all the way to General Hershey, who was then the Director of Selective Service. On the night before I was to report for service, I received a telegram from the state director telling me that the national director of selective service had ordered him to postpone my induction indefinitely. So I was not drafted.

DEAN ENTIN: Let me ask you a quick technical question. *Browder v. Gayle*<sup>28</sup> was the case in which the Supreme Court invalidated the bus segregation ordinance. Why was the case filed in the name of Browder rather than in Mrs. Parks's name?

MR. GRAY: I recognized, even before we had filed the lawsuit, that if we were going to ever solve the problems of the buses, it was going to take an action in federal court because the State of Alabama would never let you get a federal constitutional issue decided in the Alabama Supreme Court. They would find some way of avoiding that. I wanted to be sure that when we filed a case in federal court, we would have plaintiffs involved in order to assure that the court would not be able to avoid ruling on the constitutionality of the city ordinance and the state statute requiring segregation on the buses.

The City of Montgomery had the case against Mrs. Parks pending. Technically, it was not a criminal case because Alabama law classified city offenses as being offenses against the city. They were quasi criminal as distinguished from real criminal. However, her case was up on appeal. If I had included Mrs. Parks as a plaintiff in that case, someone could have said that it was a collateral attack on an appeal going through the state court system. So I decided, without saying anything to anybody else, to just let Mrs. Parks's case proceed up through the state court system as it was going. I had wanted to file a case for Claudette Colvin a longtime earlier anyway.

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25. *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd*, 352 U.S. 903 (1956) (holding city ordinances that mandate racial segregation violate the Fourteenth Amendment).

26. *See* 32 C.F.R. § 1630.43 (2013).

27. *See* § 1630.10 (classification for those "[a]vailable for unrestricted military service").

28. 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd*, 352 U.S. 903 (1956).



There was another young lady, Mary Louise Smith, who had been arrested in October 1955. We had found out about Ms. Smith after Claudette's case. We did not know about it until after we started the bus boycott. Her father had simply paid a \$5.00 fine, and they had forgotten about it. Then, there were also other individuals in the community who had had problems on the buses. When we decided we were going to file the suit, I considered all the persons who said they would be willing to be plaintiffs and selected those persons who were to be plaintiffs. I wanted to be sure that Claudette Colvin would serve as a plaintiff, and she did. I did not want to name her as the lead plaintiff because she was a minor, and I would rather have an adult. I did not want to be forced to sue through her parents. So we ended up filing *Browder v. Gayle* with those separate plaintiffs, and Mrs. Parks's case proceeded in the state court.

DEAN ENTIN: Eventually, you won the federal case in the District Court, and then the Supreme Court affirmed.<sup>29</sup> Then, shortly after that, the city acquiesced in the desegregation of the buses.

MR. GRAY: Yes. But let me just mention something particularly for the benefit of the students in the audience. I had enough sense to realize that I was just out of law school, and I needed a lot of help. I knew the State of Alabama would have the best legal minds that money could buy to oppose what we were doing. So I had enough sense to know I needed help. There was a black lawyer in Birmingham named Arthur Shores, who was very good and who had been handling civil rights cases. He became my mentor. I had also heard about Thurgood Marshall, who was the general counsel for the NAACP. I had been working for the local Montgomery branch of the NAACP.

I got on the phone, never having talked to Mr. Marshall before, but was able to get him at his office. He had heard about what we were doing in Montgomery. I told him that we needed his help and his assistants' help. I told him what was going on and asked him whether I could come to New York and talk with him and his assistants. I asked him whether he would help us with these cases. He agreed.

As soon as we made arrangements, I went to New York and met Mr. Marshall. He particularly assigned the responsibility to Robert Carter, who later became a United States District Court Judge in Manhattan. From that day—in the third week in December of 1955—until this day, I have had excellent working relationship with the NAACP and the NAACP Legal Defense Fund. As a matter of fact, the first book signing I had—in May 2013—was in Washington D.C., at an event hosted for me by Sherrilyn Ifill, who is now the Director-Counsel for the Legal Defense Fund in New York.

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29. See *Gayle v. Browder*, 352 U.S. 903 (1956).

I realized that I needed some help, and I was able to get that kind of help I needed. I remember Professor Sonnifield, who was on the faculty here at Western Reserve University Law School and my advisor when I was in school, came to me once and tried to convince me to stay here and practice law in Cleveland. He offered to introduce me to some of the black lawyers in Cleveland. He thought I could develop into a good lawyer but that they would not give me the opportunity in Alabama. I thanked him for his offer. I did not tell him what my plans were because I did not tell anybody. However, I did say the only reason I came to Cleveland was to go back to Alabama to practice. He said, well, if you must go back, let me give you some good advice: do not be afraid to share a fee with a lawyer who has more experience than you. I did that. For all of these cases, including *Browder v. Gayle*, I ended up getting Arthur Shores, the great civil rights lawyer from Birmingham, to work with me on those cases. He did it on all these other cases, too.

DEAN ENTIN: We have been going for quite a while, and we are clearly not going to get through everything that you have done in the time available to us today. But let me just ask you a little bit about the Tuskegee syphilis case because that one really did not result in a trial, but it was a really major problem and a really major contribution on your part.

MR. GRAY: The Tuskegee syphilis study involved about 623 men, who, basically, were farmers in rural Macon County, Alabama. I found out that the study started in 1932 and that the title of it was *The Untreated Syphilis in the Negro Male*.<sup>30</sup>

The federal government had found that there was a great deal of syphilis in any number of states. As a matter of fact, the Rosenwald Foundation had treated syphilis for some years in Alabama, Tennessee, and some other states. They stopped that program, and there were doctors who knew that in Macon County, Alabama, there was quite a pocket of syphilis. So they were able to convince the Surgeon General to let them engage in a study. It was supposed to have been a short-term study of untreated syphilis in the Negro male. They had the white health officer of the county and a Negro registered nurse to send out notices to the churches and schools. The notice asked men to come to a new health program, at which doctors would end up examining them—many of whom had never been examined by doctors—and whatever they found wrong they would treat them for it. They did not tell them that it was a study of untreated syphilis, and that if somebody may have syphilis they were not going to treat them, even though they diagnosed it.

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30. See J.K. Shafer, Lida J. Usilton, & Geraldine A. Gleeson, *Untreated Syphilis in the Male Negro*, 69 PUB. HEALTH REP. 684 (1954).

So the study existed for some forty years before it became generally known. It was known, however, in medical circles for persons who were interested in studying syphilis. But in July of 1972, an employee for the public-health service ran across these reports, and he complained to his superior about the study. They had him go to Atlanta to the Disease Control Center and talk to officials there. The Disease Control center officials would not do anything about it. He was told that this was a federally funded program, and he was not involved in it. But he finally told a newspaper reporter in San Francisco, whose boss got in touch with a reporter in Washington, D.C. Then a story came out, the first one in the later part of July of 1972.

Of the victims, there was a man named Charlie Pollard, who was a farmer in a community known as Notasulga, a little north of Tuskegee. He came to my office a few days afterwards and told me that he was one of those men. He had a copy of the local newspaper and said that he thought the federal government had mistreated him. He wanted to know if I could help him, and I told him I thought I could. I had him bring the other men who he knew had been in the study with him. We got all the necessary information. Ultimately, we were able to file a lawsuit that resulted in settling that case.<sup>31</sup> Later, I was able—along with help from others—to get President Clinton to render an apology to those men. We went to the White House on May 16, 1997. Herman Shaw, who introduced the President at the time of the apology, also told the President that the men were interested in having a permanent memorial in Tuskegee that would acknowledge the contributions that they had made to health care, even though they did not realize it. As a result, he announced the formation of the Tuskegee Human and Civil Rights Multicultural Center.

All of those men are now dead, but before they died, they told me they wanted such a history museum. We now have such a museum. Professor Entin had the opportunity to see it, and he has some information about it. It is a nice museum that gives you the history of Civil Rights as it evolved from around Tuskegee. It tells about the Tuskegee syphilis study, and it tells about many other precedent-setting cases. I invite all of you to come and to become a part of it.

DEAN ENTIN: One last question, Fred. In recent years, a group of scholars have been writing about civil rights and the movement. They have suggested that litigation and courts played a relatively marginal role in bringing about desegregation and social reform. They suggest that civil rights progress was really more a function of social

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31. See JACK KUSHNER, *COURAGEOUS JUDICIAL DECISIONS IN ALABAMA* 69 (2011) (discussing how Fred Gray settled the case on behalf of Charlie Pollard).

mobilization and political activism, things like that. How would you respond to that view?

MR. GRAY: I would say that that is inaccurate and contrary to history. I can tell you from firsthand information about Alabama. The State of Alabama has not done anything at all to do away with discrimination against African Americans, even after slavery, after reconstruction, where we had African Americans in Congress. In Alabama, they adopted the Constitution of 1901, which was designed primarily to disfranchise African Americans and poor whites; and they did a very good job of it and still have not changed that Constitution. The Constitution has been amended more times than any other constitution in the country.<sup>32</sup>

But you could take cases that I have handled in Alabama that involved the buses, involved lunch counters, and involved destroying segregation in all of the institutions of higher learning in Alabama—Auburn and the University of Alabama. I have filed suits that have desegregated 105 of the 119 school systems in the state and everything under the control of the State Board of Education. In every desegregation case I won in Alabama, the State of Alabama has fought desegregation. They have never agreed to any of the issues, even when they barred the NAACP from doing business in Alabama—I think it was June 1, 1956.<sup>33</sup> It took us eight years to get it so that the NAACP could do business again in the State of Alabama. So it is the court orders that have been able to change the landscape of this country.

In order to get a court order, there are several things you must have. One, you need a lawyer to file a lawsuit. In Alabama, for a long time until recent years, we did not have any reciprocity.<sup>34</sup> By keeping lawyers out, there is no one to file the lawsuit, and you do not have any challenges to the laws.

Secondly, it took individual plaintiffs. These persons, when they ended up filing the lawsuits, would often lose their jobs and also lose almost everything else they had. Pressure would be brought on them, if not by their employer, then by somebody who had the pressure. You had to have plaintiffs.

Then, you had to have federal judges who were willing to make the right decisions, like Frank Johnson.

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32. As of March 2014, the Alabama Constitution had 856 amendments.

33. *See* NAACP v. Alabama, 377 U.S. 288 (1964) (removing the injunction preventing the NAACP from carrying on business in Alabama).

34. As of October 29, 2013, Alabama had reciprocity agreements with only 27 states. *States That Have a Reciprocity Agreement with Alabama as of October 29, 2013*, ALABAMA BAR ASSOCIATION, <http://www.alabar.org/admissions/ReciprocityStates.cfm> (Aug. 18, 2014).

I was talking to the Dean earlier, and I might just challenge all of you lawyers out here, and tell you that we have a very interesting case going on now in Alabama. It is a case that involves the right to vote. It involves civil rights. It involves economic ventures and electronic bingo. The case is pending in federal court.<sup>35</sup> We have a constitutional amendment that was passed by black folks in Macon County to have electronic bingo.<sup>36</sup> It existed for four years. The governor decided to close it down. They took the very machines that were in the black county to the Indian-owned casinos. They are still using those machines now. They closed the facility down in Macon County that was generating 2,000 jobs and millions of dollars. There is a case involving these pending now before the federal court. It is one that deals with voting rights, it deals with civil rights, and it deals with economic rights. If you law students want to, I am going to send you a copy of the pleadings in that case, and anybody who wants to may work on it. I think you will find the first part of a brief that I wrote. I took time to write this part of it myself. It is a motion for leave to amend our complaint after the Supreme Court struck down a section of the Voting Rights Act that was one of the provisions in the original complaint. So we amended it.

But I ended up telling the judge in that case that what Alabama is doing in this case now is the same thing the state has done in all these other cases. I outlined them, and it was really a litany of cases that I have handled. In all of them the object, the purpose, and the result was to deny African Americans their constitutional rights. The facts are different. This is electronic bingo. The *Gomillion v. Lightfoot*<sup>37</sup> case was where we got a chance to vote. They changed the city limits and put us out. In the county just below us, Bullock County, where we got the right to vote, they extended the term of office of the white County Commissioners so that the term did not even expire. We had to get that declared unconstitutional.

Then in another county—George Wallace’s home county—where we got the right vote, they used to have single-member districts for the Democratic Executive Committee. At that time, the Democratic Party was controlling things in Alabama. They changed from single-member districts, to a district-at-large. So the facts are different, but the issues are the same. I am going to send the pleadings in the

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35. See Fifth Amended Complaint, *Hope for Families & Cmty. Serv. v. Warren*, No. 3:06-cv-01113-WKW-csc (M.D. Ala. May 13, 2008) (suing Macon County and its sheriff, in his official capacity, for violations of the equal protection clause).

36. ALA. CONST. amend. DCCXLIV (also labeled ALA. CONST. Macon County § 1).

37. 364 U.S. 339 (1960) (striking down an Alabama statute which effectively deprived African Americans in Alabama of the right to vote).

electronic bingo case to you all, and I will see if you really want to work on a civil rights case. If you do, you can help us.

DEAN ENTIN: We could sit here for at least the rest of the afternoon, but I think we really need to call the formal part of the program to a halt. Fred, it is an extraordinary honor to have you back. It is really inspiring to know that, although you are coming up on your sixtieth year out of law school, you are still going strong.

Thank you so much for being with us. Let us call the formal proceedings to a halt and thank Fred for being here. It has been a privilege to talk with you this afternoon.